



A Way Out?

**Models for negotiating an exit plan for
entrenched leadership in South Sudan**

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Cover Image: South Sudan Independence
July 9, 2011. Juba, South Sudan (Flickr/Steve Evans)

Enough Forum

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By: Confidential*
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Introduction

Following the July 2016 outbreak of fighting in Juba, the August 2015 Agreement on the Resolution of the Conflict in South Sudan (ARCSS) has collapsed. This conflict, which led to soldiers raping and killing civilians,¹ saw one of the key signatories to the agreement, First Vice President Dr. Riek Machar, flee the country.² The peace agreement's collapse and subsequent fighting created new armed groups in various South Sudanese regions that had been relatively peaceful, especially in Greater Equatoria and Western Bahr el Ghazel.³ These armed groups' emergence has deepened ethnic cleavages and exacerbated the

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conflict dynamics in the country.⁴ There is an urgency to bring an end to South Sudan's conflict, particularly with reports warning that the country is on the "brink of genocide,"⁵ and the recent declaration of famine where 100,000 risk starvation and 1 million more are on the brink of this "man-made" famine.⁶

Prior to the July outbreak of hostilities between the forces loyal to President Salva Kiir and now former First Vice President Machar, the relationship between the two men was fragile.⁷ The two men deeply distrust each other, which has been cited as one of the contributing factors to the genesis of the December 2013 conflict.⁸ Since the peace agreement's collapse, it has been difficult to get both men to talk to each other. The guarantors and implementers of the peace agreement—the Intergovernmental Authority on Development (IGAD) and the Joint Monitoring and Evaluation Commission (JMEC) respectively—seem to indicate support for the status quo, i.e., that in their view the peace deal is not dead.⁹ Yet, the fact that the two key players in the August 2015 peace agreement—Kiir and Machar—cannot even agree to have a meeting suggests otherwise.¹⁰ However, these men are still influential in their respective camps—both holding influence and power which they are unlikely to cede easily. Yet, the loss of lives continues.

The peace deal's death has precipitated debate on what the way out of the stalemate should be.¹¹ In situations where there is a stalemate such as the one in South Sudan, there is precedence elsewhere to induce leaders to exit the scene by using certain conflict resolution measures. This research paper will review and analyze case studies of countries where measures such as the offer of asylum, amnesty, and financial leverage were employed as a means of conflict resolution. Countries such as Gambia, Liberia, Haiti, Uganda, Tunisia, and Colombia are examples where some of these offers were used to resolve conflict. It will then explore how the suggested measures, incentives, or disincentives can be applied in the case of South Sudan, as well as the strengths and the challenges surrounding their application. The research and analysis of issues such as amnesty, asylum, and financial incentives, and discussion of how they could be applicable to South Sudan should not in any way be construed as Enough's policy toward South Sudan or an endorsement of those policy approaches.

Asylum, amnesty, and financial leverage

The Offer of Asylum

Asylum for the purposes of this paper is defined as a refuge granted to a state official by a sovereign state on its territory.¹² This section explores case studies where asylum was offered to the respective leaders of regimes in Gambia, Liberia, and Tunisia to bring an end to a conflict or stalemate.

Gambia

On December 1, 2016, citizens of Gambia elected opposition leader Adama Barrow as president, defeating incumbent Yahya Jammeh. President Jammeh's loss to Barrow brought his 22-year rule to an end. He initially conceded,¹³ but later rescinded his concession blaming election irregularities for his loss.¹⁴ It is believed that Jammeh's fear of political reprisal from the opposition in the form of threats of seizure of his assets and denial of immunity from prosecution, forced him to fight to retain power.¹⁵ Jammeh took back his concession, declared a state of emergency, and pressed parliament to extend his rule by 90 days.¹⁶ President-elect Barrow fled to neighboring Senegal where he was later inaugurated as president at the Gambian embassy in Dakar.¹⁷ The United Nations High Commissioner for Refugees (UNHCR) reported that the political instability created by the stalemate had driven 45,000 people, mainly children,

into the neighboring country of Senegal, and warned that the situation could worsen if there was no peaceful resolution.¹⁸ This political crisis led the regional bloc, Economic Community of West African States (ECOWAS) to take a leading effort to resolve it. First, ECOWAS affirmed Barrow as the democratically elected president.¹⁹ Then, a diplomatic mission traveled to Gambia in December to convince Jammeh to relinquish power, but an agreement was not reached.²⁰ Another delegation traveled to Gambia on January 13, 2017, this time with President Muhammadu Buhari of Nigeria bearing an offer of asylum in Nigeria, confirmed by Nigeria's legislators.²¹ However, Jammeh was not willing to cede power and instead missed multiple deadlines despite the threat of military advancement by the ECOWAS military force.²² Following a last attempt at diplomatic negotiation by the presidents of Guinea and Mauritania before the troops' advancement, Jammeh finally agreed to step down and leave the country.²³ Jammeh left on January 21, 2017, alongside Guinea's president Alpha Conde.²⁴ He landed in Conakry, Guinea, but set off again for Equatorial Guinea where he will remain in exile.²⁵

Liberia

Charles Taylor of Liberia began a war against the government of Samuel Doe in 1989 marking the beginning of the First Liberian Civil War, which ended in 1996. The following year, 1997, Taylor was elected president of Liberia.²⁶ Despite Taylor's election, peace remained elusive in Liberia. In 1999, Nigeria and Ghana accused Taylor of supporting rebels in Sierra Leone. Then, in July 2000, a group calling itself the Liberians United for Reconciliation and Democracy (LURD) launched attacks against Taylor's regime.²⁷ Between 1997 and 2002, more than 100,000 Liberians died.²⁸ March 2003 saw an advancement of rebels into Monrovia prompting talks in Ghana to end the rebellion.²⁹ In July 2004, Nigeria's President Olusegun Obasanjo offered Charles Taylor asylum in Nigeria if he resigned, an offer that Taylor accepted without stating when he would leave.³⁰ In light of a looming rebel takeover of Monrovia and an indictment issued by the Special Court of Sierra Leone calling for Taylor's arrest, Taylor was incentivized to relinquish power for a guarantee of asylum in Calabar, a city in southeastern Nigeria.³¹ Taylor and his family traveled to Nigeria where on arrival President Obasanjo promised he and fellow Nigerians would be good hosts for the duration of Taylor's stay in Nigeria.³² Taylor was given three hilltop villas close to the home where Obasanjo resided on his visits to Calabar.³³ Leaked documents pertaining to Taylor's exile agreement indicated stringent conditions to guarantee that he would not continue to fuel the war in Liberia while in exile.³⁴ These conditions included seeking permission from his hosts to travel out of Calabar, a bar from commenting on Liberian affairs, and only granting interviews with permission from Nigerian authorities.³⁵

Tunisia

President Zine El Abidine Ben Ali of Tunisia took power in a bloodless palace coup in 1987 after he had President Habib Bourguiba declared mentally unfit to rule.³⁶ Ben Ali's rule was characterized by steady economic growth, but youth unemployment remained high.³⁷ On December 17, 2011, Mohamed Bouazizi, an unemployed man in the agricultural town of Sidi Bouzid, self-immolated after officials in his town prevented him from selling vegetables without a permit.³⁸ This act sparked protests in his town and quickly led to demonstrations about the lack of jobs all over the country.³⁹ Authorities attacked demonstrators aggravating widespread public anger and igniting more protests. Frustrations highlighted by the protests included the large numbers of unemployed graduates, the absence of freedoms, anger at the overindulgence of the elite class, and anger at police brutality.⁴⁰ Ben Ali initially defended the police action but soon changed tact making concessions such as sacking his interior minister, promising to create over 300,000 jobs, and releasing detained protesters.⁴¹ These attempts were in vain as the protests eventually reached the capital on January 13, 2012. A day later, Ben Ali, who had ruled as a dictator for more than

23 years, announced he was “temporarily” stepping down and fled to Saudi Arabia, where he was granted asylum.⁴² A statement released by the Saudi Arabian government read, “Out of concern for the exceptional circumstances facing the brotherly Tunisian people and in support of the security and stability of their country ... the Saudi government has welcomed president Zine El Abidine Ben Ali and his family to the kingdom.”⁴³ Ben Ali made the port city of Jeddah his home in exile where he was given an unoccupied palace that King Faisal of Saudi Arabia previously used to honor guests.⁴⁴ Mustafa Alani, a research director at Dubai’s Gulf Research Centre at the time, asserted in an interview with Al Jazeera that Saudi Arabia had opened its doors to this secular Muslim leader “not out of sympathy” but out of a desire to ease tensions and stop a deterioration “from bad to worse.”⁴⁵ This asylum was granted to Ali with a list of conditions, one of which included “being shut out of media and politics.”⁴⁶

Application to South Sudan

An asylum offer to Kiir and Machar could be made to induce their exit from the political scene. When countries or entities contemplate this option, careful thought should be placed on finding safe havens that offer them security for their personal well-being. In the absence of such assurance, both men relinquishing their influence, control, and power in their respective factions becomes increasingly difficult to imagine. Uganda, Rwanda, and South Africa have been suggested as potential countries of asylum for Kiir, and South Africa and Sudan as options for Machar.⁴⁷ Uganda’s President Yoweri Museveni has been a principal political ally to Kiir over the years, becoming a military ally during the current conflict.⁴⁸ The good working relationship between Kiir and Museveni could be an indicator that the Ugandan government may not be opposed to the idea of granting Kiir asylum. The significant risk of leaving either or both men in the region would have to be weighed against other variables.

In Machar’s case, notions or aspects of asylum are already in play, especially following Machar’s flight from Juba in July 2016 to the Democratic Republic of Congo.⁴⁹ His subsequent journey to Khartoum, Sudan, and to Pretoria, South Africa, are examples of countries offering a form of safe haven to him.⁵⁰ In this respect, they may not be opposed to granting him full asylum. Machar currently resides in South Africa, although the terms of his stay are not clear. There was speculation that he is being held under house arrest and his calls monitored, but the South African government was quick to deny this.⁵¹ They instead described him as a “guest” justifying this as part of their responsibility as mediators.⁵²

Granting asylum to both Kiir and Machar would need to be accompanied by a set of strict conditions to govern their interaction with South Sudan. These conditions should include a promise to denounce any form of involvement in the politics and the governance of South Sudan. For the first few years after accepting this offer of asylum, their interaction with the media could be restricted, with all media interview requests passing through the host government. Negotiators could also establish a duration of time during which Kiir and Machar would not be allowed to set foot on South Sudanese soil. This could range from 10 to 20 years, depending on the political situation in the country following their departure and the system of governance in place after this departure. Any violations to the asylum agreement’s conditions could lead to harsh consequences such as prosecution for crimes committed under their authority.

The Offer of Amnesty

“Amnesty” derives from the Greek word “amnestia” meaning “forgetfulness” or “oblivion.”⁵³ For the purposes of this paper, amnesty refers to legal measures that have the effect of “prospectively barring

criminal prosecution, and in some cases, civil action, against certain individuals or categories of individuals in respect of specified criminal conduct committed before the amnesty's adoption, or retroactively nullifying legal liability previously established."⁵⁴ Amnesties tend to be limited to a specific time period or particular event, like a particular armed conflict. In practice, amnesties are adopted in two common forms: executive decrees or proclamations, and parliamentary enactment into law.⁵⁵ Amnesties are also granted conforming to a peace agreement or other negotiated accord such as "an agreement between the incumbent government and opposition groups or rebel forces, though such provisions have often been implemented through national legislation or executive action."⁵⁶ There are different kinds of amnesties in the United Nations classifications which include: self-amnesties adopted for self-protection by human rights violators, blanket amnesties which absolve large groups of offenders from prosecution, conditional amnesties adopted for fulfilment of certain conditions, de facto amnesties which preclude prosecutions, and disguised amnesties which can take various forms.⁵⁷

The offer of amnesty to resolve conflicts is found as early as the 17th century when general amnesty was one of the terms of the Westphalia Peace Agreement of 1648.⁵⁸ In recent decades, it has featured in peace agreements to bring an end to conflicts ranging from South Africa's apartheid to El Salvador's civil war. Amnesty has been used because more often than not parties to the peace treaty's negotiations are the same actors who participated in the war, accused of human rights abuses and crimes against humanity. Any threat of prosecution can be a deterrent to achieving peace due to the perpetrator's fears of prosecution, leading to prolonged conflict.

Haiti

In September 1991, the first democratically-elected president of Haiti, Jean-Bertrand Aristide, was overthrown in a military coup headed by Lt.-Gen. Raoul Cédras.⁵⁹ The military regime that ensued paved the way for "ferocious repression and organized violence" by the Haitian armed forces and paramilitary groups associated with them, who targeted the Haitian poor, the bulk of Aristide's supporters.⁶⁰ As a result of this violent campaign, almost 4,000 people were killed and over 300,000 people were internally displaced.⁶¹ An estimated 40,000 to 60,000 people fled Haiti for the United States or the Dominican Republic.⁶² As Haiti's situation worsened, the Organization of American States and the United Nations condemned the coup and deployed the International Civilian Mission in Haiti "to monitor the human rights situation and investigate violations."⁶³ This started a host of diplomatic measures and pressures including an arms embargo and sanctions on the military junta. In April 1993, Cédras was forced to the negotiating table where he conceded to step down and in return receive amnesty for himself, his family, and his staff members.⁶⁴ This request for amnesty was accepted in the "Governors Island Accord" signed by Aristide and Cédras on July 3, 1993, to which an amnesty for the coup leaders was granted and Aristide was allowed to return to Haiti amongst other provisions.⁶⁵ The military junta did not fully comply with the agreement's stipulations, forcing the newly-established U.N. Mission in Haiti and other international agencies to leave Haiti in October 1993 creating a tense year of standoffs and negotiations.⁶⁶ The U.N. Security Council commissioned the creation of a multi-national force that would employ "all necessary means" to expedite the military junta's departure.⁶⁷ Finally, in autumn of 1994, former U.S. President Jimmy Carter negotiated an agreement with Cédras and his chief of staff, Brig. Gen. Philippe Biamby. It required Cédras to "leave the military upon parliamentary approval of a general amnesty or by Oct. 15."⁶⁸ Gen. Cédras resigned in October 1994, and left Haiti for Panama, allowing Aristide to return to Haiti.⁶⁹

Colombia

More recently, the resolution of the decades-long conflict in Colombia between the Revolutionary Armed Forces of Colombia (FARC), and the government of President Juan Manuel Santos includes amnesty as one of the peace agreement's key considerations. The war, which began in 1964 when the FARC revolted pursuing land reform, has led to the deaths of over 220,000 Colombians and displaced millions.⁷⁰ Previous governments had unsuccessfully pursued peace agreements with the FARC until this pursuit by Santos, who made this the focal point of his tenure. After a year and a half of undisclosed negotiations beginning in 2012 between Santos and the FARC, a general agreement was signed which laid the groundwork for peace talks that were held in Havana, Cuba.⁷¹ In August 2016, both parties reached a consensus, signed the peace deal, and put the peace agreement to a public referendum.⁷² The peace agreement was rejected by a narrow margin.⁷³ Nevertheless, President Santos was rewarded for his persistent endeavors with the Nobel Peace Prize.⁷⁴ In November 2016, the government and the FARC announced that they had reached a new final accord which integrated "changes, precisions, and proposals, suggested by the most diverse sectors of society."⁷⁵ Rather than taking the revised deal back to a referendum, Santos took it to Congress, which approved it, and then to Colombia's Constitutional Court, which ratified it on December 13, 2016.⁷⁶

Amnesty was one of the main areas of contention in the Colombian peace deal for both sides, and with the civilian population. Ivan Marquez, FARC's chief negotiator, stated that "assurances" were vital if the FARC were expected to lay down their weapons, and if a peace deal was to succeed.⁷⁷ A form of conditional amnesty was applied to the original peace deal granting amnesty for political and related crimes but in keeping with international guidelines, an exception was made for international crimes and grave human rights abuses.⁷⁸ However, an alternative sentencing plan gave violators of crimes against humanity a chance to avoid prison if they agreed to perform reparative labor and accept some restrictions on their freedom. Under the plan, they needed to meet two conditions: 1) a confession of their crimes and acknowledgement of responsibility, and 2) a formulation of an individual or collective reparation project, approved by authorities and covering a period of five to eight years.⁷⁹ Offenders who failed to comply were subject to 20 years imprisonment.⁸⁰

Despite the FARC's and the government's agreement on this amnesty provision, a majority of the civilian population that voted objected to this initial peace deal for its "perceived leniency towards FARC fighters."⁸¹ Many civilians viewed the FARC as "terrorists" and wanted to see them behind bars.⁸² These sentiments were backed by rights groups like Human Rights Watch, which stated that the deal promoted a culture of impunity and violated international law obligations.⁸³ However, others like law professor Douglass Cassel of the University of Notre Dame Law School, who was one of the lawyers who helped to negotiate the agreement to create the Special Jurisdiction for Peace to investigate and prosecute atrocities, justified it as a "holistic transitional justice approach which satisfied Colombia's obligations under international law."⁸⁴ According to him, in situations of armed conflict, "transitional justice measures must be assessed by international standards applicable to peace processes, not by standards that apply in a society already at peace."⁸⁵

The amnesty provision was not repealed in the revised peace deal, but rather, some details and the language in the previous deal were changed to make it more clear. For instance, one of the specific changes was an eight-year rural confinement and mandatory community service for FARC rebels who confessed to war crimes.⁸⁶ Regardless, no negotiations for peace in Colombia would have taken place without an assurance of amnesty.

Application to South Sudan

The creation of a hybrid court is one of the 2015 South Sudan peace agreement's stipulations that the South Sudanese leadership opposes, but it could be used as a diplomatic measure to induce exit from the political scene. The African Union Commission is to set up the court with the mandate to "investigate and prosecute individuals bearing the responsibility for violations of international law and/or applicable South Sudanese law, committed from 15 December 2013 through the end of the Transitional Period."⁸⁷ Numerous reports from bodies, such as the U.N. High Commissioner for Human Rights and the African Union Commission of Inquiry, provide a plausible basis for the indictment and trial of Kiir and Machar for crimes against humanity and war crimes.⁸⁸ These leaders are accused of perpetrating potential war crimes in the December 2013 Juba Massacre and massacres in Bor, Malakal, and Bentiu.⁸⁹ Opposition to the hybrid court is in part informed by the above factors.⁹⁰ In a June 7, 2016, *New York Times* op-ed, "South Sudan needs truth not trials," alleged to have been co-authored by Kiir and Machar (and later denied by Machar), the agreement's two co-signatories urged the international community to reconsider the hybrid court.⁹¹ Despite Machar asserting that he had not been consulted on the essay, the fact that the piece had been written by representatives of South Sudan's leadership and called for a reconsideration of legal action⁹² reinforces the idea that the leadership is indeed terrified of the court. With such high fear of prosecution and sufficient evidence to back their indictment, the provision of amnesty for these leaders in exchange for their exit from the political scene could be a powerful means to negotiate their exit. A proponent of the establishment of an international administration over South Sudan calls for a similar measure suggesting that an offer of immunity from international prosecution and a safe haven abroad for Kiir and Machar could be made by the United States and international community in exchange for Kiir's willingness to hand over power and a commitment from both men to "never hold or contest power and to remain permanently outside South Sudan."⁹³ Some form of amnesty for crimes committed would be a carrot for the two leaders, and the threat of prosecution posed by the hybrid court or the International Criminal Court would be a stick that could be used to induce their departure from the political scene.

Financial Leverage: The Offer of Incentives or Disincentives

Financial means have been key elements in brokered peace agreements. These means have included the offer of enough money to support the exiled leader in his country of exile. This has taken the form of monthly stipends to the deposed leader, or allowing him to keep a portion of his initial wealth. Targeting a leader's wealth through asset freezes has also been used as a disincentive to induce this political exit. This section focuses on Haiti and Uganda where some financial means were employed.

Haiti

Following the signing of the Governors Island Accord in Haiti, the military dictators reneged on the agreement forcing the Clinton administration to impose targeted sanctions which included a freeze on their assets.⁹⁴ In the deal brokered to negotiate Gen. Cédras' departure from Haiti politics and to enter exile, the United States agreed to lease at least three homes that the general owned in Haiti.⁹⁵ This included a walled hillside villa, a beachfront residence, and his mother-in-law's private home.⁹⁶ This meant that Gen. Cédras would receive government funds amounting to approximately \$3000 per month.⁹⁷ U.S. administration officials stated that the general insisted that the rental income from the properties would be essential to afford a life in exile.⁹⁸ Furthermore, the United States granted the general and his military leaders access to at least \$79 million in frozen accounts in the United States.⁹⁹ Bank secrecy laws made it difficult to know how much in particular was owned by Gen. Cédras but it was clear that he gained access to his previously frozen accounts.

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Uganda

Idi Amin Dada

As mentioned earlier, Saudi Arabia did not only offer asylum to Ben Ali of Tunisia but earlier, in the 1970s, offered asylum to the ruthless dictator, Idi Amin of Uganda. Idi Amin came to power on January 25, 1971, when as chief of general staff, he overthrew the government of President Milton Obote.¹⁰⁰ Amin was initially welcomed by Ugandans who viewed him as “charming, informal and flexible.”¹⁰¹ He was thought of as a nationalist and grew more popular when he removed Obote’s secret police, freed political prisoners, and promised to return power to the Ugandan people.¹⁰² This view of him was short lived as he soon exhibited his unpredictable and cruel personality.¹⁰³ In 1972, he banished tens of thousands of Asians, who dominated the economy, and soon after declared himself president for life.¹⁰⁴

Amin ran the country with an iron fist with human rights groups estimating about 300,000 deaths during his eight-year rule.¹⁰⁵ The murders were conducted by death squads, which included the Public Safety Unit, the State Research Bureau, and the military police, numbering about 18,000 men mainly drafted from Amin’s home region.¹⁰⁶ Those killed included some prominent people but a majority were anonymous people like farmers who were selected because the killers desired their wealth, their wives, or because of their tribal affiliations.¹⁰⁷ Amin drew harsh criticism, but also fascination globally. Officials like Henry Kissinger called him a “murderer and a spy” while others such as Libya’s Muammar Gadhafi actively sought him as an ally.¹⁰⁸ In an effort to annex the Kagera region of Tanzania, Amin sent troops to the west of Lake Victoria in 1978, an effort that was quickly thwarted by an assault by Tanzanian forces and Ugandan exiles.¹⁰⁹ On April 12, 1979, Mr. Amin and his Libyan counterparts were unable to stop the offensive. Amin first fled to Libya and finally to Saudi Arabia.¹¹⁰ He was given a spacious villa in Jeddah, the Red Sea port where he lived with about six of his 30 children.¹¹¹ Additionally, Amin was paid a hefty monthly stipend by the Saudi government.¹¹² He was able to own several cars and in an interview with a Ugandan journalist, bragged about having five new satellite dishes installed in his new home.¹¹³

Lord’s Resistance Army (LRA)

Financial incentives for conflict resolution were also brought to the fore at one point in the case of Uganda’s Joseph Kony of the Lord’s Resistance Army (LRA), when his armed group was in southern Sudan, which was then a part of Sudan. The LRA was formed in 1987 as an insurgency claiming to fight against President Yoweri Museveni’s government to defend the rights of the Acholi, an ethnic group in northern Uganda.¹¹⁴ Despite these claims, their extreme brutality against fellow Acholi including rape, mutilation, murder, sexual slavery, and widespread abductions of children and adults betrayed those claims.¹¹⁵ In 1994, the LRA received military, financial, and logistical support from Sudanese President Omar el-Bashir.¹¹⁶ President Bashir viewed the LRA as a vital force in its efforts to keep southern Sudan and northern Uganda destabilized and as a means to “punish Uganda for its support of the rebel group in Sudan, the Sudan People’s Liberation Army (SPLA).”¹¹⁷ Following the signing of the Comprehensive Peace Agreement between the SPLA and the Bashir government, in 2005, Sudan ceased its support for the LRA.¹¹⁸

Over the years, the LRA spread and began attacks in remote locations in the Democratic Republic of Congo, Central Africa Republic, and South Sudan to acquire food or money to sustain their rebellion.¹¹⁹ In 2006, seeing the havoc that the LRA was causing in southern Sudan, Machar, the then vice-president of southern Sudan met their leader Joseph Kony in the bush and gave him \$20,000 and food, contingent upon Kony and his troops leaving southern Sudan without pillaging other South Sudanese villages.¹²⁰ Despite harsh criticism from groups such as Human Rights Watch, Machar claimed that his financial

incentives to the LRA worked as more than 90 percent of the fighters had left Sudan.¹²¹ The United Nations confirmed that there had been a significant decline in attacks attributed to the LRA, underscoring Machar's claims.¹²²

Application to South Sudan

President Kiir, Machar, and their associates have been accused of corruption, running South Sudan as a violent kleptocracy.¹²³ These top officials have been accused of "accumulating fortunes despite modest government salaries."¹²⁴ Family members of the two leaders reside in luxurious homes in the upscale Lavington neighborhood of Nairobi, Kenya.¹²⁵ In the same way the United States offered to lease the homes of Gen. Cédras, offering to let Kiir and Machar retain some of their wealth to allow them income could be a financial incentive to persuade them to relinquish control. Conversely, the wealth illegally acquired in the years after the Comprehensive Peace Agreement's signing could be used as a disincentive to holding on to power. Accusations of economic crimes and corruption could be used as leverage to influence exit from the political scene. Threats of criminal prosecution for the documented economic crimes could be a powerful disincentive to continue their hold on power.¹²⁶

Additionally, the asset freezes applied in Haiti by the U.S. government could be employed in the case of South Sudan. Funds and assets allegedly stored in neighboring East African countries, such as Kenya,¹²⁷ could be frozen by the international community in a push to pressure the South Sudanese leaders to exit the political arena.

South Sudan's reliance on donor support could potentially be used as leverage to induce a departure from the political scene. On December 2, 2016, the South Sudan Parliament authorized a 38 billion SSP budget, but nearly 40 percent was unfunded.¹²⁸ The government through its finance minister stated that it would seek donor funding to cover this funding gap and was already in conversations with the International Monetary Fund.¹²⁹ Donor funding to South Sudan from institutions and countries could be tied to meeting certain conditions such as the exiting of the two key players. At a country level, the United States and many European countries, such as the Netherlands, have halted direct assistance to the government of South Sudan.¹³⁰ In August 2016, the government sought a \$1.9 billion loan from China,¹³¹ but received no public reply.¹³² The same month, newly appointed First Vice President Taban Deng Gai visited Kenyan President Uhuru Kenyatta during which he appealed for a 'soft loan.' President Kenyatta reportedly responded by asking Deng to send the South Sudan central bank governor and both the finance and agriculture ministers with a detailed proposal.¹³³ In October 2016, President Kiir appealed to the Troika countries to provide the financial assistance for the implementation of the peace agreement during a visit by the Norwegian foreign minister to Juba.¹³⁴ The South Sudanese government is desperate for financial assistance, a need that could be used as leverage to achieve an exit from the political scene. Given that all the countries that the South Sudanese government has directly appealed to were parties to the negotiation of the peace deal, they could all form a united front and decline to provide any direct assistance to the government unless Machar and Kiir exit the scene. The South Sudanese government is in dire need of this financial assistance more particularly because the economic situation of South Sudan is worsening by the day. Revenue from South Sudan's oil exports has declined due to the recent glut in global oil production. This is a huge blow to a country that is the most oil-dependent country in the world, as oil accounts for almost all of its exports and around 60 percent of its gross domestic product (GDP).¹³⁵ Oil production is expected to decrease to about 120,000 barrels per day in the 2016-17 fiscal year, down from 165,000 barrels per day in 2014.¹³⁶ This declining oil revenue has caused "a negative impact on macro-budgetary indicators, requiring austere fiscal adjustments," according to the World Bank.¹³⁷ The

South Sudanese pound plummeted from 18.5 SSP per dollar in December 2015 to almost 80 SSP per dollar by the end of September, 2016.¹³⁸ As of February 15, 2017, the inflation rate was reported at 900 percent, according to a UNICEF situation report.¹³⁹ Food shortages, increases in relative food prices, and hunger are disturbing signs of this large economic collapse. Given this clear indication that South Sudan's government relies on donor funding for almost half of its budget, and the terrible economic conditions in the country, donor funding to the government could be used as leverage to induce the departure of Kiir and Machar from politics.

Strengths, challenges, and implications of each offer

Asylum

Granting asylum to leaders who have been accused of human rights violations can breed resentment among host populations. Saudi Arabia's offer of asylum to Ben Ali was not welcomed by all of its citizens.¹⁴⁰ When it comes to hosting deposed leaders, Saudi society maintains a general view of censure particularly towards Ben Ali due to his dictatorial reputation.¹⁴¹ Saudi Arabia has over decades past offered a safe haven for once-all powerful asylum seekers such as the dictatorial Idi Amin of Uganda and ex-Pakistani premier Nawaz Sharif.¹⁴² A tweet posted on social media platform Twitter during Ben Ali's arrival in Saudi Arabia questioned, "How long until King Abdullah bin Abdul-Aziz changes his title to 'Custodian of the Two Holy Mosques and Unwanted Despots?'"¹⁴³ Similar resentment to harboring a former leader accused of committing crimes against humanity was evident in Nigeria, too, as it hosted Charles Taylor.¹⁴⁴ The Nigerian Union of Journalists took this a step further mounting a legal challenge to his presence in Nigeria.¹⁴⁵ One of the union's demands included a charge for the death of two Nigerian journalists that Taylor's revolutionary front had taken responsibility for in the early 1990s.¹⁴⁶ The journalists insisted that it was against Nigeria's constitution to harbor a 'murderer' in their house.¹⁴⁷

There is no guarantee that the former leaders will not find ways to break the terms of their exile agreements and engage in the politics of their countries of origin. Idi Amin, who had been offered sanctuary by Saudi Arabia, escaped on a fake passport in 1989 and flew to Kinshasa, Zaire, where he claimed he would return to restore his rule in Uganda.¹⁴⁸ However, this move was not successful as Zairean authorities apprehended him and Uganda said it would only take him if he agreed to stand trial.¹⁴⁹ No other country wanted to offer him asylum forcing Saudi Arabia to welcome him again.¹⁵⁰ Charles Taylor of Liberia was also accused by his critics of violating the terms of his agreement.¹⁵¹ He was accused of breaking these terms by trying to influence Liberian politics and that of its neighbors from exile.¹⁵² The Liberian interim government, through a statement issued by the Liberian justice ministry, accused Taylor of making "daily phone calls to cronies in Liberia and other parts of the world through which he issues orders and instructions much to the detriment of peace and security of Liberia and the sub-region."¹⁵³ More allegations of meddling were made by research groups which stated that Taylor controlled or helped to finance at least nine of the 30 political parties that put forth a bid for the Liberian elections.¹⁵⁴ In Sierra Leone, special prosecutors accused him of wiring USD \$160,000 to his supporters in Monrovia in October 2004 to help start riots during which 16 people were killed and hundreds injured, and accused him of involvement in a January 2005 assassination attempt on ailing Guinean President Lansana Conte.¹⁵⁵ Taylor's case is a clear example that asylum offers cannot guarantee that the leaders will not find ways to get involved in the politics of their home countries or possibly engage in a proxy war.

While negotiating asylum various conditions can be put in place for the leader's departure, but there is no guarantee that the leaders will not empty the country's treasury on their way out. In Gambia, Jammeh allegedly "plundered the state coffers" in his last few weeks stealing millions of dollars.¹⁵⁶ According to incoming President Barrow's advisor, Mai Fatty, Jammeh withdrew over USD \$11 million and transferred luxury goods on a Chadian cargo plane, including an uncertain number of vehicles.¹⁵⁷ But another adviser to President Barrow cast doubt on these allegations claiming that the central bank was functioning normally.¹⁵⁸ Claims of pillaging the country's resources while fleeing into exile were also made in the case of Tunisia. The wife of former President Ben Ali, Ms. Leila Tabelse, allegedly stole one and a half tons of gold which she personally collected from the country's central bank.¹⁵⁹ Tunisia's central bank denied the allegations.¹⁶⁰ Given that these claims were alleged yet none of the accused has so far taken any responsibility, there is indeed a risk that granting asylum cannot guarantee the country's resources will be left untouched. In a move to safeguard their financial interests, outgoing political leaders can empty the coffers on their way to exile.

Despite offering asylum to leaders with the assurance that the host country would not extradite them, there have been instances where this understanding was breached. At the onset of Charles Taylor's asylum offer, many called on Nigeria to extradite him to be tried for war crimes, but Nigeria refused to surrender Taylor.¹⁶¹ However, in March 2006, President Obasanjo stated that Liberia's new government was free to take him after consultations with ECOWAS and other African heads of states who had helped broker the peace deal.¹⁶² The United States and the United Nations, which had also been party to the agreement that led to Taylor's exile,¹⁶³ also called for Taylor's extradition.¹⁶⁴ Despite Taylor disappearing a few days after President Obasanjo announced that he would be extradited to Liberia, Nigerian authorities apprehended him and transported him to Liberia where he was arrested upon arrival.¹⁶⁵ Some critics argue that Taylor was handed over because he violated the terms of his exile agreement.¹⁶⁶ Whether Taylor was handed over to authorities because he violated his asylum terms or because Nigeria finally gave in to pressure to hand him over for prosecution, it is evident that his arrest would act as a deterrent to leaders seeking to accept an asylum offer. After all, what guarantee do they have that in a few years, the same people and institutions that secured their asylum offer would not act contrary to their initial word?

Regardless of the above challenges, precedence in countries such as Liberia and Tunisia show that granting asylum to leaders as a form of conflict resolution played the intended role of negotiating peaceful transitions and stopping the loss of more lives. In Gambia, many heaved sighs of relief following Jammeh's exit as his departure averted the possibility of a military confrontation and a descent into war given that foreign military troops were already present in Gambia.¹⁶⁷ In Liberia, Charles Taylor's departure led to the immediate end of the conflict which may have saved the lives of hundreds of thousands of civilians.¹⁶⁸ In the case of Tunisia, had Ben Ali stayed to fight to maintain his rule, the conflict would have continued leading to a far more "bitter and bloody end."¹⁶⁹ In Saudi Arabia's estimation, the kingdom's asylum for Ben Ali ended a "vicious rear-guard guerilla campaign by his militia" against the civilian protesters.¹⁷⁰ Tunisia, which was part of the Arab spring, can be compared to countries like Syria where Assad stayed to fight to maintain his rule. In Tunisia, within a few months of the protests which eventually led Ben Ali to seek asylum in Saudi Arabia, the number of lives lost was at least 50.¹⁷¹ Yet in Syria, the conflict has gone on for five years and has led to the loss of 250,000 Syrian lives and more than 11 million forced out of their homes.¹⁷² It can thus be argued that "diplomatically removing key actors and their families from the theatre of war,"¹⁷³ can lead to resolution of a political stalemate, and the immediate halting of the loss of more lives and prolonged conflict.

Amnesty

A key argument against offering amnesty to leaders accused of human rights violations is that it promotes a culture of impunity not only in the specific country but also internationally. Reports from fact-finding missions¹⁷⁴ conducted in Chile, where an amnesty decree passed in 1978 absolved all individuals who perpetrated human rights violations between 1973 and 1978 from criminal responsibility,¹⁷⁵ back this view. At an international level, it is argued that failure to prosecute rogue regimes in one part of the world emboldens other dictatorial regimes.¹⁷⁶ A former prosecutor of the International Criminal Tribunal for the former Yugoslavia (ICTY) inferred that the lack of prosecution of dictators such as Idi Amin of Uganda and Saddam Hussein of Iraq emboldened the Serbs to launch ethnic cleansing expecting no repercussions or accountability for their actions.¹⁷⁷ Expectedly, following Taylor's conviction for war crimes, the court's prosecutor remarked that the historic judgment reinforced to "heads of state that they will be held to account for war crimes."¹⁷⁸

For the victims of human rights violations, prosecution is one of the means through which they receive some sort of closure for the abuses committed against them. Therefore, granting amnesty to perpetrators of human rights abuses denies them of this.¹⁷⁹ Criminal prosecution validates the victims' suffering serving as a "partial remedy for their injuries."¹⁸⁰ A survey conducted by the South Sudan Law Society found that a majority of South Sudanese respondents expressed popular support for transitional justice mechanisms including the criminal prosecution of perpetrators.¹⁸¹ In the absence of criminal prosecutions, citizens may decide to take justice into their own hands, such as in Haiti when a former general who was granted amnesty was killed by civilians.¹⁸²

The past decade has also seen the annulment of some amnesty laws that were passed in earlier decades to negotiate peace agreements. Amnesty laws that had been passed to protect the military juntas in South American countries of Argentina and Uruguay were annulled by the courts.¹⁸³ El-Salvador joined this bandwagon in July 2016, when its supreme court overruled an amnesty law that had been crucial in securing peace 12 years before citing that it was unconstitutional and denied victims justice.¹⁸⁴

In spite of the challenges that come with granting amnesty, the offer of a form of immunity from prosecution has proved to fulfill the immediate goal of bringing an end to the conflict. In most situations, it would be almost impossible to bring the leaders to the negotiating table if they face a threat of prosecution. In Haiti, the amnesty deal had the desired effect of peacefully removing a military dictator who had caused so many human rights violations and allowed for the reinstatement of a civilian government.¹⁸⁵ Cédras and his close associates went into exile, the military surrendered arms, and most of the human rights abuses in the country ceased with no more bloodshed.¹⁸⁶ Blame for Haiti's later deterioration in the 2000s largely lies with President Aristide's corruption and mismanagement, not the lack of punishment for the military junta in the mid-1990s.¹⁸⁷ Colombia's Santos justified granting a form of amnesty in the Colombia peace agreement when he remarked, "The victims will always seek and ask for more justice. The future victims will say no; I want more peace. And what stopping the war means is that there will be no more victims. You have to weigh the two. I don't agree that people should be let off completely. But if you have to reduce sentences, if you have to negotiate a more lenient justice to avoid more victims and to avoid continuing the war, I think it's a good deal."¹⁸⁸ Amnesty can bring the leaders in a conflict to the negotiating table allowing for peace to be achieved and stopping the loss of more lives.

Financial Incentives/Disincentives

Allowing political leaders who have pillaged the country of resources to retain some of their wealth is bound to leave a country struggling for survival. Before Cédras' rule in Haiti, a previous dictator, Charles Duvalier, had fled into exile leaving the country poor and struggling for survival.¹⁸⁹ He had apparently hoarded an estimated \$300 million throughout his rule and his departure had left the country poor and aid-dependent.¹⁹⁰ Without the essential resources, any incoming leadership is likely to struggle to survive. Moreover, letting leaders keep wealth amassed through corruption while the citizens live in dire poverty is bound to breed resentment amongst the population.

As with any offer, the South Sudanese government may reject the conditions tied to donor provisions. For instance, in June 2016, before the peace agreement's collapse, donor countries gave preconditions for financial assistance which included the revocation of the controversial 28 new states and a sacking of the finance minister and governor of the central bank. Presidential spokesperson Ateny Wek Ateny dismissed these preconditions as an interference in matters of national sovereignty.¹⁹¹ Preconditions for financial assistance will expectedly not be welcomed by the government of South Sudan.

Nevertheless, it would be near impossible to convince leaders to cede power and live a life of poverty when they are benefitting financially. The negotiation of the leasing of Gen. Cédras' houses in Haiti was a key component of his exit package.¹⁹² Negotiators stayed till the "wee hours of the morning" ironing out the details of this part of the exit package before Gen. Cédras agreed to leave.¹⁹³ A sense of financial security is key in convincing a leader to exit the scene, especially if they are financially benefitting from their political position. Financial disincentives too, such as asset freezes, proved effective in getting the leaders to the negotiating table, and eventually out of the political scene as was seen in Gen. Cédras' case.

Conclusion

"It is a very tough call whether to point the finger or try to negotiate with people. As a lawyer, of course, I would like to prosecute everybody who is guilty of these heinous things. As a diplomat or as a politician or as a statesman, I also would like to stop the slaughter, bring it to a halt. You have two things that are in real conflict here ... I don't know the proper mix."¹⁹⁴

- *Morris B. Abram, U.S. Representative, U.N. Commission on Human Rights under President Lyndon B. Johnson*

Undoubtedly, any negotiated exit of Kiir and Machar from the South Sudan political scene will require serious thought and consideration. Measures previously employed elsewhere of offering asylum, amnesty, or financial leverage, have proven successful in inducing that exit, but come with a host of challenges which could include opposition, resentment, or even a violation of some of the stipulated conditions of the measures. It would be important to note though that none of these measures are employed on their own but are coupled with each other. For instance, asylum, amnesty, and financial incentives often form components of an exit package presented to a particular leader or are coupled with other transitional justice mechanisms, such as victim reparation and truth commissions, which are not covered by the scope of this paper. Moreover, for these measures to successfully induce a leader's departure from politics, other pressures must be included. In some cases, these pressures took the form of a threat of military force as was the case of Gambia's Jammeh, Haiti's Lt. Gen. Cédras, and Liberia's Taylor where the arrival or presence of military force by ECOWAS, the United States, and the United Nations respectively, played a significant role in achieving their exit from the political scene. In other cases,

this pressure comes in the form of increasing unpopularity amongst their citizens exhibited in the form of massive protests as was the case in Tunisia for Ben Ali, or from religious figures as was seen in Colombia where the visit of the first Latin American pope to Cuba, was credited as contributing to a breakthrough in the peace accord.¹⁹⁵

Nevertheless, employing the above measures could be considered as one of the possible ways out of the current political stalemate. If negotiators in South Sudan's case decided to pursue the departure of Kiir and Machar from the political scene, an assortment of measures such as asylum, amnesty, and financial leverage, coupled with a combination of pressures from local actors or international bodies, would need to coalesce in a proper mix that could be used to induce this departure. The measures may be successful in attaining that departure and preventing the loss of more lives, but will present a host of challenges that would need to be considered. It is also crucial to note that employing the above measures to induce the exit of Kiir and Machar from the political scene may not necessarily lead to peace. Kiir and Machar may be at the head of their respective militarized camps, but there is not a guarantee that neutralizing them will achieve peace, especially if the process is hijacked by equally problematic leaders whose presence becomes a similar barrier to the achievement of peace in South Sudan. Furthermore, it would be important for negotiators to critically think about how the South Sudanese will have some control in their leadership choices if the two leaders are convinced to cede power. At the end of the day, if a negotiated exit package emerges as a viable option, asylum, amnesty, and financial leverage need to be considered as measures to resolve the stalemate and stop the massive loss of life. The people of South Sudan are tired of the war, and all they want right now is peace.

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