A Reinvigorated US Anti-Corruption Strategy for Africa

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Africa is besieged by kleptocratic networks. Sub-Saharan Africa is consistently the lowest-ranked region on Transparency International's Corruption Perceptions Index (CPI),[1] and it lags behind on various sustainable development indices.[2] From South Sudan to Zimbabwe, corrupt elites enabled by transnational networks plunder state coffers and move their ill-gotten proceeds in dollars, pounds sterling, and euros. State capture is profitable and creates a cycle of conflict that rewards impunity. In fact, "[t]he 2021 CPI shows that 80 per cent of countries across the region have stagnated in the last 10 years," and one key obstacle to progress is "systemic corruption involving high-level public officials and vast sums of money, often accompanied by gross human rights violations."[3] It is clear that the United States government needs a fresh approach to counter corruption on the continent.[4]

Undoing the status quo requires strategies that foster accountability for the theft of the continent's wealth and that build leverage for peace, human rights, development, democracy, and good governance. With the release of President Joe Biden's "Memorandum on Establishing the Fight Against Corruption as a Core United States National Security Interest" and the first ever US Strategy on Countering Corruption (the "Strategy"),[5] which recognizes the global scale of the challenge,[6] now is the time to focus on dismantling key networks that enable the—often violent—kleptocracies in Africa. A sustained, multiyear, whole-of-government effort to dislodge kleptocratic networks on the continent would reap dividends for US security for decades to come by diminishing opportunities for transnational criminal networks and America's adversaries. Going after these networks with a creative mix of financial pressure tools would provide real leverage for efforts at promoting democracy, peace, human rights, and broader good governance.

Ultimately, reinvigorated US policy should include robust diplomacy, the creative use of existing tools of financial pressure, and a fresh approach to the private sector.

Sharpening Existing Tools of Financial Pressure

Network sanctions

Sanctions can be overused as a tool of foreign policy, particularly when not connected to clearly articulated policy strategies and goals. However, The Sentry's experience and broader research has found that sanctions can be highly effective when they are designed, implemented, and enforced in a sustained and thoughtful manner as part of a broader diplomatic strategy.[7] The US Department of the Treasury's 2021 Sanctions Review, which aimed at ensuring the effectiveness of sanctions, also concluded that "[s]anctions should be deployed alongside other measures as part of a larger strategy in support of specific policy objectives" and should be "assessed to be the right tool for the circumstances."[8]

Unfortunately, in the past, sanctions related to sub-Saharan Africa have often been geared more toward satisfying the urge to do something in response to atrocities than toward creating real impact. In order to be effective, sanctions should not be one-off, punitive gestures, and they should go beyond naming and shaming warlords and officials to focus on exerting pressure on entire networks.[9] The Office of Foreign Assets Control (OFAC) has long conceptualized narcotics trafficking through a network lens, with a kingpin at the top and a cascade of family members, business holdings and associates, proxies, financial facilitators, and other enablers. This same approach can be used to deploy anti-corruption sanctions in sub-Saharan Africa. Warlords and corrupt officials tend not to conduct business in their own names, given the compliance scrutiny this could engender. Therefore, it is critical that research is done up front to identify their cronies and the entities they own or control, so that they may be sanctioned as well. Imposing sanctions in a strategic and timely manner requires advance legwork.

Most importantly, however, network sanctions need to target the international facilitators. Kleptocrats rely on networks of international intermediaries or enablers to be able to siphon off funds and store them in a "safe" place.[10] These facilitators are often profit-minded with quasi-legitimate businesses. The threat of being sanctioned themselves, or of becoming the target of enforcement, is powerful, and they are the actors that could be influenced to change their behavior through the use of international sanctions.[11] Sanctions are an instrument of disruption, and they impose real costs, not just on in-country targets but on these international enablers, making them unable to travel freely, open bank accounts, hire public relations advisors, or send their kids to boarding schools abroad.

Unlike designations of warlords or foreign officials, which are added to screening filters automatically but generally do not receive further examination by global financial institutions, sanctions on international facilitators, who often require access to the global financial system to do their dirty work, receive significant attention. Such measures usually result in global financial institutions conducting in-depth exposure searches to ascertain whether there are any links to the target. These designations may also have knock-on effects by subjecting any companies that do business with such sanctioned targets to increased scrutiny.

Smart sanctions succeed

The 2017 sanctions on Dan Gertler are a prime example of the successful use of Global Magnitsky (GloMag) network sanctions on an international facilitator.[12, 13] Gertler used his close friendship with the Democratic Republic of Congo's then-President Joseph Kabila to become one of the key profiteers in the DRC's mining sector. Gertler gained access to lucrative mining licenses that he flipped at a great profit, while Kabila received the resources he needed—money and arms—to win elections and maintain power.[14, 15] Gertler, his key business partner, and his network of 19 companies were first sanctioned in December 2017.[16] But the Department of the Treasury did not stop there, as 14 more Gertler-affiliated entities were designated in August 2018.[17] With follow-up designations and the focus on a network rather than an individual, the US government displayed a seriousness more characteristic of the sanctions programs for countries such as Venezuela—a seriousness that is rarely employed with respect to Africa.[18] This forceful approach made it clear that US pressure would last well beyond one news cycle.

Ultimately, Kabila did not run for another term.[19] Based on The Sentry's discussions with contacts in the region, sanctions played a key role in that decision.[20] For his part, Gertler demonstrated the impact of the sanctions by lobbying to have them lifted,[21] which he managed to do at the end of the previous administration.[22, 23] Fortunately, that decision was reversed in March 2021,[24] but Gertler was able to benefit from the temporary reprieve and, as the newest and third round of designations targeting his network demonstrates,[25] almost certainly continues to search for ways to sidestep sanctions.

Similarly, sustained financial pressure from the US and other partners on President Salva Kiir's inner clique in South Sudan, through a range of sanctions and anti-money laundering (AML) measures,[26, 27, 28, 29, 30] has been credited with contributing to the formation of a unity government in February 2020 by Kiir and Riek Machar.[31, 32]

Incisive designations should be supported by further actions. From the aggressive use of civil penalty authorities to penalize those breaching sanctions to focused prohibitions on certain sectors, such as the mining and oil industries in South Sudan, the Treasury Department should be looking beyond lists to be as smart and focused as possible.

Keeping smart sanctions fit for purpose requires adequate resources and staff. For example, identifying and building designation packages to counter efforts at sanctions evasion requires persistence and investigative capacity.[33] However, sanctions programs addressing human rights and corruption, particularly in sub-Saharan Africa, have traditionally not been viewed as a high priority, and existing resources are often redirected towards whatever programs are deemed higher priority by any given administration at any given time—for instance, Russia, Venezuela, or Iran.[34] With a renewed focus on anti-corruption efforts, the Biden-Harris administration can no longer afford to allow sub-Saharan Africa to fall by the wayside, and we have seen that ongoing pressure through continuous sanctions designations and complementary measures can lead to tangible results in the region. Even a small investment in resources has the potential to reap significant rewards on a continent plagued by corruption and conflict.

The power of GloMag

Many of the South Sudan designations, as well as those on the Gertler network, were conducted under the GloMag sanctions authority, which is an especially nimble tool in that it allows sanctions to be levied against kleptocrats, human rights abusers, and their enablers without the need to declare a national emergency and issue a new executive order. The Sentry believes that GloMag network sanctions should be used more often, in lieu of the largely symbolic sanctions targeting a single individual without their network of associates and companies.

In fact, GloMag sanctions should be considered before setting up new country-based sanctions regimes. Out of the 25 country-based sanctions programs administered by OFAC, 10 relate to African countries, with Ethiopia-related sanctions representing the latest entrant on the list.[35] Country-based sanctions will continue to have their place, but we believe that it makes sense to curtail the proliferation of country-based programs in Africa and rely on the GloMag authority to a greater extent.[36]

We have found that, at times, targeted country-based sanctions, such as those imposed in relation to the DRC or Zimbabwe in which only activities relating to specifically sanctioned parties are prohibited, are conflated with comprehensive embargoes, such as those applied to Iran and Cuba for which the prohibitions relate to the entire country and all its people. This can lead to private sector actors "over enforcing" and foregoing permissible business with those countries, though the specific prohibitions are actually narrow enough that they could be navigated. This is especially the case when the business gains are not worth the real or perceived compliance risk. As a case in point, the Burundi sanctions program only had 11 sanctioned individuals until it was terminated in November 2021,[37] but the general perception was that the country was under sanctions. On the other hand, although countries such as Mexico and Colombia have notably high numbers of sanctioned persons and entities under global counternarcotics sanctions authorities,[38] there has not been wholesale de-risking of these countries by financial institutions.[39]

Beyond sanctions: Anti-money laundering and other measures

Smart sanctions cannot be effective in isolation. Leading up to the Joint Comprehensive Plan of Action, the US government embarked on a multifaceted, whole-of-government approach to counter Iran's malign activity, including actions by the Departments of Treasury, State, Justice, Commerce, and Homeland Security.[40] To truly have an impact countering kleptocracy in Africa, the US government needs to think creatively and holistically, as it does with other threats, and use sanctions in concert with other levers.

In recent years, the Financial Crimes Enforcement Network (FinCEN) has issued a couple of Africa-related AML advisories for financial institutions to help them investigate patterns of money laundering and better calibrate their transaction monitoring systems. These FinCEN advisories are an important tool for warning banks and drawing their attention to patterns that their financial intelligence units (FIUs) may be seeing through access to suspicious activity reports (SARs), while at the same time eliciting better quality SARs. In September 2017, FinCEN issued an advisory on the risks presented by illicit financial flows related to South Sudanese elites,[41] and in 2018, FinCEN issued an advisory drawing attention to "human rights abuses enabled by corrupt senior foreign political figures and their financial facilitators,"[42] highlighting the cases of Gertler and South Sudanese business tycoon Benjamin Bol Mel. Even so, such advisories remain an underutilized tool. For instance, FinCEN could generate an advisory to alert financial institutions about conflict and high-risk gold from East and Central Africa.[43] It should also consider issuing an advisory related to illicit financial flows stemming from Sudan, in particular the money laundering risks related to businesses associated with the Sudan Armed Forces (SAF) and the Rapid Support Forces (RSF).[44]

In what appears to be a growing trend, multi-agency business advisories, such as those most recently issued with respect to human rights abuses and corruption in Myanmar, illicit finance and corruption in Cambodia, and forced labor and other human rights abuses in Xinjiang,[45, 46, 47] are proving to be an invaluable tool for the private sector and serve as a due diligence roadmap. Because sanctioning all bad actors is not possible, these business advisories communicate the potential legal and reputational risks of continuing to engage in certain activities without enhanced due diligence—whether or not sanctioned actors are present in the transaction. Accompanied by sanctions and other measures such as entity list designations, business advisories can serve as the gold standard of a whole-of-government approach. Such advisories could be issued with respect to a number of jurisdictions or sectors in Africa. In particular, the Departments of State, Treasury, Commerce, and Homeland Security could issue a business advisory focusing on illicit financial flows and corruption in the infrastructure, banking, and mineral resource sectors of the DRC economy and highlighting the risks of forced labor and human trafficking. As a logical next step, the advisories could be combined with responsible investment reporting requirements—such as those implemented in 2013 subsequent to the easing of sanctions on Myanmar, which were later abandoned by the Trump administration in 2017—requiring public reporting by US businesses on due diligence efforts undertaken to mitigate the risks outlined in the advisories.[48, 49]

In addition to issuing advisories to financial institutions alerting them of risks, FinCEN should consider strategically and surgically using its Patriot Act Section 311 authority, which allows the Treasury Department to in effect prohibit banks in the US from providing correspondent banking services to designated banks, thereby depriving them of access to the US financial system and the US dollar.[50] For example, The Sentry has recommended that FinCEN investigate and consider all available tools under the Patriot Act to address past conduct of BGFIBank in the DRC.[51, 52, 53] When imposing such measures, the Treasury Department needs to make clear that the remainder of the banking sector should not be impacted, and it should caution against wholesale de-risking. Section 311 can be used to target a particular class of transactions, and FinCEN could issue a finding, as previously recommended by The Sentry, that the trade in conflict and high-risk gold from East and Central Africa with certain traders is a "class of transactions" that constitutes a primary money laundering concern.[54]

The combination of a more robust use of advisories, the limited but strategic use of Section 311 findings, and the right kind of messaging to counter de-risking could contribute to building confidence in the rest of the banking sector for future investment.

But there are even more tools available in the arsenal. In 2018, in an unprecedented move, the Commerce Department added 15 South Sudanese oil and gas sector entities to its Entity List, thereby prohibiting any exports and reexports of US-origin goods and technologies to these entities without a license.[55] The Commerce Department's Entity List has been robustly used against Chinese and Russian entities, but to this day, only a handful of African companies have been added to it. The Sentry believes that the Entity List could be a viable tool of pressure as a complement or alternative to sanctions. Such Entity List designations are best employed against targets in industries that use US technology. They restrict the ability of US companies—and foreign companies that use US technology—to export their products to listed entities. Entity List designations could be targeted at entities operating in the South Sudanese, Sudanese, Congolese, and Central African mining sectors, where we have seen significant corruption, forced labor, and ties to armed militias.

Coordination with the Department of Justice on prosecutions, in particular with the Human Rights and Special Prosecutions Section (HRSP) and the Money Laundering and Asset Recovery Section (MLARS), is also key. The Sentry has briefed these sections on illicit gold and on South Sudanese officials with US citizenship who have been involved in human rights abuses and corruption. The Department of Justice's civil forfeiture action against Yahya Jammeh's mansion in Maryland is precisely the type of move that should be used more frequently to target the US-based real estate of corrupt African leaders and their families.[56]

Rooting corruption out of the African banking sector

In addition to considering some of the more coercive measures described in this briefing, the US government should prioritize technical assistance and capacity building to support domestic and regional efforts to counter corruption and money laundering in the banking system, and it should more effectively enforce sanctions, in particular by supporting local FIUs and other financial regulatory and supervisory bodies. The US government does not have to go this alone but should enlist partners such as the UK, EU, World Bank, IMF, African Union, and the United Nations Office on Drugs and Crime. In fact, the US and interested partners could lead a working group on countering kleptocracy within regional banking hubs in Africa.

The Sentry has conducted several investigations on corruption in the African banking sector. Ownership and control of banks by corrupt elites is a systemic problem that transcends borders. For example, according to a 2018 investigation by The Sentry, 14 of the 26 banks operating in South Sudan were partially owned or controlled by a politically exposed person (PEP).[57] These PEPs received preferential access to foreign exchange, which resulted in inflation and hurt ordinary South Sudanese.[58] Similarly, in the DRC, a 2019 Sentry investigation uncovered that entities affiliated with Kabila's family and inner circle sought to control around 28% of the country's banking sector.[59]

Regional African banking hubs such as Nairobi are the conduit between domestic African banks and the global financial system. However, as a recently published study by The Sentry shows, such hubs are especially vulnerable to serving as a transshipment point for illicit finance.[60]

Closing the gaps

Multilateralization is a signature theme of this administration, and the efficacy of the anti-corruption tools described above will be dramatically enhanced if the US works closely with its allies, such as the EU, UK, Canada, Australia, and Japan, as well as partners in sub-Saharan Africa, particularly in financial and economic hubs such as Kenya, Nigeria, and South Africa. In acknowledging the need for greater collaboration, the Strategy introduces a new Democracies Against Safe Havens (DASH) Initiative.[61] The Initiative, housed within the State Department, will coordinate sanctions and similar actions with like-minded countries to enhance impact and encourage countries with "globally-connected financial systems" that have not yet enacted the necessary tools, such as Glo-Mag sanctions, to do so.[62]

Access to the US dollar, euro, and pound sterling is critically important to kleptocrats who are looking to move and store the proceeds of corruption, which means that illicit funds flow through the US, EU, UK, and other regional commercial capitals. Thus, it is vital that currencies beyond the US dollar are closed off to kleptocrats. Sanctions designations should be coordinated with allies as frequently as possible. For example, last March, the US, EU, UK and Canada announced sanctions on China related to human rights abuses in Xinjiang.[63] Taking such coordinated action to address the corruption crisis in sub-Saharan Africa would send a strong message. In order to increase the frequency of multilateral sanctions, the US government should urge allies that have yet to establish their own domestic GloMag authorities—including Japan and the EU, where the current authority does not have a corruption prong—to do so as soon as possible.

However, to truly confront the problem, regional financial centers need to join the fight. While sanctions may not be a popular option for certain countries in Africa to adopt, advisories could represent a more palatable alternative. The US should urge its partners in the region, in particular jurisdictions serving as regional banking hubs, to issue advisories or circulars describing illicit financing case studies, risk indicators, typologies, and red flags that domestic banks can use to improve their anti-money laundering and countering the financing of terrorism (AML/CFT) compliance programs. As the US and the UK have already issued advisories related to South Sudan,[64, 65] both countries could urge Kenya, a destination for proceeds of corruption from South Sudan, to do the same.

Diplomacy and Development

It is critical to recognize that the sanctions and other tools described in this briefing cannot work on their own. Instead, they will require clear policy goals and sustained diplomatic engagement. Financial pressures are only effective over the long term when they create leverage to support diplomatic efforts aimed at achieving particular foreign policy goals. The DRC and South Sudan sanctions would not have succeeded without accompanying political engagement and multifaceted diplomatic pressure, including from high-level officials, especially at the Departments of State and Treasury. A renewed diplomatic strategy to counter kleptocratic networks in Africa that includes senior-level political engagement is urgently needed. For example, in 2018, Treasury Under Secretary for Terrorism and Financial Intelligence Sigal P. Mandelker visited Kenya and Uganda and identified the ties between corruption and violence as a key focus of her message to authorities and financial institutions.[66]

More specifically, it is critical for senior officials at the Department of State, as well as officers both at posts and on desks, to understand the impact of corruption and to ensure that, when financial pressure tools are used, there is a clear strategy for how the leverage they provide should be exploited. From clearer guidance to training programs for deploying officers, the clearer the messaging can be to the diplomatic corps, the better.

On a related note, the development and technical assistance agencies—from USAID to the State Department's Bureau of Democracy, Human Rights, and Labor (DRL) and Bureau of International Narcotics and Law Enforcement Affairs (INL) to Treasury's Office of Technical Assistance (OTA)—should ensure that their training programs address financial pressure strategies both to maximize the impact of such strategies and to enhance the implementation of Sustainable Development Goal (SDG) 16.[67]

Buy-In From the Private Sector

The Strategy acknowledges the vital role that the private sector needs to play in the fight against corruption, but this has not always been the case.[68] Over the years, the US government has made it clear that its priorities in this arena are illicit financial flows related to topics such as terrorism and narcotics trafficking, and countries such as Iran, Venezuela, Russia, and North Korea, and compliance departments at banks have been set up to address these specific areas. Rooting out illicit financial flows related to Africa is generally not a high priority for most banks, and this needs to change. In addition to prioritizing enforcement cases related to corruption in Africa, the US government should include the objective of thwarting corruption in Africa as part of its regular outreach to private sector stakeholders, whether through conferences, industry roundtables, or direct outreach. This could include the Wolfsberg Group, the Association of Certified Anti-Money Laundering Specialists, and national banking associations. This dialogue should also focus on promoting financial inclusion by managing the financial crime risks of doing business in Africa. Any single financial institution generally only has a fragmented view of the illicit finance risks in a particular jurisdiction. Thus, a bargain could be made that the US government will be better about sharing information on illicit finance typologies if global financial institutions make more of an effort to stay engaged with the continent. This message needs to be delivered at a senior level so that it has buy-in from the C-suite.

As a starting point to better information sharing with the private sector, FinCEN could revive "The SAR Activity Review – Trends, Tips & Issues," a periodic publication issued from 2000 to 2013 that provided an analysis of activity reported in SARs and was intended for financial institutions, law enforcement, and regulators.[69] An edition focused on foreign corruption was issued in 2011.[70]

Furthermore, global correspondent banks should be urged to engage with, and even pressure, their partners in Africa to improve anti-corruption and AML/CFT compliance programs. If local governments are unable or unwilling to apply the pressure themselves, then the international financial sector should step in to fill the gap.

Knock-On Effects

Combatting corruption in Africa may also reap dividends for the United States' other foreign policy objectives, such as dismantling transnational criminal organizations and countering the malign influence of the United States' adversaries. As The Sentry has reported, rampant corruption in various African nations has created a breeding ground for criminal networks,[71] sanctions evaders,[72] smugglers,[73] suspected terrorist financiers,[74] and mercenaries such as the Wagner Group.[75] Resource-rich kleptocracies provide an attractive refuge for bad actors from around the globe. This phenomenon was made shockingly clear in The Sentry's recent report investigating bribery related to Chinese infrastructure deals in the DRC,[76] as well as in the reports of the other organizations that were part of the Congo Hold-up consortium.[77] It is no coincidence that as Russia was invading Ukraine in February 2022, Sudan's leader General Mohamed Hamdan Dagalo (aka "Hemedti") was in Moscow forging stronger ties to the country.[78] The playing field for US businesses will never be level when kleptocracies are allowed to flourish. This is not merely a matter of human rights or American ideals, but a pressing matter of national and international security, as well.

Recommendations

The United States should urgently deploy a robust strategy that utilizes pressure tools and incentives to change the status quo of corruption-driven insecurity and continued crises in Africa.

- When imposing sanctions, don't just sanction individual officials, who often conduct business through cut-outs and companies. For sanctions to have a real impact, focus on entire networks, in particular the enablers and facilitators that need access to global finance.
- Consider the appropriateness of utilizing GloMag sanctions authorities before setting up yet another country-based sanctions program related to Africa.
- Be creative and proactive by considering all available pressure tools. Network sanctions should be just one part of a broader pressure strategy that includes advisories, export controls, import restrictions, responsible investment reporting requirements, and prosecutions.
- Make sure network sanctions are accompanied by a clear strategy involving political engagement and multifaceted diplomatic pressure, including from Cabinet-level officials.
- Provide training to the diplomatic corps on corruption case studies, risk indicators, typologies and red flags, and tools of financial pressure.
- Ensure that relevant agencies, in particular the Departments of Treasury and State, have adequate staff and resources focused on Africa to sustain an ongoing pressure campaign.
- Prioritize technical assistance and capacity building by the Treasury Department to support domestic and regional efforts to counter corruption and money laundering within the African banking system, in particular by supporting local FIUs and other financial regulatory and supervisory bodies.
- Consider convening a working group of like-minded states to counter kleptocracy within regional African banking hubs.
- Pursue a senior-level diplomatic mission to urge key US allies to adopt GloMag-style sanctions and increase coordination on targets among like-minded states.
- Issue additional FinCEN AML advisories targeting illicit financial flows related to Africa.
- Consider issuing multi-agency business advisories with respect to certain jurisdictions or sectors in Africa.
- Bring back responsible investment reporting requirements.
- Press jurisdictions serving as regional African banking hubs to issue advisories or circulars describing illicit financing case studies, risk indicators, typologies, and red flags that domestic banks can use to improve their AML/CFT compliance programs.
- Ensure that the development and technical assistance agencies—from USAID to State DRL and INL to Treasury OTA—integrate financial pressure strategies into their training programs to both maximize impact and enhance implementation of SDG 16.
- Convene a meeting of senior executives in the private sector, in particular at global banks, and make it clear to them that countering kleptocracy in Africa is a USG priority. Enlist them to help drive that message within their organizations and more broadly in the financial sector.
- Revive the "SAR Activity Review" to improve information-sharing with the private sector.
- Urge global correspondent banks to engage with, and even pressure, their partners in Africa to improve anti-corruption and AML/CFT compliance programs.

Endnotes

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