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By Joshua White
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THE SENTRY

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In the final weeks of 2018, the United States sanctioned a retired Israel Defense Forces major general and two South Sudanese businessmen, including a brother-in-law of South Sudanese President Salva Kiir. These individuals were blacklisted, along with six associated companies in Israel and South Sudan, for their roles in perpetuating conflict in the world's newest country. This action, carried out by the U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC), a relatively small agency responsible for administering and enforcing economic and trade sanctions, represents only the most recent example of a paradigm shift in how sanctions and anti-money laundering measures are used to bring meaningful financial consequences to those responsible for profiting from mass atrocities in South Sudan. South Sudan-related sanctions were first put in place by the U.S. government in 2014. Until recently, all of the individuals designated in response to the country's crisis have been South Sudanese nationals, and all of the companies have been located in South Sudan. Notably, the Treasury Department's press release from December also publicly highlighted the involvement of the sanctioned individuals in illicit financial dealings, such as engaging in corruption and bribery and receiving payments and favorable contracts from the South Sudanese government.[1] This action also tripled the total number of companies the United States has targeted for sanctions since the original designations of three South Sudanese companies in 2017.

### The Network Approach

The Treasury Department's last wave of sanctions signals a new approach in the use of these measures to advance U.S. policy, applying expanded financial pressure through "network sanctions," anti-money laundering measures, and senior-level engagement in order to incentivize a change in behavior and create leverage for peace with the powerful kleptocratic elites in South Sudan.

A strategy of using network sanctions similar to the December action has long been the model advocated by The Sentry to create meaningful pressure in South Sudan. The term "network sanctions" refers to the strategy of freezing the assets of not just one individual for whom a change in behavior is sought but also the individuals or entities who act on their behalf or provide support for the primary individual's activities. In addition, network sanctions target the companies or properties that are "owned and/or controlled by" the primary target. Network sanctions based on these criteria are also commonly referred to as "derivative designations" because the basis for sanctioning the individuals or entities in these support networks derives from their relationship to the primary target.

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In the case of this most recent action, the United State began its network sanctions approach by targeting three individuals: South Sudanese businessmen Gregory Vasili and Obac William Olawo and retired Israel Defense Forces Major General Israel Ziv. All three were designated for sanctions under primary sanctions criteria outlined in Executive Order 13664, "Blocking Property of Certain Persons With Respect to South Sudan." Olawo and Ziv were designated for "being leaders of entities whose actions have the purpose or effect of expanding or extending the conflict in South Sudan" while Vasili was designated for "actions that have undermined peace, stability, and security in South Sudan."

Next, the use of derivative designations was exemplified in OFAC's simultaneous listing of three companies in Israel owned or controlled by Ziv and three companies in South Sudan owned or controlled by Olawo. By going after the business holdings of those who are targeted—as opposed to listing only the individuals—the Treasury Department has strengthened the disruptive impact of these sanctions, making it difficult for Ziv's and Olawo's networks to recover from losing access to the U.S. financial system.

## Beyond "Naming and Shaming"

The network sanctions approach is a notable evolution from previous practice. Until September 2017, the United States only listed a few South Sudanese individuals at a time and rarely with any companies. This changed with the listing of South Sudanese businessman Benjamin Bol Mel in the new Global Magnitsky executive order, which implemented a law passed by a bipartisan majority in Congress that imposed sanctions against those responsible for serious human rights abuse and corruption around the world. Bol Mel has served as the chairman of the South Sudan Chamber of Commerce, Industry, and Agriculture and as President Kiir's principal financial advisor.[2] The Sentry submitted information on Bol Mel to the Treasury Department in addition to highlighting his activities in its public reports. At the same time OFAC designated Bol Mel, it also levied sanctions against two of his companies, ABMC Thai-South Sudan Construction Company Limited (ABMC) and Home and Away LTD., for being under his ownership or control. Before this case, the previous approach to bringing accountability for the systemic corruption fueling the conflict in South Sudan focused on a foreign policy-centered belief that "naming and shaming" individuals would essentially embarrass them into changing their behavior, or would otherwise symbolically demonstrate American disapproval for their actions—with little tangible financial impact. This approach largely targeted a handful of military officials in the government and opposition who were already detached from the international financial system, while ignoring the corporate and financial networks the targets used to move money. The effectiveness of these sanctions was further undermined by a lack of enforcement in the region, particularly in Kenya and Uganda. Unlike the elite cadre of kleptocrats and their business associates at the top of South Sudan's power structure, these early targets of U.S. sanctions had little reason to fear the impact of the designations, if they even knew about them at all.

The new designations, by contrast, aim to hold accountable not only those in power, but also those who facilitate the financial capabilities that allow them to remain in control. In fact, the Treasury Department's latest action marks the first use of network sanctions during a period in which there is a peace agreement in South Sudan. The U.S., European Union, and United Nations previously only imposed individual sanctions during the height of conflict in South Sudan as a fallback when diplomatic efforts failed or to pressure actors to sign a peace agreement. By proactively wielding network sanctions to influence behavior instead of punitively responding to events that have already taken place, the United States is reinforcing the need for South Sudan's government to build the structural foundations for sustainable peace. The U.S. action was also an important step toward dissuading South Sudan's ruling elites from replicating the failures of the past and facilitating a return to conflict for the country, though it is critical to follow up on the December sanctions by taking further actions against the networks profiting from continuing violence and the absence of the rule of law. Fundamentally, these sanctions must be used to dismantle the violent kleptocratic system in South Sudan in order to truly sustain peace and good governance.

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## Anti-Money Laundering Measures

While sanctions have been relied upon heavily to advance foreign policy and protect the international financial system from abuse—and thus have received the most public attention— they are merely one part of an important formula now being utilized to combat illicit financial flows from South Sudan. Anti-money laundering measures, such as the public and nonpublic advisories issued by the Treasury Department's Financial Crimes Enforcement Network (FinCEN), have helped to support the ability of banks to identify and disrupt the methods through which kleptocrats and war criminals use the international financial system to move their illicitly obtained assets. FinCEN advisories, which were first introduced with a global focus in March 1996, have highlighted typologies and jurisdictions that represent money laundering risks to financial institutions, ranging in focus from the illicit financial activities of the North Korean government to "home equity conversion mortgage fraud schemes." These advisories are an important way for FinCEN to warn banks and draw attention to serious risks to the security of the U.S. financial system.

In September 2017, FinCEN issued its first advisory on the risks presented by the illicit financial activities of South Sudanese elites. The alert warns that "certain South Sudanese senior political figures may try to use the U.S. financial system to move or hide proceeds of public corruption." This alert is particularly notable because of the relatively small number of public advisories FinCEN issues, especially when compared to the number of sanctions actions taken by OFAC. In 2017, FinCEN issued only eight advisories; South Sudan was one of three countries to be the focus of an entire advisory, along with North Korea and Venezuela.

Less than a year later, FinCEN built upon this advisory by issuing a more expansive warning about "human rights abuses enabled by corrupt senior foreign political figures and their financial facilitators."[3] By alerting

U.S. financial institutions to the risks posed by "corrupt senior foreign political figures [attempting to] access the U.S. and international financial systems to move or hide illicit proceeds and evade U.S. and global sanctions," FinCEN underscored the causal relationship between corruption and violence—a connection The Sentry has long argued should be the focus of financial tools of pressure. FinCEN also recommended in this advisory that, "financial institutions should take reasonable, risk-based steps to identify and limit exposure they may have to funds and other assets associated with individuals and entities providing financial facilitation for corrupt senior foreign political figures." The advisory also reminds financial institutions of their obligations regarding the filing of Suspicious Activity Reports (SARs) related to facilitators of corrupt senior foreign political officials. The advisory concluded by highlighting the case of Israeli billionaire Dan Gertler and South Sudanese businessman Bol Mel, individuals sanctioned under Global Magnitsky who exemplify the connections between corruption and human rights abuses that have been extensively reported on by The Sentry over the past several years.

U.S. and foreign banks can incorporate the typologies for money laundering risk presented in these advisories into their internal compliance training to educate staff on what to look for in order to better detect the illicit financial activity described by FinCEN. As such, these advisories are an important tool for furthering the expertise and knowledge of those on the front lines responsible for detecting this activity within their institutions.

## Senior-Level Regional Engagement

In addition to the combined use of impact-driven network sanctions and public anti-money laundering measures, the third and final pillar of an evolving strategy by the Treasury Department to create financial pressure against those destabilizing South Sudan is an unprecedented level of engagement with jurisdictions exposed to South Sudanese illicit financial flows. The most high-profile example of a new level of attention to this issue came in July 2018, when Treasury Under Secretary for Terrorism and Financial Intelligence Sigal P. Mandelker, the department's senior official responsible for sanctions and anti-money laundering, became the first official in her position to ever visit Sub-Saharan Africa. With stops in Kenya and Uganda, Under Secretary Mandelker and a delegation of her staff made the ties between corruption and violence a central focus of their message to authorities and financial institutions. Under Secretary Mandelker called on the regional audience to take more serious action to prevent their economies from being destinations for the proceeds of corruption by South Sudanese elites, or face increased scrutiny from regulators in the United States. According to press coverage of Under Secretary Mandelker's remarks while in Kampala, she "told reporters at the American Embassy in Kampala . . . that the U.S. government has made it clear to Ugandan and Kenyan lawmakers and bankers it is their responsibility to stop corrupt South Sudanese officials from taking illicit funds derived from the four-and-a-half-year conflict and investing it in Ugandan and Kenyan property."[4] In a subsequent press conference[5] hosted jointly with The Sentry in

Sigal Mandelker, U.S. Treasury Under Secretary, and John Prendergast, Co-Founder of The Sentry, together at a press conference in Nairobi, June 2018.

Nairobi, Under Secretary Mandelker reinforced her message for a Kenyan audience,[6] saying, "We will impose consequences, we will cut off your access to the U.S. financial system and we will work with our partners in this region and elsewhere to do the same. . . . Those who profit on of the backs of individuals who are devastated by human rights abuses will no longer have access to the international financial system because we will block that access, kick them out and we will work together to eliminate such despicable profiteering." John Prendergast, co-founder of The Sentry, emphasized the important role of the Kenyan financial system as a regional hub for South Sudanese elites to bank and purchase property, stating, "It's vital that Kenyan banks and their regulators lead the way in implementing strict standards for anti-money laundering, anti-corruption, and sanctions enforcement to protect the country's financial system from abuse by the violent kleptocrats and corrupt elite in South Sudan who pump their ill-gotten gains into Kenyan bank accounts and real estate holdings."

The initial reaction from Kenyan officials sparked a popular movement that could not have been predicted at the time of Under Secretary Mandelker's remarks.[7] After Kenyan Foreign Affairs Principal Secretary Macharia Kamau told local media that "Kenya knows its obligations in regards to corruption and money laundering, and is working closely with the international community on the same" but retorted that "we work with multilateral platforms and don't take instructions from other sovereign states," frustrated Kenyans took to Twitter to call for their country's leaders to take a more aggressive stance toward fighting South Sudanese elites' use of their country's financial system and luxury real estate market.[8] In thousands of tweets tagged with #SouthSudanUntouchables, Kenyans posted photos of South Sudanese elites posing with suitcases of cash and their Kenyan luxury homes, decrying "the way government is turning a deaf ear to (a) US push to seize properties belonging to #SouthSudanUntouchables."[9] Soon after media outlets started to report on this growing Twitter movement, Kenyan Cabinet Secretary for Foreign Affairs Monica Juma told journalists her "government is considering all available options in ongoing efforts to restore peace in South Sudan including freezing assets of leaders violating cease fire agreements."[10] Cabinet Secretary Juma added, "The matter of sanctions is governed by the rule of law. When there are claims of people who have violated cease fires, we're insisting on verification and evidence so that we process these in a rule-based manner."

The decidedly more conciliatory tone to Cabinet Secretary Juma's remarks and recent heightened interest by Kenyan authorities and banks in engaging with The Sentry on illicit financial flows from South Sudan to Kenya demonstrate how increased attention by U.S. and other regulators can have an impact by incentivizing regional stakeholders to take their exposure to the corrupt proceeds of South Sudan's elites more seriously.

## The Sentry's Role

By advocating for a new strategy of network sanctions—particularly Global Magnitsky designations—and anti-money laundering measures, The Sentry has played a key role in changing the way financial pressures are deployed against those responsible for the destruction of South Sudan. In its reports, The Sentry has used its investigative information to highlight the role of financial facilitators such as Vasili, Olawo, and others close to the powerful elites in Juba who trade favorable access in exchange for political support. Vasili featured prominently throughout The Sentry's September 2016 inaugural report, "War Crimes Shouldn't Pay," which highlighted documents that showed how Vasili, who is also President Kiir's brother-in-law, has held stakes in numerous businesses operating in South Sudan.[11]

Most recently, Olawo was a focus of "Fueling Atrocities," a March 2018 report in which The Sentry exposed how in 2014 alone, Olawo received over $8 million in payments from Nilepet, South Sudan's national oil company, to supply vehicles, import armored personnel carriers, and transport tanks and supplies to armed factions linked to the South Sudanese government's war effort.[12] Besides Olawo's sanctions designation, The Sentry has advocated for the United States to target South Sudan's lucrative oil sector. In addition to its findings on specific individuals such as Olawo, The Sentry also revealed how funds from South Sudan's state oil company, Nile Petroleum (Nilepet), helped fund militias responsible for horrific acts of violence and how millions of dollars were paid to several companies partially owned by family members of top officials responsible for funding government-aligned militia or military commanders. Later that same month, the U.S. Department of Commerce's Bureau of Industry and Security (BIS) added 15 South Sudanese companies—including Nilepet—and government ministries representing nearly the entire petroleum sector of South Sudan to a list of entities "reasonably believed to be involved, or to pose a significant risk of being or becoming involved, in activities contrary to the national security or foreign policy interests of the United States." This action imposed a licensing requirement on U.S. and foreign companies that wish to export, reexport, or otherwise transfer certain U.S.-origin technology or services to these entities, with the policy that any applications submitted to BIS to export U.S. goods to these South Sudanese companies and government ministries will be considered with a "presumption of denial." The reason given for this action by the Department of Commerce in its press release spoke directly to the findings of The Sentry's "Fueling Atrocities" report, noting that the 15 entities were "contributing to the ongoing crisis in South Sudan because they are a source of substantial revenue that, through public corruption, is used to fund the purchase of weapons and other material that undermine the peace, security, and stability of South Sudan rather than support the welfare of the South Sudanese people."[13]

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The results of The Sentry's investigative findings have translated into action by policymakers over the past several years. The Sentry has investigated and publicly reported on numerous South Sudanese senior officials and businesspeople who have subsequently been designated for sanctions by the United States, European Union, or United Nations. In "War Crimes Shouldn't Pay," The Sentry reported on the extensive illicit financial activities of General Malek Reuben Riak and General Paul Malong Awan. At the time, these senior military officials were two of the most powerful members in President Kiir's government and held extensive business and real estate holdings in the region. In the same report, The Sentry also described the role of Bol Mel and one of his companies, ABMC, in allegedly receiving lucrative contracts from the South Sudanese government because of Bol Mel's privileged access to President Kiir. Almost exactly a year later, on September 6, 2017, OFAC sanctioned General Riak, General Malong, and South Sudanese Minister of Information Michael Makuei Lueth, in addition to three companies owned or controlled by General Riak. The Treasury press release announcing these sanctions featured information included in The Sentry's reports on Riak and Malong's corrupt financial dealings. Simultaneously published with these sanctions designations was the aforementioned FinCEN advisory to financial institutions concerning the potential movement of assets belonging to South Sudanese politically exposed persons, which also focused on activities that featured prominently in "War Crimes Shouldn't Pay." Several months later, on December 21, 2017, Bol Bel was included as one of 13 individuals—and one of only two individuals from Africa—listed in the executive order signed by the president implementing and expanding upon the Global Magnitsky Act. In addition, OFAC simultaneously sanctioned ABMC and another company owned or controlled by Bol Mel. The Treasury press release announcing the executive order also explained some of the activities for which Bol Mel was sanctioned. The information made public by the Treasury Department overwhelmingly reflects The Sentry's findings in "War Crimes Shouldn't Pay."

## Impact

Similar to the sanctions placed on Gertler over a year ago for his role as the key financial facilitator to the Democratic Republic of Congo's President Joseph Kabila, the Treasury Department's designation of Ziv and his three companies is especially impactful for limiting Ziv's ability to continue using the international financial system to support malign activities in South Sudan.[14] The sanctions action against him represents the targeting of a high-level retired military officer of a country closely aligned with United States. According to the Treasury Department, Ziv was also paid through the oil industry and closely collaborated with a major multinational oil firm to use an agricultural company—which was supposed to be carrying out agricultural and housing projects—as a cover to sell approximately $150 million worth of weapons to the South Sudanese government. At the same time, while Ziv maintained the loyalty of senior South Sudanese government officials through bribery and promises of security support, he also reportedly planned to organize attacks by mercenaries on South Sudanese oil fields and infrastructure in an effort to create a problem that only his company and affiliates could solve.

The Treasury Department's designations against Ziv and his companies limit his ability to use the international financial system in U.S. dollars since the overwhelming majority of dollarized payments are cleared through correspondent banks in New York. In addition, the sanctions against Ziv, his companies and other individuals will freeze any funds under U.S. jurisdiction, which is an important tool for halting major oil contract payments as many are made in U.S. dollars.

## Looking Ahead

In recent months, Sudan, Congo, and the Central African Republic—all of which are countries in The Sentry's area of focus—saw heightened turmoil. Sudan has been struggling to implement an agreement to transfer authority to a civilian government, Congo witnessed contentious elections marred by irregularities and violence, and the Central African Republic, an aid group warned, is steering toward a possible humanitarian catastrophe.[15] It is therefore even more urgent to create leverage for lasting peace and dismantle the kleptocratic systems responsible for looting state coffers and committing grave human rights abuses. Although there is currently a peace deal in South Sudan, it does not go nearly far enough in addressing the core problem behind war, and remains largely unimplemented on its most important provisions. There is still a need for sustained financial pressures on the leaders in both the government and opposition, not only to adhere to the peace deal, but also to catalyze a systemic change that ultimately dismantles the current violent kleptocratic system in order to give sustainable peace and good governance a chance in South Sudan.

The Sentry, through its public reports and private dossiers to governments and banks, will continue to uncover financial intelligence in order to shut out kleptocrats and their networks from the international financial system, create leverage for peace, and build incentives for respecting human rights and accountable governance.

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