



Using Financial Pressures to Combat Kleptocracy in Africa

By Megha Swamy

President Joe Biden has publicly committed to leading the fight on corruption and illicit financial flows.¹ This emphasis, coupled with the sweeping new anti-money laundering (AML) reforms in the Anti-Money Laundering Act of 2020 (AML Act)—part of the National Defense Authorization Act for Fiscal Year 2021 (NDAA)—provides fertile ground for the United States to further expand and strategically deploy financial pressures as part of its broader efforts to combat corruption, conflict, and mass atrocities.²

East and Central Africa—the deadliest war zone in the world over the past few decades—is a prime example of how mass corruption fuels conflict and how US and multilateral tools of financial pressure could save lives. Illustratively, in South Sudan, Sudan, the Democratic Republic of Congo (DRC), and the Central African Republic (CAR), kleptocratic leaders steal public wealth and use extreme violence to quash democratic aspirations and human rights efforts. Their ill-gotten gains are moved largely in dollars and euros into the formal financial system, enabled by transnational networks. This same playbook has also been used in Zimbabwe for decades. Disrupting these illicit financial flows can affect the cost-benefit calculations of kleptocrats interested in fomenting instability, undermining the rule of law, and capturing state institutions for their personal enrichment. Creating accountability for financial crimes can also weaken entrenched corrupt patronage networks and provide much-needed leverage for renewed diplomatic efforts.

For these reasons, financial pressure tools like AML measures and network sanctions—particularly through Global Magnitsky authorities—can be an even more integral component of the United States' efforts to support peace and good governance in East and Central Africa, especially when part of a multilateral strategy. These tools, however, are not effective in a vacuum. They should be paired with renewed and vigorous diplomacy, robust efforts at multilateralism, and broader support to reformers in governments and civil society.

Expanding the Use of Financial Pressures

As reporting by The Sentry and others has increasingly highlighted, corrupt elites in East and Central Africa, aided by their transnational networks, divert public assets into private accounts.³ These funds are routed through the formal banking system, often in US dollars. AML measures are therefore crucial to disrupting this theft.

The US Department of the Treasury's Financial Crimes Enforcement Network (FinCEN), the regulatory body charged with safeguarding the country's financial system from illicit use, has a host of existing tools that have been and can be



increasingly used to counter corruption-related illicit flows. In 2017, FinCEN issued an advisory to financial institutions on the money laundering risks from South Sudanese political corruption.⁴ Advisories like this are a crucial component of public-private sector information sharing, which is critical in combating illicit finance. They allow FinCEN to share insights with financial institutions while eliciting more information from banks on financial intelligence priorities.⁵ FinCEN also has the ability to declare—through Section 311 of the USA PATRIOT Act—jurisdictions, financial institutions, or even certain types of transactions as primary money laundering concerns—a potent tool to cut off expressly rogue elements from the international financial system.⁶ Section 314(b) of the PATRIOT Act allows FinCEN to set a process for information sharing between banks.⁷ Given that illicit transactions often transit through several banks, this process can be useful in helping financial institutions cooperate on disrupting dirty money.

The AML Act is the most significant upgrade to the US AML regime since the PATRIOT ACT, helping to modernize FinCEN's functions but also adding to its duties.⁸ In particular, within the AML provisions of the NDAA, the Corporate Transparency Act (CTA) requires FinCEN to maintain a registry of beneficial ownership information for a broad range of “reporting companies” to help identify “malign actors” seeking to obscure their ownership of entities in the United States in order to facilitate illicit activity, including money laundering and foreign corruption.⁹ The Secretary of the Treasury is mandated with issuing regulations to implement the CTA, and the Biden administration should ensure that these measures are implemented promptly and effectively and that they live up to their promise.

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Sanctions, too, are important in exerting financial pressure. The Sentry's research shows that sanctions can be incredibly effective when designed, implemented, and enforced thoughtfully and transparently.¹⁰ However, in some past sanctions programs, the entirety of the strategy was the implementation of sanctions, usually in a manner that was more about messaging than impact. This is not sufficient. Sanctions should never be the whole of the policy themselves, but rather a part of a larger pressure strategy designed to reach a clearly stated goal or intention. Sanctions should also be levied against entire networks, targeting actors and entities that aid corrupt regimes and not just individuals who have no substantive connections to the formal financial system. The value of sanctions as a tool is undermined when they are politicized, one-off, or solely punitive with inadequate messaging. Simply put, the first step to better sanctions is the development of a better strategy.

The Global Magnitsky sanctions authority is an especially nimble tool, allowing the United States to designate individuals and networks perpetuating corruption and human rights abuses anywhere in the world without having to declare a national emergency and issue a new Executive Order.¹¹ An excellent example of the use of this authority is in the case of South Sudan. In October 2019, businessmen Ashraf Seed Ahmed Al-Cardinal and Kur Ajing Ater, along with their companies, were sanctioned for “engaging in bribery, kickbacks, and procurement fraud while draining state coffers.”¹² That December, five individuals were sanctioned for their role in the murder of activist Dong Samuel Luak and opposition member Aggrey Idri.¹³ The same month, two high-ranking officials were sanctioned under the South Sudan sanctions program for obstructing the tenuous peace process.¹⁴ With the implementation of the country's peace deal long delayed, the United States then sanctioned First Vice President Taban Deng Gai for his role in Dong and Aggrey's murders in January 2020. In a statement, Deputy Secretary Justin G. Muzinich said, “Taban Deng Gai's attempt to silence the opposition party is derailing the country's ability to implement a peace agreement.”¹⁵ This escalating use of pressures, combined with intensive diplomatic efforts and local South Sudanese civil society peace advocacy, was effective. President Salva Kiir and opposition leader Riek Machar broke the deadlock and agreed to form a unity government in February 2020.¹⁶



The sanctions on Dan Gertler and his network are yet another example of the use of this authority. Gertler, a billionaire Israeli businessman, used his friendship with DRC's then-President Joseph Kabila to entrench himself as a key player in the country's profitable mining sector. The US sanctioned him and his network of companies in December 2017.¹⁷ By keeping up the pressure on a key Kabila ally, designating more of his companies in June 2018,¹⁸ the United States signaled that it was serious about impacting those profiting from corruption in the DRC. In August 2018, Kabila announced that he was stepping down after 17 years in power, ending a run for an unconstitutional third term as president.¹⁹

However, in a secret, last-minute action in January, the Trump administration gave Gertler and his businesses a license to, in effect, nullify sanctions.²⁰ This action undermined the efficacy of the program and set an alarming precedent allowing nefarious actors to continue to do business through backroom deals. Thanks to intense NGO advocacy and Congressional attention, the Biden administration revoked the license in March, curbing the damage to the credibility of the Global Magnitsky program. The administration should now sanction any other known Gertler entities in order to help critical Congolese and US anti-corruption efforts in the DRC get back on track.

Additionally, the Global Magnitsky Act that provides the basis for these sanctions is set to expire in December 2022. Bipartisan legislation was introduced in the Senate this month to begin the process for its reauthorization.²¹ The new administration should work closely with Congress to ensure its renewal.²²

Toward More Effective Financial Pressures

In addition to deploying financial pressure tools, the United States should take steps to improve its efficacy, including by reaching out to partners, assisting in capacity building, and strengthening public-private partnerships.

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Multilateral and regional outreach

While AML measures and network sanctions are tools that the United States can deploy on its own, their efficacy is vastly strengthened when actions are multilateral. The United States should work closely with the European Union, the United Kingdom, and other partner countries with Global Magnitsky-style sanctions authorities—such as Canada—to coordinate sanctions actions. Multilateral and synchronized designations not only send a powerful message, but they also help ensure that assets can be frozen even if located outside the United States. The United States should also call on those allies that are contemplating adopting Global Magnitsky-style sanctions—such as Japan—to do so, while encouraging the United Kingdom and the European Union to add a corruption prong to their sanctions programs, which currently authorize only human rights-related designations.

Too often, the effectiveness of sanctions is also stymied by the lack of enforcement regionally. For instance, in Africa, the banking and real estate sectors of economic and commercial hubs like Kenya and Uganda provide the main conduit for the flow of dirty money from neighboring South Sudan and the DRC. To combat this, the United States should engage with governments and regulatory bodies in sub-Saharan Africa to build partnerships supportive of compliance and sanctions enforcement efforts. Global Magnitsky-style sanctions will be most effective when the weak links can be eliminated so that malign actors truly have no place to hide their money.

The United States should also work closely with organizations like the Financial Action Task Force (FATF), the multilateral body responsible for developing global standards for combating money laundering, and its regional affiliates, supporting their focus on illicit flows emanating from East and Central Africa.



Technical assistance and capacity building

Often in countries like the DRC and Sudan, regulatory and supervisory bodies responsible for implementing AML measures and enforcing sanctions obligations suffer from lack of funding and capacity.^{23, 24} For better enforcement of sanctions and AML measures, the United States should closely coordinate with regional partners, provide technical and capacity building assistance to supervisory bodies, and help build robust regulatory frameworks for effective compliance in the banking sector.

Public-private partnerships

The Treasury and State Departments should closely engage financial institutions, sharing information on the risks from corruption-related illicit flows. Provisions in the new AML Act, such as the FinCEN Exchange forum, allow for collaboration between the public and private sectors on strategies to counter illicit finance.²⁵ Crucially, the AML Act also authorizes regulatory steps to address de-risking, an issue affecting many countries in Africa.²⁶ De-risking refers to the phenomenon of financial institutions terminating or restricting businesses' relationships with certain clients or jurisdictions to avoid, rather than manage, risk.²⁷

Conclusion

Financial pressure tools are not a replacement for strategy and should be deployed thoughtfully in support of or to achieve particular foreign policy goals. Additionally, these measures, when used with certain policy goals in mind, can be imposed and lifted as needed to have the “carrot or stick” effect. Using sanctions or other financial actions as stand-alone measures without a well-informed diplomatic strategy in place simply undermines their value. Robust diplomacy, multilateralism, and support for in-country reformers are essential components to be deployed in tandem with these tools.

For years, diplomatic efforts to mitigate intractable conflicts have been missing leverage. Billions of taxpayer dollars have been spent to address humanitarian crises, and while there is a dire need for this assistance, it does not address the underlying issues of corruption and kleptocracy fueling widespread misery. With innovation and will, financial pressure tools can provide this much-needed leverage and guide a better way forward.

Over the past few years, the United States has used tools of financial pressure to support its efforts to counter conflict and corruption in East and Central Africa, with promising positive impact. The Biden administration should expand their use, strategically deploying these tools to support renewed diplomatic efforts toward sustainable peace, improved human rights, and good governance efforts.

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