



Testimony of Akshaya Kumar, Enough Project

Tom Lantos Human Rights Commission, U.S. House of Representatives
The Current Human Rights Situation in South Sudan

July 10, 2015

Co-Chairs Pitts and McGovern, members of the Commission, thank you for your ongoing commitment to the people of South Sudan.

It's bittersweet that we come together today – four years after South Sudan's independence– not to measure all that has been accomplished but instead to reflect on all that has been lost. Four years ago, I stood shoulder to shoulder with my South Sudanese friends and colleagues under the hot Juba sun to celebrate as a dream long deferred came to fruition. We listened to then Ambassador Susan Rice tell the swelling crowd that southern Sudan's peaceful referendum and separation proved that *"few forces on Earth are more powerful than a citizenry tempered by struggle and united in sacrifice. And every problem created by human folly can be met by human wisdom and mended by human resolve."* Now, twenty-one months into a new and equally devastating civil war, that legacy is deeply in jeopardy.

The South Sudanese people's struggle and sacrifice continues, but this time, it's their own kleptocratic leaders' folly that is testing their resolve and wisdom.

In the face of nine broken agreements to cease hostilities, it is indisputable that there can be no military resolution to this conflict. Both sides' intransigence and callous disregard for human suffering have left them deadlocked on the battlefield. With each passing day that elites delay at the negotiating table in Addis Ababa or Nairobi, the economic collapse and humanitarian disaster back in South Sudan deepens. It's hard to imagine that anyone could possibly benefit from the tit-for-tat scorched earth campaigns that have driven over two million people from their homes and left one in ten South Sudanese households in Upper Nile facing catastrophic famine conditions. And it's even harder to conceive how any advantage could be gained from fighting that UNICEF confirms has often involved castrating young boys and raping young girls.

But the cold hard truth is that there are people who profit from the war economy in South Sudan and the grand corruption that enables it. With billions in oil revenues missing from state coffers, hundreds of acres of land bartered away for pennies on the dollar, and currency speculation running rampant, South Sudan was hijacked by violent kleptocrats long before it became an independent state four years ago. Since the 2005 peace agreement that ended the earlier war between the northern and southern parts of Sudan, South Sudanese elites have taken advantage of their country's rich potential to line their own pockets, just as the leaders in Khartoum had done before 2005. Since there is no arms embargo on South Sudan, both warring sides' continued unchecked access to the global financial system enables these hijackers to exploit rich natural resource endowments, loot the state treasury, and launder their profits to get rich and wage war.

The American people have long stood in solidarity with the people of South Sudan. For decades, that meant supporting their leaders in an international campaign to secure their freedom. Now, that dynamic must change.

In South Sudan, the U.S. government must be willing to impose punishing consequences on those most responsible for obstructing the peace, stealing from their own people, and committing atrocity crimes, even if that means targeting those it considered friends in the past. This will require a three-pronged approach:

- (1) a measured escalation of existing individual targeted sanctions to ban the travel and freeze the assets of the country's political elite and their enablers,
- (2) legal action to confiscate wealth acquired through corruption and other illegal activity, and jumpstart efforts to recover and return the billions in stolen assets taken from South Sudan, and
- (3) a hybrid court with jurisdiction over all kinds of atrocity crimes, including economic crimes like pillage and grand corruption.

First, leveraging the momentum created by last week's sanctions designations at the UN Security Council, the U.S. government should immediately intensify efforts to collect information and develop dossiers to identify a second round of targets for multilateral sanctions. This time, however, the sanctions should target two groups: the high level political elite responsible for prolonging the war and the facilitators providing financial and material support to the warring parties. When the President is in the region in just a couple of weeks, pressing for cooperation and support for targeted sanctions enforcement should be at the top of the agenda as he meets with President Kenyatta and Prime Minister Hailemariam, as well as any other regional leaders he engages with at the African Union.

So far, the United States and the UN have imposed asset freezes and travel bans on a few South Sudanese field commanders who have little contact with the global financial system. As a consequence, sanctions have been more of a box-checking exercise rather than the instrument of serious financial pressure they should be.

To utilize sanctions as an instrument of real financial pressure in support of human rights accountability and the peace process, we recommend that the U.S. government keep three factors in mind when reviewing candidates for designation: (1) their political influence and role in the leadership structure of each warring side, (2) their connections with the formal financial system outside South Sudan, (3) their susceptibility to a travel ban based on their lifestyle and travel history.

But even with more hard-hitting targets, sanctions designations are only as good as their enforcement. Too often, adding a name to our Specially Designated Nationals list is considered an end in and of itself, instead of a starting point for enforcement action. While sanctions do serve an important role as a signaling tool for the international community, in South Sudan, sanctions must be seen as more than hollow words. Law enforcement in the United States and in the region should view these sanctions designations like an arrest warrant. Unless there is execution, the mere act of designation is almost meaningless.

With active sanctions programs on Iran, Cuba, Ukraine, North Korea, and dozens of other situations, we recognize the serious capacity constraints that the Department of Treasury's Office of Foreign Assets Control faces. Last year, the Enough Project worked with Congressional appropriators to secure an additional allocation to this overworked terrorism and financial intelligence bureau in the Department of the Treasury. Now that these funds have been appropriated, we recommend that this Commission urge Treasury Secretary Lew to prioritize those funds to support work on African sanctions regimes, particularly the nascent effort in South Sudan.

Earlier this week, Representatives Rooney, Capuano, McCaul, Lee and Fortenberry made their support of this approach clear, with a new legislative measure, HR 2989, which codifies the United States' existing bilateral sanctions regime and asks the administration to prepare a strategy to deal with the corruption and illicit financial flows plaguing South Sudan. The Enough Project is strongly in support of this bipartisan bill, and I urge all the members of the Lantos Commission to consider co-sponsoring this important measure before the President heads to Africa.

Second, we're very encouraged by the prospects for asset forfeiture, recovery, and ideally, return, for South Sudan. Until now, South Sudan's leaders, who are largely insulated from the impact of the war, have not felt the pain that they are putting their people through. Asset forfeiture actions could help address that asymmetry. The U.S. Department of Justice's Kleptocracy Asset Recovery Initiative has conducted a number of successful investigations into grand corruption in Africa, most notably in Equatorial Guinea and Nigeria. Just last week, they announced a new case to recover the proceeds of corruption involving a senior Chadian government official. We hope that with greater inter-agency support from the FBI, the Department of State, and the Department of Homeland Security, the Department of Justice will be able to identify actionable instances of grand corruption in South Sudan with a strong connection to the United States. Our research shows that most corrupt deals and transactions in South Sudan occur in U.S. dollars and that elites tend to offshore their assets and maintain homes and families in places like Australia, South Africa, the United Arab Emirates, the United Kingdom, Canada, and the United States. We believe that finding a nexus is possible that would allow the Department of Justice to act on its own under its existing mandate.

Even if actual forfeiture action is further down the road, at this juncture, active U.S. contributions to intelligence gathering through existing networks like the Asset Recovery Focal Point Initiative could be catalytic in the efforts to trace the proceeds of grand corruption from South Sudan globally. We also recommend operational cooperation with the UK's newly formed National Crime Agency and the Royal Canadian Mounted Police to undertake joint

investigations into stolen assets from South Sudan. Since these investigations are inherently multi-jurisdictional, engaging with the Camden Asset Recovery Inter-Agency Network or CARIN network and leveraging European support for asset recovery will be crucial for operational success.

Finally, President Obama will be well placed to raise these issues while meeting with President Kenyatta and Prime Minister Hailemariam during his upcoming trip to the region. He should urge Kenyan and Ethiopian authorities to share intelligence and leads on the location of stolen assets from South Sudan through the Asset Recovery Inter-Agency Network of Southern Africa (ARINSA), which has observer status in the globally influential CARIN network.

In addition to calling contacts in the administration to express Congressional support for the President's direct engagement in urging asset recovery work on South Sudan, members of this Commission can complement these efforts by co-sponsoring the Global Magnitsky Human Rights Accountability Act- H.R. 624, which uses Congress' power to tackle the nexus between corruption and human rights abuses. The Global Magnitsky Act offers the President stand-alone authority to ban the travel and freeze the assets of human rights abusers and foreign officials accused of grand corruption, regardless of their origin.

Representative Chris Smith introduced the measure in January of this year and it has garnered 50 co-sponsors, including both co-chairs of this commission: Rep. McGovern and Rep. Pitts. It's currently under consideration by the House Judiciary Committee's subcommittee on Immigration and Border Security and has the endorsement of 11 members of this commission. Thank you Rep. Capuano, Rep. Cicilline, Rep. Doggett, Rep. Eshoo, Rep. King, Rep. Jackson Lee, Rep. Polis, Rep. Rohrabacher, Rep. Schiff, Rep. Slaughter, and Rep. Waters for your support of this important measure.

Finally, there can be no peace without justice and accountability in South Sudan. In early May, U.S. Secretary of State John Kerry pledged five million dollars to help support documentation efforts and fund a "credible, impartial, and effective" hybrid court in South Sudan. By publicly endorsing the need for a tribunal even as peace talks stalled, Sec. Kerry confirmed that justice should not be held hostage at the negotiating table. Kerry's pledge, which comes after the African Union buried its own commission of inquiry's report on human rights abuses in South Sudan, is a welcome sign that accountability has not fallen off the international community's priority list.

Unfortunately, since then there has been limited traction on these issues. Despite a long-standing pledge from both warring parties to support the creation of a hybrid court for South Sudan, no work has been done to establish this mechanism. To help get the process moving again, we hope that Lantos Commission members might be able to call and weigh in with Secretary Kerry to highlight the importance of swift action on this file. While urging the President to push for the immediate release of the AU Commission of Inquiry report when he meets with African Union leaders, we hope you will also emphasize that any hybrid court should have jurisdiction to prosecute economic crimes, including pillage and grand corruption.

As it stands now, war crimes pay. Changing that dynamic will require systematic efforts to make war more costly than peace. One important part of the international response is to deny those war profiteers the proceeds from their crimes. The complement to that retributive effort is to establish transitional justice mechanisms with a mandate to consider compensation for victims of these abuses in the service of restorative justice. Public U.S. support for a hybrid court in South Sudan with an expansive mandate that tackles economic crimes and reparations can help add momentum to both efforts.

South Sudan has spent the last 18 months of its precious independence locked in a devastating conflict. Cholera is spreading through camps for the displaced and an entirely man-made famine is looming. Children are being recruited to fight a war with no end in sight. Young boys are being tied up before their throats are slit. Girls are being raped.

A generation is being lost once more. This is a great tragedy, but the greater tragedy is that all of this is happening in a climate of incredible impunity. With biting sanctions enforcement, asset recovery efforts, and a push for a hybrid court, together, we can change that.