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RESEARCH FOR A PEACEFUL, JUST AND PROSPEROUS SOUTH SUDAN

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Weekly Review

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Abyei Final Status: A mismanaged and Unyielding Stalemate

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As the month of October draws to a close, the future of the final status of the disputed region of Abyei remains disappointingly uncertain and extremely unpredictable. The unyielding stalemate between South Sudan and Sudan is a remarkable test that challenges not only the leadership and credibility of the African Union, a body that is tasked to facilitate the resolution of the conflict through mediation, but equally that of the Government of South Sudan. It should be recalled that the Comprehensive Peace Agreement (CPA) of 2005 signed between South Sudan's ruling party, the Sudan People's Liberation Movement (SPLM) and the National Congress Party (NCP) led government of Sudan, gave the people of Abyei the right to self-determination. According to the CPA, the Abyei referendum was slated to take place concurrently with that of Southern Sudan in January 2011. However, this did not happen because of disagreement between the peace partners over who should be eligible to vote in such an exercise. Besides the stalemate over Abyei and with the deal on oil flow being the exception, the two sides are practically embroiled in a deadlock on a myriad of post-independence issues.

Although all of the outstanding, unresolved matters between the Sudans are important and urgently require immediate resolutions, Abyei uniquely stands out as an issue whose resolution is critically a matter of urgency. This heightened nature of the potentially explosive, precarious situation over this area stems from the danger it presents to the two nations. In fact, this contest necessitated the armies of the two countries to fight, albeit, briefly in 2008 and 2011. For South Sudanese generally and the Ngok Dinka in particular, there is a great deal of frustration, as the history of the area is well known. Abyei was transferred from Bahr el Ghazal province to Kordofan province during the British colonial administration in 1905. The institution of over a century old transfer was done mainly to correct what appeared as a problem of ineffective governance of the area. At that time, there was a sincere recognition that it was not possible to properly administer Abyei from Wau, then headquarters' of the Bahr el Ghazal region.

In a move designed to help ensure that the two Sudans reach an amicable deal with respect to the two sides resolving their differences over the disputed Abyei region as well as on host of other pertinent issues, the African Union tasked its High Level

Implementation Panel (AUHIP) under the chairmanship of Thabo Mbeki, former South African president, to mediate the talks. In spite of a series of negotiations and presidential summits, the two sides are yet to make any headway on Abyei. To be sure, the fact that a year has already passed without an end insight despite the seemingly best efforts exerted by the AUHIP is a convincing testimony to this reality.

After reaching a conclusion that the intermittent talks on Abyei between South Sudan and Sudan were practically stalled, AUHIP decided to offer its own proposal on the final status of Abyei on September 21, 2012. The proposal, which set October 2013 as the month during which the much delayed referendum was to be conducted in order to determine the fate of Abyei was rightly seen as presenting a viable solution to this perennial problem. As expected, this proposal aimed at ending the deadlock by imposing a solution to which adherence on the part of Juba and Khartoum was mandatory. The fact that this AUHIP proposal has remained on paper thus far, a situation that severely threatens to dim the prospect of the often-repeated mantra “African problems require African solutions”, speaks volumes about the utter failure of AU leadership on the continent.

For more than two years now, the continent’s body has been leading the world’s efforts to help the two conflicting sides settle their differences over Abyei and on other post-independent issues. Despite the countless, series of negotiations organized under the auspices of the AUHIP, the two countries have unfortunately, remained far apart on virtually everything in contention that they set out to address, hence no significant gains beyond the resumption of oil flow, which both countries badly need, is made thus far. Frankly, it is tempting to blame this ostensible abject failure of South Sudan-Sudan negotiations, particularly on Abyei on the disputing parties themselves, but the reality is that the AU as a body shares considerable part of the blame. By offering a proposal that it miserably fails to honor in terms of implementation the organization either intentionally or inadvertently sends a bad signal to Khartoum that it surely does have a license to be endlessly intransigent without repercussions in return.

To ensure a speedy end to these fruitless negotiations and thereby determine the final status of Abyei, the AUHIP wisely called upon the countries involved to try to reach a settlement within a specified period of less than two months. Failure to settle the matter within this prescribed window of time was supposed to compel the AU Peace and Security Council (AUPSC) to endorse the said proposal. It did not really take long before the parties reached a dead end again after the resumption of the talks, immediately triggering the need for the AUPSC to endorse the proposal. But for some unexplained reasons, it is rapidly approaching a year now since the AUPSC failed to do the right thing – doing justice to the people of Abyei by allowing them to freely decide their future. Instead of endorsing the proposal, the AUPSC, knowing too well the near impossibility of the parties agreeing any time soon on the way forward, unwisely continues to call upon Juba and Khartoum to maintain the dialogue.

This AU's position on the need for endless talks to continue is rather very incomprehensible as Khartoum is visibly stonewalling and negotiating in bad faith. To show that he is not genuinely interested in addressing the matter head on, President Bashir refused to grant the AUPSC permission to visit Abyei on October 26 – 27, 2013. The reported October 9, 2013 letter that President Salva Kiir wrote to the AU Commission clearly underscores his conviction that President Bashir is unwilling to settle on Abyei. The letter requested the AUPSC to endorse the AUHIP's proposal as the only way to resolving the conflict. This reality is confirmed by lack of any meaningful progress made in the last two presidential summits. It is worth noting that during the recent Khartoum meeting, which was held this past September, Abyei did not even make it into the agenda. While the two presidents did discuss Abyei during the recently concluded Juba conference, which was convened on October 22, 2013, the outcome was simply not new but rather a regurgitation of an earlier, stalled position that calls for the establishment of joint administration in the area.

Besides the aforementioned AU utter failure to facilitate a speedy resolution of the final status of Abyei, it is noticeable that there is a great deal of dissatisfaction among the South Sudanese public with respect to the way their own government has been handling the matter. For some people, AU's inability to endorse its own proposal has to do with South Sudan's abysmal diplomatic performance when it comes to selling the proposal to the members of the AUPSC. Moreover, Juba's recent stance on Abyei has not helped in allaying fear among South Sudanese in general and the Abyei community in particular. The public announcement made by Michael Makuei Lueth, South Sudanese Minister of information and broadcasting that no publicity of any kind relating to Abyei referendum can be aired either on South Sudan Television or South Sudan Radio is very unfortunate. The thinking here is that the seemingly newfound, reset relations between Juba and Khartoum, is one that ostensibly rewards the criminal behavior of the Sudanese government at the expense of South Sudanese.

While it may not be entirely accurate to suggest that the Government of South Sudan seems to have retreated from its early position on Abyei, Hon. Makuei's recent statements, apparently made on behalf of the government, do more harm than good with a justifiably weary public. Instead of simply telling the people of Abyei that their government will not recognize the outcome of the referendum should they proceed with it, it would have been better if the government had directly engaged the community, calmed the greater public and made its position in support of Ngok Dinka's rights known to the entire country. Of course, the gains to be made from such a step cannot be underestimated. By directly engaging the country, particularly the Ngok Dinka, the government would have taken charge of the issue, therefore, well positioned to control the process by reminding the people about the danger of a unilateral action. Equally important, the government taking charge of the issue needed to articulate the way forward by providing a roadmap that will guide the process in terms of strategic direction to follow as well as the mechanisms to adopt in order to ensure quick resolution of the matter.

It is not difficult to see why the proposal put forward by the AUHIP is the only workable, fair and speedy solution to the stalemate. From the aforementioned history of Abyei transfer, it is simply mind boggling to see how Khartoum and the Misseirya community can claim any belonging there at all. This fact is evidently clear from the history that litters the path of the attempted resolution of the matter by the parties involved. Following the disagreement that arose after the Abyei Boundary Commission (ABC), a body whose establishment and function was provided for by the CPA. The ABC's chief aim was identified as determining the boundary of Abyei Area as the land belonging to the nine Ngok Dinka chiefdoms. After the submission of its report in 2008, the ABC was accused by Khartoum of having overstepped its mandate. With this assertion, President Bashir and his NCP dominated government of Sudan refused to endorse the report, triggering the dispute that continues to this day.

After agreeing to seek an impartial, neutral third party, whose job it was to assist the parties to settle their differences, the SPLM and NCP went to the Permanent Court of Arbitration (PCA) based in The Hague, Netherlands. As already alluded to, at the center of the row that eventually made it into the PCA's docket was whether the ABC has really overstepped its mandate and drew a map in favor of then government of Southern Sudan. The PCA rendered its ruling on July 22, 2009, which largely agreed with the decision of the ABC and the parties indicated their acceptance of the decision and promised to abide by it. Owing to what amounts to a midnight change of heart, perhaps under pressure from the Misseirya community which saw itself as a loser of the outcome, Khartoum opted to refuse to recognize the decision of the court, and this again put the issue up for a fresh series of negotiations, which ultimately saw the involvement of the AUHIP.

Frustrated by years of unfruitful negotiations, apparent lack of vigorous and shrewd diplomatic efforts on the part of South Sudan, and seemingly AU's foot-dragging and inability to respect and enforce its own proposal to ensure the peaceful conduct of the referendum in October as planned, the Ngok Dinka community has understandably decided to go it alone. That is, to organize and conduct the plebiscite before the end of October this year. This decision was reportedly reached on October 18, 2013 in Abyei town during a meeting allegedly held by the general assembly of the nine Ngok Dinka chiefdoms. It is to be mentioned that the conduct of the referendum by the Abyei community could spark tension in the area; the two countries involved, the AU and UN need to take a serious note of this situation and ensure that it does not in any way degenerate into a source of insecurity in an area that is already engulfed in a very tense and volatile atmosphere. The relations between the Ngok Dinka and Misseirya communities are at their worst lows in the wake of the unconscionable spate of killings that culminated with the murdering of Paramount Chief Kuol Deng Kuol early May this year.

In what appears to be a recognition of a looming potentially violent crisis, especially if the Ngok Dinka community-organized Abyei referendum were to go ahead as

planned, the UN, US, AU, among others are sternly warning the governments of South Sudan and Sudan to avoid any unilateral action that can heighten tension between the two countries. For sure, given the history of the area, it is highly likely that the two communities could engage each other in a violent confrontation, a situation that guarantees direct military confrontation between the two countries. To abate any potential escalation of the conflict, both South Sudan and Sudan do have to engage their citizens and armies not to make any provocative moves. Furthermore, the AU and UN have the duty and responsibility to ensure that Sudan and its allied Misseirya militia do not over react in the event that the Ngok Dinka do go ahead with their planned referendum. It is to be understood that by wanting to hold a plebiscite, the Ngok Dinka community is simply registering its displeasure with the way the negotiations have failed them. If, and when this is done, the referendum is far from settling the matter, as its outcome would certainly lack support from any of the two governments concerned or the international community.

Ultimately, to break this vicious and intractable dispute over Abyei, the AU, particularly the AUPSC has to show leadership by immediately endorsing the AUHIP proposal. The facts in this case are very clear and do not warrant an endless engagement that bears no fruits. Abyei belongs to the Ngok Dinka and these people deserve to voluntarily decide under the international system that recognizes their right to self-determination where they should belong. The nomadic Misseirya community, which seasonally comes to Abyei and South Sudan's neighboring states for grazing and pasture, has the secondary right recognized by the PCA's ruling. This, however, does not and should not at all be confused with the idea of permanent abode, which the court has identified as forming the sole basis upon which all other Sudanese citizens can participate in the referendum.

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