

Reflections about AU recent decision on Abyei

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By Tim Flatman

January 31, 2013 - In continuing to endorse Thabo Mbeki's proposal to resolve the status of Abyei, but deciding not to follow through on its earlier commitment to refer it to the UN Security Council, the African Union has effectively declared itself, at the Heads of State level, competent to enforce the proposal and carry out a referendum itself should the Government of Sudan continue to obfuscate and delay implementation of its Agreements.

Already GoS' chief negotiator Idris Abdel-Gadir has bragged about his confidence that no disputed issues will be referred to the UN Security Council even if no progress is made by July, claiming the African Union Peace and Security Council meeting as a victory. The Communique of the 353rd Peace and Security Council meeting at the level of Heads of State and Government/Sudan-South Sudan has given Presidents Bashir and Kiir until the Council meeting in March to continue negotiations.

A typical strategy by the Government of Sudan would be to avoid a meeting between the Presidents until the deadline is looming, then raise a new demand which they know will be unacceptable to the Ngok and/or South Sudan and present the impasse to the international community as a "neutral" sticking-point requiring further talks. An alternative strategy would be to link progress on Abyei to progress on another issue which cannot immediately be resolved.

If this seems a jaundiced view of Sudanese diplomatic strategy, it should be recalled that this is exactly how GoS behaved in the run-up to the Council meeting itself. With Prime Minister Meles Zenawi dead and unable to verify the Ngok claim GoS promised to nominate a Ngok to the position of speaker in Abyei Legislative Council, and the Mbeki proposal having depoliticised the issue by giving a final judgement on the issue of voter eligibility in an upcoming referendum, the South Sudanese agreed to allow a Misseriya to take the role, in the interests of pragmatism and demonstrating to Misseriya that their rights will be respected should the referendum proceed with the expected result. With this issue resolved, there were no barriers to confirming Abyei Area Administration immediately. Formal recognition of Abyei Area Administration would have been a boon to those organising support for the >20,000 who have already returned to Abyei town or their villages north of the river Kiir, and to the thousands in camps in Wau and elsewhere who are waiting for transport to return immediately. However, the Sudanese Government chalked the concession up as a victory, and proceeded to make a further demand (of further Misseriya representation) that had no basis in any agreement previously signed, in order to prevent Abyei Area Administration from being confirmed and hold the entire process up.

The Communique of the 353rd Council meeting stops short of calling Sudan out by name, but it does condemn this kind of behaviour. It emphasises its disappointment at the failure to implement fully the 20 June 2011 Temporary Arrangements Agreement in all its aspects. This is significant because South Sudan has, with the acceptance of an NCP nominee to the position of Speaker on Abyei Legislative Council, fulfilled all its commitments under that agreement. Sudan has not, the two most significant aspects being the failure to confirm Abyei Area Administration and the failure to remove its troops entirely from Abyei Area. South Sudan is therefore in the admirable and convenient position of having fulfilled all its commitments and being able to insist that the other partner does likewise. South Sudanese negotiators should not sign further agreements on Abyei that impose further demands on them, or they will lose their high ground and allow Sudanese negotiators to assert moral equivalence and claim there are obstacles on both sides once more. Indeed, the Communique of the 353rd Council meeting reflects this logic, repeatedly stressing the importance of unconditionally implementing all Agreements signed in their entirety rather than making new Agreements. In this, the African Heads of State have clearly sided with South Sudan. The Communique also, helpfully, condemns the linking of implementation of agreements already signed to resolving issues of dispute, implicitly calling out another favourite NCP strategy.

However, the most encouraging aspect of the Communique was the demand that the Presidents negotiate over the formation of the Abyei Area Referendum Commission on the basis of the AUHIP 21 September 2012 proposal, a proposal which GoS has of course rejected! This indicates an assumption, at the Heads of State level that the path set out in the Mbeki proposal must be followed regardless of the protestations of the Sudanese Government, and a close eye must be kept on timescales. The Sudanese Government has two months to find a way of proceeding on the basis of the Mbeki proposal that is acceptable to them. If they do not, the African Union must put a Referendum Commission in place themselves and conduct a referendum. That this is a realistic possibility is confirmed by informal reports by those present in Addis. Lest it seems fanciful, we should remember that the proposal itself contains mechanisms for proceeding if there are seemingly impassable disputes between the parties, through an Abyei Referendum Facilitation Panel set up not by the Presidents of Sudan and South Sudan but by the African Union, and by the African Union reserving the power to choose the Chair of the Abyei Area Referendum Commission, with the casting vote on matters of dispute, itself. The Referendum Commission should start its work with enough time to carry out its work even if the Government of Sudan decides not to exercise its right to appoint Commissioners

to it.

GoS will, of course, try to paint such a course of action as “unilateral”. The response will point out that it is simply an attempt to implement, in the light of GoS’ failings, Agreements which have already been made in line with the Communiqué of the 353rd Council meeting, and invite the Sudanese Government to participate in doing so.

For its part, the Government of South Sudan must insist that the October deadline for a referendum is non-negotiable. If the African Union does not discharge its responsibilities as outlined above, the community in Abyei is capable of conducting its own referendum and inviting observers from around the world to monitor it and ensure it is free and fair. Allies, both state and non-state actors (including faith-based organisations) should already be considering how they could respond to such a call, and mobilising training to cover the eventuality that the “experts” (Carter Centre, etc) do not, in the light of political pressure, respond to such a call.

In the meantime, the primary duty of Ngok community leadership and international NGOs is to facilitate the return of those still waiting for transport back to Abyei, and to support those returnees already there in rebuilding their community. There have been fine words from the international community to this end, but in practice the vast majority of useful work has been done by the community (and especially the local church) and not by INGOs, an ideal in theory but in practice hamstrung by lack of resources and co-operation from those in a position to come alongside and assist.

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