



"Independent South Sudan: A Failure of Leadership"
Senate Foreign Relations Committee
Testimony of John Prendergast, Founding Director, Enough Project
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Chairman Corker, Ranking Member Cardin, and members of the committee, I'm grateful for the opportunity to testify about South Sudan at such a critical fork in the road for the youngest nation in the world. Working with the executive branch and through your actions, the Senate Foreign Relations Committee has the opportunity to help this new country change course and make progress on implementing the hard-won peace agreement that was signed back in August. If these efforts fail, South Sudan will likely be plunged back into a full-scale civil war that surely would be – based on past experience – one of the world's deadliest.

This war has been hell for the people of South Sudan, but it has also been very lucrative for their leaders. "War crimes pay" has been the message. And therein lies the crux of the problem with U.S. and broader international efforts to support peace in South Sudan and other war torn states in Africa: we are not frontally addressing the violent kleptocracies¹ that are at the core of wars and extreme violence in South Sudan, Sudan, Congo, the Central African Republic, Somalia, Burundi, etc.

South Sudan and the other countries listed above are not simply failed states, as they are commonly referred to. They are **hijacked states**. In South Sudan, competing factions of the ruling party have used state institutions and deadly force to finance and fortify networks aimed at self-enrichment and brutal repression of dissent. South Sudan's leaders never seriously invested in building credible state institutions because they wanted to ensure the absence of accountability. Rather than protecting their populations, these competing factions used elements of the military and police to protect the spoils of their corrupt networks and their exploitation of the countries' rich natural resources. Then the two factions turned on each other due to long-running financial and political rivalries in the zero sum game that is South Sudan's politics, and they mobilized communities along ethnic lines, with predictably horrific consequences.

As Sarah Chayes has observed in other settings, Afghanistan most prominently, **corruption is not an anomaly; it is the foundation of the intended system.**

¹ The Enough Project uses the term "violent kleptocracy" to refer to a system in which a country's wealth is captured and controlled almost exclusively by a small group of powerful elites within the government. These officials rely on state structures and institutions, including the state security apparatus, for their own protection and personal economic gain. Kleptocracy exceeds corruption as a state-based system of economic exploitation, and violence is the primary means by which the government seeks to stay in power. Patronage networks also play an important role in the system and tend to reinforce existing power dynamics. Nevertheless, these systems can also be deeply unstable, and competing kleptocratic networks within the government may become rivals for control over the state. Such competition can lead to an increase in violence and state repression, and potentially civil war, as in the case of South Sudan.

The hijacking of the state by corrupt leaders willing to use mass violence and harsh repression to maintain or gain power is the deepest root cause of South Sudan's war, as it is in a number of other endemic conflicts in Africa. But the outlook is not hopeless. The African states that have begun to overcome this cycle are beginning to thrive, offering rays of hope for the future of those still caught in conflict. And **because these violent kleptocracies internationalize the spoils of their theft and use of deadly force, there are vulnerabilities that the U.S. is in a unique position to address in support of peace and human rights.**

Our conventional diplomacy has limited value and impact because it has not sought to alter the calculations of those fueling and profiting from war. Therefore, dismantling the financial networks that enable and benefit from mass atrocities and creating a cost for profiting from conflict will allow other essential tools – such as diplomacy, peacekeeping, state building assistance, and accountability efforts – a better chance of success.

We must focus on making war more costly than peace. The incentives for financially benefiting from violence need to be fundamentally altered through a comprehensive strategy of financial pressure that provides the necessary leverage to drive the parties to compromise. As long as war is profitable for certain leaders and their enablers, it will be that much harder to end.

The missing ingredient in U.S. policy toward South Sudan, and many other war-torn African states, is financial/economic leverage. Greed is driving the calculations of South Sudan's government and rebel leaders. Politics in South Sudan has become a winner take all game, so huge patronage and security networks financed by acute corruption can only be maintained by keeping other factions out of government. The national interest is sacrificed for more venal self-interests as a matter of policy. And given the lack of any accountability for such a system, it should not be surprising that it continues.

When there are no limits to the hijacking of state resources or consequences for the use of violence to maintain power, instability and civil war are never far off. It is in the arena of global financial investigations into the proceeds of corruption used to fund mass atrocities that the U.S. has the most potential leverage. The U.S. and other governments working genuinely for peace in South Sudan (and other war-torn African states) can only enhance their influence in supporting peace and human rights if a concerted effort is made to expand economic pressure. **And the surest route to building this kind of leverage is by hitting the leaders of the rival kleptocratic factions where it hurts the most: their wallets.** A hard target transnational search is required for the assets that have been stolen from South Sudan by its leaders over the last decade, aiming to freeze, seize, and return the proceeds of corruption to the South Sudanese people and create a real consequence for those that have robbed the country blind and plunged it back into war.

That, Mr. Chairman, is where the Senate Foreign Relations Committee can help the most, and where I believe your efforts should be focused: ensuring that the U.S. government and its allies deploy the under-utilized tools available to build financial leverage in support of peace and human rights in

South Sudan, Sudan, Congo, and other violence-wracked states in Africa. U.S. financial leverage remains strong when it is built and utilized. That is where we can make a difference.

More specifically, to build real leverage, we must focus on three key elements:

- 1) Creating consequences for those who undermine the agreement's implementation or the spoilers who loot state assets;
- 2) Supporting the peace agreement and the institutions it has established in South Sudan, especially those dealing with financial transparency and accountability; and
- 3) Enhancing the capacity of civil society to do the same, holding their own leaders to account and countering extremist discourse.

Later in my testimony I will outline several specific measures that the United States government should pursue now in order to build needed leverage, but first I want to focus the Committee on the key aspect of how South Sudan descended into this conflagration. A proper diagnosis will yield more effective policy prescriptions.

Violent Kleptocracy in South Sudan: A Hijacked State

South Sudan is what the Enough Project defines as a “violent kleptocracy.” It is a system in which the country’s wealth has been captured and controlled almost exclusively by a small group of powerful elites within the government and the patronage networks and private sector operators connected to them. Ruling elites in Juba have relied on state institutions, especially the state security apparatus, to enrich and protect themselves at the expense of the rest of South Sudan’s population. And they use extreme violence to enforce the kleptocratic system at the core of South Sudan’s tragedy.

Although there are many causes, we see a corrosive climate of corruption and elite competition for state resources at the heart of South Sudan’s current crisis. The South Sudanese Minister of Justice himself recently acknowledged that the pattern of corruption in his ministry and elsewhere is so pervasive that “everyone is stealing.” The word “corruption” is mentioned no less than 34 times in a recent report by the African Union Commission of Inquiry on the crisis in South Sudan. One quote from the report, in particular, illustrates the centrality of corruption in the current crisis:

“It was clear from the various consultations of the Commission that the absence of equitable resource allocation and consequent marginalization of the various groups in South Sudan was a simmering source of resentment and disappointment underlying the conflagration that ensued, albeit the implosion of the conflict was brought about by the political struggle by the two main players. The struggle for political power and control of natural resources revenue,

corruption and nepotism appear to be the key factors underlining the break out of the crisis that ravaged the entire country.”

In South Sudan, the link between corruption and conflict could hardly be more pronounced. This link has been facilitated by the predominance of weak and under-developed institutions that allow for minimal or non-existent checks and balances on the excesses of government officials. For example, the country's systems for revenue collection, public expenditure, and currency management provide a select few individuals with privileged access to state resources. Senior government officials have been able to capture and divert national revenues and manipulate the official and black market exchange rates to turn huge profits on the dollar for themselves at the public's expense.

To protect their ill-gotten wealth, government officials spent a large portion of the national budget on security at the expense of infrastructure development, health, and education. State assets that are not looted outright are often used to fund elaborate patronage networks and to retain outsized security forces and the militias that are narrowly focused on protecting the elite within the government, often along ethnic lines, thus reinforcing these divisions between communities. And those who wield power rarely hesitate to use violence and commit the most horrific of human rights abuses to counter anyone who challenges their supremacy or seeks to expose their ruse.

These corrosive political and economic dynamics sowed the seeds for South Sudan’s descent into violence in December 2013.

The *violent kleptocracy* that has emerged in South Sudan is also the product of long-standing exploitative economic practices with their origins in the 1983-2005 civil war in Sudan. Many of the existing patronage networks in South Sudan have their origin during that war. Patronage-based systems, however, can also be deeply unstable. In the case of South Sudan, rival cliques within the system started competing for control over the spoils of state power, leading to an increase in violence and state repression, and eventual civil war.

This is exactly what happened in late 2013. A political dispute between President Salva Kiir and Vice President Riek Machar may have been the proximate cause of the current crisis, but elite competition between rival factions over access to state resources was the major underlying catalyst of the conflict.

As the Enough Project details in a report to be released next week, the financing of the conflict is representative of the patronage networks and kleptocratic system that prop up those in power and sustain continuous violence. The government has been able to fund the conflict primarily with oil money and currency speculation schemes that leverage the difference between the official and black market exchange rates. It has also received loans on future oil production, and from doing business with “war profiteers” – private sector investors interested in gaining access to South Sudan’s natural resource wealth once the conflict has ended.

For its part, the opposition funds the war with the personal wealth of key individuals in its ranks, through diaspora remittances, and from high-risk investors. Several opposition delegations have toured the United States, Canada, and Australia seeking financial support from members of the South Sudanese diaspora. These sources of funding are vital to sustaining the opposition because they lack access to the state's financial resources and do not receive regular salaries.

In retrospect, South Sudan's slide into a state of *violent kleptocracy*, corruption, and conflict seems like a predictable path. But that doesn't mean nothing was done to prevent these dynamics from taking hold. The legal and institutional frameworks to manage the petroleum industry and combat corruption in South Sudan actually exceed international standards in some cases, but implementation and enforcement have been non-existent. The problem is that laws are ignored and institutions are disempowered or marginalized because they are not in the interest of those in power.

The bottom line is that competing South Sudanese factions of the ruling party have been willing to loot state assets and murder rivals and civilians alike because they believe there are no consequences. To change the equation, consequences must be created.

Ending Impunity and Creating Consequences in South Sudan

Ultimately, ending South Sudan's crisis will require creating accountability for economic and atrocity crimes. This is where the United States is in a unique position to both support the implementation of the peace agreement and pursue global financial measures to curtail conflict financing in South Sudan. My fellow panelists discuss the importance of U.S. support for accountability for war crimes through support to the proposed Hybrid Court, which I strongly support. I'd like to focus on five financial and legal mechanisms that the United States can pursue to counter the kleptocracy at the core of the war and enhance economic accountability in South Sudan:

- 1: Enhancing the types of criteria used by the U.S Treasury Department to impose sanctions
- 2: Passing the Global Magnitsky Act
- 3: Ensuring that sanctions are enforced by Treasury once imposed
- 4: Directing the Financial Crimes Enforcement Network (FinCEN) to gather information and address potential money laundering activities
- 5: Building cases at the Department of Justice-led Kleptocracy Asset Recovery Initiative to investigate and prosecute cases involving the U.S. financial system.

For many of the initiatives laid out below, the U.S. can act unilaterally as well as in partnership with the UK, EU, and others that have similar concerns and well-developed financial, legal, and regulatory frameworks to target assets, firms, and individuals under their jurisdictions. The impact would be greatest if the U.S. builds a coalition of countries willing to work with us in these efforts, particularly countries where South Sudan's leaders have stored their assets or housed their families. Deadlocks in the UN Security Council should not be a reason to not pursue multilateral leverage-building actions.

First, in order for targeted sanctions to actually have an impact, they must be more robustly imposed and systematically enforced. Moving forward, the U.S Treasury Department's Office of Foreign Assets Control (OFAC) should focus its investigations on politically and financially exposed individuals who threaten the implementation of the peace agreement and overall peace and security in South Sudan. This will likely require OFAC to issue *intelligence community collection requirements* to gather information on possible targets and their networks in South Sudan, the region, and overseas.

Additionally within this category, there are two ways that the sanctions authorities on South Sudan could be improved significantly, and members of Congress should encourage the Obama administration to pursue these steps. Facilitating public corruption in South Sudan should be grounds for designation under sanctions. At least five U.S. sanctions regimes (those for Belarus, Burma, Syria, Venezuela, and Zimbabwe) have included language that explicitly allows Treasury to place sanctions on anyone who facilitates public corruption. Sanctions can also be used to address attempts to muzzle civil society and the press. Civil society actors and journalists must be able to carry out their essential tasks in supporting implementation of the peace agreement and serving as watchdogs for the public trust against abuses perpetrated by state actors. The Executive Order recently issued on Burundi and the existing sanctions regime on Venezuela serve as a blueprint for countering public corruption and enshrining protections for civil society actors and journalists.

Second, in addition to use of the existing designation criterion within the South Sudan Executive Order related to the commission of the grave human rights abuses outlined in the African Union Commission of Inquiry report, **Congress should pass the Global Magnitsky Human Rights Accountability Act, S. 284, introduced in the Senate by Ranking Member Cardin, to bolster the U.S. government's infrastructure to take action against those who commit human rights abuses or are complicit in acts corruption.**

Third, we also should not forget about "sanctions-busters" and international facilitators that enable corruption. There is no shortage of unscrupulous illicit entrepreneurs, or "war profiteers," willing to help isolated regimes circumvent sanctions and remain financially afloat. Therefore, **identifying and countering these sanctions busters must be made a crucial component of enforcement efforts**, regardless of the original authorities used to impose sanctions. Current sanctions authorities already allow the Treasury Department to place sanctions on anyone found "to have materially assisted,

sponsored, or provided financial, material, logistical, or technological support for, or goods or services in support of any of the [prohibited] activities...or of any person whose property and interests in property are blocked.”

This provision cannot be an idle threat. Enforcement resources at OFAC should also be directed at those named as Specially Designated Nationals to ensure that they are not able to continue conducting business in ways that should be impacted by sanctions, but in some cases may not be because of insufficient resources for enforcement at Treasury, or a lack of cooperation from South Sudan’s neighbors. Congress should supplement Treasury’s resources to ensure OFAC has the resources it needs to enforce sanctions and monitor those designated, given the many priorities the agency is balancing.

Fourth, sanctions are not the only lever that can be used to apply financial pressure. Anti-money laundering measures should also be part of the equation. The U.S. Treasury Department’s Financial Crimes Enforcement Network (FinCEN) has broad authority under section 311 of the Patriot Act to require domestic financial institutions and agencies to implement specific “special measures” against a designated primary money laundering concern. **We would like to see FinCEN issue an advisory to all U.S. financial institutions regarding the risk of possible money laundering activity in South Sudan.**

FinCEN’s issuing such an advisory would trigger U.S. banking and financial institutions to provide information about money laundering activity to the Treasury Department. FinCEN could, in turn, use this information to determine if specific banks, classes of transactions or specific accounts should be designated as primary money laundering concerns. These steps could place significant pressure on the networks relied upon by corrupt officials, opposition leaders, and their enablers. Should FinCEN identify a primary money laundering concern, its special measures under section 311 could require specific types of information collection and due diligence or even prohibit U.S. financial institutions from maintaining correspondent accounts connected to the primary money laundering concern.

Finally, there are also mechanisms beyond the Treasury Department that the U.S. can bring to bear in South Sudan. For example, the U.S. government can also take steps to ensure that South Sudanese leaders’ ill-gotten gains do not wind up in the United States or pass through the U.S. financial system. The U.S. Department of Justice’s Kleptocracy Asset Recovery Initiative is empowered to identify and seize the proceeds of overseas corruption in cases that involve a “U.S. nexus.” When appropriate, **the Justice Department’s Kleptocracy Initiative should actively pursue cases involving the misappropriation of South Sudanese assets.** South Sudanese officials who loot state coffers should be under no illusion that they can park their ill-gotten gains in the United States or use the U.S. financial system to execute their heist.

Supporting South Sudan’s Peace Deal

The peace agreement signed in August has ushered in some hope that South Sudan can move beyond the violence that has plagued the country for the past two years. The agreement represents an important milestone in efforts to end the conflict, but as long as South Sudan's kleptocratic system remains intact, the peace agreement will remain imperiled.

To be sure, the peace agreement signed in August contains provisions that, in theory, take aim at corruption and bolster accountability. For example, it stipulates the creation or reconstitution of several important domestic institutions with an anti-corruption mandate, including the Anti-Corruption Commission, the Fiscal, Financial Allocation and Monitoring Commission, and the National Audit Chamber. These organizations must be effectively empowered to fulfill their mandate, just as the Hybrid Court must be fully empowered to address human rights violations.

The peace agreement also mandates the creation of the Joint Monitoring and Evaluation Commission (JMEC), a body of a few dozen representatives from regional and international actors that is supposed to monitor the implementation of the agreement. Empowering this entity to expose corruption and the misappropriation of state assets is a crucial priority for ending the culture of impunity among South Sudan's leaders. Donors must provide JMEC with the necessary resources and technical expertise to fulfill its mandate. These experts must include specialists in forensic financial accounting and oil industry transparency.

To enhance effectiveness, donors should also provide increased support to South Sudanese civil society to hold their leaders to account. Supporting the internal demands for peace, transparency, and human rights is an essential bottom-up element of a comprehensive strategy for sustainable change.

Moving forward in South Sudan, we need to beware of cosmetic reform. Fully supporting sustainable peace will require integrating anti-corruption and accountability initiatives into virtually every aspect of our engagement in South Sudan—and leaning on our partners to do the same. In other words, accountability and anti-corruption initiatives must be woven into everything from security sector reform to foreign assistance. It also means not necessarily accepting anti-corruption initiatives at face value. South Sudanese officials shouldn't be able to reap the rewards of compliance by simply paying lip service to reforms but rather should ensure that there is clear reporting on what actions are taken and what remains before further steps in assistance programs are taken.

CONCLUSION

Mr. Chairman, the Senate Foreign Relations Committee can make a difference in fighting kleptocracy in South Sudan by ensuring sufficient resources for agencies like OFAC and FinCEN and then holding them accountable for results on South Sudan, by passing legislation like the Global Magnitsky Human Rights Accountability Act, by strengthening language on sanctions to target the

looting of state coffers and the repression of civil society, and by ensuring adequate resources so that the peace agreement can be enforced.

South Sudan has devolved into a *violent kleptocracy* in which we have seen atrocity after atrocity committed while the state's coffers are looted. We have a chance now to help South Sudan change course. The process of building effective, accountable institutions in South Sudan that are inherently different from what we have today will undoubtedly require significant resources, sustained engagement, and time. But unless economic and atrocity crimes at the root of the system are addressed, South Sudan will remain at risk of a return to deadly conflict. To prevent this, we urge you to ensure that the tools at the disposal of the U.S. government are deployed to the fullest extent in support of peace and accountability in South Sudan.