

The Outstanding Issues between the Two Sudans

Introduction

The civil war between the North and South in the Sudan, which started in August 1955 before the independence of the country, was the longest in the history of Africa. The reasons behind the war are complex and intermingled between external and internal factors. The closed district policy of the British administration in the Sudan laid the foundation for separating the two regions for three decades, the missionary propaganda inflamed the feelings of southerners against the Muslim Arabs of the North, the long military rule in Khartoum adopted the course of military solution to the southern problem, and the weak democratic governments did not have the time or the political will to give the South an acceptable federal system. General al-Bashir, like Nimeiri before him, was compelled to accept a political solution with the Sudan People's Liberation Movement/Sudan People's Liberation Army (SPLM/A) based on a semi-independent federalism and right for self-determination. The Comprehensive Peace Agreement (CPA) reached between the two parties, the National Congress Party (NCP) and the SPLM/A, in January 2005 under the auspices of the Inter-Governmental Authority on Development (IGAD), was a result of long negotiations that dragged on for more than three years in Kenya. The outstanding issues came to the political arena in Sudan as a result of southern Sudan referendum and its consequence, the birth of the Republic of South Sudan.

The CPA

The detailed Comprehensive Peace Agreement (CPA) is divided into six chapters: Machakos Protocol, Power Sharing, Wealth Sharing, Abyei Conflict, Southern Kordofan & Blue Nile, and Security Arrangements. The Machakos Protocol, which was signed in July 2002, set the following basic principles: self-determination for the people of South Sudan through a referendum, right of legislations based on Sharia for the North, the border of North-South is that of January 1956 as incorporated in the Declaration of Principles adopted by the IGAD, and an interim period of six years

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before the referendum. The Power Sharing gave the South a semi-independent rule; the allocation of seats in the national assembly before the elections was divided as follows: 52 per cent of the seats to the NCP, 28 per cent to the SPLM, 14 per cent to other northern parties, 6 per cent to other southern parties. In the national executive, the incumbent president shall continue while the chairman of the SPLM becomes the first vice-president. The offices of the national executive will be divided in the same ratio as that of the national assembly. In the legislature of southern Sudan, the SPLM shall be represented by 70 per cent, the NCP by 15 per cent and other southern political forces by 15 per cent; the executive in the South shall be divided in the same way as that of the legislature. The state legislatures (15 in the North and 10 in the South) shall be comprised as follows: the NCP is to hold 70 per cent in the northern states and 10 per cent in the South, the SPLM will take 70 per cent in the southern states and 1 per cent in the North, the other political forces in the North and South shall divide the remaining 20 per cent among themselves. The state executive in the North and in the South shall be divided among the political parties in the same way as the state legislature.

However, the arrangement for Abyei, South Kordofan and Blue Nile is different. For Abyei, its executive council is shared by the two parties to the CPA and appointed by the presidency, which is comprised of the president and his two deputies. In the case of South Kordofan and Blue Nile, the legislature and the executive is divided only between the two partners, 55 per cent for NCP and 45 per cent for SPLM. The three regions were given some form of self-autonomy and promised financial assistance, enabling them to reconstruct their damaged infrastructure, as war affected zones. A special commission is established to

define the boundaries of the disputed Abyei which was transferred by the British administration to Kordofan in 1905. It is called Abyei Boundaries Commission (ABC). Another commission is to be formed by the presidency to conduct a referendum among the residents of Abyei, to decide whether they want to retain their special status in the North or be part of Bahr el Ghazal in the South. The two other northern states were granted the right for 'popular consultation' to give their opinions, through the elected legislative assemblies, on their status as agreed in the CPA and how it is implemented in the interim period.

The wealth sharing formula is as follows:

1. The net oil revenue extracted from wells in southern Sudan (75% of Sudan oil is located in southern Sudan) shall be divided equally between the government of southern Sudan (GoSS) and the national government (50% to each), after giving out 2 per cent to the region in which the oil is produced.
2. The national government, the government in the South and state governments are entitled to legislate, raise and collect taxes as listed in the CPA.

The security arrangements allowed the two armies, Sudan Armed Forces (SAF) and SPLA, to continue as separate forces, the first will be deployed in the North and the second in the South. That was a big concession to the SPLM, which allowed it later to go smoothly for secession. A Joint Integrated Unit (39,000 soldiers) will be formed from SAF and SPLA and be stationed in the South, southern Kordofan, Blue Nile and Khartoum. A Joint Defense Board (JDB) under the supervision of the presidency shall command the integrated units. The provisions and principles governing the ceasefire, disengagement and redeployment are written in meticulous details.

The international community hailed the agreement as a model of peaceful resolution to the longest conflict in Africa. The agreement was signed by the presidents of Kenya and Uganda, witnessed by senior representatives from

Egypt, Italy, Netherlands, Norway, United Kingdom, United States of America, the African Union, the European Union, IGAD partners, Arab League and United Nations. The signing ceremony was an impressive occasion that took place in the national stadium of Nairobi on the 9th of January, 2005.

Implementation of the CPA

The real challenge to the CPA was its implementation in a serious and honest way that would maintain the spirit of cooperation which marked the long negotiating process that led to the conclusion of the agreement. The challenge proved to be difficult and sensitive because of the following obstacles: the lack of trust between the two partners, especially after the sudden demise of John Garang de Mabior, the chairman of SPLM/A; the economic difficulties which faced the government of Sudan after the loss of half of the oil revenue coming from the South, in addition to the failure of the international community to fulfil its financial promises to the government. The American sanctions against the North put more pressure on the economy; the support given by each government to opposing group against the other eroded the trust between the two partners. The limited clashes between the armies of both governments in Abyei and Malakal showed a growing hostility between the two parties which incited small extreme groups within both governments to advocate confrontation. The relationship between the two partners during the interim period was mostly tense, suspicious and quarrelsome. The issues of Abyei boundary, its referendum commission, the delimitation of border between North and South, the population census, the actual oil revenue, the referendum laws for the South and Abyei, etc., were all questions of disagreement and dispute between the NCP and the SPLM which, under frustration, withdrew for some months from the Government of National Unity (GoNU) and parliament. As a matter of fact the SPLM acted during the interim period as an opposition party to the NCP rather than a partner, allying itself most of the time with the opposition parties in the North. However, the major steps in the CPA were completed, although later than envisioned in the agreement: the power sharing in the federal and regional governments, the withdrawal of SAF from

the South, a partial withdrawal of SPLA from the North, the equal sharing of the southern oil revenue, the passing of the referendum laws, the mid-term election and the implementation of the referendum on self-determination for the South and the acceptance of its harsh secession outcome. However, some important issues which should have been dealt with during the interim period were not settled; they were shifted to after the referendum. The postponement of settling important issues like Abyei, oil, the North-South border and nationality, caused many problems to individual citizens in the other state—pastoralists, cross-border traders – and economic difficulties to both governments which threaten peace and security in the country. The GoSS insisted on having the referendum of the South on time at any cost. The western powers supported that position and put much pressure on Khartoum to accept the demand, irrespective of its serious consequences. The crisis between the two parties at present is a logical outcome of the hurried way the implementation of the CPA was completed.

A strong criticism is directed by many political observers and analysts to the CPA, that it was a convenient settlement between two armed groups who were fed up with fighting, and those who hoped for real change in the governance of the whole country were disappointed. Many sympathizers and supporters of the SPLM in the North were frustrated that the liberation movement, which called for a 'new Sudan' and promised to work for the unity of the country, easily opted for secession. The SPLM leadership did not show much interest in the affairs of the North nor in the system of good governance. The First Vice-President, Salva Kiir Mayardit, was absent from his office in the Republican Palace in Khartoum most of the time. The objectives of 'democratic transformation', 'the bill of rights', the freedom of expression and association, all enshrined in the CPA and in the transitional constitution were not respected by either government in its domain. The whole exercise of the CPA looked like a division of power between the two armed groups; the NCP continued its grip on the North while the SPLM took its share of power in the South.

Nevertheless, the CPA brought a long-awaited peace to the country and had, in its first few years, many defenders. The

Assessment and Evaluation Commission (AEC), established by the CPA to monitor the implementation, said in its final report: "It has been a unique experiment in peace-building, of unprecedented scale and complexity. Some of the outcomes could not have been clearly foreseen when the Agreement was drafted. Lessons can, and should, be learnt from the problems that arose. But the overall achievement of the CPA as described in this and earlier AEC reports remain something that Sudanese, north and south, can view with pride – not least the act of self-determination, promptly accepted by all, which has brought a new member into the community of nations". Although the government of Sudan was disappointed at the outcome of the referendum, President al-Bashir attended the celebration ceremony of the independence of the Republic of South Sudan on the 9 of July 2011 in Juba, and addressed the crowd, saying that the will of the people of the South has to be respected and promised full cooperation with the new state.

The Outstanding Issues

The Southern Sudan Referendum Act 2009, passed by the National Assembly on 31st December 2009, stated under article (67) some substantive issues that would be negotiated by the two parties to the CPA, and witnessed by the organizations and countries who are signatories to the CPA. They were left over from the interim period, during which they should have been negotiated and settled. It is possible that the GoSS wanted to discuss these issues as an independent country instead of a junior partner to the hawkish Inqaz regime. The issues are the following:

- a) Nationality;
- b) Currency;
- c) Public service;
- d) Position of the Joint Integrated Units, national security and intelligence;
- e) International agreements and covenants;
- f) Assets and debts;
- g) Oil fields, production, transport and export of oil;
- h) Contracts and environment in oil fields;
- i) Water;
- j) Property;
- k) Any other issues to be agreed upon by the two parties.

There are other issues which are part of the CPA but were not settled before the secession and thus have to be negotiated later: Abyei question, the North-South border, security arrangements, and popular consultation in the Blue Nile and southern Kordofan states.

The first meeting between the two parties (NCP & SPLM) to discuss the outstanding issues took place in Mekelle of Ethiopia from 21 to 22 June 2010. It was a successful meeting at which the two parties signed an MoU containing the following points: that the negotiations will be conducted by a joint team of six members from each party. The African Union High Implementation Panel (AUHIP) chaired by Thabo Mbeki shall be the facilitator, supported by IGAD, the UN and IGAD partners. The negotiations shall be supported by a full time joint technical secretariat of six members that coordinate and liaise with AEC which will provide administrative support. The parties agreed to cluster the negotiations into four working groups to address the following issues: citizenship; security; financial, economic and natural resources; international treaties and legal issues. The substantive negotiation on these issues was to commence on 19 July in Juba. It was a promising start for a difficult and complex job.

Another important meeting was convened later, in November 2010 by AUHIP in Khartoum, for the two parties (NCP & SPLM) to negotiate a framework document relating to the implementation of the various outstanding issues. The parties committed themselves to work for the successful conduct of the southern Sudan referendum and pledged to respect its outcome. They agreed to continue negotiating the future of Abyei at the highest level; to hold the popular consultation in the Blue Nile and Southern Kordofan and respect its outcome; to demarcate immediately the North-South border; to maintain 'soft border' allowing peoples' movement, economic activity and social interaction. They accepted that decisions taken on citizenship will not adversely affect the rights and well-being of ordinary people. In this context, the two parties agreed to adopt the policy of free movement of people, goods and services, monetary and fiscal policy, the management of oil and water resources. On the question of security, the parties undertook that neither would take any action, nor support any group that would

undermine the security of the other. They recognized that each post-secession state would conduct its foreign policy mindful of the need to achieve the objective of two viable states which would cooperate for mutual benefit. The Panel was greatly encouraged by the determination of the parties to address the challenges ahead through peaceful negotiations. However, things did not go as smooth as agreed upon, especially after the result of the referendum showed that the overwhelming majority of southerners wanted secession from the old Sudan.

1. Obstacles on the way: An important change in the attitude of the government of Sudan came after secession became a reality on the 9 of July 2011; it drew harsh criticism from the northern opposition and political analysts to the government's handling of the CPA and its consequences. The agreement, which the government considered as its greatest achievement in the political history of the Sudan, turned to be its worst liability in the eyes of the Sudanese political elite. It resulted not only in the loss of one-third of the country, but also of about 40 per cent of the government annual revenue and almost 90 per cent of its foreign currency that used to come from the oil extracted in southern Sudan. The government reacted in an emotional way by dismissing the southern members of parliament after the declaration of the result of the referendum. Even workers, civil servants, soldiers and army officers from southern Sudan were summarily sacked from their jobs before the end of the interim period. The joint integrated units were dissolved untimely before 9 July, which partly contributed to the eruption of conflict in southern Kordofan. Strong statements by government officials and media campaign against the presence of southerners in the North created fear among numerous southerners who no longer felt secure, could not find means of transport to the South and could not keep their jobs in the North. The armed forces invaded the whole of Abyei region in May 2011 after one of their withdrawing units was attacked by the army of the South, despite the fact that the unit was accompanied by UN officials and using UN cars. It was an example of undisciplined soldiers deciding the course of engagement on their own, which caused real damage

to the precarious relationship between the two countries. The flare up of conflict between Sudan Armed Forces and the SPLA-North in southern Kordofan in early June 2011, and later in September in Blue Nile was a serious development that worsened the relationship between the GoS and the GoSS to a new low level. The GoS accused GoSS of encouraging and supporting the rebellion in the two states. The southern army should not have been in the North long time ago, and the northern units in that army should have been disarmed and demobilized. Lack of progress on the oil issue, led the GoSS to close the oil fields in the South in February 2011, accusing the government of Sudan of 'stealing' two shipments of its oil. The government defended its action by saying that it did not receive any payment for its facilities and transport of oil since the secession on 9 July; thus what it seized is what it deserves for its services in the last seven months. However, the quick attack on Heglig by southern soldiers in the last week of March 2012, and later on 10 April by several SPLA divisions, planned on the highest military command, was the most serious violation of the CPA. It could have led to an outright war between the two countries, thanks to the inter-national community which intervened quickly, condemning the aggression and putting pressure on the GoSS to withdraw its troops, which it did. The Sudan Armed Forces felt humiliated, and so attacked the withdrawing army, to avenge its early defeat. As a consequence of Heglig attack, Sudan closed its border with the South, preventing all forms of trade and transport. This serious event led to the intervention of the Peace and Security Council of the African Union (PSCAU), on a complaint from Khartoum, which adopted, on 24 April 2012, a comprehensive decision on the situation between the Republic of Sudan and the Republic of South Sudan. Later, the UN Security Council passed a detailed Resolution 2046 (2012) on 5 May, supporting the PSCAU decision on the matter. The Heglig event may be a blessing in disguise!

2. The Contents of the PSCAU Decision: The Council condemns the violation of the human rights of non-combatants, the damage of oil installations, the inflammatory state-

ments from both sides and the threat of hostile action. It reaffirms its commitment to respect the territorial integrity of Sudan and South Sudan and the inviolability of their border as existed at the time of independence on 1 January 1956; taking into account the disputed areas as agreed in the deliberations of the Technical *ad hoc* Boundary Committee. It expressed deep concern at the failure of the parties to implement agreements that they had freely entered into, particularly the Temporary Arrangements for the Administration and Security of Abyei (20/6/2011), the Joint Political and Security Mechanism (JPSM) (29/6/2011), the Border Monitoring Support Mission (30/7/2011), and the Memorandum of Understanding (MoU) on Non-Aggression and Cooperation (10/2/2012). Then, the Council adopted a roadmap in order to ease the current tension and facilitate the resumption of negotiations on post-secession relations. It included: the immediate cessation of all hostilities within 48 hours; the unconditional withdrawal of all armed forces to their side of the border; the activation within a week of all border security mechanisms agreed upon; cessation of harbouring or supporting rebel groups against the other state; cessation of hostile propaganda and inflammatory statements in the media; taking full responsibility for the protection of each other's nationals; implementation of pending aspects of Abyei agreement, namely the redeployment, within two weeks, of all Sudanese and South Sudanese forces out of Abyei; unconditional resumption of negotiations by the two parties within two weeks, under the auspices of the AUHIP, to reach agreement on: oil, status of nationals in the other country, border disputes, and status of Abyei. The negotiations were to be concluded within three months, otherwise the High Panel should submit a comprehensive report on the status of negotiations, which includes detailed proposals on all outstanding issues, to be endorsed as final and binding solutions to the post-secession relations. The Council sought the endorsement of the UN Security Council of the same, which it did on the 5 of May. The Council urged the Government of Sudan and the SPLM-North to reach a political negotiated solution on the basis of

the Framework Agreement on Political Partnership between the NCP and SPLM-North, and Political and Security Arrangements in Blue Nile and Southern Kordofan states (28/6/2011). Both parties should extend full cooperation to the AUHIP and the Chair of IGAD to reach a settlement. It requested the government to permit humanitarian access to the affected population in the two areas.

The two governments accepted the PSC decision and started acting upon it: they withdrew their armed forces from Abyei, and accepted the invitation of AUHIP to a meeting in Addis Ababa on 29 May, to start the negotiations.

- 3. Resolved Issues:** Some of those outstanding issues were resolved as *de facto* situation or by a common understanding after the secession on 9 July. These include 'public service', position of the 'joint integrated units' and 'property'. Each government acted on its own right to decide the future of workers from the other state within its public service. The majority of those were working in the North, mainly in the army and police. The government sacked all of them, although majority of them got their pensions and after-service claims. The joint units in the South and in Khartoum were easily dissolved before the end of the interim period, the only problem was that of the northerners from southern Kordofan and Blue Nile who were part of the SPLA, and who waged a rebellion in the two states against the government. This problem still exists and will surely be discussed in the Addis Ababa negotiations as decided by the PSCAU and UNSC. The question of property was left to concerned individuals who owned plots of land or houses in the other state; most of the southerners in the North sold their property in a private way while the northerners in the South were not in a hurry to do that. The three issues were not a topic in the rounds of negotiation after secession.

On the 'currency' issue, the two parties agreed before the secession to use the old currency in the new state of South Sudan for a period of six to nine months, then it would be gradually exchanged on agreement between the two central banks of both countries. However, each country was secretly printing a new currency of its

own before the fixed period was over. The Central Bank of Sudan introduced the new currency earlier than South Sudan, leaving the old currency in the South without value. At present, each country is using its own new currency, but the store of old currency in the South has to be compensated for in one way or another. It was an example of mistrust and lack of commitment, on the part of the two governments, to their agreements.

The issue of 'international agreements and covenants' was also not considered important. The two parties agreed that the predecessor state (Sudan) should continue bearing the entity of the old Sudan with all its international and regional agreements while the successor state (South Sudan) will make its own new international and regional treaties.

On the 'assets' and 'debts', the two parties accepted the geographical principle of dividing the assets according to their location in the country where they exist: what is in the North will go to the North and what is in the South will go to the South. The foreign assets shall go to the predecessor state which will also bear the responsibility for the foreign debt (about 40 billion US dollar). It was based on the understanding that the international creditors will write off all possible debts; the two parties shall work together to convince the creditors to forgo their debts on the old Sudan. Otherwise, the parties shall share the debts and assets in foreign countries according to the recognized international standards.

- 4. Partially Resolved Issues:** These include 'nationality', 'North-South border' and 'security arrangements'. At the beginning, the government of the North was strict about giving its nationality or residential concession to the hundreds of thousands of southerners living in the North, while the government of the South was ready to do that to a far less number of northerners in the South. The two parties agreed to give nine months, after secession, to the nationals of the other country to leave or regularize their stay according to the laws of the country where they want to stay. The period expired on 8 April 2012, but besides some strong statements in the media, the government of Khartoum did not attempt to enforce the decision against the over-staying

southerners. The government of the South never threatened to push northerners out, they were only asked to get a residential permit, which is easily given for 100 US dollars. Eventually, a breakthrough was reached in the negotiations at Addis Ababa on 13 March 2012. The parties agreed to allow the nationals of the other state to enjoy the freedoms of residence, movement, economic activity, and ownership of property. A joint high level committee would be established to oversee the adoption and implementation of the agreed measures relating to the status and treatment of the nationals of each state in the territory of the other state. The two states shall negotiate an agreement to elaborate the four freedoms mentioned above.

On the 'delimitation and demarcation' of the boundary between the two states, a joint technical committee had been established since the beginning of the interim period to draw the border between North and South, as left by the colonial administration on 1 January 1956. The process should have been finished before the referendum of the South took place, but it dragged on till the secession. The joint committee agreed to about 70 per cent of the border between the two countries, which consequently the presidency affirmed. According to the committee, only four regions were disputed: 1) Jodah or Dabat al-Fukhar, a rich mechanized agricultural land between Upper Nile and White Nile; 2) Megenis Mountains between Upper Nile and South Kordofan; 3) Kaka town which lies between Upper Nile and South Kordofan, a small piece of land but strategically important for its access to the Nile and to oil producing areas; 4) Kafia Kinji, a rich area between South Darfur and Western Bahr al-Ghazal. The delegation of the GoSS asked JPSM, by the end of 2010, to add a fifth area – Safaha grazing area, which extends 14 kilometers south of Bahr al-Arab; it lies between South Darfur and Northern Bahr al-Ghazal. The presidency accepted the inclusion of the new area. In the late negotiations of 29 May in Addis, the South delegation demanded the inclusion of five areas to the disputed regions that includes Heglig, Abyei and almost all the oil-producing fields in the North. It came with a self-drawn map, including the claimed areas, asking that it should

be considered as the reference map. But it was immediately rejected by the Sudanese delegation. That was a non-starter position which practically led to the failure of the first round of negotiations after the SC Resolution 2046. The High Panel tried a compromise by proposing a new map, but that was refused by the GoSS delegation. It seems that the South delegation was seeking a bargaining position against the North by increasing the number of disputed areas. The GoS accused the GoSS of avoiding to settle the question of border before secession in order to take the whole issue to international arbitration, which may rule in its favour or seek a compromise settlement between the two countries. A complicating factor to the issue of border is that the two parties, like all African governments, accepted the territorial boundary as left by the British colonial administration on 1 January 1956, but the British left no map on that date to show the exact border. Moreover, the British administrators used to shift certain regions, for security or administrative reasons, from one province to another irrespective of the ethnic group living in that area. This happened in the cases of Abyei, Heglig, Kafia Kinji, Kaka and others. The GoSS claimed Abyei, not on the basis of its location in January 1956 but on the ethnicity of its population in 1905, when it was transferred from Bahr al-Ghazal in the South to Kordofan in the North. However, in the agreement between the two parties on the demarcation of boundaries, in Addis Ababa on 13 March 2012, the parties affirmed the definition of the agreed boundary in accordance with the physical description and delimitation, and corresponding recommendations of the Technical Committee for the 1st January 1956 border line demarcation between North and South Sudan, which was affirmed by the presidency of the Republic of the Sudan prior to the secession of southern Sudan. In the March 2012 meeting, the parties also agreed to establish a Joint Demarcation Committee, a Joint Technical Team, and a Joint Border Commission in order to finalize the question of border between the two countries. It is strange that in the first round of negotiations at Addis Ababa (17 May to 7 June 2012) the border line created much disagreement between the two

delegations. I have the feeling that the real interest of GoSS is to have Abyei at any cost, thus it might be hoping to swap the disputed areas for Abyei. It is worth mentioning that all the borders of the old Sudan with its eight neighbours have never been demarcated and most of them have not yet been delimited since independence till today!

The question of 'security' was much complicated by the fact that the SPLA included many units from southern Kordofan and Blue Nile, which fought under the leadership of southern Sudan for many years until the signing of the CPA. It was not easy to terminate that comrade relationship after secession, the GoS accused the SPLA as still supporting and controlling the 9 and 10 army divisions which started the mutiny in southern Kordofan and Blue Nile. The GoSS also has its accusations against the government of Khartoum for supporting rebel army generals against the elected government of the South. In a number of previous agreements, since before secession, the parties promised not to threaten the security of the other state. In the negotiations round of 7 November 2010, facilitated by the AUHIP in Khartoum, the NCP and the SPLM undertook that neither of them would take any action, nor support any group, that would undermine the security of the other. Instead, the North and the South would continue to cooperate and share information that would enhance their capacity to deal with internal and external threats as well as trans-border crime. The MoU between the two parties, reached on 10 February 2012, on non-aggression and cooperation, affirmed similar statements. It clearly said that neither country will harbour, arm or train militia or other entities against the other. This is why the PSCAU, in its decision on 24 April 2012, expressed its deep concern at the failure of the parties to implement agreements that they themselves had freely entered into. It seems that the real problem is not to find the theoretical solution for any issue; rather, it is the political will to implement in an honest and serious manner what the parties have agreed upon. That is a question of political culture rather than a legal position towards a certain issue. It is understandable that the GoS, being threatened in the regions of Darfur,

Southern Kordofan, Blue Nile and the border with the South, insist on first discussing the issue of security arrangements in the last Addis Ababa round. It was agreed that each army should withdraw 10km from the border within its territory. This agreement has not been implemented because the borderline between the two countries was not agreed upon.

5. Unresolved Issues: These include ‘popular consultation’, ‘Abyei status’, ‘oil’ and ‘water’.

The issue of popular consultation in Southern Kordofan and Blue Nile was part of the CPA. The people of the two states are supposed to give their opinion on the status granted to them in the CPA and how it was implemented during the interim period. The consultation in Southern Kordofan never took place because the state election was delayed till May 2011, then the armed conflict started immediately in the next month. In the Blue Nile, the process started but was not completed because the state joined the conflict in Southern Kordofan in September of the same year. An attempt was made to solve the conflict peacefully by the Framework Agreement on Political Partnership between NCP and SPLM-N signed by the leaders of the two parties, Nafi A. Nafi and Malik Agar, in Addis Ababa on 28 June 2011. However, the leadership of the NCP was quick to reject the agreement, thereby allowing the conflict to drag on till today. The other side sought to broaden the rebellion against the government, by allying itself with another militia group ‘the Justice and Equity Movement’ of Darfur under the name of Sudan Revolutionary Front (SRF). The aim of the new organization is to overthrow the NCP government by political and military means. The decision of the PSCAU required GoS and SPLM-N, in cooperation with AUHIP and the Chair of IGAD, to reach a negotiated settlement for the two states on the basis of the Framework Agreement mentioned before. The issue of popular consultation became entangled with the questions of peace, security, the North-South border, and the wider issue of good governance in all the Sudan.

The Abyei status remains to be the most difficult and complicated issue, even reaching a temporary arran-

gement and implementing it proved to be impossible. The inclusion of Abyei in the CPA was against the principle of the border, according to the January 1956 status. The American senator John Danforth played an important role in trying to resolve the impasse between the two parties by authoring the problematic and vague protocol of Abyei as it exists. The first dispute between the two parties was about the area of Abyei which they took, after much wrangling, to the PCA in The Hague, the second was about the person who is eligible to vote in the referendum to decide the future of Abyei, whether to remain in the North or join the South as SPLM wants. The SPLM defended the right of Dinka Ngok, being the original residents of the region, to decide its future; the NCP argued that the protocol defined the residents of Abyei Area as: “the members of Ngok Dinka community and other Sudanese residing in the area”, and that allows the Misseriya nomads who had lived up to eight months in the region to take part in the voting. That was unacceptable to the SPLM, because it simply means that the Misseriya who are the majority in the area will surely keep it in the North. A number of proposals to solve the problem were advanced by the American envoy and AUHIP, but none of them got the approval of both parties. Two serious clashes took place in Abyei between SAF and SPLA which led to the displacement of the majority of its population. The PSCAU, in its late decision, asked for the implementation of the Agreement on Temporary Security and Administrative Arrangements for the Abyei Area, in particular the redeployment of all Sudanese and South Sudanese forces out of Abyei. The local administration was to be formed from the two communities in the region under the protection and supervision of the Ethiopian force introduced by the United Nations (UNISFA).

The issue of ‘oil’ in the South and the service facilities being in the North should have been a factor to encourage both poor countries for closer economic and interdependent relationship. However, the opposite was the case, as it became a dividing factor because of the extreme demands proposed by either party. This eventually led to the closure of the oil fields in the South, pushing the two governments to go around begging

for foreign financial loans or assistance. A number of proposals were put forward by the AUHIP to bridge the gap between the exaggerated demand of GoS for its oil facilities and services and the poor offer given by GoSS, but none of them was accepted by both parties. It seems that each side wants to break the other, thinking that it cannot stand the pressure of deprivation for long. However, the deadlock cannot continue for a long time because both governments are in a desperate economic situation. The World Bank analysis of the economic and social impact of the shutdown of oil in the South (March 2012), gives a bleak picture for the economic situation and its repercussions in South Sudan.

The question of ‘water’ is puzzling. It is mentioned in the Southern Sudan Referendum Act as one of the outstanding issues to be negotiated by the two parties. It has never come up in any of the many rounds of negotiations between the GoS and the GoSS since July 2010. It is GoSS which holds the leverage on the question of water, because it is not in need of water at present but it has a legal right to divide with Sudan its share in the Nile water which amounts to 18.5bqm. It is likely that the government of the South wants to keep this card under its sleeve to use it at the right moment. Sudan can hardly afford sharing this amount of water with the South, unless new sources of water is developed like the Jonglei canal.

The Way to Peace

It is not in the interest of either party to go to an outright war because of failure in resolving the outstanding issues. Neither of them is ready for that eventuality from a military, economic or political point of view. They showed in a number of cases that they do not wish to go to a full-fledged war, in the cases of Abyei, Southern Kordofan and Heglig. They may be aware, by now, that neither of them could, by military means, defeat the other and, even, this would not mean that they would not still continue their political brinkmanship, which may plunge them into small scale conflicts. As pragmatists and self-centred politicians, the NCP and SPLM leaders know where to stop the game before it endangered their fragile regimes. In order to follow the way to peace, the two sides have to broaden their vision for a long-term strategic rela-

tionship because it is to their mutual benefit to do so. The negotiations on the outstanding issues should be based on that strategic outlook. The global community should help them to adopt such a broad and long-term vision. Despite the obvious differences between the two countries which partly led to the painful secession, there are many common features between their people which make them closer to each other than to the Africans in the south or the Arabs in the north. Besides the social and cultural linkages, the two countries have vital areas of common interest: oil, Nile waters, long tradition of cross-border trade and cattle grazing, and rich agricultural land along the border. The systems of education, civil service, judiciary, military, police, medical care, etc., are similar; the new-born country in the South may benefit from the experience and technocrats in the North in all these areas better than expatriates from other countries. Strange enough, the two parties recognize this common interest which they mentioned in a number of their agreements; but when they disagree on something, they seem to completely forget about it and behave like enemies. It may be for internal politics, each party needs a 'common enemy' in order to galvanize popular support behind its ill-confidant government!

The resolutions of both PSCAU and UNSC (under Chapter 7), will put a tremendous pressure on both governments to behave themselves and reach agreements on time. It is unlikely that either of them would dare to oppose the two important bodies headlong. The quick withdrawal from Heglig and the beginning of negotiations on time in Addis Ababa prove this assumption. The AUHIP, as usual, was quick to take the lead and facilitate the negotiations between the two parties in Addis Ababa. This time, it is armed with a comprehensive and detailed resolutions from the PSCAU and UNSC (under Chapter 7), which requires "any or all of the parties have not complied with the decisions set forth in this resolution, to take appropriate additional measures under Article 41 of the Charter as necessary". Sudan, before the voting on the resolution, was hesitant to accept it; but after consulting with the Russian government, it found out that it would get no support if it refused the resolution. The resolution was passed by consensus in the UNSC. In order to prevent prolonging the process, the

resolution gave fixed dates for the various actions which are supposed to be implemented by the two parties, including the conclusion of the negotiations on all issues within three months. In the event these negotiations fail to result in an agreement, it asked the Secretary General in consultation with the AUHIP, the Chair of IGAD, and the Chairman of AU Commission to report within four months of the resolution, including detailed proposals on all outstanding issues. This means that the UNSC is considering enforcing its own solutions for the problem of Sudan and South Sudan. It may be a good idea for the AUHIP to involve, in the coming rounds of negotiations, some political forces other than the two ruling parties, some active civil society organizations and neutral experts. One of the obvious shortcomings of the CPA is that it was a closed club for the NCP and the SPLM; and whenever they disagreed on something, they had to take it to a third party outside the country. Surely, the big powers have other concerns and problems to care about than stick themselves to the North-South endless conflict. Involving other Sudanese and South Sudanese would broaden the popular base of the agreement, give a better guarantee to the fulfillment of what is agreed upon, and assure each party that its political rivals would not exploit the unpopular parts of the agreement against it. The approach to negotiate the issues should be in the form of a package deal rather than on single issue basis. It is not necessary that all outstanding issues should be solved at once. Some of the sensitive and complicated ones, like Abyei status or the disputed areas, may be postponed to a fixed time in the future. Both parties should be given tangible incentives by the international community on the conclusion of a peaceful settlement. The fixed dates given in the SC resolution should not be taken literally, as long as positive progress is achieved.

However, without real change in the spirit and political will of the two parties, it is not likely that they will reach a comprehensive settlement on the various outstanding issues. The international community may use the present economic crisis in both countries to press for a change of attitude, on a firm commitment that it will help them in solving their economic difficulties. It may even go a step further to encourage and support all forms of economic cooperation between

the two quarreling states. In the past, the financial promises of the international community to the parties have not been honoured; so, it is time that it shows something in advance.

Conclusion

The problem of North-South Sudan is not unique in Africa but it is more complicated by internal and external factors, and a long history of confrontation. The eventual peaceful solution in Sudan will be an example for others, as happened in the case of South Africa. If not, it will have disastrous consequences for most of its neighbours. The two parties alone cannot easily solve their problems, as has been demonstrated since the beginning of negotiations on the CPA. The international community has to be actively involved, but it has to act in a fair and neutral way in order to achieve sustainable peace and cooperation between the two new countries. The African Union and the AUHIP are the best bodies to facilitate and lead the negotiation process, till the desired settlement is successfully concluded. There is a strong suspicion within the NCP, shared by the majority of northerners, that the big western powers are pro-South and against the North. This charge can easily be used to mobilize people against western proposed solutions. The western governments should therefore be more sensitive to such accusations in dealing with North-South relations. The economic crisis in the two countries is an opportunity for the west to attract the two parties for positive cooperation, in return for economic incentives. It may be a good idea to use close neighbours, like Saudi Arabia and Egypt, to influence Sudan; Kenya and Uganda, to persuade South Sudan. The resolutions of the PSCAU and UNSC should be used to the maximum in order to reach a fair and peaceful settlement to all outstanding issues between the two obstinate countries.

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