

Breaking Out of the Spiral in South Sudan

Anti-Money Laundering, Network Sanctions,
and a New Peacemaking Architecture

By Brian Adeba, Brad Brooks-Rubin
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September 2017





Cover: Displaced women collect firewood and other items outside of a U.N. Protection of Civilians site in Juba, South Sudan, March 2017. Photo: UNMISS

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The metastasizing crisis in South Sudan requires a new strategy for achieving a sustainable peace. Conditions on the ground are unbearable for large swathes of South Sudan's population, and regional peacemaking efforts are not delivering results.

Absent any new variables, the parties to South Sudan's war, particularly the government, lack sufficient incentives to make the necessary compromises for peace. Since an outright victory by any party does not seem realistic in the short run, the variable that actually could alter the parties' incentive structure is much more effective, focused, and meaningful international pressure.

The U.S. Treasury Department's Office of Foreign Assets Control (OFAC) recently announced new sanctions designations for three South Sudanese individuals and three related companies associated with destabilizing South Sudan.¹ This is a critical step forward, as is the new advisory from the U.S. Treasury Department's Financial Crimes Enforcement Network (FinCEN) alerting financial institutions to the risk of potential movement of assets of South Sudanese Politically Exposed Persons (PEPs).² These welcome and promising developments are a positive step toward countering conflict financing in South Sudan. But much more should be done.

International partners should support these U.S. policy measures and take additional steps to build up the leverage required to change calculations made by South Sudanese political and military leaders who are responsible for violence and profit from grand corruption. Until just recently, the international community had imposed only half-hearted sanctions on a few individual mid-level and upper-level military commanders, with little effort expended to enforce the sanctions or to go after the broader networks that are funding the war and profit from corruption. Such individual sanctions by themselves are inadequate

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in shifting the calculations of abusive leaders and countering the violent kleptocratic system as a whole. The levying and enforcement of network sanctions of the sort that the U.S. government has just announced, especially if backed up by strong enforcement and more aggressive international anti-money laundering measures, could undermine the abilities of leaders and enablers to move illicit funds through the international banking system. Peace efforts for South Sudan are unlikely to succeed, and there should be no expectation that the war will be resolved, until those who profit from state capture face serious financial and political costs.

A new peace strategy for South Sudan should be built around two pillars:

1. **The continued and expanded use of financial tools to build leverage:** Financial tools—including network sanctions, sectoral sanctions, and anti-money laundering measures—should continue to be used and expanded to build greater leverage over the South Sudanese government, armed opposition actors, and commercial partners who drive mass violence and hijack state institutions. Such financial measures can ensure that South Sudanese leaders and their networks pay a far greater price for state capture, which in turn can compel them to change their behavior. Limited pressure, such as unenforced sanctions placed on a small number of individuals, by itself, does not build the requisite leverage. Such an approach can undermine the credibility of sanctions as a policy tool. International partners should support and build on the recent U.S. policy measures that recognize this reality.
2. **A revised peacemaking architecture and peace approach:** The peace process should be reinvigorated, as the current Agreement on the Resolution of Conflict in South Sudan (ARCSS), negotiated by the Intergovernmental Authority on Development (IGAD) and signed in August 2015, is clearly not working. The architecture of peacemaking should be revised, with the African Union and United Nations taking a more direct, hands-on role in a process that includes a broad range of South Sudanese constituents. Such participants can represent a range of different interests and grievances within the population, and not just the narrow interests of government and rebel political and military leaders. The peace process should not only include a broader range of people but also include a broader range of the issues that matter most to South Sudanese people. The peace process should also include opposition leader Riek Machar, who represents a notable constituency and should not be isolated.

Pillar 1: Use financial tools to build leverage

The people making war in South Sudan are evading accountability and benefiting from the attendant chaos and the subversion of the rule of law. In response, there should be a concerted and urgent international effort to deploy policy tools and measures that can create consequences for gross human rights abuses, generate new leverage, and compel warring parties to change their calculations.

These pressures, based on financial intelligence that Enough's financial forensic investigative initiative, The Sentry, helps provide, should primarily target the government of South Sudan. The government leadership bears disproportionate responsibility for catastrophic conditions on the ground, seems content with its pyrrhic victories, and, on an individual level, leaders have thus far paid little to no price for their destructive actions and in fact have often benefited. Armed opposition leaders and others who commit atrocities, along with their accomplices, should continue to be targeted for additional pressures by the

U.S. government and the international community as well. It is inconceivable that after more than three years of one of the most destructive wars anywhere, only three government-aligned individuals and three opposition members³ have been placed under U.N. Security Council sanctions. That is an enormous international failure of global will—unless international partners now concertedly support the new U.S. policy measures and extend the use of pressure tools with South Sudan.



People who have been displaced by the war live in squalid conditions in U.N. camps, often facing hurdles in accessing adequate nutrition and shelter. Wau, South Sudan, April 2017. Photo: Nektarios Markogiannis/UNMISS

Escalate financial pressure

The international community, including influential African states, the African Union, the United Nations, the European Union, and interested governments—like the United States, United Kingdom, Canada, and Australia—can do much more, including:

- **Imposing network sanctions focused on key leaders, their business associates and facilitators, and the companies they own or control.** Sanctions on individuals alone are often less effective because individuals can often still move money through business associates and companies. By targeting multiple actors and entities together as a network, sanctions have a greater impact because they provide banks with the information they need to more effectively detect evasion. Network sanctions are used to address other threats based on the operation and control of networks, such as Iran's nuclear program and narcotics trafficking, but network sanctions have not traditionally been used in response to mass atrocities or deadly conflicts in Africa. That should change, and the U.S. Treasury Department's recent designation of three companies associated with a senior military commander is a positive example of how this should be done.
- **Implementing sectoral sanctions directed at economic sectors hijacked by elites.** These sanctions would rely not necessarily on asset freezes of targets but on measures such as

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limitations on financing available from international institutions for projects in sectors such as oil and construction. These sectors are critical to the future economic development of the country, but according to Sentry investigations and other reporting, these sectors are not providing benefits to the population at present because the proceeds they generate have been hijacked and the sectors have become totally corrupted. These sanctions would enable the worst actors to be targeted specifically for their corruption in these sectors. These sanctions can also incorporate responsible investment reporting requirements so as to ensure that the sector can benefit from companies and actors that are willing to conduct necessary due diligence and avoid complicity with illicit activity. This type of reporting requirement was used to positive effect in ensuring transparency and due diligence in new investments in Burma.⁴

- **Increasing banks' reporting requirements and collecting financial intelligence on money laundering risks.** Financial intelligence units (FIUs), such as the U.S. Treasury Department's Financial Crimes Enforcement Network (FinCEN), should increase their reliance on advisories and related actions focusing on the risks of money laundering connected to the government of South Sudan. These advisories, such as the one recently issued by FinCEN,⁵ should then lead to actions by the FIUs and law enforcement actors that are focused on specific types of transactions—for example, targeting military procurement or real estate purchases, especially in neighboring Kenya and Uganda, by senior South Sudanese Politically Exposed Persons (PEPs) under section 311 of the U.S. Patriot Act. Other countries, including EU member states, Australia, and Canada, should also take actions that follow up on information collected from their advisories. Advisories focus the attention and resources of banks and other private sector actors on corruption and money laundering in South Sudan and should prompt additional investigations and enforcement. These investigations would not only enhance implementation of existing sanctions, but also provide critical information to governments through the filing of suspicious activity reports (SARs) that can contribute to future sanctions or law enforcement actions.

Increase regional enforcement of financial pressure

For these pressures to have real impact, regional enforcement is key. Neighboring countries in which South Sudanese leaders invest many of their assets—notably Kenya and Uganda—have been reluctant to enforce and escalate international political and financial pressures. The international community as a whole, with U.S. and European engagement, can respond to this challenge in several ways:

- **American and European leaders can directly underscore the financial risks the Kenyan and Ugandan governments incur in allowing illicit activity within their banking systems.** Démarches by officials from the U.S. Departments of State and Treasury and by their counterparts in other like-minded governments can reinforce this message about financial risk and show the Kenyan and Ugandan governments the ways they may jeopardize the substantial investments in their banking and commercial sectors by allowing illicit South Sudanese activity to continue. As different FIUs (like FinCEN and international counterparts) issue advisories that require global financial institutions to collect more information on potentially risky transactions and clients, a concerted set of diplomatic démarches can clarify the incentives regional governments have to counter money laundering. Governments and banks operating in financial systems tainted by illicit activity risk incurring heavy penalties, losing foreign investment and access to U.S. dollars, or facing a withdrawal of financial institutions that pull out of environments they consider too risky

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to serve. For example, between 2012 and 2015, Sudan lost nearly half of its correspondent banking relationships because of such fears.⁶ Major banks in Liberia have also lost correspondent banking relationships for the same reasons.⁷ The economic effects of de-risking by financial institutions is one of the little-understood results of financial pressures that drove the government of Sudan to intensify its negotiations with the United States over the removal of U.S. sanctions. It is easy to overlook or underestimate the impact of these financial pressures and to dismiss sanctions altogether or consider them a failure. The real failure is instead in the lack of a meaningful political strategy around how to use that financial leverage to advance peace and human rights in a timeframe and manner that prevents targets from fully adjusting.

- **The U.S. government and international partners can urge the international anti-money laundering body to investigate money laundering from South Sudan when the body visits Uganda and Kenya in late 2017 and early 2018.** The Financial Action Task Force (FATF), the international organization established to develop and oversee anti-money laundering standards, should press Uganda and Kenya to address South Sudan money laundering concerns within the scope of actions taken by these governments to ensure compliance with FATF standards. FATF and its related regional organizations oversee “mutual evaluation” processes that evaluate each country’s anti-money laundering efforts and identify countries with insufficient systems. Uganda will receive a FATF visit in September 2017 to assess its efforts to improve its systems, which are considered deficient. Kenya will likely receive its next FATF visit in 2018.
- **The U.S. government and international partners can issue public statements and press releases that raise concerns about money laundering and corruption related to South Sudan.** These statements can focus attention on the need for banks, regional governments, and international bodies such as FATF to address these risks and liabilities.
- **The U.S. government and like-minded countries can convene global and regional banks, review specific money laundering concerns related to South Sudan, remind banks of the risks these threats pose to their institutions, and commit to specific steps to counter these threats.** Banks found to have been used for money laundering may incur heavy penalties and be subject to other law enforcement measures. Banks and governments have incentives to coordinate their efforts to counter money laundering. If convened, such a gathering should be followed by a press release summarizing the meeting and highlighting the specific steps that the financial institutions and governments will take.
- **The U.S. government and other countries can convene global and regional actors that are active in the construction and extractives industries sectors to highlight the risks to these sectors in South Sudan.** Governments should underscore the risks and potential penalties such private sector actors may face for connections to illicit activity. Governments convening such a gathering should also highlight the importance of identifying responsible channels for investment. If convened, such a gathering should also be followed by a press release summarizing the outcomes of the meeting and highlighting the specific steps that the industry actors and governments will take.

Pillar 2: Revise the peacemaking architecture and approach

The financial pressures detailed above should be paired with a revised peace approach and a reconsideration of the peacemaking architecture. Members of the Intergovernmental Authority on Development (IGAD) and the broader international community should not perpetuate the fiction of the August 2015 Agreement on the Resolution of Conflict in South Sudan (ARCSS) as a roadmap for reform. Many of the components of the ARCSS are sound on paper, and some pieces, such as the Hybrid Court for South Sudan, should be preserved, but the actions of parties to the agreement make clear that the agreement is no longer meaningful. One of the two main signatories is in exile and multiple new South Sudanese rebel groups are not party to the agreement.

IGAD is now leading a “revitalization” process that is intended to breathe new life into the ARCSS. But the fact that IGAD deems it necessary to revitalize the peace agreement is itself an admission that the agreement is not working. Countries and organizations with a strong interest in peacemaking in South Sudan should pursue the following steps:

Reorganize international peace process architecture

Divisions and inaction in the international community prevent sustained and focused efforts to end the war, despite commitments to that effect. Divergent and competing interests among IGAD members prevent a cohesive, coherent response. The rest of the international community has adopted a deferential approach that leaves mediation efforts to IGAD, an organization in which leaders are generally accustomed to working to contain insurgent scenarios rather than seeking strategies to achieve comprehensive and lasting peace and governance reform. At the United Nations, no country is providing leadership or a center of gravity on South Sudan, which leaves the U.N. Security Council adrift and divided. Meanwhile, the United States is retreating from its traditional leadership role on South Sudan, as the current administration feels few of the historical obligations to South Sudan recognized by previous administrations.

As the financial pressures described above are being deployed, the international architecture of peacemaking in South Sudan should be reorganized. IGAD should no longer lead mediation on its own, as that approach has proven to be ineffective. The competing interests among IGAD members that cause the group to work at cross purposes are not going away. The African Union and United Nations should therefore take on much greater responsibility for peacemaking in South Sudan, and they should operate alongside IGAD as part of a peacemaking team if IGAD insists on a continuing role. While some IGAD members may argue for continued adherence to “subsidiarity”—under which Africa’s Regional Economic Communities are first in line to respond to crises, ahead of the AU—that strategy has clearly run its course in this instance.

Both the United Nations and African Union are better suited than IGAD to lead for at least three reasons. First, their most influential member states have fewer vested interests in South Sudan, compared to strong IGAD states such as Kenya and Uganda. Second, both institutions have a relatively strong executive and professional staff capable of leading a peace process (and staffing up as necessary), whereas IGAD has a weak executive unit and fewer experts in negotiations and peace processes. Third, at least in the case of the African Union, it has shown some willingness to pressure its members—for example,

suspending Egypt, Burkina Faso, Madagascar, Central African Republic, and Guinea-Bissau after coups in those countries—whereas IGAD has shown little will to do so.

In January 2017, IGAD, the African Union, and the United Nations announced that they had “reaffirmed their commitment and determination to further enhance their cooperation in support of the South Sudan peace process.”⁸ There should be much more progress in this regard. While U.N. Secretary-General António Guterres and AU Commission Chairperson Moussa Faki Mahamat—both in their first year in office—have prioritized conflict prevention and resolution, their attention to South Sudan has been inconsistent. But South Sudan is the single largest crisis in Africa today, and it requires more sustained and urgent engagement from U.N. and AU leaders and the institutions they represent.



Displaced people appeal for humanitarian assistance in a village west of Juba, as an UNMISS soldier watches. There are over 12,000 U.N. troops in South Sudan, but they face restrictions in their movement and operations. Kuda, South Sudan, September 2016. Photo: UN Photo/Isaac Billy

A shared leadership arrangement among the African Union, United Nations, and IGAD will require strong coordination among the organizations and personalities involved. Ultimately it is the United Nations that should, when necessary, play a leading role and drive any mediation given its perch at the apex of the international peace and security architecture—which also means the United Nations should limit deference to African leadership when that leadership is not productively engaged. IGAD members will need to take a more cooperative approach to working alongside the African Union and United Nations.⁹ Ethiopia, as an IGAD leader, current member of the U.N. Security Council, and home to the African Union, can play a key coordination role, and more so than other IGAD members seems ready to welcome a greater role for the African Union. The U.N. Office to the African Union, based in Addis Ababa and headed by an experienced diplomat with a long history on Sudan and South Sudan, is also a natural coordinator of joint efforts. That office provided some of the impetus behind the “Joint United Nations-African Union Framework for Enhanced Partnership in Peace and Security,” signed in April, which is intended to stimulate improved partnership between the organizations in response to crises. Nowhere is that partnership more important than in South Sudan.

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Planning for an enlarged U.N. and AU role should begin now, not wait until the IGAD revitalization process reaches its conclusion. The AU Peace and Security Department should be working closely with the United Nations to map out the next phase of a peace process to follow directly on the conclusion of the revitalization process, including by lining up the required staff. If the revitalization process drags beyond its projected

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October conclusion, the African Union and United Nations, with the support of the United States and others, should step in to bring it to conclusion.¹⁰

Simultaneously, the African Union and United Nations should start working closely with the key external actors, especially the Troika members, on a plan for how, as mediators, they can borrow and employ the leverage that the external actors can bring to bear through the pressures described above—and how their own institutions can generate additional leverage through increased pressures. The next phase of the peace process should include a timetable for when new pressures will be introduced as part of an escalation strategy that reaches to the highest levels of the South Sudanese government and opposition. That escalation strategy has to be lined up with a timetable for the peace process, so that when certain benchmarks are missed, pressures escalate, and so that those under sanctions and other pressures know what they need to do to have those pressures reduced.

External peace process spoilers should also come under greater scrutiny. Ugandan President Yoweri Museveni, in particular, shows little interest in building consensus among IGAD members for a coordinated peace strategy. He is pursuing a separate effort to reunify the ruling Sudan People's Liberation Movement that is a distraction from a broader peace process. This separate process is not coordinated with other peacemaking efforts, and even if successful will do little to address the drivers of violence. President Museveni can pursue such efforts in part because he knows the international community is indebted to him for Uganda's troop contributions to the peacekeeping mission in Somalia and, until recently, the regional mission to counter the Lord's Resistance Army. Nonetheless, his counterproductive South Sudan interventions should be recognized for what they are given the magnitude of the crisis. South Sudan currently presents a greater threat to regional peace and stability than Somalia. Some elements of continued U.S. and European support to Uganda should be conditioned on Uganda not pursuing counterproductive efforts in South Sudan. Kenya also appears to be pursuing independent peacemaking efforts which, if not coordinated with broader initiatives, also threaten to be counterproductive.

**There is a need to rebuild
the global sense of urgency
around ending the war in
South Sudan.**

As part of this reorganized international architecture, there is a need to rebuild the global sense of urgency around ending the war in South Sudan. That urgency has dissipated, even as violence and displacement intensifies. Efforts to refocus attention on South Sudan have found only limited traction, but they remain vital. Remarkably, there has been little effort to quantify the casualties in South Sudan. While the numbers of refugees, internally displaced people, and South Sudanese living in famine conditions are publicized, unlike in Syria or Darfur there has been no concerted effort to count the dead, even though there are scientific tools available to produce credible estimates. Developing an updated casualty figure, as well as estimates of victims of sexual violence, both of which are likely to be grim, is one strategy to reinvigorate international attention and urgency. Significant population displacements to refugee camps in neighboring countries can provide access to primary sources with information on conflict-related deaths. The government of South Sudan will be hostile to any effort to count the dead, as it will affect efforts to downplay the scope and impact of the conflict. But credible casualty estimates have been made for other hostile environments, such as in Darfur, and can be replicated for South Sudan's war.

Ensure inclusivity in peacemaking

The peace process should include and directly address the grievances and demands of a broad array of South Sudanese people, rather than the narrow interests of the leaders of the government and one rebel group. More inclusive peacemaking should:

Include unarmed groups and the issues they promote

Inclusivity should not be reduced solely to inviting unarmed groups to attend negotiations. Both *inclusivity of people* and *inclusivity of issues* are important to a more effective peace process. Including unarmed groups—representatives of women’s and youth groups, civil society organizations, traditional authorities, religious leaders, and political parties—is essential. But equally important is the inclusion of the community-level issues they promote. In the 2014-15 talks that led to the ARCSS, there were early efforts to involve civil society in negotiations, but enthusiasm later waned. As the South Sudan Young Leaders Forum notes, ultimately “there was not room for South Sudanese to discuss their issues.”¹¹

There are precedents in East and Central Africa for meaningful inclusion of unarmed groups in peace processes. For example, after violence engulfed Kenya following elections late in 2007, former U.N. Secretary-General Kofi Annan led a mediation process that closely involved Kenyan civil society. Annan met with civil society representatives for more than two days ahead of the formal negotiations, and former Mozambican first lady Graça Machel, also part of the mediation, repeatedly consulted with women’s organizations.¹² In another instance, in the Inter-Congolese Dialogue in the early 2000s, U.N. mediators ensured civil society participation in the process. As a result, civil society was part of power-

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sharing negotiations and was allocated positions in the transitional government. Through this process, Congolese civil society “questioned the legitimacy of the warring parties on both sides and challenged their respective claims of pursuing national interests through their struggle.”¹³

Before inviting unarmed stakeholders into any peace process, there is important advance work to be done. To

start, mediators and other friends of South Sudan should organize and support a series of parallel tracks of preparatory meetings of unarmed groups to help them move closer to common positions and to back those positions up with detailed arguments and plans. For example, there could be one track of preparatory meetings for civil society organizations, one track for political parties, and another track for faith-based groups and traditional leaders. There should be a series of meetings along each of these tracks, in the region but outside South Sudan, to discuss the details of what issues are essential to include in the peace process agenda and common positions on those issues. Friends of the peace process should divide up responsibilities in supporting these tracks—for example, the United States could be the lead supporter and facilitator for one of the tracks, the United Kingdom could support another, and Norway could support a third (ahead of the Inter-Congolese Dialogue, the Belgian Minister of Foreign Affairs convened such meetings of Congolese civil society organizations in Brussels, which helped them engage more effectively in the dialogue).¹⁴ This type of detailed preparatory work can help ensure that unarmed participants in the peace process are, in the words of the South Sudan Young Leaders Forum, providing “substantive contributions” rather than “procedural interventions,”¹⁵ and that their input proves so valuable and authoritative that they cannot be ignored. This preparation can also mitigate the potential risks of

involving more groups and voices in a peace process: that each will seek to advance its own narrow interests.

Simultaneously, people most affected by violence, who may or may not be connected to the organized unarmed groups discussed above, should have opportunities for their voices and ideas to be heard directly in a peace process. There are mechanisms that can help make this happen. For example, in the recent negotiations that led to a historic peace agreement in Colombia, a website was established to allow Colombians to share their views and make proposals on specific issues to the parties to the negotiation. This is the type of effort that could be replicated in some fashion, with modifications, to the South Sudanese context. A simple website could be established for those with internet access (including many in the diaspora), though it will be important that input is monitored for hate speech.¹⁶ Simultaneously, in refugee camps populated by South Sudanese people, there could be multiple series of community meetings to collect proposals to address specific issues, such as relations between Juba and the states and service delivery at the community level. At the same time, radio and other media tools can be used to inform South Sudanese people in and out of the country about the peace process, so that communication goes both directions.

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Input from unarmed groups and individuals should help define the range of issues to be incorporated into the peace process agenda. What matters most to many South Sudanese are day-to-day concerns that are ignored by both the government and the armed opposition, including delivery of basic services, provision of community-level security, and accountability for past crimes. If the United Nations and African Union are driving a new peace process, they have to argue for and defend, with the backing of the United States and others, the inclusion of these issues as a central part of the process and agenda, ensuring these issues are not compromised for the sake of an easier path to an agreement. If there is not clear inclusivity of groups *and* issues, any international funding or other forms of support to the peace process should be suspended. If the process comes to a point where the belligerents seek to whittle down the agenda to the issues only in their interests, international supporters of the process have to hold the line on inclusivity of issues. To do anything else risks repeating the failed efforts of the past.

Include armed groups

An emphasis on inclusivity also means that all rebel groups, including Riek Machar's faction of the SPLM-IO, should have the opportunity to participate in a peace process. The current international isolation of Machar, enacted in the interests of short-term stability, is ultimately counterproductive. Machar represents a constituency that cannot be ignored, and he should be reincorporated into the process as one of multiple participants.

At the same time, the peace process must adapt to the new realities of a metastasizing conflict, no longer between two parties, that continues to expand in scope and complexity. New actors have emerged to challenge the state, most prominent among them the National Democratic Movement led by Lam Akol and the National Salvation Front led by Thomas Cirillo. There are also signs of growing divisions within President Salva Kiir's power base, exemplified by the firing of former army Chief of General Staff Paul

Malong and by the competition among an increasingly small group of leaders over a shrinking pot of resources.

Such fractures only make peacemaking more difficult. The international community's track record in successfully intervening to promote the unification of armed groups is not good—one of the hard lessons learned from Darfur and elsewhere is that there are limits to what can be achieved once splits take hold, and there can be diminishing returns to efforts to reunite internally divided groups.

Rather than seeking to reunite groups, mediators and other friends of South Sudan should set clear criteria for what an armed group needs to do to participate in the peace process going forward. For example, if an armed group wants to be represented in the peace process, it should be asked to establish three committees—on humanitarian issues, security issues and governance—each of which is tasked with developing and articulating its positions on the relevant issues. If those positions are clear and reasonable, their representation should be strongly considered. In this way, access to the peace process can be tied to developing policy positions and new ideas which can be presented during negotiations, rather than solely to military progress on the ground. This incentivizes the search for solutions, rather than violence. When armed groups are able to clearly articulate their positions, and when they demonstrate common positions with other armed groups, they should be publicly recognized for doing so.

Inclusivity and accountability

Advancing accountability can be another form of inclusivity. Creating opportunities for people to share their experiences during war, as part of evidence collection and building cases against those most responsible for violence, allows them to be part of a broader healing process in response to war and help hold accountable the senior figures who are responsible for their suffering. The demand for accountability coming from the South Sudanese public is quite clear—there should be an equally clear response from those with the means to advance accountability, notably the African Union.

Accountability efforts are often long-term endeavors. Chadian dictator Hissène Habré left office in 1990 after committing a range of abuses during his tenure, and he was only convicted in May 2016 by the Extraordinary African Chambers in the Senegalese court system. Nonetheless, initiating investigations and establishing institutions for accountability can also produce short-term leverage, as these steps increase pressure on those most responsible for abuses. Initiating investigations can undermine assumptions of impunity that many armed groups and high-ranking officials carry. Investigations can help fortify rule of law more generally, and these processes signal that popular demands for justice are heeded. Some argue that there is a tradeoff between peace and justice—that one must be prioritized over the other, with peace usually winning out—but in South Sudan peace and justice can be mutually reinforcing, as the absence of justice continues to fuel violence.¹⁷

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Regardless of the fate of the ARCSS, the call in the agreement for creation of the Hybrid Court for South Sudan should be a central focus for the African Union. Despite some recent progress toward establishing the court, it remains unlikely that the Juba government will provide genuine backing. Even so, as others

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have noted,¹⁸ there is a legal argument for why the African Union currently has the authority to establish a court, or at least initiate investigations, based on Article 4(h) of the African Union charter, which affirms “The right of the Union to intervene in a Member State pursuant to a decision of the Assembly in respect of grave circumstances, namely war crimes, genocide and crimes against humanity.” By some interpretations, this can apply both to military and to accountability interventions. Furthermore, the AU Commission of Inquiry report on South Sudan called for the creation of such a court. Given this legal foundation, the African Union should, at a minimum, proceed with initiating formal investigations.

In those investigations, preservation of the chain of custody for evidence is critical. The move by the U.N. Human Rights Council to expand the mandate of the Commission on Human Rights in South Sudan to include the responsibility to “collect and preserve evidence of, and clarify responsibility for alleged gross violations and abuses of human rights and related crimes”¹⁹ is important, and it is essential that the Commission have the necessary funds and staff and a mandate that goes beyond one year. A further step would be for legal experts to comb through the many different streams of human rights reporting that have been collected by different institutions and organizations to determine if they contain evidence that will stand up in court, which could also be done by the Commission on Human Rights in South Sudan if it is properly resourced.

Simultaneously, engage outside Juba and take a longer view

While many of the steps detailed above focus on political developments in Juba and the East Africa region, there should be a parallel, intensified track of international engagement in parts of South Sudan beyond the capital. To start, the international community should increase support to local peace agreements between communities. For instance, the Bari and Mundari communities signed a peace deal that has helped to mitigate violence between the communities.²⁰ Likewise, the agreement between the Mundari and Bor Dinka signed two years ago has been crucial to halting feuds between them.²¹ Local dialogues and reconciliation efforts are happening at local levels—some driven by faith groups, notably under the auspices of the Action Plan for Peace, a joint effort by churches of multiple denominations²²—and these efforts similarly deserve sustained international support, while ensuring they remain South Sudanese initiatives. Such dialogues can be a stabilizing force and lay the foundation for broader reconciliation. While the process of creating the 32 states has been fraught and contravenes the ARCSS, the international community should engage with the subnational leaders who are seeking to foster social cohesion at the community level and bring people together around common, shared interests for peace. If it is possible to help South Sudanese people establish pockets of stability and resilience in parts of the country, these areas over time can serve as building blocks for broader stability.

There is also a need for long-term planning for how South Sudan moves beyond the leadership of the current “liberation generation” of those who led the struggle for independence, and toward a broader, shared understanding of national unity and identity. This is a project that only South Sudanese people can lead, but the international community should support this effort with funding, physical space, and technical support. For example, donors can support South Sudanese nongovernmental organizations and think tanks in a “thinking over the horizon” process that envisions how South Sudan might look in 20 years and considers the various paths leading in that direction. While it is difficult to advance these types of conversations in the midst of war, it is also impractical to wait until fighting subsides.

Conclusion: Follow-up, South Sudanese ownership, and international leadership

If a revised peace process leads to either a new agreement or a substantially reformed version of the ARCSS, concerted follow-up will be essential. After the ARCSS was signed, much of the international community turned its attention elsewhere and withdrew pressure on the parties before there was meaningful progress on implementation, during a time when the parties had not developed the trust needed to move forward together without reverting to hostilities. The Joint Monitoring and Evaluation Commission (JMEC) was put in place to oversee ARCSS implementation, but it had no ability to pressure the parties when implementation lagged or the agreement was blatantly violated. Such an error should not be repeated; any new agreement should be accompanied by an oversight body with greater authority, persistence, and pressure tools at its disposal. That oversight body should include, and carve out a robust role for, unarmed groups in driving and overseeing implementation, so that their inclusion in the peace process is carried over into implementation.

Ultimately, a successful peace process will be one owned by the South Sudanese people. Any revised process will need to produce an agreement that directly addresses their core grievances and daily hardships. But the need for South Sudanese ownership is no excuse for international inaction. The absence of regional and international leadership on South Sudan—compared to other current crises, and given the scale of devastation—is a dereliction of responsibility. As described above, there are steps that the United States and others can take now to change dynamics on the ground. Without bold moves in support of South Sudanese demands for peace, the crisis will only grow.

Endnotes

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- ³ The narrative summaries associated with U.N. sanctions issued in July 2015 on Gabriel Jok Riak, Simon Gatwech Dual, James Koang Chuol, Santino Deng Wol, Marial Chanuong Yol Mangok, and Peter Gadet are available at <https://www.un.org/sc/suborg/en/sanctions/2206/materials/summaries>.
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- ⁹ Unfortunately, the matrix of activities that are part of the IGAD revitalization process shows only a very limited role for either the African Union or United Nations.
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- ¹¹ South Sudan Young Leaders Forum (SSYLF), “#SSYLF Proposal on Political Process to End Armed Conflict in South Sudan,” May 2017, on file with Enough.
- ¹² African Union and Centre for Humanitarian Dialogue, “Managing Peace Processes: Towards more inclusive processes: A handbook for AU practitioners,” p. 43 (Addis Ababa and Geneva, July 2013), available at <https://www.hdcentre.org/wp-content/uploads/2016/07/AU-Handbook-Volume-III-Making-Processes-Inclusive-July-2013.pdf>.
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- ¹⁴ Ibid.
- ¹⁵ South Sudan Young Leaders Forum (SSYLF), “#SSYLF Proposal on Political Process to End Armed Conflict in South Sudan.”
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