



United States Institute of Peace

South Sudan's Conflict and Famine

**Testimony before the Senate Foreign Relations
Subcommittee on Africa and Global Health Policy**

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Chairman Flake, Ranking Member Booker, and Members of the Subcommittee, thank you for convening this hearing on South Sudan and for the opportunity to testify today. The views I express here are my own and do not represent those of the U.S. Institute of Peace or the UN Panel of Experts on South Sudan, of which I was the coordinator from its inception in May 2015 until April 2017.

Three and a half years after an elite power struggle precipitated the outbreak of civil war, conflict has engulfed every part of South Sudan. Both the state itself and a 2015 peace agreement have failed—and catastrophically so: South Sudan is the world’s fastest growing refugee crisis, at least one third of the population is displaced internally or in neighboring states, and 6 million people—more than 60% of the population that remains—are severely food insecure.

The war has mutated into an existential struggle between tribes and, increasingly, among sub-clans within tribes as the centrifugal forces tearing the country apart accelerate, with no end in sight. In a study conducted by the South Sudan Law Society using the Harvard Trauma Questionnaire, 41% of South Sudanese exhibited symptoms consistent with post-traumatic stress disorder (PTSD)—rates comparable to those of post-genocide Rwanda and post-genocide Cambodia. That was two years ago.

But the human cost of the war is just one part of the story. More fundamental to U.S. interests are the increasingly dire consequences for regional security posed by South Sudan’s dissolution. South Sudan sits at the nexus of intensifying competition among five of the United States’ core counter-terrorism partners in the region—Egypt, Ethiopia, Kenya, Sudan, and Uganda—and left unresolved, the conflict there risks provoking a larger regional war.

Construction of the Great Ethiopian Renaissance Dam (GERD)—the largest infrastructure project in the country’s history on which Ethiopia’s ruling elite has staked considerable prestige—will likely be completed within the next year. A core narrative of President Abdel Fattah Al Sisi’s government, however, is that Ethiopia exploited Egypt’s weakness during the rule of Mohammed Morsi to secure the acquiescence of the regions’ other states to the GERD project, isolate Egypt, and violate long-standing agreements on the use of the Nile water that date to British colonial rule.

With Sudan having backed Ethiopia on the GERD, South Sudan’s president, Salva Kiir, has deflected pressure from Addis Ababa, which has to date led the regional mediation effort to negotiate an end to the war, by playing his advantage with Cairo. In exchange for aligning with Egypt on the Nile dispute, Kiir has secured Egyptian support in the UN Security Council—where Ethiopia and Egypt both currently hold seats—and in the African Union. Sudanese President Omar Al Bashir has publicly accused Egypt of providing arms to Kiir’s regime, and the UN Panel of Experts on South Sudan has documented sales of equipment from Egypt to Kiir’s military. Despite signing two protocols with Ethiopian prime minister Hailemariam Desalegn pledging not to support armed groups in each other’s territories, there are multiple reports that Kiir has allowed Egypt to train Ethiopian armed opposition groups within South Sudan, possibly with

Eritrean collusion, while several prominent South Sudanese opposition leaders move freely in and out of Addis Ababa. Ethiopia has also blamed Eritrea for orchestrating an attempted attack on the dam in March.

In addition, Uganda and Ethiopia's competition for regional hegemony, Uganda and Sudan's competition over South Sudan, and the demonstrated willingness of all four states to engage militarily across their borders compounds the volatile regional puzzle. In 2012, Sudan and South Sudan engaged in a military confrontation along the border that nearly escalated into a full-scale war, and both provide support to rebel groups operating in each other's territories. Uganda deployed several battalions into South Sudan at the beginning of the civil war in 2013 to protect the government from the armed opposition. The Ethiopian Defense Forces (EDF) have undertaken operations into South Sudan in response to raids into western Ethiopia by South Sudanese tribal militia.

The escalation of Egyptian-Ethiopian and Egyptian-Sudanese competition in South Sudan, inevitably drawing Uganda, and potentially Kenya, into the fray, will compromise the regional counter-terrorism architecture in which the United States has invested so heavily. U.S. security assistance to Egypt exceeds that of every other country in the world except Israel, and in the last three fiscal years, the United States has also provided over \$223 million to Uganda and over \$92 million to Ethiopia.

In 2002, former Ethiopian prime minister, Meles Zenawi, in fact predicted a "nightmare scenario" for the Horn of Africa involving an unstable South Sudan and Egyptian-Ethiopian competition.¹ Yet the current geopolitical dynamics are more complicated than Meles even predicted given the increasing political and financial commitments in the region by two other U.S. partners—Saudi Arabia and the United Arab Emirates—including with Eritrea in exchange for assistance in prosecuting the war in Yemen; with Sudan in exchange for its shift away from Iran; and with Egypt to shore up Sisi's regime against the Muslim Brotherhood and ISIS. Qatar has also invested substantial political and financial capital in Sudan over the last decade. The result is that a war sparked by South Sudan's deterioration is in fact part of a broader "Red Sea security challenge," the implications of which have come into sharp relief with the recent Egyptian, Saudi, Emirati, and Bahraini confrontation with Qatar.

The humanitarian emergency in South Sudan and consequent refugee flows have further exacerbated these security challenges in a region whose population is projected to increase by 40% in the next 15 years and by at least 105% by 2050.² Given these expected demographic trends, it is not hard to imagine an exponential increase in refugee flows out of the Horn of Africa should a regional war erupt out of South Sudan's civil war. One need only look to the lesson of the Rwandan genocide to see how a horrific humanitarian crisis resulted in a mass exodus of the population and sparked a broader war in Congo in which nine African

¹ Alex de Waal, "Africa's \$700 Billion Problem Waiting to Happen," *Foreign Policy*, March 17, 2016.

² 2016 World Population Data Sheet (Washington, DC: Population Reference Bureau, 2016)

governments ultimately became involved. There are no perfect historical analogies. But as the adage holds, history may not repeat itself, but it often does rhyme.

The United States therefore has not only a clear moral reason to invest in ending South Sudan's war but a compelling security interest in doing so. The United States remains the largest donor to humanitarian relief efforts as well as, through its treaty obligations, to the UN peacekeeping force in the country. But neither humanitarian aid nor peacekeeping is going to solve what is fundamentally a political problem requiring a political solution.

While the Intergovernmental Authority on Development (IGAD) is attempting to revitalize the collapsed 2015 peace agreement, the myriad challenges to the success of this effort—not least the lack of any discernible desire by the belligerents to end the war—warrants consideration of a new and more productive diplomatic strategy. The July 20 statement by the United States, the United Kingdom, Norway, and the European Union indicating a “wait and see” approach to the revitalization effort before committing further resources to support implementation of the agreement underscores the urgency of laying the foundation for such a strategy.

Fortunately, South Sudan's civil war is not as intractable as Syria's. There are no great power politics at play. There is no competition between the United States and another external actor such as Iran or Russia. There is no evidence of the presence of jihadi elements. South Sudan's brutal conflict can be ended, but doing so will require robust leadership and commitment from the United States and recognition of **six fundamental truths about the war**.

First, to paraphrase Tolstoy, every failed state fails in its own way. Despite the very real risk of the war escalating into genocide, South Sudan is not Rwanda, and one million people may not be killed in the span of 100 days, as tragically occurred there. That does not, however, absolve the United States or the rest of the international community—including the United Nations, the African Union, IGAD collectively, South Sudan's neighbors individually, or our European partners—from the responsibility of taking urgent action to end the war. The fact is that the South Sudanese nation is abandoning their state—the one million South Sudanese who have fled into Uganda alone, most in just the last twelve months, is a clear illustration. The country is slipping away, perhaps irreparably, and the time to act is now.

Second, we cannot be overwhelmed by the complexity of the war and claim that as an excuse for an ineffectual response. Notwithstanding the regional Rubik's cube outlined above and the fact that the conflict is no longer a binary one between two warring parties, it is possible to take stock of the various drivers of conflict, identify the determinative actors on the ground, and conceptualize and execute a strategy for defusing the crisis.

There are five civil wars unfolding within the country's broader conflict: a war of resistance against Kiir's regime in Juba by the population of the surrounding Greater Equatoria region; a land contest between the Dinka and the Shilluk in Upper Nile; an intra-Nuer war in Unity; a drive to establish Dinka primacy in Greater Bahr el Ghazal; and diversionary “crises of convenience” in Lakes and Jonglei that have been exploited by Kiir and his allies. Utilizing the

insight and expertise of a number of South Sudan scholars, the U.S. Institute of Peace (USIP) is mapping these conflict theaters and the individuals who are decisive in each. Smart diplomacy that accounts for specific interests and is backed by the credible threat of punitive consequences can leverage these individuals into drastically reducing the violence.

Third, while there is no shortage of bad actors in South Sudan, the UN Panel of Experts and other international investigations have provided extensive evidence indicating that President Salva Kiir and his allies now bear the preponderance of responsibility for the largest scale violence, for instigating mass displacements, for inciting tribal hatred, and for the obstruction of humanitarian assistance. History suggests that successful negotiated settlements to other civil wars have depended on a stalemate when the parties no longer believe in the prospect of military victory.³ However, the absence of an arms embargo; the ill-conceived isolation of the main opposition signatory to the 2015 agreement, Riek Machar, and by extension his faction of the Sudan People's Liberation Movement in Opposition (SPLM/IO); and the failure by the guarantors and witnesses of the peace agreement, including the United States, to impose any meaningful consequence for violations of the agreement, including its reform and security provisions, have ceded military dominance on the ground to Kiir and his regime, leaving little incentive to compromise.

We have seen the devastating consequences of this failed approach as the regime has continued large-scale military operations throughout the country, even during the current rainy season and despite its declaration of a unilateral ceasefire. Creating the conditions for a negotiated settlement will therefore require either a degradation of the Kiir regime's capacities or an enhancement of the opposition's.

Fourth, external actors—and the United States in particular—possess multiple leverage points to shift the power dynamic vis-à-vis Kiir and Juba and underscore the unviability of a military solution. A resolution to the civil war is not possible without the constructive engagement of Uganda, Sudan, Ethiopia, and Kenya—four states upon whom the United States has unique influence.

The UN Security Council and the AU Peace and Security Council must impose an arms embargo on South Sudan, and the United States must bring its leverage to bear to enforce that embargo, particularly upon Uganda, the main transit point for arms and ammunition to Kiir's regime. At the recent Solidarity Summit on Refugees co-hosted in Kampala by Ugandan President Yoweri Museveni and UN Secretary-General Antonio Guterres, donors pledged over \$350 million dollars to support Uganda in dealing with the refugee flows. Yet weapons transfers to South Sudan documented by the UN Panel of Experts that have either been facilitated through or by Uganda in the last three years suggest the price of these sales may equal or even exceed these donor pledges.

³ Kenneth Pollack and Barbara F. Walter, "Escaping the Civil War Trap in the Middle East," *Washington Quarterly* 38, no. 2 (Summer 2015): 34; see also I. William Zartman, "Ripe for Resolution: Conflict and Intervention in Africa" (New York: Oxford University Press, 1989).

The contradiction whereby Uganda continues to empower and embolden Kiir's regime on the one hand and then receives international assistance for managing the humanitarian fall-out of the regime's actions must be resolved. Uganda is the largest recipient of U.S. military assistance in sub-Saharan Africa, and the United States can and should make clear that that assistance is contingent on Uganda ending its support for Kiir's brutal regime and using its influence on Kiir to support a new diplomatic strategy to end the war.

The United States also has significant leverage over Khartoum as a result of the three-month extension of the decision on sanctions relief announced by the Trump Administration earlier this month. Cooperation with the United States on South Sudan was one of the benchmarks for sanctions relief under the agreement that the Obama Administration concluded with Sudan shortly before it left office. Unfortunately, that cooperation was defined by the outgoing administration primarily as isolating Machar, which, as described above, has proven counterproductive and a waste of the political capital that the sanctions relief discussion generated. Sudan has taken important steps to allow vital cross-border humanitarian access into South Sudan, but there is not a humanitarian solution to the war. The United States can and should use the next 90 days to illicit Sudan's cooperation on a new political initiative to end the conflict.⁴

Ethiopia is a vital political and security partner of the United States, and any new strategy must build on this important relationship. As the chair of IGAD, Ethiopia has led the mediation efforts to end the war. With that effort having failed as a result of the parties' lack of goodwill, the United States must work closely with Addis Ababa in developing a new way forward, including in managing the often-fraught dynamics within IGAD.

Kenya has played a fairly muted role in South Sudan in recent years, despite its deep involvement in negotiating the end to the Sudanese civil war that ultimately resulted in South Sudan's secession from the north. However, much of the ill-gotten wealth of the South Sudanese elite responsible for instigating and prosecuting the war is held in Kenyan banks, and the U.S. Treasury Department has the capacity both to investigate the disposition of these funds and to increase the reputational risk to these institutions for complicity in financing the conflict. At the very least, Washington could better prioritize South Sudan in its bilateral discussions with Nairobi so that Kenya plays a more productive role as a partner in U.S. diplomatic efforts.

The United States can also exert direct leverage on Kiir's regime by applying financial pressures that do not require the UN Security Council, have gone unutilized, and in many cases have not even been thoroughly considered in the policy debate. In addition to targeted asset freezes on specific individuals, these include modernized sanctions, direct anti-money laundering

⁴ Cooperation on South Sudan was one of five "tracks" that constituted the agreement between the Obama Administration and the Sudanese government. The focus in this testimony on the South Sudan track is not intended to elevate that above the other four but rather to concentrate on the topic of this hearing.

measures, multilateral anti-money laundering measures, and diplomatic pressure on corporations and financial institutions doing business with the regime. The Enough Project has done important work to describe at least 15 different options for operationalizing these measures, any combination of which would be a watershed in terms of international pressure on the regime.⁵ The United States can also block the regime's access to support from international financial institutions such as the World Bank and the International Monetary Fund (IMF).

The United States can further play an important role in defining the international legitimacy—or lack thereof—of Kiir's regime, which would be instrumental in re-balancing the power dynamics to create an environment more conducive to political negotiation. The legal legitimacy of the government is in fact questionable for a number of reasons. The legitimacy of the government derives from the 2015 agreement and the transitional government of national unity envisioned in that agreement. The government has not, however, implemented any of the meaningful elements of that transition and, particularly after Machar was expelled from Juba by force and subsequently removed from the government, it is neither nationally unifying nor inclusive of any elements of the armed opposition. As a result, the government in practice satisfies none of the characteristics stipulated for that government in the agreement.

In addition, Kiir's term as president as well as the terms of the members of the national assembly—which were set to expire in July 2015—were extended in spring 2015 by a parliament that did not include members of the opposition, who had been expelled at the outbreak of the war. However, because the agreement has not in fact been incorporated into the constitution, as the agreement itself required, the transitional government of national unity has never actually existed as a legal entity. Therefore, is the current regime the government whose term expired in 2015, the government whose mandate was extended in 2015, or the government allegedly established by the peace agreement in 2016?

It is also noteworthy that there are numerous precedents in international law for deeming a government illegitimate if it has engaged in international crimes in violation of major treaties such as the Geneva Conventions, to which South Sudan acceded in 2012. The AU Commission of Inquiry on South Sudan led by former Nigerian President Olusegun Obasanjo in fact found that war crimes and crimes against humanity “were committed pursuant to or in furtherance of a State policy.”⁶ As the head of state at that time, Kiir would bear responsibility for these crimes.

The ambiguity over the government's legitimacy provides the United States ample rationale to de-recognize the Kiir regime and/or downgrade its diplomatic relationship with it, by for example, choosing to no longer accredit an ambassador to South Sudan, as has been the case in Sudan since the mid-1990s. The political consequence of the United States even considering de-

⁵ Brad Brooks-Rubin, “Yes, We Have Leverage: A Playbook for Immediate and Long-Term Financial Pressures to Address Violent Kleptocracies in East and Central Africa,” The Enough Project, June 2017.

⁶ Final Report of the African Union Commission of Inquiry on South Sudan,” October 15, 2014, <http://peaceau.org/uploads/auciss.final.report.pdf>

recognition of Kiir and his regime, alone or in tandem with partner governments, could be impactful in altering Kiir's calculations, not least because it would call into question his privileges and immunities as a sitting head of state.

As a former U.S. diplomat who believes firmly in the value of robust American diplomatic engagement around the world, I do not propose the withdraw of our ambassador lightly. Nor am I suggesting that the U.S. entirely draw down its diplomatic presence in South Sudan. However, recognition that the Kiir regime is not a government in any real sense could in fact reinforce diplomatic efforts to bring the war to an end and salvage South Sudan's sovereignty.

Fifth, the 2015 agreement provides for the establishment of a hybrid court to prosecute those responsible for crimes and human rights abuses conducted during the war. The African Union is mandated to establish the court, and the chairperson of the African Union is mandated to select and appoint the judges, prosecutors, defense counsel, and the registrar. While the agreement stipulates that the transitional government of national unity should adopt legislation to establish the court, the African Union is not constrained by this provision and can appoint judges and prosecutors at any time. Furthermore, there are a number of legal bases for the hybrid court outside of the agreement, meaning that the hybrid court can proceed even if there is international recognition that the agreement has collapsed.⁷ There are some signs suggesting that the African Union is starting to operationalize the court, and these should be both encouraged and expedited.

Importantly, the often-debated tension between peace and justice is not relevant in the South Sudan context, where they are uniquely reinforcing. As the lack of justice is in fact one of the drivers of the war, concrete progress in establishing the court could not only have a meaningful impact on the calculations of Kiir and others in the regime who fear prosecution but would provide a non-violent mechanism for addressing the grievances of a traumatized and victimized society where the line between unarmed civilians and armed groups is blurred.

⁷ Kate Almquist Knopf, "A Path to Justice in South Sudan," Africa Center for Strategic Studies, July 1, 2017. There are four separate legal bases for the hybrid court outside of the 2015 agreement: First, the African Union Commission of Inquiry, operating under the mandate of the African Union Peace and Security Council, recommended its creation. Second, the IGAD heads of state, including Kiir, signed a protocol in August 2014 containing guidance that individuals found by the African Union Commission of Inquiry to have committed human rights violations would be prohibited from participating in the transitional government of national unity. Third, Article 4(h) of the Constitutive Act of the African Union lists as one of its principles "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." This provision is often interpreted as a justification for military intervention. However, Article 4(h) also provides a legal anchor for a wider range of interventions, including the creation of a judicial body to prosecute those that commit these crimes. Fourth, IGAD as a sub-regional intergovernmental body exercises "delegated" functions in relation to regional peace and security. Within the African Union's Peace and Security Architecture, regional organizations such as IGAD are integral to conflict resolution but occupy a rung lower than the African Union, which itself sits in a subordinate relationship to the UN Security Council. Having delegated the peacebuilding responsibilities to IGAD, the African Union is well within its authority to take up the entire process itself, if it deems warranted.

Sixth and finally, as the largest donor in South Sudan—having contributed at least \$12 billion in humanitarian, peacekeeping/security sector, and transition and reconstruction assistance since 2005—the United States can play a determinative role in re-assessing the current humanitarian operation. Despite the valiant efforts of the U.S. Agency for International Development (USAID) and humanitarian organizations, all humanitarian indicators continue to worsen dramatically throughout country. The humanitarian operation is in fact under siege, and the UN Office for the Coordination of Humanitarian Assistance has reported that the highest number of humanitarian access incidents so far in 2017 occurred just last month.

As noted above, the Kiir regime is not a willing partner for the delivery of humanitarian assistance, is in fact the primary impediment, and benefits from the operation's reliance on Juba and government-controlled infrastructure. The famine conditions in South Sudan are a result not of environmental stresses but of the insecurity, forced displacement, and destruction of livelihoods caused by the regime's policies and its prosecution of the war. New modalities for the delivery of humanitarian aid need to be considered in recognition of these facts, both to mitigate the benefits that accrue to the government under the current approach and to better reach the millions of South Sudanese in desperate need of assistance.

With the requisite political will, the United States has both an interest and the assets necessary to lead the international community in a new diplomatic initiative to curtail the violence and, ultimately, negotiate a credible political transition. Given the degree of extreme state failure, any viable transition will likely need to draw extensively on temporary external administration—akin to that of Bosnia-Herzegovina, Kosovo, Cambodia, East Timor, and Liberia when those wars were ended—following a negotiated exit for Kiir, Machar, and their inner circles from the South Sudanese political landscape.⁸ In order to lead a new diplomatic effort, however, the administration needs to designate and empower a senior-level political appointee immediately with primary responsibility for South Sudan policy. Such an individual must have the stature to deal directly and effectively with the regional heads of state.

U.S. leadership alone will not be sufficient, however, nor is it an alibi for inaction by the United Nations and the African Union, which have a moral imperative and an obligation under their respective charters to act decisively in South Sudan. U.S. Ambassador to the United Nations Nikki Haley rightly demanded an “operational plan of active engagement for peace in South Sudan” from both institutions in April. The limited prospects that the IGAD revitalization effort will succeed makes the development of such a plan by the UN and African Union all the more urgent. In assuming their positions earlier this year, both UN Secretary-General Guterres and AU Chairperson Moussa Faki have prioritized conflict management, and South Sudan—by far the most heinous war on the African continent—is a critical test for them to deliver on these pledges.

⁸ Kate Almquist Knopf, “Ending South Sudan’s Civil War,” Council on Foreign Relations Report No. 77, November 2016.

Let me conclude by again thanking the Subcommittee for its consistent and sustained attention to South Sudan and for convening this hearing today. I look forward to your questions.

The views expressed in this testimony are those of the author and not the U.S. Institute of Peace.