

The African Union Roadmap: Will it yield win-win solutions?

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June 9, 2012 - The roadmap adopted by African Union (AU) came as a result of the failure of Sudan and South Sudan to reach an agreement on the post-secession issues, which degenerated into war that threatened regional peace and security. While the main objective of the roadmap is to put the two states on the track of peace, the possible outcomes of the roadmap are less clear. South Sudan is keen to ensure its survival and build the new nation after years of prolonged civil war. But the regime in Khartoum also has an interest in making use of the roadmap to prolong its lifetime in power and reduce chances of regime change.

In fact the road of the negotiations will be rather bumpy as the parties will be calculative, trying to get maximum gains without running the risk of being labeled the bad guy by the international community. While the South, being a new nation, is concerned about its image, the regime in Khartoum seems less sensitive to pressure by the international community. Such behaviour of Khartoum might change in the light of a looming economic crisis, political challenges posed by the Sudan Revolutionary Front, serious division within the NCP leadership, increased international isolation and a possible popular uprising as a result of deteriorating living conditions.

The roadmap consists of measures to ease tension, facilitate a resumption of the negotiations and reach an agreement on the pending critical issues so as to normalise relation between the two states. In fact, the outcomes of the roadmap will be gauged not only by the final resolution of the pending issues but also by the process with which to reach such solutions. On the process, it would be in the best interest of the parties to amicably reach an agreement on the pending issues so as to ensure a win-win solution rather than having a win-lose solution imposed on them. Any imposed solutions will not be sustainable and may not contribute towards normalisation of relations.

Sometimes the process may be more important than the solution itself, particularly in a situation where two parties lack trust. Although Sudan may be inclined towards win-lose solutions provided by the African Union Panel, it would be in the best interest of the region to assist the parties reach an acceptable agreement on the pending issues.

On finding solutions, the parties, with the facilitation of the African Union Panel, reached a general understanding on most of the pending issues. On the oil, the remaining issues include transit fees, transitional financial assistance to Sudan, arrears and reconciliation of the outstanding oil claims. The most critical issue is the transit fees as Sudan suggested unreasonable fees that are inconsistent with international practices. It is likely that a solution will be found within the range of US\$0.67 per barrel, as suggested by the South, and US\$1 per barrel, as seen acceptable by some circles in the international community. Others have suggested US\$3 per barrel. This will not be acceptable by the South as it far above the international norm and may set a precedent for its future alternative pipelines in the region. On financial assistance, the South accepted to contribute US\$2.4 billion towards the US\$10 billion deficit faced by Sudan, to assist in mobilising the international community to meet the remaining deficit and to relief Sudan of its US\$40 billion debt. This provides a solid basis for reaching an agreement on oil and other issues.

On the border, there seems to be a great deal of difference between the parties. Sudan considers only four contested areas: Wanthou (Joda), Maganis, Kaka and Kaffia Kanje, and Hofrat el Nahas. The South, however, considers two additional areas: Panthou (Heglig) and the border area between Northern Bahr el Ghazal and Southern Darfur. Despite such differences, there is a way the parties can reach an agreement or find a mechanism for resolving the issue of the disputed border areas. In fact, the border dispute between Sudan and South is not unique. Most boundaries of African countries are not demarcated and many border areas remain disputed. Even Sudan's other international boundaries are not clear and it has contested areas with most of its neighbours. With the secession, the South has inherited some of these disputed border areas.

The problem of the border between South Sudan and Sudan is that it has been agreed to be delineated as strictly administrative borders without due consideration to land use and communal flexibility. African land use practices are more inclusive than exclusive. Any strict boundaries will not be economically, ecologically and socially viable. The parties are likely to reach a solution either through compromise or by referring the disputed areas to an arbitration court, either a court in the UK, which has historical records, or the Permanent Court of Arbitration in The Netherlands. The framework agreement reached by the parties on the four freedoms for their nationals will contribute in making their border soft and flexible.

On the final status of Abyei, the agreement of the parties will be guided by the Abyei Protocol and the ruling of the Permanent Court of Arbitration. As the parties have agreed on a referendum to determine the final status of the Abyei area, the focus should be on how to conduct such a referendum. The referendum should ensure that the Ngok Dinka, the indigenous population, freely express their views about the final status of their area. The definition of other residents who will

participate in the referendum should not include nomads - whether from Sudan or from South Sudan. It is important that interests in land should not be confused with rights over land. The arbitration ruling has clearly defined the Abyei area as the land of the nine Ngok Dinka chiefdoms and defined the interests in land as ensuring nomads access to water and pasture.

The South and the Ngok Dinka will be keen to have a referendum without being diluted by the participation of nomads. But Sudan will be interested in using Abyei as its bargaining chip to maximise its gains on other pending issues. Finding an amicable solution to the final status of Abyei will be less likely. The African Union Panel may be forced to come up with a solution. Such possible solution should attempt to reconcile the interests of the parties but within the parameters three of the Abyei Protocol and the arbitration ruling. Any solution that may temper again with the land of the Ngok Dinka will not only outrage the local population but renew conflict between the two countries.

During my participation in the first round of talks in Addis Ababa last week, I noticed that the parties are keen to comply with the roadmap. Although these talks did not yield good results, there is seriousness by the parties in finding solutions. During the talks, the South has performed well with a capable negotiating team. The team of Sudan was rather weak and lacked solid leadership. It is clear that Sudan is rapidly losing ground in the current talks. It is seen as irrational and unreasonable and it has more red flags of non-compliance with the roadmap. This poor performance should make Sudan cautious to defer any pending issues to the African Union Panel. Subsequently, there are good opportunities that the AU roadmap will yield win-win solutions.

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