



PRINCETON N. LYMAN
E-mail: plyman@usip.org

JON TEMIN
E-mail: jtemin@usip.org

SUSAN STIGANT
E-mail: sstigant@usip.org

Crisis and Opportunity in South Sudan

Summary

- Ongoing negotiations to end the South Sudan crisis cannot simply return the country to the previous status quo. For lasting peace, the negotiating parties and mediators will need to reach beyond national political elites and those bearing arms and invite active involvement of the international community.
- South Sudan needs to build national cohesion and address fundamental issues of governance, democracy, and human rights. Restarting the stalled constitution-making process presents an opportunity to achieve these objectives.
- Following negotiations, a broad-based, inclusive, interim government that includes a degree of joint South Sudanese-international community administration and management should govern and ensure preparations for new elections.

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Introduction

Only two and a half years removed from its birth, South Sudan is in crisis. A political dispute between President Salva Kiir and Dr. Riek Machar, his former vice president, has quickly taken on ethnic overtones and escalated into widespread fighting, with dire consequences. The exuberance and optimism that accompanied independence is all but lost. In its place is fear of another failed state and civil war in the heart of Africa.

Negotiations between delegations representing President Kiir and Dr. Machar have started in Ethiopia under the auspices of the Intergovernmental Authority on Development (IGAD), an organization of eight East African countries. The negotiations have so far focused on securing a ceasefire, a positive first step to bring an immediate end to the killing, destruction, and displacement. But this is only the first of many steps. Horrible as the violence since mid-December has been, the crisis also presents an opportunity to address unresolved issues and put South Sudan back on the path of democratization, good governance and peace—a path from which it deviated well before the current crisis.

First Principles

The negotiations should be guided by three core principles.

- First, there cannot be a simple return to the previous status quo. Too much blood has been spilled, and the status quo will not solve the underlying problems that led to the crisis. Indeed, no short-term agreement will be sufficient if it does not lead to a longer process

that addresses the underlying problems in South Sudan's political system and chart a future that will be acceptable to most parties. A return to the status quo, in either the government or leading political party, only invites repeated failure.

- Second, the negotiations should reach beyond national political elites and those bearing arms. State-level officials must be consulted, engaged and informed about the agenda, issues and options for agreement. Members of parliament ought to be briefed regularly and encouraged (and supported by international partners) to update their constituents. Civil society should have a robust role, serving as a mechanism for citizen input to negotiators and mediators and monitoring deliberations. Regular press conferences are needed to inform media so that radio, newspapers, and social media can help to quell misinformation and rumor, rather than incite violence. Youth and women must be present and heard from. A narrow bargain among elites, which has been the standard practice in negotiations in Sudan and South Sudan, only perpetuates the exclusionary and corrupt politics that are one cause of the crisis, and will inevitably lead to future crises. The constitution-making process is one way to move beyond the pattern of elite deal-making—provided that the mediators encourage this as part of the talks.
- Third, the international community must play an active role in helping to define the long-term process crafted during negotiations and be a substantive participant in it. Governments, regional organizations, nongovernmental organizations and concerned individuals around the world have been seized by the crisis and responded with relative haste. A major increase in U.N. peacekeepers is in the works, more than 60,000 South Sudanese are under U.N. protection, and the costs of picking up the pieces of the economy and restoring stability will fall heavily on donors. South Sudan's history, notably the extensive international support for its people's right to self-determination and pressure on Khartoum to accept the referendum result, also sets it apart from other fragile states. This history places additional responsibilities on the international community (especially the United States, given its strong support for South Sudan), and puts an additional onus on South Sudan to constructively engage the outside world. The international community, as guarantors, monitors, donors, advisors and mentors, must insist that it be a constructive party to how this conflict is brought under control and South Sudan's future is defined.

Constitution Making

The process of developing a permanent constitution has the potential to be a vehicle for nation building and reform in South Sudan. Work on the constitution has been stalled for some time. Reasons for the delay included inadequate funds due to austerity measures, a hands-off approach by the political leadership who had come under criticism for how they developed the Transitional Constitution and who demonstrated little commitment, and significant constraints on media, civil society, and "opposition" voices which in turn impaired efforts to initiate education and dialogue. As a result, international donors and partners hesitated to commit support, which only compounded the financial gaps and absence of an effective political champion.

This failure presents an opportunity, and revitalizing and reforming the moribund constitution-making process should be a South Sudanese and international priority. The parties need to renew their commitment to a constitution-making process that models democratic principles and sets the stage for peaceful, credible elections. For this to happen, there must be sufficient resources and support. And there must be an understanding that constitution-making is not strictly a technical exercise. Rather, constitution making should be a vehicle to define a national vision, forge a

national identity, and rebuild trust between citizens and leaders, among citizens and between communities. Through nationwide civic education, consultations and dialogue, South Sudanese must be encouraged to freely discuss fundamental principles: how powers are shared between the national, state and local governments; how freedoms and human rights are guaranteed and protected; how financial resources are raised and shared (especially sharing of oil proceeds across states); principles for multiparty politics and internal party processes; and how powers are divided across the executive, parliament and judicial branches of government to ensure accountability. Questions of term limits, rotating leadership, sequencing and timing of elections and other ideas should also be debated.

The process cannot succeed without fundamental changes. The National Constitution Review Commission has little to show after two years, and the continued efforts by individual staff and members will not bear fruit without significant structural reforms. Negotiators should look to the 2011 referendum as a model of an effective process. For example, negotiators should ask: Does the current constitution-drafting body enjoy the trust, respect and relationships (within South Sudan and with international partners) as did the Southern Sudan Referendum Committee (SSRC), which was ably chaired by Chief Justice Chan Reec Madut? Does the commission have clear counterparts and sufficient gravitas to negotiate a balance between independence from the executive and cooperation with the government, as did the SSRC?

Negotiators should also consider proposing a constitutional amendment to make the process more people-centered. This could be achieved by extending the period for the national constitutional conference, guaranteeing participation by state and local representatives and providing for adoption through a popular referendum. Any proposed amendment should be introduced according to law, debated by parliament, and subject to popular input. Given their positive relations with South Sudan, South Africa and Kenya may be able to provide advice on and support to such a process.

The constitution should also incorporate a clear commitment to accountability and mechanisms to investigate, document, and address alleged human rights violations and atrocities. Accountability has been brushed aside in all of Sudan's previous peace agreements, including the celebrated Comprehensive Peace Agreement. If that happens again, many South Sudanese, especially victims of politically-motivated violence, will see any new agreement and constitution as business as usual, and the process will again result in failure and violence. There are many possible models, among them truth commissions, trials, reparations, and hybrid or international courts. The negotiating parties should commit to supporting the design and implementation of a fair, transparent and legitimate process. Further, negotiating parties and mediators should consider whether individuals who fail to subject themselves to the agreed authority and procedures—as witnesses, victims or alleged perpetrators – should be excluded from participating in government for a period or face other sanctions. For its part, the African Union and broader international community should insist on accountability mechanisms that have credibility with the South Sudanese population.

Finally, international experts and advisors should have a formal role in the constitution-making process. There is some precedent for significant international participation in a country's constitution making. Namibia's constitution was developed with international participation as a prelude to its independence. Kenya invited two international experts to serve on the committee that prepared the constitution for the 2010 referendum following the 2008-2009 post-election violence. The circumstances in South Sudan are different than those in Namibia and Kenya. Nonetheless, international participation in South Sudan could complement (and should support) national expertise and robust civil society engagement to prevent elite deal-making that ignores the interests of the general public and build confidence among various communities about the process—and even the outcome.

The Interim Phase

If the negotiating parties are assured that the constitution-making process will address their fundamental concerns, then negotiations should turn to how South Sudan should be governed between now and the next elections, currently slated for 2015. These conversations should address who governs, how decisions are made, and what other transformation processes need to be prioritized.

It is unlikely that President Kiir would agree to step down as part of any agreement, nor would that be the likely position of international mediators. He is the elected president. But there could be agreement on a broad-based government of national unity until the next elections. The interim government should be broadly representative of ethnic groups, geography, and political leaders, including some of the senior politicians of the Sudan People's Liberation Movement (SPLM) detained when the crisis erupted.

During this interim phase, a degree of joint South Sudanese-international community administration and management should be instituted. The international community can reasonably insist on this until the next elections, as much of the burden from this conflict will fall on the donors. One potential model to consider comes from Liberia, where the Governance and Economic Management Assistance Program (GEMAP), though not perfect, instituted significant international community oversight of expenditures in an effort to combat widespread corruption, which is also a factor in South Sudan's political impasse.

Drawing on the GEMAP model and other similar experiences, a joint South Sudan-international community committee should be established to assess the state of the oil sector, the economy, and how damage from the current conflict will be addressed. The government in Juba should submit its budget and plans for approval to this committee. After this crisis, it would be a mistake to return to budgeting and aid programs as before.

During the interim phase, a deliberate and sustained process of national reconciliation and healing should be prioritized. A reconciliation process, led by the Church-based Committee for National Healing, Peace and Reconciliation, was already underway before the crisis. The process started in mid-2013 and has made cautious progress so far, and takes on greatly added importance in the current context. At the same time, this process cannot be burdened by outsized expectations. Any reconciliation process should be kept at arm's length from the government, especially if the government is seen by some as instigating violence. It should benefit from external assistance and support, but not be smothered by well-intentioned outsiders. The ongoing negotiations should address how the reconciliation process will interact with the constitution-making process, and solicit commitments from all parties to participate in, and never impede, reconciliation. Church leaders should be brought into the negotiations at the appropriate stage to ensure that the reconciliation process is protected and prioritized. As with constitution making, this is an area where South African expertise and experience can be valuable.

Another major task during the interim phase will be standing down of military activity on all sides. Ending fighting and providing humanitarian access on the ground – both of which should be agreed to at the start of negotiations – have to be the first steps. Eventually there must be reintegration of divided military units into the Sudan People's Liberation Army (SPLA) and, over time, a thorough disarmament, demobilization, and reintegration process. But this can only succeed in the context of the political processes discussed above. In the interim, the enlarged U.N. Mission in South Sudan (UNMISS) should assume a greater role monitoring any ceasefire and protecting civilians.

ABOUT THIS BRIEF

This brief analyzes the crisis in South Sudan and strategies for building lasting peace in the young country. Ambassador Princeton N. Lyman is a special advisor to the president of the United States Institute of Peace and the former United States Special Envoy to Sudan and South Sudan. Jon Temin is the director of the Africa program at the U.S. Institute of Peace. Susan Stigant is a senior program officer at the U.S. Institute of Peace. The views expressed here are those of the authors, and do not necessarily reflect the view of the U.S. Institute of Peace, which does not take policy positions.

As the ruling party, the SPLM leadership must commit to undertaking significant internal reforms to overcome the weaknesses revealed in the current conflict. An interim party leadership structure and bodies will need to be formed until a new convention can be held. Nomination procedures for candidates for local, state, and national positions need to be freely debated. Regular communication between the local bodies, secretariat, and leadership structures need to be implemented. Focus needs to shift from competition over titles to tolerating – and encouraging – constructive policy debate, open dialogue, and productive dissent both within the SPLM and with other parties. And if visions for the future of the party and its policies cannot be reconciled, the negotiating parties and mediators may need to consider reaching agreement on principles and a process for the peaceful dissolution of the SPLM and formation of new parties.

Most important, during the interim phase the government should prioritize delivery of services and addressing the basic needs of South Sudanese. South Sudan cannot afford to wait to rebuild and improve the lives of citizens. Only by building roads, providing clean water, training teachers, and ensuring primary health care can the civil service and government begin to foster the trust of its citizens and rebuild society and the economy. Without development and security, people will not have the luxury to think, much less debate, about their constitution and future. And without a state that can deliver, South Sudanese will continue to depend on ethnic allegiances rather than a strong national identity.



**UNITED STATES
INSTITUTE OF PEACE**

2301 Constitution Ave., NW
Washington, D.C. 20037

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