

# **The Way Forward for the African Union in South Sudan**

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## **1. Introduction**

South Sudan is slowly emerging from a brutal and bloody civil war. The war caused serious loss of human lives, displacement of people, destruction of their means of livelihood, and significantly fractured the social fabric between people – societal cohesion, interpersonal and interethnic ties, emotional bonds, and a sense of belonging to a previously shared political, cultural and social framework within South Sudan. Even though the warring parties have reached an agreement to end the conflict, they did so grudgingly, arguing – as they still do – that the terms of the agreement were imposed on them by external forces. As a result, there are more countervailing forces working within the warring parties to undermine the peace efforts than those working to enhance the fragile peace. These deliberate efforts to undermine peace have resulted in renewed violence and new cases of serious abuses of human rights.

Even though there is no simple and single cause of the war in South Sudan, there is a general consensus that the following factors played significant roles in accelerating and accentuating the conflict:

- Historical and unresolved people-to-people grievances as part of a legacy from years of war,
- A quest and competition for political power by fragmented elites,
- A weak and centralised government, scarce resources, corruption and patronage politics,
- An absence of equitable resource allocation and the marginalisation of some groups,
- Lack of peace dividends since the Comprehensive Peace Agreement (CPA) in 2005, and
- The lack of accountability and proper closure for past atrocities, and the resultant feeling of impunity, has also contributed to the current war.

Thus, the conflict in South Sudan bears the hallmark of a society held hostage by its bloody past and where on-going and unfathomable atrocities constitute serious obstacles to reconciliation and sustainable peace.

It is likely that this appreciation of the causes and main drivers of the conflict in South Sudan informed the African Union Commission of Inquiry's (AUCISS) position in its October 2014 report on the conflict. For instance, the AUCISS argued that the traditional approach of negotiated political compromise and power sharing between belligerents would be grossly inadequate in South Sudan. The AUCISS's reasoning was that if such efforts are devoid of a broader societal reconciliation that goes beyond the crimes within the conflict and a consideration of structural grievances that contributed to the conflict, then such an undertaking would simply amount to a dress rehearsal for another crisis.

The responsibility to forgive, reconcile and collectively work towards national healing and a sustainable peace rests primarily with the government and people of South Sudan. Nevertheless, there is a clear role and opportunity for the African Union to facilitate and assist South Sudan with moving from a divided past to a shared future. Above all, the African Union has a moral, political and legal obligation to ensure that peace, accountability and justice – as complementary imperatives – are achieved in post-conflict South Sudan.

## 2. Peace first, justice later, or peace *and* justice in South Sudan?

There is no easy answer for how South Sudan should best deal with past atrocities. But the experience of countries in the region suggests that the road to sustainable peace, healing and reconciliation is the one that breaks the veil of silence to unveil the truth about crimes that have been committed. This road should lead to the prosecution and punishment of perpetrators of gross human rights violations, expose vested political interests in South Sudan and those who gained personal benefit from the war, empower victims to share their experiences and receive reparations, and demand that perpetrators and the state offer genuine remorse, apology and official acknowledgement of atrocities and the loss and pain suffered by victims.

The lesson for South Sudan from experiences of countries such as Sierra Leone and Rwanda is that post-conflict countries in Africa that made some progress in dealing with their wounds and trauma are those that never saw reconciliation as an alternative to justice, or the drive to secure justice as an alternative to other reconciliation measures. This lesson is supported by transitional justice scholars and practitioners who conclude that there can be no lasting peace in the absence of a clear and forthright response to calls for individuals to be held accountable for egregious violations of international humanitarian and human rights law.

Every context and every conflict is unique. The context and conflict in South Sudan is no different and not short of complexity. Nevertheless, there are many reasons why these challenges should not preclude the African Union from taking assertive action:

- First and foremost, there needs to be strong and consistent pressure on the warring parties to abide by the agreement's terms and to permanently put aside any plans to resort once more to war. This pressure must especially come from the African Union to be effective,
- Second, since the African Union through the report of the Commission of Inquiry already reasonably believes that mass killings, torture, mutilations and rape against civilians as well as forced cannibalism have taken place in South Sudan, allegations that amount to serious war crimes and crimes against humanity, inaction will foster impunity and send the dangerous message that such heinous crimes come with no consequences.
- Third, despite initial worries, the release of the AUCISS report did not further destabilize the country or the peace agreement, which attests to the fact that there is enough room in South Sudan to pursue reconciliation and justice simultaneously and should provide the African Union with the impetus to act.
- Fourth, the African Union's commitment to combating impunity, as observed in its declaration of 2016 as the *African Year of Human Rights*, requires that it should undertake a victim-centred approach to peace, reconciliation and justice in South Sudan.
- Finally, and above all, the people of South Sudan and victims of these heinous crimes demand reconciliation, healing and that perpetrators of grave abuses be held accountable for their crimes.

## 3. What the African Union should prioritise

One of the reasons why the conflict in South Sudan could well be one of the shortest wars in the history of Sudan and, in fact, the continent, was the speedy intervention and multi-pronged approach adopted by the African Union and its different bodies. As the Intergovernmental Authority on Development (IGAD) swiftly moved to bring the warring parties to the negotiating table, the African Union initiated a peace building and accountability process through the establishment of the AUCISS and mobilised different stakeholders to respond to issues arising from the conflict.

However, the delay in releasing the report of the AUCISS on South Sudan and the slow implementation – in large part due to obstacles posed by the warring parties – of the Agreement on the Resolution of the Conflict in South Sudan (the Peace Agreement) have affected the momentum of the African Union's intervention. In addition, the multiplicity of actors and interventions without effective coordination has further delayed a timely,

effective and efficient implementation of the Peace Agreement as well as the AUCISS's recommendations. Thus, there is an urgent need for a more coordinated well-resourced and decisive African Union leadership on South Sudan. The African Union's steering effort, with the support of the United Nations, is perhaps needed now more than ever in the following ways.

**a) *Provide credible leadership and coordination***

The Peace Agreement was facilitated by IGAD-Plus, and its implementation monitored by the Joint Monitoring and Evaluation Mechanism (JMEC). JMEC will report to the Transitional Government of National Unity (TGoNU), which is yet to be formed as of this writing, as well as the AU and the UN. The African Union's Special Envoy to South Sudan and the IGAD-Plus Consultative Committee all have roles to play in the implementation of the Peace Agreement. There are just as many issues to attend to as there are decision-making structures. For instance, the AUCISS report has a number of recommendations that are not necessarily provided for as part of the Peace Agreement that may need additional complementary initiatives for their implementation. At the moment these different bodies and structures are not well coordinated; neither are the different efforts so effectively synergised.

Therefore, we recommend that the African Union find ways to provide leadership and coordination especially with respect to reconciliation, healing and accountability in South Sudan. One way would be for the office of the African Union Special Envoy to identify the elements in the Peace Agreement and AUCISS report that need coordination for their proper implementation, and to ensure that the variety of actors concerned with the Peace Agreement's implementation are aware of and assisting the African Union's effort to develop a cohesive package of recommendations and benchmarks for reconciliation, healing and accountability. Another way would be for the five African Union countries that are a part of IGAD-Plus – Algeria, Chad, Nigeria, Rwanda, South Africa – to play a more active role by sending representatives to South Sudan to meet with civil society organisations, community leaders and war victims to establish their own reporting on key issues that the African Union should address as it moves forward with establishing reconciliation, healing and accountability measures.

**b) *Support the establishment and effective functioning of the National Commission for Healing and Reconciliation in South Sudan***

A failure to deal with deep grievances and to serve justice in South Sudan will only nurture the next round of mass violence. Therefore, truth-telling and truth-seeking should be critical components of the healing and peace building process in the country. The timely, public and official exposure of individuals, their motives and people or institutions responsible for the atrocities that unfolded in South Sudan is in itself an important component of justice in its own right. The provisions of the Peace Agreement that address these goals are positive and welcome. Nonetheless, truth-telling and reconciliation in South Sudan should pull from the experiences of countries in the region and the continent. The experience of South Africa, Sierra Leone and Kenya suggest that the main problem in dealing with the past is not a failure to provide for some truth-seeking mechanism, but more often than not because of a lack of political will and more attention and resources being directed towards criminal prosecution at the expense of unearthing the truth and fostering healing.

Hence, we recommend that the African Union encourage and support the Government of South Sudan to commence the process for establishing the National Commission for Healing and Reconciliation in South Sudan (the Commission) in a manner that safeguards the balance between national stability, meeting the needs of the victims and instituting social and personal accountability. The mandate, composition and selection of the commissioners for this body should be informed by lessons from other similar structures in South Africa, Sierra Leone and Kenya. Mostly importantly, the African Union should ensure that civil society organizations play a significant role in the setting up and workings of the Commission.

**c) *Support local civil society organizations to support grassroots peace efforts***

The extent of the atrocities committed between ethnic groups in the context of the current conflict in South Sudan is arguably the most traumatic the country has ever witnessed. Unfortunately, current peace efforts place too much emphasis on compromise at the political and elite level. As important as that is, until there is peace, forgiveness, healing and reconciliation 'from below' at the community level, peace 'from above' will likely not be truly achieved.

Local civil society organizations are best placed to carry out peacemaking between communities and to effectively and efficiently monitor the peace on the ground. The churches have played an important role and continue to do so. However, the space for civil society organizations in South Sudan to carry out these tasks, as well as their existing capacities, is limited. While we commend IGAD's initiative to ensure the inclusion of civil society in the peace process as guarantors of the Peace Agreement and important stakeholders in its implementation, what is needed now is for the African Union to support the development of a well-planned and resourced strategy that enables local civil society organizations to meaningfully participate in peace making in South Sudan, and to urge the Government of South Sudan to demonstrate a political commitment that will guarantee civil society a space to provide this input. Ultimately, the Peace Agreement's chances of success lay with the ability of South Sudanese civil society organizations to chaperone its implementation from beginning to end. There must be an opportunity for broad-based discussions and engagement among various civil society actors, a national dialogue for the country. The African Union must endeavor to put this into place.

***d) Highlight the urgent need for humanitarian efforts***

The humanitarian needs of the South Sudanese people are as dire as ever. The war has severely disrupted the delivery of humanitarian aid, leading to severe food insecurity among populations in conflict-affected areas of the country and dangerously high levels of malnourishment among children. Civic reconstruction without effective and meaningful humanitarian efforts will likely delay or derail other peace and nation building initiatives in South Sudan and destabilize the country. The nature, scope and severity of displacement and unfolding humanitarian disaster in South Sudan call for a well-planned, resourced and coordinated humanitarian intervention in South Sudan.

In the immediate to short term, the African Union, with the support of the international community, should take decisive steps to deal with the worsening and seriously impeded humanitarian access to affected populations in South Sudan. The African Union must denounce existing direct and indirect restrictions imposed by the warring parties on humanitarian agency personnel and humanitarian supplies. The relentless attacks on humanitarian personnel and theft of their assets should be independently investigated and punished. The African Union should also call on countries across the region to fulfil their obligations towards South Sudanese refugees and give them shelter as long as needed until these refugees feel safe to return.

***e) Take immediate steps to establish a hybrid judicial court to try alleged perpetrators of gross human rights violations***

The African Union's multi-pronged approach at the beginning of the conflict in South Sudan signaled its intention to treat peace and justice as complementary, rather than competing, objectives. This approach is commendable and should be pursued with the rigor and vigor it deserves. Furthermore, this is a project that the AU is uniquely placed to do and is tasked to do so by the AUCISS report. While the establishment of a fully-functional hybrid court with the necessary personnel, infrastructure and funding will take time, the AU can already undertake preliminary and intermediary steps towards its establishment.

In particular, there is an urgent need to collect and preserve evidence, the quality of which may deteriorate or disappear if not gathered in time. In addition, there is the serious risk that, with the eventual formation of the TGoNU, particular individuals may deliberately destroy, alter or conceal evidence in order to minimize their chances of being excluded from government on the basis of any indictment. Furthermore, in a society with a

high level of illiteracy and very rudimentary means of record keeping, it is very likely that with the passage of time witnesses' memories fade, their whereabouts become unknown and vital evidence is lost forever.

Accountability is absolutely critical and necessary for a sustainable peace to take hold in South Sudan. The establishment of a hybrid court must not be left to wait after the attainment of a long sequence of benchmarks. It must be established in parallel with other critical elements of the Peace Agreement, be it the launch of the TGoNU or the initiation of truth-telling and truth-seeking mechanisms. Aside from its value as an accountability mechanism, the hybrid court is also a valuable tool for the AU to use to deter future human rights violations and to convince the warring parties to change their tone and to build peace. The formation of the hybrid court also presents the AU with an opportunity for it to lead efforts to close the impunity gap that South Sudan's political elite have exploited for far too long – their vested interests in the perpetuation of the war for their personal benefit, which has led to a level of corruption that has severely debilitated the country. This is why the hybrid court for South Sudan must not only hold people accountable for committing grave abuses of human rights violations, but also grave economic crimes that have had just as big a role in destroying the country's fabric.

We, therefore, strongly urge the AU to not wait for the formation of the TGoNU to begin the process of establishing a hybrid judicial court. We recommend that the AU should:

- Immediately initiate a process to develop the legal structure and mandate of the court – which should investigate grave violations of human rights and the perpetration of economic crime – to address its human and financial resourcing needs, the composition of its judges and the court's location;
- Launch consultations to rapidly appoint a court president that can spearhead political and legal consultations, the court's implementation and progress;
- Initiate on-the-ground investigations of alleged abuses and of perpetrators and put in place a mechanism to collect and preserve evidence for the purpose of criminal trials and for reconciliation processes.
- Launch a mass public information campaign on the hybrid court towards the people of South Sudan, so that the population can eventually assume rightful ownership of this critically important element for peace.