

House Committee on Foreign Affairs

Subcommittee on Africa, Global Health, and Global Human Rights

Impact of Sanctions in Africa

ERIC B. LORBER

Senior Director

*Center on Economic and Financial Power
Foundation for Defense of Democracies*

Managing Director

K2 Integrity

Washington, DC

May 25, 2021

Introduction¹

Chairwoman Bass, Ranking Member Smith, and distinguished members of the committee, I am honored to appear before you today to discuss the impact of sanctions in Africa. I come before this committee as an economic sanctions and compliance professional, having worked at the U.S. Department of the Treasury and having advised financial institutions, corporations, humanitarian organizations, and individuals on ensuring they operate in compliance with U.S., EU, and UN sanctions obligations.

My testimony today will focus on the impact of sanctions in Africa, in particular the United States' use of targeted sanctions to counter specific malign activity. I will provide an overview of the different types of sanctions used by the United States and then discuss how the U.S. government has employed sanctions in Africa to disrupt corrupt networks, terrorist financing, and human rights abuses. Understanding the key differences in the programs the United States employs in Africa against particular regimes and conduct versus other, comprehensively sanctioned jurisdictions such as Iran, Syria, and North Korea, is important when assessing their impact and some of the risks of their use. While sanctions can be a powerful tool to disrupt specific illicit activity in Africa, they should be used in conjunction with other forms of pressure and in close partnership with allies, partners, and the private sector to achieve maximum impact.

I. U.S. Sanctions Architecture

Over the last four administrations, the Treasury Department, the State Department, and other executive agencies, along with Congress, have significantly increased the number of both countries and illicit actors subject to U.S. sanctions, as well as the sophistication of these tools. In recent years, the United States has expanded the scope, intensity, and impact of these tools. During the Trump administration, for example, the U.S. government – led by the Office of Foreign Assets Control (OFAC) at the U.S. Department of the Treasury – designated more than 1,000 targets per year.²

Beyond new targets and ramped-up programs, successive administrations have imposed new and sophisticated types of sanctions to change state behavior and prevent terrorist organizations, weapons proliferators, corrupt actors, human rights abusers, and many others from accessing the international financial system. The United States now employs a range of sanctions to protect its national security interests, including:

- **Comprehensive Jurisdictional Sanctions.** Often referred to as “embargoes,” comprehensive sanctions broadly prohibit U.S. persons from transacting with certain countries or territories, often as a means of pressuring the regime in that country. The United States currently maintains comprehensive sanctions programs on Iran, Cuba, Syria, and North Korea as well as on the Crimean Peninsula.

¹ The views expressed in this testimony are my personal views and do not represent the views of the Foundation for Defense of Democracies, K2 Integrity, or the Treasury Department. Pursuant to legal and ethical obligations, I cannot discuss internal deliberations that occurred during my tenure at the Treasury Department.

² “2020 Year-End Sanctions Update,” *Gibson Dunn*, February 5, 2020. (<https://www.gibsondunn.com/wp-content/uploads/2021/02/2020-year-end-sanctions-and-export-controls-update.pdf>)

- **Conduct/List-Based Sanctions.** List-based sanctions focus on individuals and entities engaged in illicit activity such as terrorism, weapons proliferation, drug trafficking, corruption, human rights abuses, and malicious cyber activity, among many other illicit activities. These persons are added to the Specially Designated Nationals And Blocked Persons (SDN) List, and U.S. persons are required to block their assets. These sanctions are generally imposed to cut these persons off from legitimate financial and business markets. They are often referred to as “targeted sanctions” because they focus on the specific individuals and networks engaged in the illicit activity, as opposed to an entire jurisdiction.
- **Regime-Based Sanctions.** Regime-based sanctions are list-based programs that target members of current and former regimes engaged in corruption, human rights abuses, and other malign activity. These programs are not fully comprehensive programs but target specific regimes. Examples include the U.S. sanctions programs on Libya, Yemen, and Zimbabwe. The sanctions and associated prohibitions apply only to specific persons identified by OFAC, even if the U.S. government has the legal authority to prohibit transactions with any member of a regime.
- **Sectoral Sanctions.** First employed against Russia following its annexation of Crimea and destabilizing activities in eastern Ukraine, sectoral sanctions were developed to impose costs on target companies in situations where designating those companies as SDNs is viewed as too escalatory or would have too many negative collateral consequences. Whereas SDN designations prohibit U.S. persons from engaging in all transactions with the target, sectoral sanctions prohibit *certain* transactions with targets, such as transactions in new debt over a certain tenor or equity. The Russia sectoral sanctions program was subsequently expanded pursuant to the Countering America’s Adversaries Through Sanctions Act. Sectoral sanctions on Russia have been further expanded, and the Trump administration extended these types of sanctions to Venezuela as well.
- **Secondary Sanctions.** Secondary sanctions extend U.S. coercive leverage to non-U.S. persons who knowingly engage in significant transactions with SDNs or in prohibited sectors (e.g., in Iran’s oil or shipping sectors). Secondary-sanctions authorities threaten persons who engage in such activities with being cut off from U.S. markets (including financial markets), among a number of additional penalties. Designed to pressure non-U.S. persons to cease engaging in unwanted activity with adversaries, they are often controversial with allies and partners given their so-called “extraterritorial” nature. Currently, the United States has secondary-sanctions authorities in the Iran, North Korea, Syria, Russia, Hizballah, and terrorism programs.
- **Non-Sanctions Economic Authorities.** In addition to sanctions, U.S. regulatory and enforcement agencies have a range of economic authorities to protect the international financial system and pressure U.S. adversaries, including USA PATRIOT Act Section 311 identifications of institutions and jurisdictions as primary money laundering concerns, outreach to the private sector and guidance through advisories issued by OFAC and the

Financial Crimes Enforcement Network, and robust diplomacy to garner support for coordinated action with U.S. allies and partners.

It is important to note that the United States often imposes multiple types of sanctions to address a particular national security challenge. For example, Iran is subject to comprehensive jurisdictional sanctions, secondary sanctions, and non-sanctions authorities (it is identified as a jurisdiction of primary money laundering concern), and specific entities are designated under both conduct- and regime-based sanctions programs.

II. Africa-Focused Sanctions Programs

While the United States employs this wide range of sanctions to target threats to its national security interests across the globe, it currently employs only two types of sanctions programs with respect to threats and foreign-policy challenges in Africa: regime-based sanctions and conduct-based sanctions. Both of these sanctions programs are targeted, sanctioning only particular individuals or entities for engaging in malign activity. They are not akin to comprehensive jurisdictional programs such as those targeting Iran or Syria, as their scope is much more limited. While many argue that the United States overuses its sanctions authorities, recent administrations have not focused their sanctions tools as heavily on malign actors in Africa, at least in comparison to other programs across the world.

Regime-Based Programs

The United States employs country-specific, regime-based sanctions programs against certain regimes and countries in Africa. These programs target specific individuals OFAC has identified, and each program contains a limited number of designations.

Burundi

The Burundi sanctions program, established in 2015 under Executive Order 13712, targets persons determined to be responsible for or complicit in actions or policies that threaten the peace, security, or stability of Burundi; human right abuses; the targeting of women, children, or civilians; the obstruction of delivery of humanitarian assistance; or a range of other activities. OFAC currently imposes sanctions on 11 persons under this authority.

Central African Republic

The Central African Republic sanctions program, established in 2014 under Executive Order 13667, targets persons responsible for or complicit in actions that threaten the peace, security, or stability of the Central African Republic; actions that undermine democratic processes in the Central African Republic; the obstruction of delivery of humanitarian assistance; or a range of other activities. OFAC currently sanctions 20 persons under this authority. The most recent designation was imposed in August 2020, when OFAC designated an individual for targeting women and children through acts of violence. OFAC previously designated two individuals in December 2017 for facilitating the transfer of ivory and weapons for the Lord's Resistance Army.

Democratic Republic of the Congo

The Democratic Republic of the Congo sanctions program, established in 2006 under Executive Order 13413 and expanded in 2014 under Executive Order 13671, targets persons who are political or military leaders of foreign armed groups operating in the DRC, impede the disarmament of combatants, are responsible for actions or policies that threaten the peace and security of the DRC, obstruct the delivery of humanitarian goods, or commit a range of other actions. The most recent designation occurred in 2019, when OFAC sanctioned three individuals for undermining the DRC elections. OFAC has currently designated 55 persons in connection with the DRC sanctions program.

Mali

The Mali sanctions program, established in 2019 under Executive Order 13882, targets persons who engage in actions that threaten the peace, security, or stability of Mali or undermine democratic processes or institutions in Mali, among other activities. In December 2019, the Trump administration sanctioned five individuals for threatening the peace and security of the country. They are the only persons sanctioned under the Mali program.

Somalia

The Somalia sanctions program, established in 2010 under Executive Order 13536 and expanded in 2012 by Executive Order 13620, targets individuals who threaten the peace, security, or stability of Somalia; obstruct the delivery of humanitarian assistance to Somalia; or have supplied, sold, or transferred arms or related material or services to Somalia, among other activities. The U.S. government thus far has imposed sanctions on 19 persons under the Somalia sanctions program, including the Foreign Terrorist Organization al-Shabaab. Al-Shabaab is likewise subject to a range of additional, multilateral restrictions.

Sudan

As of 2017, the United States has suspended the imposition of sanctions on Sudan. While the comprehensive jurisdictional program, which broadly prohibited U.S. persons from conducting any business in Sudan, is no longer in effect, the United States continues to maintain limited sanctions designation authority related to Darfur, with eight persons sanctioned under that program.

South Sudan

The South Sudan-related sanctions program, established in 2014 under Executive Order 13664, targets persons who threaten the peace, security, or stability of South Sudan; threaten the country's transitional agreements; or undermine democratic policies or institutions in South Sudan, among other activities. Recent designations under the program include two individuals sanctioned in 2017 for undermining peace and security; three individuals sanctioned in 2018 whose actions have extended the conflict in South Sudan; and two individuals sanctioned in 2018 for obstructing

reconciliation efforts. The U.S. government thus far has imposed sanctions on 19 persons under this program.

Zimbabwe

The Zimbabwe sanctions program, established in 2003 under Executive Order 13288 and expanded in 2005 under Executive Order 13391 and again in 2008 under Executive Order 13469, targets anyone OFAC identifies to be a senior official of the Zimbabwean government, to have engaged in actions or policies that undermine the democratic processes or institutions of Zimbabwe, or to be responsible for human rights abuses related to political repression in the country, among other activities. In 2020, OFAC designated two individuals for providing support to the Zimbabwean government, and another two individuals for participating in political repression. OFAC thus far has imposed sanctions on 120 persons under the Zimbabwe sanctions program.

Conduct-Based Programs

In addition to country-specific programs, the U.S. government also uses a range of transnational sanctions programs, which target certain categories of illicit activity, to sanction individuals and entities operating in Africa. In particular, the United States has used its counterterrorism and Global Magnitsky sanctions authorities to counter national security threats posed by individuals and entities in Africa.

Counterterrorism-Related Sanctions

The United States maintains a range of counterterrorism-related sanctions authorities, most notably Executive Order 13224 (issued after September 11, 2001), as amended by Executive Order 13886 in September 2019. This amended executive order now includes authorization for secondary sanctions on foreign financial institutions that provide support to designated terrorist groups or individuals. This amended authority put all financial institutions on notice that enabling terrorists or their financial backers will have consequences. The United States has actively used its 13224 as amended authority to target individuals and entities in Africa. For example, the United States sanctioned one individual in Mozambique for supporting the Islamic State and its affiliates in the Democratic Republic of the Congo and Mozambique (March 2021); one individual in Morocco for supporting the Islamic States (January 2021); two Somali individuals for supporting al-Shabaab (November 2020); two individuals operating in Mali for supporting al-Qaeda (July 2019); and three persons in Sierra Leone for supporting Hezbollah (February 2018).

Global Magnitsky Sanctions

The Global Magnitsky sanctions program, established by legislation and implemented through Executive Order 13818 in 2017, provides broad sanctions authority to target persons responsible for serious human rights abuses or determined to be a current or former government official engaged in significant corruption. Under the Global Magnitsky program, the U.S. Department of the Treasury has sanctioned a number of individuals in Africa, including two individuals (including corrupt businessman Dan Gertler) and 19 entities for enacting corrupt oil and mining

deals in the Democratic Republic of the Congo; one individual and 12 entities in Gambia for torturing political opponents and journalists; and one Liberian individual for engaging in corruption for the expropriation of private assets.

III. The Impact of Sanctions on Malign Actors in Africa

To date, the United States has used targeted economic sanctions against a range of illicit actors in Africa, with varying impacts. For example, sanctions designations of persons such as Dan Gertler have impacted their ability to raise and move funds and have significantly impacted their bottom lines.³ Similarly, multilateral and U.S. sanctions against terrorist groups such as al-Shabaab have made it more challenging for these terrorist organizations to raise funds and finance destabilizing activities. Likewise, among other factors, the comprehensive embargo previously imposed on Sudan helped push the country to cease its support for terrorism and other abuses.

In many cases, however, the impact of U.S. sanctions has been limited, in large part because many of these targets do not have significant exposure to U.S. markets or to the U.S. financial system. For example, when targeting human rights abusers in a specific country, in order for the sanctions to have measurable impact, those individuals would need to have assets in the United States, be doing business with U.S. persons, or otherwise be prevented from conducting business activities they would otherwise be able to do. This is often not the case.

To ensure our sanctions are impactful, the U.S. Government needs to coordinate with partner countries to ensure our economic tools are effective. Terrorist groups such as Hizballah, Ansar al-Sharia, Boko Haram, and al-Shabaab remain a serious threat U.S. interests, particularly as they are not confined to one region and are known to utilize safe havens in Africa. It is important to work with partner countries in Africa when countering such groups, as much of their financing does not go through the formal financial system. As OFAC has played a significant role in combating terrorist financing, the Treasury Department should continue to work with a wide range of actors, to include the United Nations and the partner countries, to jointly investigate, prosecute, and implement targeted financial measures to expose and disrupt their financial activity.

In addition, the United States should continue to work with our partners and allies, particularly in Europe, where malign actors have assets and are exposed to the impact of joint designations. The recent enactment of the European Union's and United Kingdom's global human rights sanctions regimes⁴ and associated designations⁵ gives the United States additional opportunities to target human rights abusers and freeze their assets across the world.

³ U.S. Department of the Treasury, Press Release, "Treasury Sanctions Fourteen Entities Affiliated with Corrupt Businessman Dan Gertler Under Global Magnitsky," June 15, 2018. (<https://home.treasury.gov/news/press-releases/sm0417>)

⁴ Council of the European Union, Press Release, "EU adopts a global human rights sanctions regime," December 7, 2020. (<https://www.consilium.europa.eu/en/press/press-releases/2020/12/07/eu-adopts-a-global-human-rights-sanctions-regime>); UK Foreign, Commonwealth, and Development Office, Press Release, "UK sanctions relating to global human rights," July 6, 2020. (<https://www.gov.uk/government/collections/uk-global-human-rights-sanctions>)

⁵ Council of the European Union, Press Release, "EU imposes further sanctions over serious violations of human rights around the world," March 22, 2021. (<https://www.consilium.europa.eu/en/press/press-releases/2021/03/22/eu-imposes-further-sanctions-over-serious-violations-of-human-rights-around-the-world>); UK Foreign, Commonwealth, and Development Office, Press Release, "UK announces first sanctions under new global human

IV. Limiting the Downside Risks of Sanctions in Africa

While sanctions can be an impactful tool of U.S. foreign policy, their aggressive use can carry certain risks. In particular, critics of sanctions suggest that aggressive use of these tools can exacerbate humanitarian crises by making it more difficult to deliver medicine, food, and other supplies without running afoul of U.S. sanctions programs. These concerns are understandable, though the scope of U.S. sanctions programs in Africa mean that U.S. pressure is unlikely to be the primary cause of widespread challenges to deliver humanitarian goods in many instances.

These regime-based sanctions programs are narrowly scoped and unlikely to be the primary cause of challenges in delivering humanitarian goods in many instances. Furthermore, the number of persons designated under these sanctions programs may not be significant enough to impede widespread delivery of humanitarian products, though certain challenges may arise in specific instances such as with Somalia, where substantial concerns about terrorist financing exist. While the sanctions programs described above generally do not contain built-in general licenses or humanitarian exceptions, this omission is for an understandable reason: Because these programs are list- and regime-based, in order for activity to be prohibited, it must be conducted with a sanctioned person. OFAC understandably does not want U.S. or non-U.S. persons conducting transactions – humanitarian or otherwise – with sanctioned parties, given that there is a long history of such parties abusing humanitarian networks for personal enrichment and corruption.⁶ However, in situations where dealing with SDNs cannot be avoided to ensure the delivery of humanitarian aid to needy populations, those seeking to deliver the goods can seek specific licenses from OFAC permitting that activity, and have done so successfully in a variety of instances.

rights regime,” July 6, 2020. (<https://www.gov.uk/government/news/uk-announces-first-sanctions-under-new-global-human-rights-regime#:~:text=UK%20announces%20first%20sanctions%20under%20new%20global%20human%20rights%20regime,-English&text=The%20new%20Magnitsky%2Dstyle,and%20abuses%20around%20the%20world.&text=The%20Foreign%20Secretary%20with%20Nikita%20and%20Natalia%20Magnitsky%20and%20Bill%20Browder>)

⁶ For example, in Venezuela, the Maduro regime created the Los Comités Locales de Abastecimiento y Producción (“Local Supply and Production Committees,” or CLAP) program in 2016 for the publicly stated purpose of providing subsidized food rations to Venezuelan citizens. According to the U.S. government, instead of delivering humanitarian relief, corrupt Maduro regime officials used the CLAP program as a vehicle for corruption by artificially inflating contract prices and stealing shipments to sell on the black market, all while lining the regime’s pockets. “Updated Advisory on Widespread Public Corruption in Venezuela.” U.S. Department of the Treasury, Financial Crimes Enforcement Network, Advisory, “Updated Advisory on Widespread Public Corruption in Venezuela,” FIN-2019-A002, May 3, 2019. (<https://www.fincen.gov/sites/default/files/advisory/2019-05-03/Venezuela%20Advisory%20FINAL%20508.pdf>). Another example is Iran’s use of front and shell companies using medical names to obscure their illicit activities. See: U.S. Department of the Treasury, Press Release, “Treasury Designates Illicit Russia-Iran Oil Network Supporting the Assad Regime, Hizballah, and HAMAS,” November 20, 2018. (<https://home.treasury.gov/news/press-releases/sm553>). According to Treasury, “[t]o conceal its involvement in these transactions, the [Central Bank of Iran] makes these payments to Mir Business Bank using Iran-based Tadbir Kish Medical and Pharmaceutical Company (Tadbir Kish). Despite the reference to humanitarian goods in Tadbir Kish’s name, the company has repeatedly been used to facilitate illicit transfers in support of this oil scheme.”

Conclusion

U.S. sanctions programs targeting threatening activity in Africa remain limited, list-based programs designed to detect, disrupt, and deter specific illicit activity. Such an approach has both upsides, including the ability to narrowly target bad actors, as well as downsides, to include potentially limited impact. When considering adjusting these programs, the Treasury and State departments, as well as Congress, should carefully consider whether sanctions are the right tool to achieve U.S. policy objectives in the region, and whether employing other tools as part of an integrated strategy makes sense.

Thank you, and I look forward to your questions.