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POLICY BRIEF

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# Why Reduction of Illicit Financial Flows that Fuels South Sudan's War Economy is in Kenya and Uganda's Interest

## 1.0 Introduction

South Sudan is the youngest country in Africa and is also among the most fragile states in the world. Its state institutions are weak which adds to the burden of maintaining geographic integrity and law and order within its borders. As measured by the Fragile State Index (FSI) for the year 2018, South Sudan is ranked as the most Fragile Nation among the 178 countries subjected to assessment by the composite index of fragility. This index confirms the empirical view that South Sudan faces internecine conflict with low prospects for full resolution in the short term. This situation is driven by a high degree of factionalizing of the elite, poor economic performance and the absence of basic public services such as security.

South Sudan is the second most corrupt nation (after Somalia) according to Transparency International Corruption Perception Index 2017. South Sudan is vulnerable to corruption not only due to the state's inability to secure its institutions from corruption, but also because major state actors have unimpeded opportunity for self-enrichment from that state fragility. The existence of factionalized elites in a fragile state implies they are likely to extract state resources or participate in forms of Illicit Financial Flows (IFF) away from the territory. The aim in diverting resources away from the territory of South Sudan is to ensure that they are outside the reach hence not easily recoverable by the state because the main perpetrators are either associates of or people holding government positions.

The Fragile State Index identifies twelve factors as composite indicators of the score on state fragility. South Sudan is not only classified as the most fragile state, but demonstrates glaring weaknesses in areas of group grievance and state legitimacy. These gaps in the state's performance of its core functions are occasioned by the fact that officers of the state or their cronies are themselves drivers of illicit flow of funds.

From a pre-independence position of deep underdevelopment exacerbated by conflict soon after independence from the large Sudan, the economy of South Sudan has been in decline with a high inflation rate. This situation is aggravated by corruption and diversion of oil revenues and illegal transportation

[1]Illicit Financial Flows and their Developmental Impacts: An Overview (Herkenrath, 2014)

of timber and minerals through Uganda and Kenya in the face of weak financial institutions. Regional banks and financial institutions are critical players in South Sudan's financial operations – licit and illicit. The political economy literature claims that illicit financial flows result from weakening state institutions, corruption and rent seeking leaders and unconstrained officials who seek to benefit from illegal economic activities . This supports our hypothesis that illicit financial flows go hand in hand with the political affairs of the state of South Sudan.

This policy brief traces the institutional weaknesses that facilitate the illegal flow of funds belonging to the state of South Sudan and how those funds may be channeled back to escalate civil conflict thereby undermining state sovereignty and opportunities for genuine democratic development. The problem of illicit financial flows in South Sudan contains a regional dimension owing to the fact that the country's landlocked economy relies on the flow of valuable minerals, petroleum and timber through its neighbors, including Kenya and Uganda within the East African Community. These states have standing legal obligations to monitor and take actions to prevent flows of finances and property and to ensure that these do not escalate the conflict or represent illegally acquired property of the state of South Sudan.

This policy brief therefore examines the diplomatic, institutional and legal imperatives that exist for Kenya and Uganda to respond to the IFFs from South Sudan. The policy brief is confined to the property and financial assets that belong to the government of South Sudan in addition to the illegal transfer of assets by politically exposed persons who have direct influence on the conflict. While cognizant of the fact that other forms of illicit transfers are taking place, those remain outside the scope of this policy brief.

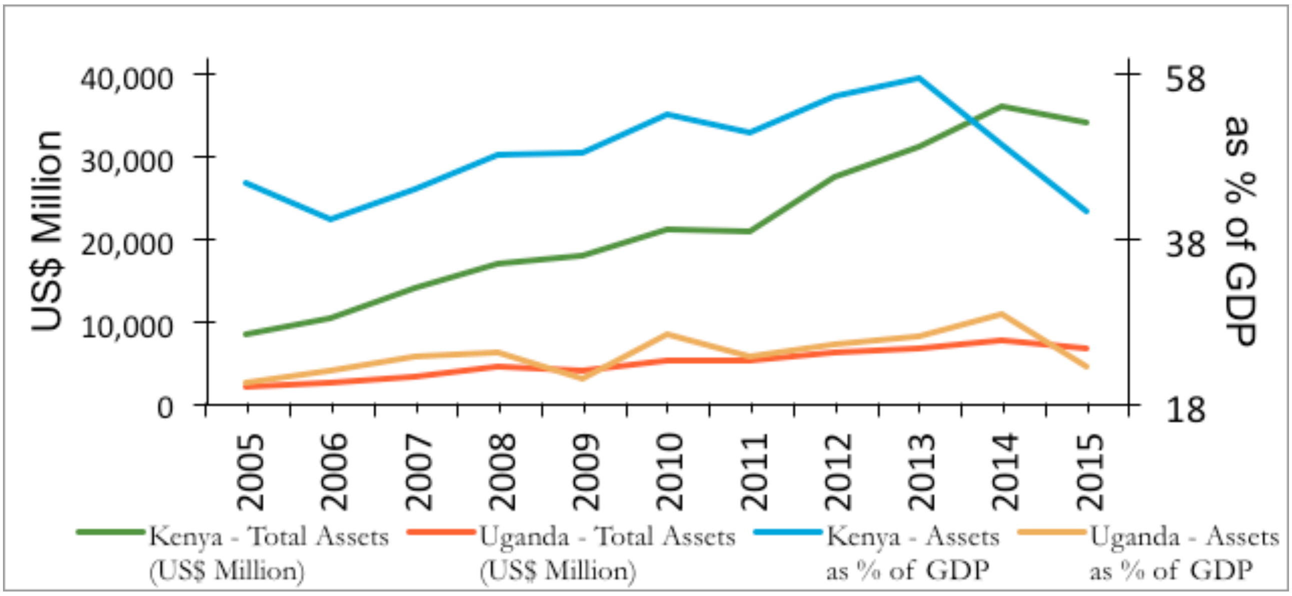
This brief focuses specifically on the institutional weaknesses and corrupt behavior facilitating IFFs within the African Continent, operating under a constricted definition of IFFs which includes action by state officers who appropriate and secrete financial and natural resources from South Sudan and which excludes tax and other liabilities due in any jurisdiction for that income.

## 2.0 The state of play in Uganda and Kenya

Kenya and Uganda face a tremendous challenge caused by the economic, political and social risks generated by illicit financial flows from South Sudan. A report by the High Level Panel on Illicit Financial Flows from Africa to the African Union Commission/United Nations Economic Commission for Africa (AUC) confirmed that African countries have lost an estimated 1 trillion dollars over the past 50 years which is equivalent to the amount of overseas development aid received by African countries. Kenya, as the most economically advanced nation in the East African Community with well-developed financial systems, is more attractive to those responsible for illicit financial flows. National institutions must be strengthened in order to provide necessary checks and balances to deter illicit financial flows. If regulations are enforced arbitrarily or inconsistently, or are too weak, the extent of illicit financial flows or outflows will deepen.

The United Nations, Global Financial Integrity, the World Bank and Africa Development Bank Group have defined IFFs to include money that is illegally earned, transferred, or utilized. While IFFs reflect a broader definition that focuses on unrecorded capital flows derived from criminal, corrupt (bribery and theft by government officials) and commercial activities (Baker, 2005), this brief will confine its examination to financial and other assets transferred outside the territory of South Sudan by state actors with direct connection to the civil conflict. Both Ugandan and Kenyan legal systems considers illicit financial flows as any movement of finances that goes against domestic laws and international laws and conventions.

**Chart 1: The Depth and Size of the Financial Sector in Kenya and Uganda**




**Source:** African Financial Sector Database, 2016

As illustrated in chart 1, Kenya's total banking assets as a share of GDP in 2015 were 45.41% while Uganda's total banking assets as a share of GDP in 2016 were 22.62%. Kenya is the most financially inclusive nation in East Africa with more financial access points than Uganda and South Sudan in the region which makes Kenya more susceptible to illicit financial flows. The commercial banking sector in Uganda is the largest segment in the financial sector which makes surveillance critical to protecting the integrity of the sector and stopping Illicit Financial Flows.

Due to geographic proximity, official closeness with elites in South Sudan and gaps in implementation of the Anti-Money Laundering Act (AMLA 2013) and Financial Institutions Act (FI ACT), Uganda too has served as a channel of illicit financial flows from South Sudan. Uganda has implemented banking guidelines like "Know Your Customer", but verification of those details remains a major challenge. Some military officers and top government officials from South Sudan have invested in both Uganda and Kenya without deterrence. Uganda's legal framework does not require information on beneficial ownership to be obtained and retained by the competent authorities for purposes of illicit financial flows (ESAAMLG mutual evaluation Uganda 2016). Coordination and cooperation in the fight against illicit financial flows is needed in Uganda. The East and Southern Africa Anti-Money Laundering Group (ESAAMLG) Uganda mutual evaluation report 2016 notes that FIA operational independence under the Anti-Money laundering law is of great concern and should be addressed. The functions of Executive Director vis-à-vis the board of the Financial Intelligence Authority overlap, which compromises the independence of the Authority. These gaps were highlighted in the recently published National Risk Assessment Report, September 2018.

South Sudan has not complied with FATF recommendations. The country has not undertaken an ESAAMLG Mutual Evaluation Report in relation to stopping the illicit financial flows. US Department of State money laundering assessment (International Narcotics Control Strategy Report) declared South Sudan a monitored jurisdiction because of the large illicit financial outflows originating from the jurisdiction. This finding confirms that there is a regulatory and institutional challenge within South Sudan in monitoring and constraining IFFs.

The key catalyst of South Sudan's civil war has been competition for control over state assets and the country's abundant natural resources[3]. The amount of illicit financial flows since 2012 is estimated at about USD 6.8 billion largely because of the regulatory failure. The primary drivers of illicit financial flows in South Sudan are weak state institutions, impunity by high ranking military officers, the rush to transfer resources to safer jurisdictions, need to pay militia and to purchase arms and other supplies used in the civil dispute. The same officers and political leadership have large stakes and investments in the main banking institutions and therefore control the supply side infrastructure for IFFs.

Kenya and Uganda are members of ESAAMLG whose purpose is to combat money laundering by implementing Financial Action Task Force (FATF) recommendations. FATF is an inter-governmental body established in 1989 to set standards and promote effective implementation of legal, regulatory and operational measures for combating money laundering, terrorist financing and other related threats to the integrity of the international financial system. FATF undertakes periodic evaluations to monitor compliance with laws governing financial flows within the financial system. ESAAMLG became a FATF associate member in 2010.

Kenya and Uganda are currently candidate members for the Egmont group which is comprised of 156 financial intelligence units. Countries must have undertaken evaluations and complied with Egmont's guidelines to qualify as members of the Egmont Group. Studies commissioned by the AU/ECA Conference of Ministers of Finance, Planning and Economic Development have shown that Kenya and Uganda face difficulties in their Egmont applications due to illicit financial flows. Illicit Financial Flows from South Sudan through Uganda and Kenya are transferring political, legal and economic risks to these countries.

Kenya established a Financial Reporting Centre (FRC) in 2012 to help deter money laundering and terrorism financing; the creation of this Centre enabled Kenya to be removed from a list of countries facing censure for non-compliance by the Financial Action Task Force. However, there are many loopholes that need to be tightened to adequately stem Illicit Financial Flows. One highlighted in a 2014 study by Findley, Nielson and Sharman concerns the ease with which shell companies in Kenya may be used by criminals to transfer money regionally and around the world. The ESAAMLG post evaluation progress report for the period August 2016 to July 2017 shows that Kenya has yet to address key gaps in preventing money laundering; for example, as relates to designation of reporting persons, tightening legal requirements on disclosure of beneficial ownership, effectiveness of the Financial Reporting Centre and precautions taken when dealing with countries that do not apply FATF recommendations.

## 3.0 Estimates of the Scale and Magnitude of IFF outflows from South Sudan to Kenya and Uganda

A very large amount of resources has been lost in South Sudan since the signing of the Comprehensive Peace Agreement in 2005. In 2012, President Salva Kiir claimed in a widely publicized letter that South Sudan had lost close to USD 4 billion. The Government prioritized military spending, which was then the source of significant corruption, patronage, and individual wealth. According to documents reviewed by The Sentry, South Sudan's leaders use the country's oil wealth to get rich and terrorize civilians.

This brief looks at three areas: manipulation of the currency exchange control system, theft of resources from the extractive sector, and mismanagement of government procurement and payment systems.

### a) Manipulation of the currency exchange control system

It is difficult to distinguish between the licit and illicit economies in South Sudan. The majority of the money that leaves South Sudan is in US dollars, which has made the currency sector one of the most

[3] The Sentry Report titled, "Fueling Atrocities: Oil and War in South Sudan" released March 2018

lucrative sectors in the economy. The huge difference between official rates set by the Bank of South Sudan and the black-market for US dollars has created a sizeable vector for illicit currency speculation and financial flows[4]. 1 US dollar is traded for 147 South Sudan Pounds (Bank of South Sudan) while the black market system sells the dollars at almost 400 percent more. This represents a sizeable loss in South Sudan whose value is appropriated in the country to which the foreign currency is transferred.

Only few individuals are capable of running this kind of business and many of these individuals are in South Sudan's Government. The US dollars used in the black-market system are supplied by a network of well-connected businessmen in Kenya and Uganda. This lucrative black-market system creates a shortage of US dollars which drives price inflation up especially for basic commodities such as fuel and food. Some of the money made from manipulation of currency exchange control is invested in Kenya and Uganda. The World Bank attributes identifies parallel exchange markets as one the challenges facing South Sudan[5].

**b) Theft of Resources from Extractive sector**

The extractive sector in South Sudan is mainly oil, precious wood and metal ores. Oil accounts for an overwhelming majority of exports and around 60% of its GDP[6]. The current reserve estimates that oil will reduce steadily and production will become negligible by the year 2035. The South Sudan conflict is centered on key strategic oil sites, and oil production has slowed due to insecurity.

With regards to timber, South Sudan has a 10% forest cover with majority of it being teak and Afizilia Africana species (which is a protected tree species). The wood is logged illegally and both Kenya and Uganda serve as exit points. The wood is transported out of South Sudan by road through the port of Mombasa.

South Sudan's political leadership has maintained extensive shares in companies in the extractive sector[7]. The proceeds from oil sales, which are supposed to be remitted to the national treasury to be spent on the provision of public goods and services, are instead used to buy weapons and accumulate wealth among South Sudan officials. An investigation by Global Witness demonstrated that South Sudan's leadership used state-owned oil company Nilepet to funnel millions into brutal security services and ethnic militias. It details how millions in letters of credit intended to facilitate the import of refined fuel, were diverted to Nilepet with almost no oversight, raising the risk of these borrowed funds lining the pockets of connected elites. In March 2018, the US government imposed sanctions on 15 South Sudanese oil operators claiming their revenues were being used by the government to buy weapons and fund irregular militias which is detriment to the peace process. The United States had previously placed sanctions on South Sudanese military and elected political figures.

In July 2018, the UN Security Council placed an arms embargo on South Sudan to stop the flow of weapons. In the same year, the UN Security Council added more senior South Sudanese citizens to the sanctions list. South Sudanese law bars all officeholders from undertaking private professions or commercial transactions (Article 121, 2). Kenya and Uganda appear to be helping the South Sudan's politicians and military officers get away with the theft of resources. An investigation by Global Witness, revealed there is little evidence that oil revenue is benefitting those who need it most and the industry is shrouded in secrecy. The oilfields have become a strategic target for the rebels. Battles to control them have displaced communities and destroyed existing infrastructure.

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[4]The Sentry, South Sudan Country Brief 2015

[5]World Bank Country Overview, 2018

[6]African Economic Outlook (AEO) 2018

[7]The Sentry Report, War Crimes Shouldn't pay 2016

In June 2018, Sigal Mandelker, the US Treasury's Undersecretary for Terrorism and Financial Intelligence asked Kenya to comply with international financial regulations and stop illicit financial flows but Kenya has yet to act on that request. This diplomatic engagement shows that there is global concern that Kenya and Uganda are insufficiently complying with their obligations to prevent IFFS and slow down the conflict.

#### c) Mismanagement of Government Procurement and Payment Systems

South Sudan government procurement sectors are awash with abuse of procurement guidelines under the law, mismanagement and waste. The oil revenue sharing bill enacted in 2013 that was meant to govern sharing of oil revenues at the national level has not been successfully implemented. The law requires all oil revenues to be directed to a single account before it is shared. However, an investigation by Global Witness and The Sentry found out that oil revenues have been diverted from the companies to militia groups fighting in various parts of South Sudan.

Contracts are awarded to the proxies associated with elites and military who are politically aligned to the government. These contracts are flawed from tender award, contract management and payment stages. South Sudan procurement law does not require that contracts be awarded to women and minorities. These awards thus tend to be dominated by men, political leadership or individuals with military connections. The contracts are awarded at inflated prices, with little documentation or oversight. The proceeds are then channeled to Kenya and Uganda. Some of it is re-invested in South Sudan for use by the military. Government contracts are major revenue generating projects for public officials. The Auditor General of South Sudan in the three publicly available reports of 2006, 2007, and 2008 could not give a true and fair opinion to the government because the ministries could not account for resources allocated to them.

South Sudanese military spending was over USD 568.6 million[8] yet there is very little transparency as to how this was spent. According to the last publicly available South Sudan Audit report 2008, only seven out of forty Sudanese People's Liberation Army (SPLA – the South Sudanese army) divisions reported their payroll figures. The military budget for that year was 650.2 million dollars. From the little information that is publicly available, military officers are paid USD 1300 per month while minsters are paid USD 1600. However, the value of properties owned outside South Sudan could not be purchased from government salaries that these politically exposed persons earned. The lack of transparency on payroll increases the risk of money being diverted.

Political actors divert resources from South Sudan by using financial infrastructure within East Africa to take resources outside jurisdiction of the state.

## 4.0 Effects of Illicit Financial Flows From South Sudan

Due to raging armed conflict and failure to stop illicit financial flows that help to sustain the conflict, there's a huge opportunity cost to the people of South Sudan. Illicit financial flows aggravate the conflict, destabilize the economy and worsen the humanitarian situation. A large majority of the refugees and victims are women and children. In addition to the opportunity costs of the war, the effects of the Illicit Financial Flows include;

- **Illicit financial flows disorient public spending:** Illicit Financial Flows are taking away money from the public sector. Almost all public sectors are dependent on donor funding with the exception of the military. Prioritization of the security budget means that little has been allocated to development needs and provision of public goods and services. South Sudan spent 63% of oil revenues (USD 1.72

[8]South Sudan Budget 2014

billion) received in 2014 on the military (The Sentry, 2015). Some of the critical sectors like health is funded 75% by international donors while education receives 50% from external support. South Sudanese cannot access basic needs such as water, affordable healthcare. South Sudan has the worst health indicators globally with maternal mortality ratio standing at 789 people per 100,000 live births (WHO, 2018[9]). South Sudan's maternal mortality remains one of the highest in Sub-Saharan Africa, ranked 5th highest globally. This suggests that essential services for women (such as Sexual Reproductive Health and Rights (SRHR), children and other vulnerable population, and the ability to deliver this service are almost nil. The situation is dire and needs urgent intervention.

- **Illicit financial flows destabilize the Economy:** South Sudan's economy has been in turmoil with 51% of the population living below the poverty line[10]. Income in South Sudan as of 2017 was less than USD 200 dollars[11]). In the Financial year 2017(July 2017- June 2018), the economy contracted by 6.9%, with inflation and parallel exchange markets soaring[12]. These factors are aggravated by illicit financial flows. The chronic dollar shortage caused by the manipulation of the currency controls policy drives up inflation which leads to increases in the price of common basic commodities. This reduces population purchasing power.

- **Illicit financial flows have increased South Sudan's Public Debt and Taxes:** Due to increased spending on security and defense budgets with little remaining for the social services, South Sudan has been forced to borrow heavily from development partners, get oil related advances and introduce more taxes. Among South Sudan lenders include China Exim Bank, World Bank and Qatari National Bank. The Debt to Gross Domestic Product is 53 % having increased by 271.3% between 2010 and 2016. International lines of credit have been restructured to longer maturities while its international reserves have also declined and thus the country is currently constrained from accessing long term external financing. The residents are taxed heavily on essential commodities and services, including rental tax at 20%, tax on insurance premiums at 5%, telecommunication services at 10%, transport services tax at 20%, tax on sale of imported goods at 18% and tax on hotel services being at 18% among many other taxes. This has raised the cost of living for a population with low income.

- **Illicit Financial Flows facilitate state capture:** Illicit financial flows mean resource allocation (especially through budgetary process) are guided by interests of political and elites over national interests[13]. This means that rent seeking is chosen over productivity maximization because the institutions (Parliament, Intelligence, Banks, Central Banks, police etc.) required to undertake proper check and balances are compromised.

In conclusion, Illicit Financial flows have had an adverse effect on South Sudan fiscal policy forcing the government to raise taxes while dealing with high inflation. This is happening while t public services continue to deteriorate.

## 5.0 Risks posed to Kenya and Uganda by Illicit Financial Flows from South Sudan

**i. Risk of international down-grading:** Based on low ratings by ESAAMLG, Kenya and Ugandan Banks could be blacklisted for non-compliance with domestic money laundering laws, international agreements and conventions. Due to concerns of reputation, international banking institutions with counterparts in Kenya could note the noncompliance and disassociate from doing business with Kenyan Banks thereby

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[9]World Health Organization county cooperation strategy, updated May 2018.

[10]World Bank, 2017

[11]World Bank, 2018

[12]South Sudan key indicators, published by World Bank

[13]United Nations Economics Commission for Africa Report 2013 titled The State of Governance in Africa: The Dimension of Illicit Financial Flows as a Governance Challenge

excluding the latter from global financial infrastructure. The same banks will also be under scrutiny for possible links to other forms of international crimes. ESAAMLG mutual evaluation report 2016 asserts that Designated Non-Financial Businesses and Professions (DNFBP) and financial institutions do not apply illicit financial flows measures that are commensurate with the risks. This endangers financial institutions in Kenya, Uganda and other neighboring countries because it becomes difficult to ascertain whether banking transactions coming from other countries are illicit financial flows or not.

**ii. Risks to status of Kenya as an International Financial Centre:** Kenya aspires to be recognized as a financial Centre within the region. Given the open history and concurrent complicity of state institutions in IFFs from South Sudan and tacit protection of persons under watch lists, it is unlikely that Kenya has adequate policy and enforcement infrastructure to grow as respected financial hub... An essential requirement for the retention of this status is to crowd in investment houses and to have legal certainty that transactions are not driven by criminal intentions. It is in Kenya's interest therefore to explicitly demonstrate its commitment to ensuring financial sector fidelity to all domestic and international conventions.

**iii. Sectorial distortions:** A significant share of the Illicit Financial Flows from South Sudan into Uganda and Kenya is directed into real property and into the foreign exchange markets. The effect of these investments into real estate is to raise prices and thus distort these markets for property primarily in Kampala and Nairobi. These distortions are compounded by the fact that the infusion of foreign exchange elevates the prices of selected property into areas with low taxation since land and house ownership are not subject to taxation in East Africa. At the same time, property purchases become an avenue for building links with local land owners, many of whom are politicians or related to them. This cements the nexus between perpetrators of Illicit Financial Flows, and political leadership in both Kenya and Uganda.

**iv. Illicit financial flows weaken states and undermine effectiveness of regional bodies:** International financial flows undermine various institutions that are responsible for prosecuting IFFs through bribery and public theft[14]. Illicit financial flows are responsible for fueling corruption since they discredit democratic institutions which can dispose proceeds of corruption like the asset recovery agency in Kenya.

**v. Undermining foreign policy goals:** One of the common goals and agenda in the region is peace and stability in South Sudan. The key perpetrators of illicit financial flows compete for resources amongst themselves thereby exacerbating the conflict further. Kenya has been a key player in the peace process in South Sudan where a peace agreement was recently signed. The current peace deal being pursued by both Kenya and Uganda will not be successful unless illicit financial flows are eliminated completely from the conflict value chain as IFFs constitute one of the factors propelling the war economy.

**vi. Illicit Financial Flows cause delayed admission into the Egmont Group:** Due to the failures of Kenya and Uganda to stem illicit financial flows, their Financial Intelligence Units have failed Egmont's qualification for admission. Negative evaluations from ESAAMLG mean that other FATF styled bodies consider both countries as weak anti-money laundering jurisdictions. Failure to detect illicit financial flows means that Kenya and Uganda cannot detect other forms of financing related to international crimes. The failures includes lack of proper Know Your Customer Policies, not reporting suspicious transaction reports on time, and few and insufficient investigation of Illicit Financial Flows from South Sudan.

The Illicit Financial Flows from South Sudan results from the weakened state. In addition, it is unclear that the recent peace arrangements will result in immediate improvements in the monitoring and regulatory infrastructure to prevent leakage of money and resources from South Sudan. It is therefore in Kenya and Uganda's interest to respond by enforcing existing domestic, regional and international laws that could substantially reduce IFFs from this fragile neigbour.

[14]United Nations Economics Commission for Africa Report 2013 titled The State of Governance in Africa: The Dimension of Illicit Financial Flows as a Governance Challenge

## 6.0 Policy Prescriptions to combat Illicit Financial Flows from South Sudan

### 1. Kenya

#### a) Ministry of Foreign Affairs

Kenya should comply with requirements of United Nations Security Council sanctions, and work with the State institutions to ensure cooperation with sanctions placed on individuals by the United States and the European Union. This will help safeguard the Kenyan financial sector while preserving Kenya's stated foreign policy goals.

#### b) Central Bank of Kenya (CBK)

As the regulator of the banking system, the CBK must ensure banks under its regulatory authority comply with laws against Illicit Financial Flows. CBK has an obligation of enforcement of Kenyan laws against foreign individuals or institutions irrespective of whether there is a request from another jurisdictions or not. In doing this, Central Bank would be protecting the reputation of Kenyan banks and the financial system. Proper enforcement of Kenyan laws regarding financial integrity – without political interference – would ensure positive evaluations from the ESAAMLG assessment in 2020-21 and admission to Egmont group. The CBK should work in tandem with law enforcement agencies in Kenya and with international partners to ensure the seizure from South Sudanese individuals of property acquired using the proceeds of corruption. The Amendments to Section 57 of the Finance Act 2018 bestow upon the Central Bank the sole responsibility to issue "guidelines, circulars and directives". The Central Bank must exercise this authority diligently to insulate the financial sector from IFFs, including by preventing corrupted banks in South Sudan from working with Kenyan banks in addition to preventing individuals sanctioned from using Kenya's financial system.

In addition, CBK must enhance cooperation and coordination with other peer financial sector regulators in order to strengthen information sharing. Central Bank of Kenya must undertake risk assessments of illicit financial flows periodically and involve stakeholders in giving solutions. The ESAAMLG Post Evaluation progress report for the period August 2016-July 2016 enumerates significant flaws and states that Kenya is not complying with a number of FATF recommendations on combatting AML. To address this, Kenya's Financial Intelligence Unit the Financial Reporting Center must be restructured and capacitated to conform to Egmont Group Statement of Purpose and its Principles for Information Exchange between Financial Intelligence Units for Money Laundering and Terrorism Financing Cases.

#### c) Parliament

Through its oversight role, Parliament must press hard on state institutions mandated to fight illicit financial flows. Parliament should ensure that the Financial Reporting Center avails reports publicly and the responsible government agency (whether National Treasury or Ministry of Foreign Affairs) acts on them quickly. They should make laws that ensure transparent ownership of legal entities such as companies, trusts, and partnerships. This will help determine where illicit financial flows are moving to and who is moving them. Stopping illicit financial flows requires real-time monitoring and actions. Relevant parliamentary committees should monitor actions by Financial reporting Centre, Treasury and Central Bank of Kenya to ensure that they are acting to reduce use of Kenya's finance system for Illicit Financial Flows, for instance by proactively sharing information on suspicious accounts and transactions.

## 2. Uganda

### a) Bank of Uganda

Uganda is the largest trading partner of South Sudan and therefore has both a political and direct economic interest in the country's stability and economic prosperity. The Bank of Uganda must ensure individuals sanctioned by the United Nations Security Council are restrained from use of Uganda's financial systems to transact illicit financial flows. The Bank of Uganda must undertake risk assessments of illicit financial flows periodically and by sector. These assessments must be set out in a formal document and shared with the Public, ESAAMLG and Central Banks in the region for action. The multi-agency committee, the Uganda Anti-Money Laundering Committee chaired by the Minister of Finance must execute its mandate and coordinate actions that arise out of those assessments. The Bank of Uganda must also strengthen information sharing pacts with other Central Banks in the region especially Bank of South Sudan and Central Bank of Kenya in order to be able to monitor financial flows from South Sudan.

### b) Financial Intelligence Authority

As enumerated in the National Risk Assessment Report, 2017, success in Uganda hinges on strengthening and securing the autonomy of the Financial Intelligence Authority. The Financial Intelligence Authority should be able to obtain additional information from reporting authorities, and have prompt access to financial, administrative and law enforcement information required to undertake its functions independently. With these prerequisites, Financial Intelligence Authority application for the membership of Egmont Group is more likely to succeed.

### c) Parliament of Uganda

To close gaps in Uganda's Anti-Money laundering law, parliament should expand the law to cover all categories as stipulated in the FATF glossary. The amendments must prohibit Ugandan banks from handling the proceeds of illegal logging, metal ores, oil and other natural resources from South Sudan and all other countries. Similar to Kenya, Uganda's parliament must use its oversight role to hold accountable all institutions with the responsibility of eliminating Illicit Financial Flows.

## 3. Kenya and Ugandan Banks

Kenya and Uganda banks must strengthen due diligence, enforce Anti-Money laundering laws, act quickly to flag suspicious transactions to the regulators and correspondent banks, and incorporate good integrity policies as an industry practice, including verifying customers' identities by applying "Know Your Customer" guidelines and scrutinizing ultimate beneficial ownership to prevent money laundering through networks. They should act without delay when the respective Central Banks issue advisories in the bid to help eliminate illicit financial flows. The banking sector should also comply with the international supervisory standards on their own motion. This may be achieved through training employees adequately on Illicit Financial Flows, fostering awareness through banking policy and advertisement channels, and taking appropriate disciplinary or legal measures against individuals where there is evidence of complicity in money laundering.

Most of the banks that perform exceptionally well in prevention of illicit financial flows enjoy good reputation and this may translate into good brand image and stronger connections with international business partners. In particular, the commercial banks must be alert to transactions that involve politically exposed persons from South Sudan given the latter's influence over the banking system and control over natural resource movements in South Sudan. More scrutiny is necessary to isolate movements of cash that would fall under the threshold of suspicious activity but whose regularity or pattern reveal deliberate effort to escape detection.

## Conclusion

South Sudan, Kenya and Uganda all have adequate laws for the prevention of illicit financial flows. They all bear obligations from state constitutions, domestic laws and internal conventions to prevent the use of internal financial systems to facilitate flows between them. In recognition of the state fragility of the government of South Sudan, and the risks to their own economies posed by illicit financial flows, it is incumbent on both Uganda and Kenya to apply special vigilance from national institutions.

Such vigilance will prevent known actors and institutions from using financial systems in Kenya and Uganda to circumvent state laws and to perpetrate conflict by benefitting from flows of money stolen from states and natural resources stolen from South Sudan. At the diplomatic level, the government of Uganda and Kenya must acknowledge that they undercut their own diplomatic initiatives by failing to constrain the beneficiaries of the funds and property stolen from South Sudan.

The resolution of the conflict in South Sudan is dependent on the cooperation of Eastern African states cutting off the financial infrastructure that benefit actors who contribute to state fragility in South Sudan. The fragility of the state will require state building for a whole generation. Without action against illicit financial flows, Kenya and Uganda will stand accused of complicity in the continued poverty and suffering of the South Sudanese people.

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## Notes

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