



Beyond Deadlock

Recommendations for
Obama's Plan B on South Sudan

By Enough Team
August 2015



COVER PHOTO: President Barack Obama boards Air Force One. President Obama recently traveled to eastern Africa, where he announced a “Plan B” including potential sanctions and an arms embargo for South Sudan if peace talks fell through. (AP Photo/Jose Luis Magana)

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Executive Summary and Recommendations

South Sudan’s warring factions have one last chance to end their country’s 20-month civil war and sign a compromise agreement¹ proposed by the Intergovernmental Authority on Development (IGAD) mediators, who are leading negotiations. The U.S. government has promised serious consequences if the parties fail to meet the August 17 deadline set by the international community. During his recent visit to East Africa, President Obama convened a roundtable on South Sudan with the presidents of Kenya and Uganda, Ethiopia’s prime minister, Sudan’s foreign minister, and the African Union Commission’s chairperson to build consensus on the need to collectively pressure South Sudan’s warring parties toward peace.² In no uncertain terms, President Obama warned that the United States is prepared to move forward with additional available tools to apply greater pressure on the parties.³ When speaking to the African Union, he said that if the two sides miss the deadline, “the international community must raise the costs of intransigence.”⁴ At a press conference in the region with Ethiopian Prime Minister Hailemariam Desalegn, President Obama explained, “we also think that [the United States] can be a mechanism for additional leverage on the parties, who, up until this point, have proven very stubborn and have not yet risen to the point where they are looking out for the interests of their nation as opposed to their particular self-interests. And that transition has to take place, and it has to take place now.”⁵

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Back in Washington, on August 4, President Obama warned, “If they miss [the August 17 deadline] then I think it’s our view that it’s going to be necessary for us to move forward with a different plan and recognize that those leaders are incapable of creating the peace that is required.”⁶ In order to maximize the impact of an alternate plan (being called “Plan B” by many), the U.S. should urgently cultivate the strongest possible support for such a proposal. Such a Plan B should include high-level asset freezes and travel bans, a global arms embargo, and the prosecution of grand corruption and atrocity crimes, including natural resource pillage as a war crime. Pressure from President Obama and other world leaders at such a pivotal moment in negotiations has already set in motion the most serious peace deliberations to date. The United States must be prepared to take swift action on the promised Plan B should the parties once again fail to agree to and implement peace. The United States must follow through on the president’s strong words with equally strong action, both unilaterally and at the U.N. Security Council, where so far only six ground commanders⁷—who hold little in the way of personal wealth or assets outside of South Sudan—have been designated for sanctions.

The most critical elements of an effective Plan B for South Sudan should include:

1. Implementation of high-level asset freezes, travel bans, and an arms embargo. President Obama should request that the U.S. Department of the Treasury prepare dossiers to present to the U.N. Security Council on high-level targets and their financial backers and enablers. If the two parties fail to sign the proposed compromise agreement by the August 17 deadline, the Security Council should be prepared to impose additional designations immediately. Because many of the targets’ assets are in the region,⁸ the United States should urge Kenya and Ethiopia to ensure U.N. sanctions designations are enforced. The United States should also support a global arms embargo on South Sudan. Should these measures fail to gain the support of the Security Council, the United States should be prepared to build a coalition of countries that are willing to ratchet up the pressure on high-level officials from both sides, who undermine peace and are responsible for ongoing atrocities.

2. Measures to end impunity for economic and atrocity crimes. The United States should fully support IGAD’s proposed Hybrid Court for South Sudan (HCSS), including its mandate to investigate and prosecute pillage as a war crime and other serious crimes, including grand corruption.⁹ The United States should offer technical and legal assistance to the court and South Sudan’s existing Anti-Corruption Commission, including specific expertise on asset tracing and financial crimes investigations. The United States, United Kingdom, Australia, Canada, and others should also take steps to prosecute pillage cases involving South Sudan within their own legal jurisdictions to ensure that corporations do not benefit from the pillage of South Sudan’s natural resource wealth.

3. Strengthened regional capacity to enforce U.N. sanctions. Building on efforts to tackle corruption and money laundering in the region, the United States should offer additional legal and technical support to improve regional sanctions enforcement. The U.S. should prioritize programs that enhance the operational capacity of regional financial intelligence units to identify

and freeze the assets of designated individuals. The United States should also urge Kenya, Ethiopia, and Uganda to submit reports on their efforts to enforce U.N. sanctions as required by U.N. Security Council Resolution 2206.¹⁰

4. A connection of regional infrastructure projects to peace. The U.S. and Chinese governments should jointly review bilateral and multilateral funds earmarked for regional infrastructure projects in East Africa to assess the feasibility of additional investments given the risks presented by ongoing conflict in South Sudan. This review should make clear that active regional sanctions enforcement will be considered a key risk mitigation factor.

5. Measures to return the proceeds of corruption back to South Sudan. President Obama should direct the U.S. Department of State, the U.S. Department of Homeland Security, and the FBI to provide inter-agency support to the U.S. Department of Justice's Kleptocracy Asset Recovery Initiative and focus on investigating instances of grand corruption in South Sudan. The U.S. should also encourage Kenya, Ethiopia, and Uganda to actively contribute to global efforts to trace, seize, freeze, and return the proceeds of corruption to the people of South Sudan by sharing intelligence through the Asset Recovery Inter-Agency Network for Eastern Africa.

6. Amplification of civil society advocacy to increase beneficial ownership transparency. Donors should support efforts by South Sudanese civil society groups to advocate for the full implementation of existing beneficial ownership transparency rules and other public disclosure provisions laid out in the 2012 Petroleum Act¹¹ and the Transitional Constitution of 2011.¹² Donors should also support civil society efforts in Kenya, Ethiopia, and Uganda to demand increased transparency about the real owners of corporate assets and trusts, as well as information about payments made to governments for mining and oil concessions. At the same time, the U.S. Treasury should revise its own proposed rule on beneficial ownership¹³ to include a look-back provision before the final rule's publication later in August 2015.

7. Greater resources for civil society groups to fight corruption. Donors should use South Sudan's ratification of the U.N. Convention Against Corruption (UNCAC)¹⁴ as an entry point for supporting efforts by grassroots organizations to hold their own leaders to account for the misuse and misappropriation of government funds. Ensuring the provision of space for civil society participation during the transition, including protections for local journalists and news outlets, should be made a precondition for the resumption of donor assistance to the government of South Sudan.

Leveraging Financial and Diplomatic Pressure for Peace

The threat of high-level targeted sanctions and diplomatic pressure from the United States and the region has been critical in cultivating the sense of urgency with which the two sides are currently debating the IGAD proposal. Even more pressure, however, is needed and can be applied with the Plan B proposal in order to provide the leverage necessary to encourage the warring parties to reach a final political settlement and fully implement the agreement. The warring parties have violated¹⁵ 10 commitments to cease hostilities¹⁶ and continue to receive financial and military support from neighbors in the region.¹⁷ The U.N. Security Council has thus

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far imposed sanctions on six ground commanders,¹⁸ who have few assets outside of South Sudan. As part of an effective Plan B, asset freezes and travel bans against high-level, politically-exposed persons and their financial enablers would fundamentally shift the calculations of the warring parties. As one South Sudanese lawyer commented on the potential impact of travel bans, “[South Sudanese political leaders] need to leave Juba [for medical care] for even so much as a scratch. If they couldn’t travel to the region to see a doctor, there would immediately be peace.”¹⁹

The agreement currently before the warring parties is far from perfect. Nevertheless, a permanent ceasefire has proven impossible to implement without an agreement on a political transition in place. The most basic objective of the transition should be to build institutions of democratic governance and create the necessary space for civil society to hold their own leaders to account. In order to pressure South Sudan’s warring parties toward peace, as part of a strong Plan B, President Obama will need to build on momentum gained with his personal engagement with regional heads of state while in the region,²⁰ and ensure that targeted sanctions and accountability measures are enforced.

Key Provisions Included in the Compromise Agreement

The IGAD proposal caters to the ambitions of all sides to return to power despite their terrible track records on corruption and human rights. It also provides a starting point for South Sudan’s leaders to turn their full attention from the war effort toward developing lasting institutions for governance, development, and reconciliation. In order to mitigate the potential risks of conflict during the transitional period and save South Sudan’s economy, the agreement outlines a number of economic reforms aimed at reviving the country’s financial institutions and oversight bodies.²¹ It also establishes a hybrid court with a mandate to prosecute economic and atrocity crimes.²² At the same time, South Sudanese civil society groups have expressed their disappointment at the prospect of a return to the status quo that rewards the very leaders who are most responsible for South Sudan’s brutal war.²³

The shortcomings of the proposed agreement reflect nearly 20 months of consultations between the warring parties and IGAD in trying to bring the two sides together. The negotiations have also, by and large, excluded meaningful consultations with civil society groups that openly question the willingness of South Sudan’s leaders to implement sweeping economic reforms and dismantle their entrenched patronage networks based on wartime alliances.²⁴

In terms of financial accountability, the agreement provides that the heads of key financial institutions and oversight bodies will be reviewed and possibly reappointed by the president in consultation with the first vice president. This includes the minister of finance, governor of the Bank of South Sudan, the nine board members for the bank, the anti-corruption commissioner, and the auditor general.²⁵ A number of new independent institutions are also proposed, along with a comprehensive review of all key legislation related to the use of oil revenues and other sources of state financing.²⁶ The proposed new institutions include a national revenue authority, a public procurement authority, a salaries and remuneration commission, an environmental management authority, and several new research centers.²⁷ Such dramatic changes to the makeup of the current administration, the introduction of a plethora of new institutions without

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clear mandates, and the need for consultations between President Salva Kiir and Riek Machar on all key appointments during the transition presents a daunting model for effective governance and independent oversight.

The main counterbalance to the proposed sweeping authority of the transitional administration is the section that promises to exclude those most responsible for economic and atrocity crimes from the transition.²⁸ The proposed compromise agreement's provisions for the hybrid court reference a mandate to order the return of stolen assets and property to their rightful owner or the state of South Sudan.²⁹ The proposed hybrid court and its mandate to prosecute pillage and grand corruption is a strong contribution to the proposed transitional administration, but the court will require the technical support of legal experts with experience prosecuting these types of cases. Efforts will also have to be made to ensure that the transitional administration cooperates fully with investigations and does not exert undue political influence over court prosecutors and judges. The continued unwillingness of the African Union to publicly release the Commission of Inquiry report³⁰ into human rights violations committed by both sides since the start of the civil war has also hurt prospects for justice and accountability.

As part of a strong Plan B, the United States, United Kingdom, Australia, Canada, and others should complement the work of South Sudan's proposed hybrid court by taking steps within their own legal jurisdictions to prosecute pillage cases involving South Sudan. These efforts would dramatically reinforce accountability in South Sudan and ensure corporations do not benefit from the pillage of the country's natural resource wealth.³¹

Making Financial Pressure Effective for Peace and Accountability

Early signs that the government of South Sudan may be unwilling to sign IGAD's compromise agreement,³² despite the stern warnings issued by President Obama on his recent visit, are consistent with patterns of resistance that have been present throughout the negotiations. To discourage this intransigence, countries in the region need to demonstrate a united front in support of tougher accountability measures. Previous efforts to galvanize regional support for targeted sanctions have been undermined by regional disunity, namely long-standing divisions between Uganda and Sudan. Uganda's direct military support to the government of South Sudan and evidence of Sudanese support to the armed opposition have, at times, undermined negotiations.³³ Efforts by President Obama to build consensus among regional leaders on the need to collectively pressure South Sudan's warring parties, including President Obama's direct engagement with Sudan's Foreign Minister Ibrahim Ghandour and Uganda's President Yoweri Museveni, were reportedly constructive.³⁴ It is unclear, however, exactly what outcomes the U.S. engagement will prompt by the regional leaders. Regional willingness to enforce travel bans and asset freezes in particular is critical to the success of any financial pressure strategy. On the latter, South Sudan relies on Kenyan banks to facilitate financial transactions, and South Sudanese officials hold significant wealth, assets, and properties in the region.³⁵ Sanctions enforcement through these regional entities is necessary. Furthermore, regional support is essential to securing additional high-level sanctions designations at the U.N. Security Council, where Russia has previously objected to such measures unless they come with a clear endorsement from IGAD and the AU.³⁶

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Beyond creating a personal cost for those individuals obstructing the peace process, sanctions may also be applied to those most responsible for orchestrating, funding, and financially enabling increasingly brutal attacks against civilians.³⁷ Sanctions criteria defined by U.N. Security Council resolution 2206 include the use and recruitment of child soldiers, maiming, torture, and rape, as well as obstructing the delivery of humanitarian aid.³⁸ As the conflict has continued, the United Nations and human rights monitoring groups have documented precisely these kinds of atrocities as part of military campaigns dedicated to displacing civilians and controlling the delivery of humanitarian aid in southern Unity state.³⁹ Rather than target ground commanders with little interest in foreign travel or assets overseas, those political elites coordinating military operations at the highest level should be held responsible for the actions of their fighting forces on the ground.

The United States should also support efforts to adopt a global arms embargo at the U.N. Security Council. An arms embargo would significantly restrict the flow of arms into South Sudan, making it illegal for either side of the conflict to access new weapons. This would allow the U.N.-appointed Panel of Experts to more closely monitor arms flows and provide a basis for secondary sanctions designations against those individuals and entities that continue to profit from the conflict. Regional cooperation and enforcement action, both in stemming the flow of weapons and ammunition to their respective allies and in ensuring high-level sanctions designations are regionally enforced, are two key components of a diplomatic and financial pressure strategy that should drive ongoing U.S. engagement with regional heads of state and feature prominently in the Plan B.

Strengthening Regional Capacity for U.N. Sanctions Enforcement

While political will is an essential prerequisite for effective sanctions enforcement, Kenya, Ethiopia, and Uganda must also take steps to improve their regulatory and enforcement capabilities in order to identify the accounts and assets of designated individuals. In order to strengthen the domestic legal and regulatory frameworks necessary for U.N. sanctions enforcement, the United States and other donors should offer to expand existing support that is currently focused on anti-money laundering and counter-terrorist financing and strengthen these institutions for U.N. sanctions enforcement. Kenya and Ethiopia in particular have already made significant progress in meeting global standards set by the Financial Action Task Force (FATF), a global body dedicated to combating money laundering and terrorist financing.⁴⁰ Many of the same technical skills required to combat money laundering and terrorist financing can also be deployed to identify and freeze accounts and block financial transactions.

Kenya and Ethiopia are also making progress toward membership in the Egmont Group, a global information-sharing and capacity-building network of financial intelligence units, also to combat money laundering, terrorist financing, and other financial crimes.⁴¹ Ongoing efforts to improve the operational capacity of their financial intelligence units may also provide significant opportunities for the United States to offer additional assistance in order to achieve Egmont

membership. Efforts to meet international standards for financial transparency may also have benefits for economic growth and development as these countries seek to attract investor and donor funds.⁴²

Leveraging Regional Ambitions for Economic Growth and Infrastructure Development

Instability in the East Africa region has long compromised regional ambitions for economic growth and foreign investment. The conflict in South Sudan presents yet another security challenge for a region beset by conflict and the threat of transnational terrorism. In keeping with the spirit of partnership and collaboration emphasized by President Obama during his visit, and strong commitments from regional leaders to step up efforts to improve regional security,⁴³ the United States should conduct a comprehensive review of all bilateral and multilateral funds earmarked for these infrastructure development projects to assess the viability of such investments given the ongoing conflict in South Sudan. Strong regional action to prioritize an end to the conflict in South Sudan, including imposing sanctions on the warring parties, would be an important part of any Plan B and help demonstrate to donors and investors that the security and economic development agendas in the region are closely aligned.⁴⁴

Possible U.S.-Led Interventions

The pursuit of biting targeted sanctions that are regionally and globally enforced, an arms embargo, technical support and assistance to improve regional capacity for sanctions enforcement, and efforts to ensure that the security and economic development agendas are aligned in the region should collectively shape U.S. engagement with regional heads of state as the peace process continues to unfold. At the same time, the United States should also pursue interventions to trace, seize, freeze, and return the proceeds of corruption back to the people of South Sudan through the efforts of the U.S. Department of Justice's Kleptocracy Asset Recovery Initiative. Given the transnational nature of economic crimes, the United States should work closely with its global partners to strengthen networks for information sharing and intelligence gathering on suspected illicit financial flows. Finally, once a peace agreement is reached, the United States should be prepared to intervene early on during the transition and provide technical support and guidance to ensure that provisions for improving financial transparency and accountability are implemented.

Pursuing Civil Asset Forfeiture Cases in the United States

President Obama should encourage high-level interagency cooperation between the U.S. Department of Justice's Kleptocracy Asset Recovery Initiative and the Department of State, the Department of Homeland Security, and the FBI on investigations into the proceeds of corruption in South Sudan. Cases investigated and pursued by the Department of Justice must have evidence of strong ties with the U.S. financial system. A number of influential elites hold U.S.-based properties, accounts, and assets that may have been purchased with the proceeds of ill-gotten gains. If prosecutors are able to proceed with a civil asset forfeiture case, the proceeds of corruption could ultimately be returned to the people of South Sudan.⁴⁵

Given the global nature of financial flows, particularly with many elites holding citizenship and assets in more than one country, U.S. investigators and prosecutors should work closely with regional and international financial regulators to share information. A number of frameworks have been established to facilitate information sharing on asset recovery investigations, including the World Bank Stolen Asset Recovery Initiative (StAR)–Interpol Asset Recovery Focal Point Initiative and the Camden Asset Recovery Inter-Agency Network.⁴⁶ U.S. financial investigators should coordinate and expand efforts with their counterparts in the United Kingdom, Europe, Canada, and Australia—where many South Sudanese elites have assets and citizenship ties—to identify actionable cases of grand corruption. The United States should also encourage Kenya and Ethiopia to actively contribute to global efforts to trace, seize, freeze, and return the proceeds of corruption back to the people of South Sudan by sharing intelligence through the Asset Recovery Inter-Agency Network for Eastern Africa, which has observer status with the Camden network.

Creating Institutions for Financial Transparency and Accountability

Ensuring transparency over the use of South Sudan’s oil revenues has proven challenging in the past, despite the comprehensive legislation that was drafted after independence.⁴⁷ Once a peace agreement is signed, South Sudanese leaders will be faced with the daunting task of tallying up the country’s debts and taking steps to control inflation and the black market exchange rate for the U.S. dollar, which is at least two to three times the official rate.⁴⁸ Despite suspending the vast majority of donor assistance to the government of South Sudan, some financial advisors have remained in Juba providing technical assistance and support to the Ministry of Finance and the Ministry of Petroleum. In order to ensure that economic reforms are prioritized by the transitional administration, the United States should be prepared to offer additional technical assistance and should make the resumption of normal donor activities dependent on meeting benchmarks for the implementation of economic reforms and independent oversight bodies laid out in the transitional agreement.

Corporations investing in South Sudan should seek to meet the Organization for Economic Cooperation and Development’s (OECD) “Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas.”⁴⁹ Investors should of course also comply with their obligations under South Sudanese law, which contains robust provisions for the public disclosure of information on oil contracts, production, revenues, and payments made to the government of South Sudan, as well as the private disclosure of officials’ assets and safeguards to prevent conflicts of interest.⁵⁰

Taking the Peace Process and Accountability Efforts to the Grassroots

During the June 2014 round of peace talks, efforts to select civil society delegates were disrupted by protests from new groups demanding a seat at the table.⁵¹ Both the government and the armed opposition attempted to introduce civil society delegates from their own camps,⁵² thereby defeating the purpose of having independent and impartial organizations representing diverse grassroots interests participate at the peace talks. Church leaders, traditional authorities, women, and other marginalized groups have also been underrepresented throughout the peace process.⁵³ While IGAD has made an effort to continue consultations with some groups, many civil society

leaders fear that their limited participation in the peace process has set the tone for the political transition.⁵⁴ The United States and other donors that have a long history of working closely with South Sudanese civil society groups and church leaders should take strong steps to ensure civil society has a meaningful role during the transition. Donors should invest in initiatives that amplify the voices of South Sudanese, such as public opinion polling and public discussion forums. Donors should also redouble their efforts to advocate for free press in South Sudan. Donors should support local journalists and media outlets that play a critical role in not only disseminating information to the public but also reporting on instances of alleged corruption, embezzlement, and the outright theft of government funds.

Rising Frustration with High-Level Corruption and Impunity

The call to end corruption and impunity by civil society groups in South Sudan has largely been drowned out by the peace process, which has sought from very early on to bring President Kiir and Riek Machar back together in a governing coalition, either through the creation of a multi-party system or by salvaging the ruling Sudan People's Liberation Movement (SPLM). Now that the latter is clearly the model being pursued, based on the Arusha agreement signed in January 2015 on intra-SPLM reunification,⁵⁵ civil society groups have once again raised the issue of impunity for economic and atrocity crimes.⁵⁶ While the compromise agreement is quite strong on justice and accountability, South Sudan's leaders must commit to cooperate fully with investigations into economic crimes led by the proposed hybrid court.

Despite numerous instances of intimidation against local journalists in South Sudan, news outlets continue to publish stories exposing instances of corruption and human rights abuses committed by both sides. Many of these outlets are backed by organizations abroad, but local newspapers in Juba have also tested the limits of what government officials are willing to tolerate. Recently, the government of South Sudan ordered *The Citizen* newspaper to shut its doors after the editor-in-chief published an opinion piece calling on the government to embrace reforms.⁵⁷ The Committee to Project Journalists reported that South Sudanese security agents closed down the Juba offices of Free Voice South Sudan and Voice of America recently as well.⁵⁸ Radio Tamazuj, in particular, has launched a series of damning investigative reports into corruption in South Sudan. These reports provide a snapshot into the high-level corruption present in South Sudan, and these accounts, coupled with blogs and statements from civil society and diaspora voices show the degree of frustration with the high levels of corruption and incompetence that may also provide a powerful base of support for collective action to expose corrupt business deals and irregular or unlawful management of South Sudan's natural resource wealth by the country's laws.

Supporting South Sudanese Civil Society Efforts to Hold their Own Leaders to Account

Civil society groups based in South Sudan and the region have widely expressed their dissatisfaction with high-level corruption, the manipulation of ethnic identities by political elites, and their exclusion from consultations on the makeup of the political transition.⁵⁹ Church leaders have also spoken out against high-level corruption and the need for the warring parties to lay down their weapons out of an obligation to the people of South Sudan.⁶⁰ One of the most important steps the United States can take for securing long-term peace and stability is to support

and empower civil society efforts to hold their own leaders to account for abuses of public office that have taken place since before independence. In order to break the culture of impunity and entitlement that exists among those political elites that led the liberation struggle, the United States and other donors should redouble their support to civil society groups. Donors should take steps to ensure that the transitional administration provides adequate space for civil society participation during the transition—as a prerequisite to the resumption of direct donor assistance to the government of South Sudan.

South Sudan and its neighbors are states parties to the U.N. Convention Against Corruption (UNCAC),⁶¹ providing an entry point for international pressure and support. The convention obliges South Sudan and other states parties to criminalize corruption within their national jurisdiction and cooperate with mutual legal assistance requests from other states parties in support of ongoing corruption investigations that may include current and former government officials.⁶² Article 13 of the convention also explicitly recognizes the role of civil society groups in anti-corruption work.⁶³ These provisions and obligations provide entry points for pressure by donors and support for civil society groups advocating in the public interest. Another avenue for international support could include linking grassroots organizations with global campaigns to improve transparency over procurement contracts and the extractive industries. For example, the global Publish What You Pay campaign provides one potential forum of support to activists to demand that corporations disclose information about payments made to their government for access to mining and oil concessions as they also advocate for the full implementation of existing South Sudanese law.

Strengthening ties between grassroots organizations and international anti-corruption campaigns can also bolster global efforts to prosecute corruption and the pillage of natural resource wealth by any actor—private or public—and should be a part of the Obama administration’s Plan B. Coordinated efforts at the local and international level would complement the efforts of South Sudanese civil society groups to hold their own leaders to account.

Civil Society Advocacy for Beneficial Ownership Transparency

The proliferation of shell companies and secrecy jurisdictions in Africa⁶⁴ has exacerbated problems associated with illicit financial flows, tax evasion, and money laundering.⁶⁵ In South Sudan and the region, civil society groups could benefit from additional donor support and resources to press for the full implementation of the country’s existing beneficial ownership rules so that there is greater transparency about the real owners of corporate assets and trusts. South Sudan’s 2012 Petroleum Act lays out robust transparency and public disclosure provisions.⁶⁶ South Sudan’s Transitional Constitution also requires public officials to make asset and business interest disclosures.⁶⁷ Nevertheless, neither the 2012 Petroleum Act nor the 2011 Constitution’s disclosure provisions have been fully implemented, and South Sudan’s oil sector remains extremely opaque.⁶⁸ Greater transparency, public oversight, and adherence to Financial Action Task Force (FATF) guidelines, particularly on beneficial ownership rules,⁶⁹ can help the region and its people combat illicit financial activity and hold their leaders accountable for misuse of public funds.

As one part of a broader effort to buttress efforts in the region with greater global support for financial transparency, the U.S. Treasury should revise its proposed rule on beneficial ownership⁷⁰ to include a look-back provision—to identify the beneficial owners from existing bank customers—before the final rule’s publication later in August 2015. Given the size of the U.S. financial system and the U.S. dollar’s status as an international currency of choice, the U.S. government must take a leadership role in implementing and raising the standards for beneficial ownership transparency.

Civil Society Support for Targeted Sanctions Enforcement

Civil society groups can also counter damaging perceptions and misinformation about the impact of targeted sanctions on communities in South Sudan. Support for public awareness projects that highlight the individual scope of targeted sanctions designations will be essential to counter government and opposition narratives that sanctions will adversely affect communities.⁷¹ These efforts would also help stem the flow of misinformation to banks and businesses that have previously opposed sanctions enforcement, particularly Kenyan banks that facilitate the bulk of financial transfers in South Sudan.⁷² In September 2014, the Kenyan Central Bank released a circular claiming that sanctions against South Sudan would adversely affect Kenyan business and banking interests.⁷³ Concerns from the private sector quickly escalated.⁷⁴ While U.N. sanctions would require Kenyan banks and other financial institutions to take appropriate steps to ensure that they do not hold accounts or facilitate transactions for individuals designated by international sanctions for their role in threatening peace and security in the region, the individual scope of targeted sanctions would by no means affect the ability of Kenyan banks to operate inside South Sudan. As one Kenyan politician argues, the dissemination at such a high level of this type of misinformation indicates the high stakes and degree of connection in the business ties between South Sudanese and Kenyan elites.⁷⁵ While some questionable business transactions with those implicated in grave human rights abuses or obstructing the peace process could potentially be put at risk with heightened scrutiny by financial and banking regulators, such an outcome would be a small price to pay for constraining those who have threatened peace and security in South Sudan.

Conclusion

Even as South Sudan’s warring parties bitterly debate the proposed compromise agreement, the United States should prepare to take swift action on a Plan B that imposes a direct cost on South Sudan’s leaders who continue to put their own personal ambitions above their obligations toward the people of South Sudan. The impact of this Plan B will largely depend on the ability of the U.S. government to garner regional support for targeted sanctions against high-level political and military elites that have significant wealth and assets in Kenya, Ethiopia, and Uganda. Travel bans, an arms embargo, the criminal prosecution of pillage, and efforts to recover the proceeds of grand corruption should also be a part of President Obama’s Plan B. South Sudanese people are weary of corruption and conflict at the hands of their own leaders, and support to strengthen civil society in order to hold leaders accountable is necessary. The United States has the institutions, resources, and capabilities necessary to ensure there is a cost for continuing the conflict. As one

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South Sudanese activist said, “South Sudanese do not care about your positions and percentages of this civil war brought on by power and greed; they want peace and security for their own dear lives.”⁷⁶

Endnotes

¹ Intergovernmental Authority on Development, “Proposed Compromise Agreement on the Resolution of the Conflict in the Republic of South Sudan,” July 24, 2015, available at <http://southsudan.igad.int/index.php/91-demo-contents/news/297-press-release-on-the-compromise-agreement-on-the-resolution-of-the-conflict-in-the-republic-of-south-sudan>. Subsequent references are to IGAD “Proposed Compromise Agreement.”

² For reporting on the U.S.-led consultations, including reported references to potential elements of a U.S.-proposed “Plan B” for South Sudan see Peter Baker and Marc Santora, “Obama Gathers Leaders in Effort to End South Sudan War,” *The New York Times*, July 27, 2015, available at http://www.nytimes.com/2015/07/28/world/africa/obama-ethiopia-south-sudan.html?_r=0; New Vision Uganda (@newvisionwire), Tweet: “#SouthSudan: President Museveni, AU chair Dlamini Zuma and other regional leaders meet USA’s Obama in Ethiopia,” with photograph, July 27, 2015, available at <https://twitter.com/newvisionwire/status/625666537958064128?s=03>; Jeff Mason, “Obama to discuss a ‘Plan B’ for South Sudan ahead of August deadline,” Reuters, July 26, 2015, available at <http://www.reuters.com/article/2015/07/26/us-africa-obama-southsudan-idUSKCN0Q00QQ20150726>.

³ Selected extracts from many speeches and statements made by President Obama during his visit to the region in late July and in the week afterward on the trajectory of South Sudan’s peace talks include the following: “Our goal now is to make sure that by August 17th there’s an agreement for them to stop the bloodshed and to move forward in an inclusive government. If they miss that target, then I think it’s our view that it’s going to be necessary for us to move forward with a different plan and recognize that those leaders are incapable of creating the peace that is required” (August 4). “...We’ll be consulting with leaders from the other countries who have been involved in IGAD to see how the United States, IGAD, and the international community can work to bring a peace agreement and a structure to fruition sometime in the next several weeks. We don’t have a lot of time to wait. The conditions on the ground are getting much, much worse. [...] But we also think that we can be a mechanism for additional leverage on the parties, who, up until this point, have proven very stubborn and have not yet risen to the point where they are looking out for the interests of their nation as opposed to their particular self-interests. And that transition has to take place, and it has to take place now. [...] “my hope is that, as a result of these consultations, that we agree on how urgent it is and what each of us have to do to actually bring a deal about [...] the good news is that all of us recognize that something has got to move, because IGAD has now been involved with consultations with these individuals for a very, very long time, and our special envoys that have been involved in this for years now have concluded that now is the time for a breakthrough. And if we don’t see a breakthrough by August 17th, then we’re going to have to consider what other tools we have to apply greater pressure on the parties” (July 27). “The situation is dire. And we agree that the best way to stop the fighting is for South Sudanese leaders to put their country first with a peace agreement that ends the fighting” (July 25). The White House Office of the Press Secretary, “Remarks by the President and U.N. Secretary-General Ban Ki-moon After Bilateral Meeting,” Washington, D.C., August 4, 2015, available at <https://www.whitehouse.gov/the-press-office/2015/08/04/remarks-president-and-un-secretary-general-ban-ki-moon-after-bilateral>; The White House Office of the Press Secretary, “Remarks by President Obama and Prime Minister Hailemariam Desalegn of Ethiopia in Joint Press Conference,” Addis Ababa, Ethiopia, July 27, 2015, available at <https://www.whitehouse.gov/the-press-office/2015/07/27/remarks-president-obama-and-prime-minister-hailemariam-desalegn-ethiopia>; The White House Office of the Press Secretary, “Remarks by President Obama and President Kenyatta of

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⁴ The White House Office of the Press Secretary, “Remarks by President Obama to the People of Africa,” July 28, 2015, available at <https://www.whitehouse.gov/the-press-office/2015/07/28/remarks-president-obama-people-africa>.

⁵ The White House Office of the Press Secretary, “Remarks by President Obama and Prime Minister Hailemariam Desalegn of Ethiopia in Joint Press Conference,” Addis Ababa, Ethiopia, July 27, 2015.

⁶ The White House Office of the Press Secretary, “Remarks by the President and U.N. Secretary-General Ban Ki-moon After Bilateral Meeting,” Washington, D.C., August 4, 2015.

⁷ U.N. Security Council Committee established pursuant to resolution 2206 (2015) concerning South Sudan, “2206 Sanctions List: Narrative Summaries of Reasons for Listing,” available at <http://www.un.org/sc/committees/2206/Individuals.shtml>.

⁸ The Enough Project, “Neighborhood Watch: Mobilizing Regional Action for Peace in South Sudan,” pp. 9, 11, 14, 21, (Washington: June 2015), available at <http://www.enoughproject.org/files/Neighborhood%20Watch%2006092015.pdf>.

⁹ The plan for the Hybrid Court for South Sudan is described in the IGAD “Proposed Compromise Agreement,” pp. 43-45. See specifically section 3.2.1, p. 43, specifying that the hybrid court is to have jurisdiction with respect to the crimes of genocide, crimes against humanity, war crimes, and “other serious crimes under international law and relevant laws of the Republic of South Sudan, including gender-based crimes and sexual violence.” Section 3.5.2 specifies, “The [hybrid court] may order the forfeiture of the property, proceeds and any assets acquired unlawfully or by criminal conduct, and their return to their rightful owner or to the state of South Sudan” (p. 45). The compromise agreement reinforces the criminality of corruption and provides for the bolstering of South Sudan’s Anti-Corruption Commission in Chapter IV section 1.2 and Chapter IV section 2.3 (pp. 29, 31).

¹⁰ U.N. Security Council, “Resolution 2206 (2015) Adopted by the Security Council at its 7396th meeting, on 3 March 2015,” S/RES/2206, art. 17, March 3, 2015, available at [http://www.un.org/ga/search/view_doc.asp?symbol=S/RES/2206%20\(2015\)](http://www.un.org/ga/search/view_doc.asp?symbol=S/RES/2206%20(2015)).

¹¹ Republic of South Sudan, “The Petroleum Act, 2012,” available at <http://www.mpmisouthsudan.org/docs/Petroleum%20Act,%202012%20-%20Signed%20-%20July%202012.pdf>. See in particular chapter II (p. 4) on ownership of petroleum, chapter VIII, arts. 22(3) and 24(3) on transparency with ownership transfers (p. 12), and chapter XVII generally on public transparency and chapter XVII specifically with regard to art. 79 (p. 37).

¹² Government of Southern Sudan, “The Transitional Constitution of the Republic of South Sudan,” 2011, available at http://www.sudantribune.com/IMG/pdf/The_Draft_Transitional_Constitution_of_the_ROSS2-2.pdf. See in particular chapter III on the development and management of petroleum and gas, including provision 172(2)(e) for transparency and accountability principles and chapter V for transparency and legal regulation of the fiscal and financial institutions.

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

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¹⁵ For detailed accounts of documented violations see Office of the IGAD Special Envoys for South Sudan Monitoring and Verification Mechanism reports through July 7, 2015. Violence in South Sudan and impediments to the delivery of humanitarian assistance have persisted since signing the July 24 “Proposed Compromise Agreement.” See, among many examples, U.N. Mission in South Sudan, “Thousands of more civilians arrive at Malakal protection site,” August 6, 2015, available at <http://unmiss.unmissions.org/Default.aspx?tabid=3465&ctl=Details&mid=6047&ItemID=9074565&language=en-US>; , U.N. Mission in South Sudan, “Impunity must urgently be tackled in South Sudan – USG Adama Dieng,” August 5, 2015, available at <http://unmiss.unmissions.org/Default.aspx?tabid=3465&ctl=Details&mid=6047&ItemID=9074499&language=en-US>; Jason Patinkin, “South Sudan soldiers accused of stealing relief food,” Associated Press, July 30, 2015, available at http://hosted.ap.org/dynamic/stories/A/AF_SOUTH_SUDAN_VIOLENCE?SITE=AP&SECTION=HOME&TEMPLATE=DEFAULT. A Human Rights Watch report published in late July documents brutal killings, sexual violence, and destruction of property in April and May of 2015. See Human Rights Watch, “‘They Burned it All’: Destruction of Villages, Killings, and Sexual Violence in Unity State South Sudan” (New York: July 2015), available at <http://www.hrw.org/node/279428>.

¹⁶ These agreements include the following: (1) “Agreement on Cessation of Hostilities Between the Government of the Republic of South Sudan (GRSS) and the Sudan People’s Liberation Movement/Army (In Opposition) (SPLM/A In Opposition),” January 23, 2014, available at <http://southsudan.igad.int/attachments/article/250/cessation%20of%20hostilities.pdf>; (2) “Implementation Modalities in Support of the Agreement on Cessation of Hostilities Between the Government of the Republic of South Sudan (GRSS) and the Sudan People’s Liberation Movement/Army (In Opposition) (SPLM/A IO),” February 24, 2014, available at <http://southsudan.igad.int/attachments/article/251/Implementation%20Modalities%20for%20CoH.pdf>; (3) “Recommitment on Humanitarian Matters in the Cessation of Hostilities Between the Government of the Republic of South Sudan (GRSS) and the Sudan People’s Liberation Movement/Army (In Opposition) (SPLM/A IO),” May 5, 2014, available at <http://southsudan.igad.int/attachments/article/252/Recommittment%20to%20Humanitarian%20Matters%20of%20COH,%205%20May'2014.pdf>; (4) “Agreement to Resolve the Crisis in South Sudan,” May 9, 2014, available at <http://southsudan.igad.int/attachments/article/249/Agreement%20to%20Resolve%20the%20crisis%20in%20S.%20Sudan,%209%20May'14.pdf>; (5) “Re-Dedication of and Implementation Modalities for the Cessation of Hostilities Agreement signed on 23rd January 2014 between the Government of the Republic of South Sudan and the Sudan People’s Liberation Movement / Army (In Opposition),” August 25, 2014; agreement text (not signed by Riek Machar but signed by all regional heads of state) referenced in Intergovernmental Authority on Development, “IGAD Mediation Calls on South Sudan Parties to Respect Cessation of Hostilities Agreement,” Press release, August 30, 2014, available at <http://southsudan.igad.int/attachments/article/262/30%20Aug%20Press%20Release%20Statement%20from%20the%20Mediation.pdf>; (6) “Re-Dedication of and Implementation Modalities for the Cessation of Hostilities Agreement signed on 23rd January 2014 between the Government of the Republic of South Sudan and the Sudan People’s Liberation Movement / Army (In Opposition),” November 9, 2014, available at <http://southsudan.igad.int/attachments/article/272/CoH%20Implementation%20Matrix%20and%20Addendum%20signed%209%20%20November.pdf>; (7) January 12, 2015 recommitment by South Sudanese representatives in a one-day special consultation in Khartoum initiated by the Chinese government; Government of Ethiopia, “Special Consultation in Support of IGAD-Led South Sudan Peace Process Concluded in Khartoum,” AllAfrica.com, January 14, 2015, available at <http://allafrica.com/stories/201501150268.html>; Ministry of Foreign Affairs of the People’s Republic of China, “Foreign Ministry Spokesperson Hong Lei’s Regular Press Conference on January 13, 2015,”

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January 13, 2015, available at http://www.fmprc.gov.cn/mfa_eng/xwfw_665399/s2510_665401/t1227905.shtml; (8) Agreement signed January 21, 2015, in Arusha, Tanzania; Paanluel Wël, "Arusha Declaration: The Draft Agreement on the Reunification of the SPLM Factions," January 21, 2015, available at <http://paanluelwel.com/2015/01/21/arusha-declaration-the-draft-agreement-on-the-reunification-of-the-%E2%80%AA%E2%80%8Esplm%E2%80%AC-warring-factions/>; see also Fumbuka Ng'wanakilala, "South Sudan ruling party rivals sign peace deal in Tanzania," Reuters, January 21, 2015, available at <http://uk.reuters.com/article/2015/01/21/southsudan-crisis-idUKL1N0V01X720150121>; (9) Intergovernmental Authority on Development, "South Sudan Parties Sign Areas of Agreement on the Establishment of the Transitional Government of National Unity (TGoNU)," February 2, 2015, available at <http://southsudan.igad.int/index.php/278-south-sudan-parties-sign-areas-of-agreement-on-the-establishment-of-the-transitional-government-of-national-unity-tgonu.>; (10) Intergovernmental Authority on Development, "Proposed Compromise Agreement on the Resolution of the Conflict in the Republic of South Sudan," July 24, 2015, available at <http://southsudan.igad.int/index.php/91-demo-contents/news/297-press-release-on-the-compromise-agreement-on-the-resolution-of-the-conflict-in-the-republic-of-south-sudan>.

¹⁷ The Enough Project, "Neighborhood Watch."

¹⁸ U.N. Security Council Committee established pursuant to resolution 2206 (2015) concerning South Sudan, "2206 Sanctions List: Narrative Summaries of Reasons for Listing."

¹⁹ Interview with South Sudanese lawyer, Nairobi, Kenya, July 2015.

²⁰ Baker and Santora, "Obama Gathers Leaders in Effort to End South Sudan War."

²¹ IGAD "Proposed Compromise Agreement" chapter IV (pp. 29-39) in particular sets forth a detailed list of reforms, including those for the Bank of South Sudan, the Ministry of Finance and Planning, the Anti-Corruption Commission, and National Audit Chamber. Chapter IV also provides for the establishment of several new institutions. Other sections of Chapter IV cover resource management practices and institutions in detail and enumerate transparency policies in the national finances and economic management of South Sudan, including providing for the establishment of a new Economic and Financial Management Authority.

²² IGAD, "Proposed Compromise Agreement," chapter V, section 3.2.1 (p. 43).

²³ Interviews with civil society delegates at the peace talks in June 2014 and in Nairobi in July 2015. For a selection of views among the many expressed in public sources by different groups and individuals about the peace process see remarks by Bishop Emeritus Paride Taban as reported by Richard Nield, "S Sudan war: 'We need healing to happen at all levels,'" Al Jazeera, July 28, 2015, available at <http://www.aljazeera.com/indepth/features/2015/07/sudan-war-healing-happen-levels-150728071950051.html>. See also comments by Michael Roberty Kenyi Legge and Geoffrey L. Duke, in Cordaid, "How to turn the tide in South Sudan?" July 9, 2015, available at <https://www.cordaid.org/en/news/how-turn-tide-south-sudan/>; Eriasa Mukiibi Sserunjogi, "South Sudan needs fresh start without Kiir, Machar - Dr Miamingi," *Daily Monitor*, April 26, 2015, available at <http://www.monitor.co.ug/Magazines/PeoplePower/South-Sudan-fresh-start-Kiir-Machar-Dr-Miamingi/-/689844/2697290/-/ecinnuz/-/index.html>; Zacharia D. Akol, "Inclusivity: A Challenge to the IGAD-Led South Sudanese Peace Process," (Juba: The Sudd Institute, December 2014), available at <http://suddinstitute.org/assets/Publications/Inclusivityfinal.pdf>; Philip Aleu, "South Sudanese Demand Government Return to Peace Talks," Voice of America, August 21, 2014, available at <http://www.voanews.com/content/south-sudan-civil-society-peace-talks-igad/2423671.html>. See also, Shelagh Daley, "What's happening with the South Sudan peace process? Nobody seems to know," Saferworld, June 5, 2015, available at <http://www.saferworld.org.uk/news-and-views/comment/175-whatas-happening-with-the-south-sudan-peace-process-nobody-seems-to-know>.

²⁴ Interviews with civil society delegates at the peace talks in June 2014 and in Nairobi in July 2015.

²⁵ IGAD "Proposed Compromise Agreement," Chapter I, section 8.1.1; Chapter IV, section 2.1.3.5, section

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2.1.4, section 2.3.2, and section 2.4.4 (pp. 10, 29-31).

²⁶ IGAD “Proposed Compromise Agreement,” section 3.1 (p. 32).

²⁷ IGAD “Proposed Compromise Agreement,” section 2.5 (p. 32).

²⁸ The provision states, “Individuals indicted or convicted by the [hybrid court] shall not be eligible for participation in the [transitional government], or in its successor government(s) for a period of time determined by law, or, if already participating in the [transitional government], or in its successor government(s), they shall resign. If proven innocent, individuals indicted shall be entitled for compensation as shall be determined by law.” IGAD “Proposed Compromise Agreement,” chapter V, section 5 (p. 46).

²⁹ IGAD “Proposed Compromise Agreement,” chapter V, section 3.5.2 (p. 45).

³⁰ Radio Tamazuj, “Timeline: African Union Commission of Inquiry on South Sudan,” January 15, 2015, available at <https://radiotamazuj.org/en/article/timeline-african-union-commission-inquiry-south-sudan>.

³¹ Holly Dranginis, “Grand Theft Global: Prosecuting the War Crime of Pillage in the Democratic Republic of the Congo,” pp. 18-19 (Washington: The Enough Project, January 2015), available at <http://www.enoughproject.org/files/GrandTheftGlobal-PillageReport-Dranginis-Enough-Jan2015.pdf>.

³² Radio Miraya, “Kiir: IGAD-plus compromise deal will not bring peace,” July 31, 2015, available at <http://radio-miraya.org/kiir-igad-plus-compromise-will-not-bring-peace/>; Aurelious Simon Chopee, “Kiir rejects IGAD peace proposal; terms it as ‘unjust,’” *The Nation Mirror*, July 31, 2015, available at <http://www.thenationmirror.com/featured-stories/1182-kiir-rejects-igad-peace-proposal-terms-it-as-unjust>.

³³ The Enough Project, “Neighborhood Watch,” pp. 7-9, 11, 21, 22. Conflict Armament Research, “Weapons and ammunition air dropped to SPLA-IO forces in South Sudan” (London: June 2015), available at http://www.conflictarm.com/wp-content/uploads/2015/06/Weapons_and_ammunition_airdropped_to_SPLA-IO_forces_in_South_Sudan.pdf.

³⁴ Baker and Santora, “Obama Gathers Leaders in Effort to End South Sudan War.”

³⁵ The Enough Project, “Neighborhood Watch”; The Sentry, “The Nexus of Corruption and Conflict in South Sudan,” July 2015, available at <https://thesentry.org/reports/south-sudan/>.

³⁶ In commenting on the Russian Federation’s decision in March 2015 to support U.N. sanctions on South Sudan, Deputy Permanent Representative Peter Ilichev said, “the Council’s decision to implement sanctions is being taken without a clear and unambiguous signal of support from key African players, first and foremost the Intergovernmental Authority on Development (IGAD) and the African Union. This breaks with the practice whereby primacy in such matters is given to Africans themselves, as was the case with Guinea Bissau and the Central African Republic. In that regard, we recall that it has been clearly stated in a number of previous Security Council resolutions on South Sudan that possible sanctions measures against that country had to be considered by the Council in consultations with interested partners, including IGAD and the African Union. Given the lack of unified support for sanctions against South Sudan by the African capitals, including those of South Sudan’s neighbours, the implementation of a Council sanctions regime might be difficult, which could have a negative impact on the Council’s credibility.” U.N. Security Council, “7396th meeting, Tuesday, 3 March 2015, 10.45 a.m., New York,” S/PV.7396, p. 4, available at http://www.un.org/en/ga/search/view_doc.asp?symbol=S/PV.7396. See also Kevin J. Kelley, “UN Security Council Split Over South Sudan Sanctions,” *Daily Nation*, May 3, 2014, available at <http://www.nation.co.ke/news/africa/UN-Security-Council-South-Sudan-Violence/-/1066/2302498/-/110ttcnz/-/index.html>.

³⁷ Human Rights Watch, “‘They Burned it All’”; U.N. Mission in South Sudan (UNMISS), “UNMISS statement on the ongoing violence in Unity State,” Press release, May 11, 2015, available at <http://unmiss.unmissions.org/Portals/unmiss/%20Press%20Releases/2015/May%202015/Press%20release%20about%20ongoing%20fighting%20in%20Unity%20State%20--%202011%20May%202015%20final.pdf>; Amnesty International, “South Sudan: Escalation of violence points to failed regional and international

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⁴⁰ Liat Shetret, Tracey Durner, Danielle Cotter, and Patrick Tobin, “Tracking Progress: Anti-Money Laundering and Countering the Financing of Terrorism in East Africa and the Greater Horn of Africa,” pp. 21, 23, 27, 29, 30 (Goshen, Indiana: Global Center on Cooperative Security, 2015), available at <http://www.globalcenter.org/wp-content/uploads/2015/03/Tracking-Progress-low-res.pdf>.

⁴¹ The Egmont Group of Financial Intelligence Units, “About,” available at <http://www.egmontgroup.org/about> (last accessed August 2015).

⁴² Remote interview with regional expert on anti-money laundering and counter-terrorist financing, New York, March 2015.

⁴³ The White House Office of the Press Secretary, “Remarks by President Obama and President Kenyatta of Kenya in a Press Conference,” July 25, 2015, Nairobi, Kenya, available at <https://www.whitehouse.gov/the-press-office/2015/07/25/remarks-president-obama-and-president-kenyatta-kenya-press-conference>; The White House Office of the Press Secretary, “Remarks by President Obama and Prime Minister Hailemariam Desalegn of Ethiopia in Joint Press Conference,” Addis Ababa, Ethiopia, July 27, 2015.

⁴⁴ The Enough Project, “Neighborhood Watch,” pp. 3, 4, 15, 18.

⁴⁵ Akshaya Kumar and John Prendergast, “Creating a Cost for Those Destroying South Sudan,” (Washington: The Enough Project, July 2015), available at <http://www.enoughproject.org/files/CreatingCostSouthSudan07232015.pdf>.

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The Global Witness report highlights some of the positive provisions contained in South Sudanese law but also highlights the need for consistency on implementation and reporting.

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⁵⁷ For the opinion piece by *The Citizen* editor-in-chief, see Nhial Bol Aken, "Reforms, President Kiir should not ignore everything," *The Citizen*, August 3, 2015, available at <http://www.citizen-news.net/reforms-president-kiir-should-not-ignore-everything/>. On the order to close, see Okech Francis, "S. Sudan shuts down leading newspaper after opposition story," Bloomberg News, via *Chicago Tribune*, August 4, 2015, available at <http://www.chicagotribune.com/news/sns-wp-blm-news-bc-ssudan-censor04-20150804-story.html>.

⁵⁸ Committee to Protect Journalists, "South Sudanese authorities silence three media outlets," August 5, 2015, available at <https://cpj.org/2015/08/south-sudanese-authorities-silence-three-media-out.php#more>.

⁵⁹ Interviews with civil society leaders, Nairobi, July 2015. See also, Radio Tamazuj, "S. Sudan civil society urges IGAD mediators to clarify strategy," July 17, 2015, available at <https://radiotamazuj.org/en/article/s-sudan-civil-society-urges-igad-mediators-clarify-strategy>; Sudan Tribune, "S. Sudanese activists organise consultative forum on peace talks," June 4, 2015, available at <http://www.sudantribune.com/spip.php?article55205>; South Sudan Law Society, "Petition to AUPSC requesting immediate publication of AUCISS report"; Radio Tamazuj, "South Sudan anti-war groups warn against 'business as usual,'" April 14, 2015, available at <https://radiotamazuj.org/en/article/south-sudan-anti-war-groups-warn-against-business-usual>.

⁶⁰ Moses Legge, "Church condemns corruption," Eye Radio, September 27, 2014, available at <http://eyeradio.org/church-condemns-corruption/>; Catholic News Service, "Church leaders: 'South Sudanese are being killed, raped and tortured,'" *Catholic Herald*, May 27, 2015, available at <http://www.catholicherald.co.uk/news/2015/05/27/church-leaders-south-sudanese-are-being-killed-raped-and-tortured/>; Sudan Tribune, "S. Sudanese clerics want churches involved in peace process," June 8, 2015, available at <http://www.sudantribune.com/spip.php?article55259>.

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⁶¹ Every country bordering South Sudan, with the exception of Sudan, has either ratified or acceded to the convention. See U.N. Office on Drugs and Crime, “United Nations Convention against Corruption Signature and Ratification Status as of 1 April 2015,” available at <https://www.unodc.org/unodc/en/treaties/CAC/signatories.html> (last accessed August 2015).

⁶² U.N. Office of Drugs and Crime, “United Nations Convention Against Corruption,” chapter III (pp.17-29) and chapter IV (pp. 29-41), October 31, 2003, available at https://www.unodc.org/documents/treaties/UNCAC/Publications/Convention/08-50026_E.pdf.

⁶³ Article 13 of the U.N. Convention Against Corruption notes, “1. Each State Party shall take appropriate measures, within its means and in accordance with fundamental principles of its domestic law, to promote the active participation of individuals and groups outside the public sector, such as civil society, non-governmental organizations and community-based organizations, in the prevention of and the fight against corruption and to raise public awareness regarding the existence, causes and gravity of and the threat posed by corruption. This participation should be strengthened by such measures as: (a) Enhancing the transparency of and promoting the contribution of the public to decision-making processes; (b) Ensuring that the public has effective access to information; (c) Undertaking public information activities that contribute to nontolerance of corruption, as well as public education programmes, including school and university curricula; (d) Respecting, promoting and protecting the freedom to seek, receive, publish and disseminate information concerning corruption. That freedom may be subject to certain restrictions, but these shall only be such as are provided for by law and are necessary: (i) For respect of the rights or reputations of others; (ii) For the protection of national security or ordre public or of public health or morals. 2. Each State Party shall take appropriate measures to ensure that the relevant anti-corruption bodies referred to in this Convention are known to the public and shall provide access to such bodies, where appropriate, for the reporting, including anonymously, of any incidents that may be considered to constitute an offence established in accordance with this Convention.” U.N. Office of Drugs and Crime, “United Nations Convention Against Corruption,” art. 13, pp.15-16.

⁶⁴ Brian LeBlanc, “Trade Misinvoicing, or How to Steal from Africa,” *Global Financial Integrity*, May 6, 2014, available at <http://www.gfintegrity.org/press-release/trade-misinvoicing-or-how-to-steal-from-africa/>; Jeff Mbanga, “Europe’s crackdown on shell firms puts spotlight on Africa,” *The Observer*, February 20, 2014, available at <http://www.observer.ug/viewpoint/83-staff-writers/30360--europes-crackdown-on-shell-firms-puts-spotlight-on-africa>; Eleanor Whitehead, “Kenya: want a shell company? No question,” *Financial Times* “Beyond Brics” blog, September 3, 2013, available at <http://blogs.ft.com/beyond-brics/2013/09/03/kenya-an-emerging-tax-haven/>.

⁶⁵ Joseph Spanjers and Håkon Frede Foss, “Illicit Financial Flows and Development Indices: 2008–2012” (Washington: Global Financial Integrity, June 2015), available at <http://www.gfintegrity.org/wp-content/uploads/2015/05/Illicit-Financial-Flows-and-Development-Indices-2008-2012.pdf>; African Union Commission / United Nations Economic Commission (AU/ECA) for Africa Conference of Ministers of Finance, Planning and Economic Development, “Illicit Financial Flows: Report of the High Level Panel on Illicit Financial Flows from Africa” (2015), available at http://www.uneca.org/sites/default/files/PublicationFiles/iff_main_report_26feb_en.pdf; Dev Kar and Joseph Spanjers, “Illicit Financial Flows from Developing Countries: 2003-2012” (Washington: Global Financial Integrity, December 2014), available at <http://www.gfintegrity.org/wp-content/uploads/2015/05/Illicit-Financial-Flows-and-Development-Indices-2008-2012.pdf>.

⁶⁶ Republic of South Sudan, “The Petroleum Act, 2012.” See in particular chapter II (p. 4) on ownership of petroleum, chapter VIII, arts. 22(3) and 24(3) on transparency with ownership transfers (p. 12), and chapter XVII generally on public transparency and chapter XVII specifically with regard to art. 79 (p. 37).

⁶⁷ Government of Southern Sudan, “The Transitional Constitution of the Republic of South Sudan,” 2011. See in particular part 6, art. 121 (p. 40).

⁶⁸ The Sentry, “The Nexus of Corruption and Conflict in South Sudan,” July 2015.

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⁶⁹ See Financial Action Task Force, “International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation: The FATF Recommendations,” February 2012, available at http://www.fatf-gafi.org/media/fatf/documents/recommendations/pdfs/FATF_Recommendations.pdf; Financial Action Task Force, “Guidance on Transparency and Beneficial Ownership,” available at <http://www.fatf-gafi.org/media/fatf/documents/reports/Guidance-transparency-beneficial-ownership.pdf>.

⁷⁰ U.S. Federal Register, vol. 79, no. 149, August 4, 2014, Proposed Rules, p. 45152.

⁷¹ Radio Tamazuj, “South Sudan warring group protests ‘white man’s’ sanctions,” March 5, 2015, available at <https://radiotamazuj.org/en/article/south-sudan-warring-group-protests-white-man’s-sanctions>; Sudan Tribune, “South Sudan warns of sanction effects on other countries,” September 16, 2014, available at <http://www.sudantribune.com/spip.php?article52407>.

⁷² The Enough Project, “Neighborhood Watch,” pp. 12-13.

⁷³ The circular reportedly stated, “Sanctions to South Sudan could expose Kenyan banks to risks.” Mark Nyipuoc, the deputy speaker of South Sudan’s national assembly is quoted as saying on September 15, “If foreign businesses, especially those in the commercial banks, like Kenya Commercial Bank, Equity Bank and other financial establishments which occupies a big space in our markets cannot repatriate their profits because of sanctions, then such actions will have dire consequences to the whole region and it is better a wise decision is made.” Sudan Tribune, “South Sudan warns of sanction effects on other countries,” September 16, 2014, available at <http://www.sudantribune.com/spip.php?article52407>.

⁷⁴ See, for example, George Ngigi, “Kenya banks at risk over South Sudan sanction threat,” Business Daily Africa, September 14, 2014, available at <http://www.businessdailyafrica.com/Kenya-banks-at-risk-over-South-Sudan-sanction-threat/-/539546/2452534/-/110an8az/-/index.html>; Wachira, “Kenyan Banks Face Risk Due to Threat of Sanctions on South Sudan”; James Waithaka, “South Sudan Crisis ‘An Elevated Threat,’” The Star, September 15, 2014, available at <http://allafrica.com/stories/201409152090.html>; Mandil, “Sanctions against South Sudan could affect Kenyan banks”; Jackson Okoth, “Kenyan banks face turbulence over looming sanctions in South Sudan,” Standard Media, September 16, 2014, available at <https://www.standardmedia.co.ke/business/article/2000135121/kenyan-banksface-turbulence-over-looming-sanctions-in-south-sudan>.

⁷⁵ Interview with Kenyan senator, 2015; The Enough Project, “Neighborhood Watch,” pp. 12-13.

⁷⁶ Interview with South Sudanese activist, July 2015.