

Will AU and UN fail Abyei again?

Thursday 18 October 2012

By Luka Biong Deng

October 17, 2012 - The first round of the AU Roadmap has come to an end on 27th September when the direct negotiation between the two countries ended with the signing of the Cooperation Agreement. The last phase of the AU Roadmap is to ensure a comprehensive agreement by resolving the issues that the parties have failed to reach agreement. The AU Panel is expected to present to the AU Peace and Security Council final and binding proposals on the unresolved issues. The AU Council is expected to endorse these proposals without changes. These proposals will then be forwarded to the UN Security Council for endorsement and enforcement under Chapter VII of the UN Charter. It is likely that members of the AU Council and UN Security will unanimously endorse these proposals as it would be politically and diplomatically undesirable for any member of the UN Security Council to challenge a resolution adopted by the AU.

The Cooperation Agreement was received with mixed feelings in the two countries. While it is generally accepted with jubilation in Khartoum, the people of the South, particularly the people along the border with Sudan, received it with a deep sense of disappointment as the issue of border is not addressed. As most people of the South rely on what they can hear from a friend or relative because of poor communication infrastructure, the Agreement is poorly understood and its benefits to the South are blurred. One journalist questioned the value of the four freedoms to the people of the South as Sudan continues with Sharaia law that prohibits alcohol. Some even consider the four freedoms as another way of reunifying the two countries and inviting again the domination of Jallaba.

Equally, the way the people of Sudan received Bashir as triumphant hero created in the South suspicion about the agreement. For them anything related to the South that makes Bashir happy must be terribly bad to the South. This is well reflected in the lukewarm reception accorded to President Salva and the negotiation team when they returned from Addis Ababa. Despite the SPLM has made serious efforts to explain this agreement to its leaders so as to ensure its ratification by the parliament, the leadership of the South has an arduous task to explain the benefits of this agreement to the rural people in the light of the unresolved issues.

The unresolved issues of border and the final status of Abyei are not only the unfinished business of the CPA but they are also central to the successful good relations between the two countries. Certainly, if the people along the border with Sudan are unhappy, then it will be extremely difficult to realize the fruits of the cooperation agreement. The real challenge to the leaders of the two countries, the African Union and international community is to make best use of the last phase of the AU Roadmap to ensure the effective implementation of the cooperation agreement by finding solutions for the unresolved issues.

On the disputed and claimed border areas, one is a bit concerned that the Cooperation Agreement did not address the issue of the disputed and claimed border areas within the framework of the AU Roadmap. The Agreement instead of referring the issue of border to the AU Panel to come up with the final and binding proposal to be endorsed by the AU Council the parties are asked to continue again negotiating without time bound the disputed and claimed areas. Given the politicization of the border and the dragging of the communities in the border politics, it is almost impossible for any country to accept any amicable resolution over these areas except through a third party.

It is only with the final and binding international border arbitration that each country will exonerate itself before its citizens from any loss of any part of its territory to the other country. Although this process will be lengthy and costly it is worth taking as it will reduce the high tension that is now developing along the border of the two countries. The initial idea of the AU Panel to expose the two countries to the non-binding opinion by the AU high-level border experts will be important to prepare the parties of what they will expect from international arbitration.

On the final status of Abyei area, the international community will be at the litmus test again of whether they will fail the people of Abyei to enjoy peace. The proposal by the AU Panel on the final status of Abyei area is not only rooted in the agreements (Abyei Protocol, the ruling of Abyei International Tribunal and 20 June 2011 Addis Agreement) signed by the parties but it is also based on the wealth of international experiences and practices. The proposal of the AU has resolved the critical issues that delayed the Abyei Referendum not to be conducted simultaneously with that of the South on 9th January 2011. These issues are the definition of other Sudanese residing in Abyei area and who will be eligible to vote in the Abyei Referendum and the chair of Abyei Referendum Commission.

On the definition of other residents, Sudan insisted to define nomads who seasonally traverse Abyei area as residents and eligible to vote in the referendum, while SPLM retains the position based on international law and practices that nomads are not residents and subsequently not eligible to vote in Abyei Referendum. On the chair of the Abyei Referendum Commission, Sudan as usual dishonoured its gentleman agreement with SPLM that the chair of Southern Sudan to be the nominee of

Sudan while the chair of Abyei Referendum Commission to be the nominee of SPLM. When its nominee to chair the South Sudan Referendum Commission was accepted by the SPLM, Sudan refused to accept any nominee of the SPLM to chair the Abyei Referendum Commission.

The Proposal of the AU Panel clearly defines other residents who will participate in the Abyei Referendum as residents who shall have "permanent abode" in Abyei area. The "permanent abode" is defined in Google as a house, apartment, dwelling place or other residence that is maintained as a household for infinite period, whether the occupants own it or not. An abode is not permanent if it is occupied only during a fixed or limited period of time for a particular purpose. Also the Proposal clearly resolved the issue of the chair of Abyei Commission to be appointed by AU Commission in consultation with the two Presidents of the two states. The Proposal has gone beyond referendum and made specific suggestions on making Abyei as a state with special status and with specific funding mechanism to transform it as an area of conflict to become the epicentre of sustainable economic development and good relations along the border of the two countries. Importantly, the Proposal allocates the oil revenue from Abyei area to Abyei state (30%), localities in Southern Kordofan state in north of Abyei area (20% for five years subject to review by the national government after five years) and national government (50%).

The international community has failed the people of Abyei many times as well articulated by Enough Project in its recent policy brief titled "Forgotten Again: How the World Has Failed Abyei" and the article by Prof. Eric Reeves in June 2011 that expounded the failure of diplomacy in the case of Abyei and Darfur. Now the international community has the chance not to fail Abyei again in the last phase of the AU Roadmap and the UN Security Council Resolution 2046. It would be morally and politically critical for the AU Council to adopt the proposal of the AU Panel on the resolution of the final status of Abyei.

The AU is expected not only to endorse the proposal but to come up with measures to ensure the parties accepted the proposal. In particular if Bashir rejects again the endorsed proposal, the AU should review the membership of Sudan in AU and his protection from the ICC. The AU should explore other economic and political sanctions that should isolate Sudan. The Government of the Republic of South Sudan as a member of the AU should review its bilateral relations with Sudan including the recently signed Cooperation Agreement. In particular the South should review its payment of \$3.028 to Sudan as Transition Financial Assistance, joint campaign for debt relief, mobilization of international community to assist Sudan and lifting of economic sanctions.

Also the members of the UN Security Council are expected to unanimously endorse the AU endorsed proposal on the final status of Abyei. If Bashir rejects the UN endorsed proposal on Abyei, the UN Security Council should effect more severe sanctions on Sudan, particularly economic and political sanctions. In order not to harm the people of Sudan from the individual behaviour of Bashir, the international community should stand together to apprehend Bashir and hand him over to ICC. The UN Security Council in collaboration with AU to explore a possibility of ensuring the conduct of Abyei Referendum in 2013 even without the consent of Sudan. The US Government is having higher moral and political obligations than any other member of international community to take the lead and to ensure the full implementation of the proposal on the final status of Abyei. The resolution of Abyei conflict in the CPA was based on the US Special Envoy John Danforth's proposal that was presented to the parties in 2004. The AU, UN and USA in particular are expected not to fail again the people of Abyei but to restore hope and stability in the area by fully supporting and implementing the proposal of the AU Panel.

Luka Biong Deng is a senior member of South Sudan's ruling Sudan People Liberation Movement (SPLM) and the Co-Chair of the Abyei Joint Oversight Committee. He can be contacted at lukabiong@kushworld.org. This article was published first by the New Nation Newspaper