

## **South Sudan: National constitutive dialogue as the only way forward towards a viable democratic constitutional state**

By Mehari Taddele Maru and Abel Abate

Two weeks after the June 10 agreement was signed to form a transitional government of national unity within 60 days, on 23 June 2014, the Intergovernmental Authority on Development (IGAD)-led peace talks on South Sudan have adjourned the multi-stakeholders' consultations.

It is to be recalled that the South Sudanese government threatened to withdraw from the IGAD mediation after the Executive Secretary of the IGAD, Eng. Mahboub Maalim, allegedly said that the warring parties were "stupid" if they thought they could win militarily. Both the government and the rebel group complained about the Executive Secretary's remarks. South Sudan's Information Minister told Iranian Press TV that his government was capable of continuing the peace talks without IGAD in any other forum where the parties would be 'dignified' and 'respected'. The minister also added that his government has written a letter of complaint to the Chairman of IGAD and the Ethiopian Prime Minister, demanding that action be taken against the Executive Secretary of IGAD. Despite the undiplomatic wording of the recent statement by the IGAD Executive Secretary, his statement was merely a restatement of the position shared by IGAD and the AU, that the crisis in South Sudan is political and cannot be solved militarily, thus only through a peaceful process.

At the centre of all the posturing, the delays and political manoeuvring are wrong assumptions and expectations of the warring parties about the IGAD- led mediation. With an increasingly diminishing legitimacy and popular basis, the warring parties and, most importantly, the government exhibits lack of commitment and concern for the people of South Sudan and their suffering.

Believing that IGAD and the other regional governance institutions, particularly the AU, would support their position, the warring factions of the SPLM/A supported the IGAD-led mediation effort without any reservations. By designating the crisis as a failed coup, President Salva Kiir may have assumed that the AU, and therefore IGAD, would corroborate and condemn the SPLM/A In-Opposition as the perpetrator of an attempted unconstitutional change of government proscribed under the AU Convention, particularly the Charter on Democracy, Elections and Good Governance. For Dr Riek Machar, the gravity of the crisis and the severe victimization of the Nuer community, as well as the determination of that community to support his bid to remove President Kiir from power, has emboldened his belief that the mediation process will favour him.

Another very important factor in attempts to pursue mediation under IGAD may be the fact that IGAD does not have both a carrot and a stick. This is factually true, but analytically incorrect. Despite IGAD's limited power to sanction and ensure observance, IGAD's partners, including the USA and the EU, who rallied behind the mediation efforts on South Sudan, have many carrots and many big sticks to ensure observance.

Understanding the sheer disregard of their responsibility on the side of the warring parties, IGAD's framework evidently displayed the required inclusivity, thus avoiding a blanket endorsement of their self-aggrandizing positions. The IGAD-led mediation avoided an over-reliance on the warring parties and called for multi-stakeholders to pursue consultations that reach out to the South Sudanese community beyond the warring parties.

Given that the SPLM has lost the popular legitimacy it enjoyed during the armed struggle for independence, now no institutional body or organs can effectively claim legitimacy to govern South Sudan. Requiring an inclusive approach for the dialogue and transitional process, the IGAD-led mediation process has granted all the power to the stakeholders to decide the procedure and substance of the dialogue and the transitional process.

As leaders of factions of the SPLM, with high vulnerability from both external and internal actors, both President Kiir and Dr Machar face resistance to taking more moderate positions. Both President Kiir and Dr Machar are now succumbing to the pressures of their respective constituents, the SPLM/A and government officials and large members of the Nuer community respectively. Fearing the return of the former detained ministers and SPLM/A leaders to their posts, President Kiir is increasingly facing strong opposition from those who have been appointed to these vacant positions. A serious problem of President Kiir resides in his inability to stand on his own two feet and his dependence on Ugandan 'presidential' military support as well as his inability to rein in his colleagues in Juba. The claim that he signed the Agreement under duress emanates from this critical weakness. Pleading with the President of Uganda to withdraw his troops from South Sudan on the one hand, and declaring on the other hand that his government could not survive long without the Ugandan army, exhibits the sad state of affairs of the SPLM/A. With multiple divergent voices and contradictory positions in Addis Ababa, Juba and Kampala, the incumbent group has been searching for any pretext to avoid its accountability to the IGAD-led mediation efforts.

In contrast, Dr Machar will face serious challenge internally if he was to join a national unity government where Mr Kiir remains president. While the former detainees do not consider him as their leader, influential Nuer politicians would not allow him to work directly with Mr Kiir as president. Indeed, for him personally, he may seek the presidency after the end of the transitional process and has a slim chance of winning. .

Indicative of the disappointment of the regional, Pan-African and International communities about the lack of concern for the suffering population and the absence of any commitment to resolve the crisis, "the IGAD-led mediation [urged] the political leaders of South Sudan to assume their responsibilities with the same resolve that their neighbours and the international community attach to this tragic situation." IGAD's special envoys including Ethiopia's former long serving Foreign Minister Seyoum Mesfin who knows the region, and the international partners well have galvanized a seamless alliance around the framework. While focusing on the need to move to "the full operationalization of the Monitoring and Verification Mechanism (MVM) in accordance with UNSC Resolution 2155", IGAD with strong backing from the international community intends to deploy the "Regional Protection Force with "a new mandate to protect civilians, reinforce the MVM and ensure unhindered humanitarian access as well as

the protection of humanitarian corridors.” Failing to abide by the IGAD-led mediation will certainly lead to strong international unanimous condemnation.

According to reports, US Secretary of State John Kerry has even tried to persuade three of South Sudan’s immediate neighbours to impose tough penalties against spoilers of the mediation process. The warring parties, particularly the incumbent group with a huge responsibility of governing a population, would face serious difficulty if sanctions were to be imposed.

Lacking the type of party and state structure and popular anti-western social base that enabled the Sudanese and Eritrean regime to survive and sustain themselves under similar sanctions and international pressure, the SPLM/A and the state would be unable to sustain similar levels of sanctions if they were to be imposed. Solely dependent on oil revenue for financing the entire public service, the state faces a serious decline in its ability to exercise legitimate core functions, including the maintenance of law and order and the operation of the armed forces (SPLA). This weakness could constitute a recipe for state failure in South Sudan.

The mediation process is taking place in unfavorable circumstances, requiring the adoption of some imperfect positions and approaches, such as the inclusion of ethnic and religious representatives with the vision and commitment to transform themselves and their followers from a purely sectarian outlook to that of democratic citizenry. In this regard, a serious concern of the IGAD-led mediation process is the need to ensure the inclusivity of all representatives of all communities, particularly those from peripheral areas located far away from Juba. These include organizations that were disenfranchised even before the crisis erupted (mainly in the diaspora) and those who were displaced during and after the crisis, such as the South Sudan Human Rights Society for Advocacy (SSHURSA). Only if the dialogue is reflective of the hopes and fears of all segments of South Sudanese society, is it possible for the national constitutive dialogue in South Sudan to enjoy a popular legitimacy, thereby serving as a constituent assembly with a view to creating a prosperous, peaceful and constitutional democratic state.

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