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Position Paper

Al-Bashir and Kiir's Potential Agreement to Overcome Obstacles



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Sudanese president Omar al-Bashir met with his South Sudanese counterpart, President Salva Kiir, in Addis Ababa on 4-5 January 2013 at the invitation of Thabo Mbeki, chair of the AU High-Level Implementation Panel (AUHIP) on Sudan and South Sudan. The meeting was facilitated by the Ethiopian prime minister, Hailemariam Desalegn, president of the Inter-Governmental Authority on Development (IGAD). The meeting aimed to overcome problems hindering the implementation of the nine agreements signed between the governments of Sudan and South Sudan at a summit attended by the presidents of both countries on 27 September 2012, which included all the outstanding issues between the two countries since the end of the transitional period (2005–2011) and after separation in July 2011. The agreements had been approved by the two countries' parliaments without any changes, despite the objections of some members to certain clauses. The summit had also been attended by Desalegn and Mbeki, both of whom signed its final statement.

The invitation to meet in Ethiopia resulted partly from western pressure, particularly that of the United States, and especially in light of the imminent meeting of the United Nations Security Council on 9 January which was to follow up on the progress of the implementation of the conventions and the extent of the cooperation of both governments with the AUHIP. The two parties feared the threat of UNSC Resolution No. 2046, which had resolved to impose sanctions under Chapter VII of the Charter of the United Nations on any party that might impede reaching a peaceful settlement.

The meeting renewed commitment to the eight conventions (the ninth convention was merely an affirmation to abide by the other eight), which include: security arrangements between the two countries, oil and economic issues, trade and related issues, assets and debts, cooperation between central banks, payment of benefits to after-service workers of the other country, conditions of citizens of each country in the other (the 'four freedoms') and disputed border issues. Some of the conventions had been signed in December 2010, May 2011, June 2011, March 2012 and September 2012 but were not implemented. So what did the bilateral summit achieve and include in the final statement?

A meeting to overcome obstacles

The summit statement did not introduce anything different from what had been stated in the previous conventions but proposed practical steps to overcome obstacles and sensitive issues that prevented progress in the implementation of the conventions. To Sudan, the obstacle was security arrangements, particularly the disengagement of the Sudan People's Liberation Army/Movement (SPLA/M) and the gunmen of the northern sector of the SPLM (or SPLM-North, formerly the ninth and tenth divisions of the South Sudan's People's Army). The SPLM-N fights the Sudanese government in South Kordofan and the Blue Nile, which is why Sudan accuses the South Sudanese government of supporting the armed group as if it was still part of its People's Army. To South Sudan, however, the issue is the need to restore the disputed region of Abyei, a matter that has been difficult to resolve despite the many solutions proposed since the beginning of the transitional period. It has resulted in armed clashes between the two groups. The two sides reached a temporary arrangement in June 2011 to govern the region until the referendum decides Abyei's annexation to the south or north.

In an attempt to overcome these obstacles, the statement mentioned the following:

- The AUHIP is required to outline the steps necessary for rapid and unconditional implementation of all signed conventions, particularly security arrangements, which are to be bound to a clear timeframe. The Joint Political and Security Mechanism (JPSM) is to confirm the establishment of the demilitarised zone on the border between the two countries (ten kilometres on each side) in its emergency 13 January meeting.
- The South Sudanese president asserted that before the separation of the south, he had ordered disengagement between SPLM and its northern sector

as well as between the SPLA and its two northern divisions. He pledged to provide a written response to the AUHIP which asked him to clarify his government's position on the disengagement. He and his Sudanese counterpart emphasised that complaints relating to this matter should be brought to the JPSM as stipulated in the security arrangements convention.

- The two presidents called for the implementation of the agreed measures without delay: the demarcation of the borders (with fixed boundary markers) on the agreed sections of the border (about 70% of the border), and the initiation of procedures in the conventions relating to the disputed areas.
- After consulting with border experts, and once the two governments complete the negotiations on the disputed areas, the two presidents will meet to determine how to resolve the issue.
- The AUHIP will request that the Abyei Joint Oversight Committee (AJOC) meet urgently to form Abyei's administration and legislative council and police and judicial units, all of which had been previously agreed upon in detail. The presidents will meet afterwards to determine the final status of Abyei and consider the composition of the Referendum Commission for Abyei.

These items added nothing to the content of the eight agreements signed in September 2012, but the meeting between al-Bashir and Kiir was an attempt to eliminate some of the hurdles caused by the distrust and lack of confidence preventing implementation by the scheduled dates. The statement was irrelevant to the Sudanese government's direct negotiations with the northern sector, which have yet to be initiated despite their embedment in the UNSC resolution. AUHIP was happy to request a memorandum from each party explaining its position on the conflict and its vision to resolve it, and favoured postponing further deliberation on the matter until a positive breakthrough was reached in North-South relations, which is necessary to facilitate the handling of the issue between SPLM-N with the Sudanese government.

Despite numerous failures in the enforcement of agreements between the two governments, some progress occurred on the ground directly after the meeting, which was earlier than expected. It is perhaps the first time that such progress has been made since the tense separation of the two countries. These achievements were announced to the media by a top military leader from the Officers Club in Khartoum. The army normally places obstacles in the way of agreements between the government and rebel movements rather than expedite their implementation. For example, Sudan's minister of defence, a close friend of al-Bashir, had rushed to inform the president on Friday, 28 June 2011, of the army's reservations on the Nafi-Agar agreement in Addis Ababa, when al-Bashir had just returned from a long visit to China. The president then stood at the *minbar* at Friday prayer, declared his utter rejection of the agreement, and ordered the armed forces to attack SPLM-N strongholds in the mountains of south Kordofan and bring rebel commander Abdul Aziz al-Helou to Khartoum.

In contrast, Major-General Imad Mustafa, chairman of the functional commission and member of the Joint Political and Security Mechanism (JPSM), told the media merely two days after the al-Bashir-Kiir meeting that the People's Army had already begun withdrawing from the six areas within Sudanese borders that were claimed by South Sudan. He said the withdrawal would be followed by redeployment outside the demilitarised zone (ten kilometres on either side of the border). He also said that there was an agreement to establish ten border crossings after the composition of the functional commissions to manage arrangements for customs points, immigration procedures and police units. He added that the crossings would be opened by 27 March 2013, and that the demilitarised zone, which consists of four sectors, would be controlled from four locations within the two countries and be managed in Abyei under the protection of around 300 Ethiopian soldiers. The joint military observer force which will supervise the demilitarised zone is currently being trained in Asosa, Ethiopia.

If these arrangements are completed in accordance with the planned timeframe, AU mediators will consider the security requirements placed on Sudan as being met and should therefore allow the resumption of the pumping of southern oil through the northern pipeline, and the opening of border crossings for trade, transportation and movement between the two countries after the completion of the required administrative procedures. Although the summit did not touch upon those details, the AU mediator acts on the basis that the summit had given it the green light for the implementation of the steps that would complete the normalisation of relations between the two countries according to the agreements signed between them.

It is not unlikely that a disagreement between the two parties may emerge and therefore hinder the implementation of certain steps but it will not drive them back to the beginning of the process because of each side's need to secure its borders and restore oil revenue after both economies were recently shaken as a result of the disruption. Furthermore, both sides want to implement the UNSC resolution out of fear of possible sanctions.

The news of the reconciliation of Sudan and South Sudan reached groups that had previously exploited the enmity between the two parties to secure their interests in Abyei by pressuring South Sudan to meet their demands. The new al-Bashir-Kiir agreement called for the Messiria tribe's leadership to be more moderate in its demands, resulting in a meeting between Messiria leaders and one of al-Bashir's assistants, Nafi Ali Nafi, two days after al-Bashir and Kiir had met. The Messiria leaders confirmed the decision of their tribe to not 'embarrass the government' in its commitment to UN resolutions. Messiria leader Mahdi Abu Nimer said after the meeting that the heads of the civil administration decided to settle in Abyei for the summer and autumn of 2013 to guarantee participation in the referendum on the relegation of the region until a decision is made to annex it to Sudan. Mbeki's panel said that the right to take part in the referendum over the region's relegation would be granted to those who had been in the area for a full year.

It seems this idea came from Nafi himself, which is why the Messiria leader requested that the government help his tribe settle in the region for a year. It is not clear whether the Mbeki panel was referring to a one-time one-year settlement, several relocations or permanent settlement.

In addition to the above, the chairperson of the European Union Commission declared that al-Bashir and Kiir had agreed to hold a summit devoted entirely to the question of Abyei in hopes of reaching a final solution. This is an indication that a referral to the UNSC might be delayed, even if for a few months, to give the parties a last chance to reach a mutually acceptable agreement on the intractable issue.

Sudan and the militants: Face-to-face

The Sudanese government had previously refused direct negotiations with SPLM-N, under the pretext that the latter is a military faction that belonged to the People's Army in the south and received funds and arms from the South Sudanese government, making it therefore the duty of South Sudan to withdraw it further south like the rest of the People's Army, or dismiss and disarm it as the Sudanese government did with South Sudanese soldiers in the Sudanese army. The government has refused to respond to calls for humanitarian aid for displaced persons in the areas controlled by the SPLM-N in South Kordofan and Blue Nile despite international efforts. The South Sudanese government responded by saying that it had already disbanded its northern units but that it could not disarm them because they resided in their native land in another state where it has no jurisdiction. Since Sudan has accepted pledges by the prime minister of South Sudan and his letter to AUHIP promising to implement the disengagement, the context of the previous position of Sudan to not engage in direct negotiations with SPLM-N has changed.

In addition, the UNSC resolution and the road map developed by AUHIP and approved by the AU Peace and Security Council compel the two northern parties to engage in direct negotiations based on the agreement reached in June 2011 in Addis Ababa. Mbeki was enthusiastic about Sudan's acceptance of the security arrangement measure and suggested that direct negotiations start on 17 January 2013. Indications show that the meeting will take place on or around the scheduled date unless new developments, such as increasing conflict between the two parties, affect the negotiating process. If negotiations fail, Mbeki will find himself obliged to recommend that the African Union to refer the matter to the UNSC, which is what Sudan has been trying to avoid through vigorous diplomatic engagement with African states.

Mbeki's panel seems to be optimistic that direct negotiations will commence, especially if progress has been made in the development of agreements between the north and the south, keeping in mind that SPLM controls a long border area between South Kordofan and north Bahr el Ghazal, meaning that that area is not controlled by either governments, and demilitarisation arrangements – including having to abide by the agreed joint supervision mechanisms – do not apply to it.

This situation demands that the Sudanese government initiate negotiations with SPLM-N in order to reach a settlement based on the cancelled Nafi-Agar convention. It is important to mention that SPLM-N exploited the period in which the government refused to negotiate and entered an alliance with armed Darfur movements (the Justice and Equality Movement and the two Sudan Liberation Movements led by Abdul Wahid Mohamed al Nur and Minni Arcua Minnawi who signed the Abuja agreement with the government and then abandoned it). The alliance was called the "Sudanese Revolutionary Front." It recently held a large conference in Kampala, bringing together political opposition parties, and issued the "New Dawn Charter" in which it expressed its aim to topple the National Conference Party government through both peaceful resistance and armed struggle. But the National Umma Party, the Popular Conference Party and the Sudan Communist Party refused to sign, claiming that some items in the charter needed revision and that their delegates were not mandated to sign.

This opposition movement poses a new threat to the government, which still has not absorbed the impact of the Islamic movement's conference which showed a split within the movement and displayed opposition to the policies of al-Bashir's government. Also, the government has yet to come to grips with the coup attempted by Islamists in the armed and security forces, the police and popular defence, and the *mujahideen* faction that had previously participated in many military operations in the south, the last being the Battle of Heglig in April 2012.

These factors alongside the deteriorating economy and external pressures on the regime will force it to reach a comprehensive agreement with South Sudan to settle outstanding issues, resume oil pumping from the south to the north and deal with the SPLM-N because of its role in the settlement with the South. SPLM-N will not be embarrassed by its withdrawal from the alliance with Darfur movements if it is offered an acceptable settlement by the government. This has happened previously, when the SPLM had withdrawn from its alliance with northern political parties after it found that the Naivasha agreement fulfilled its most pertinent demands of unrivalled sovereignty over the south, a share in oil resources, the maintenance of its army and the right of self-determination for people in the south in a fair referendum administered and supervised by the international community.

The regimes of Sudan and South Sudan face domestic and foreign pressures that make it in their interests to reach agreements on the contested issues between them and unite in the face of the unrest threatening the stability of their rule. Even if the relations between them are tense, they will have no choice but to cooperate.

