

# PROSPECTS FOR PEACE IN SUDAN

## BRIEFING

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Justice Africa  
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### Overview

1. The Sudan Peace process is in a crucial stage after the GoS rejected the draft framework for resolution of outstanding issues arising out of the elaboration of the Machakos Protocol presented by the Mediators at the Sixth round of Talks at Nakuru, Kenya, on 12 July. Problems were not unexpected, but the vehemence of the GoS denunciation was surprising. The SPLA has accepted the mediators' proposals as a basis for negotiation, unsurprisingly as they are close to the position it has itself articulated. There is both a substantive and a rhetorical gulf between the parties.

2. Khartoum's rhetoric of rejection could not be matched by any political alternative. The multilateral strategy of the mediators has resulted in solid regional and international support for the IGAD peace process, so that Khartoum has nowhere to turn. The GoS has succeeded in drawing attention to its concerns, and perhaps reassuring some of its internal constituents that it has not forgotten them, but it has no alternative but to return to the peace talks in August. The principal issue of substance now is, in what areas will the mediators bend to Khartoum's concerns? And will any such compromises jeopardise the SPLA's readiness to agree?

3. Meanwhile, the failure of the last round of peace talks has created unpredictability in the peace process. The parties could be uncompromising and the peace momentum could be lost by protracted wrangling on procedural matters. The IGAD mediators and the troika should not underestimate the possibility of the GoS abandoning the peace process if it is assured of a solid internal front. The GoS could still pursue talking at IGAD as a tactic to buy time. If the peace is to be consummated in the next month or so, major leverage will have to be exerted on the parties, which primarily implies a stepped-up high-level U.S. involvement.

### The GoS Walks Out—and Back In?

4. The GoS rejected the IGAD draft framework document as unbalanced unworkable and impossible to implement. Meanwhile, the SPLA accepted the draft proposal as a framework for further discussion, noting its reservations. The GoS announcement not only stalled the peace process, but also meant that opportunities to explore the parties' red lines in the session could not be pursued.

5. The mediators' strategy in presenting a framework document to the parties, without first having briefed them on its contents and obtained some indication that the negotiations would be able to proceed, proved to be a tactical error. President Bashir's capacity to negotiate

depends upon sensitive political calculations and manoeuvre in the fraught political environment of internal GoS politics, is limited. The mediators' approach of negotiating around a blind draft may have expedited the convening of the talks, by minimising pre-talks consultations and the opportunities for prevarication that accompany them, but in this case the gamble did not pay off.

6. Having walked out of Nakuru, the GoS stunned many observers including the Sudanese people with the vehemence of its outburst that included strong statements by the President of the Republic Omer el Beshir. The GoS delegation not only rejected the document as basis for discussion but called it unbalanced, biased and major departure from the Machakos Protocol. The GoS further challenged the credibility of the mediators especially the IGAD Special Envoy General Sumbeiywo. President Beshir even said that IGAD could go to Hell, or soak the draft and drink it, the mediators insisted on its discussion.

7. The GoS asked for a completely new draft proposal before resuming the talks, and stated that it cannot accept the 'Nakuru' document as basis for discussion leading to final agreement. It will therefore attend the coming round armed with that position. A busy round of diplomacy ensued and vigorous attempts to salvage the peace process are underway, with the mediators pushing for the GoS to accept discussion on the basis of an amended document rather than one redrafted from scratch. The parties have provisionally agreed on 11 August as the date for resumption on the peace talks, probably in the Mount Kenya Safari Club. This date may slip, but the mediators are determined that it should not slip by much.

8. JA June briefing warned that despite the optimism, the IGAD Secretariat with the full involvement and support of international backers should put in place 'Plan B' for both parties in the case of the breakdown of the talks. Thus far, a diplomatic 'Plan B' appears to be working, to ensure that Khartoum comes back to the negotiating table. (A resumption of the war in the middle of the rainy season would also not be a logical military move for the GoS.) The need for a humanitarian 'Plan B' still exists, including fall-back provisions for the protection of civilians in the war zone until the parties resume the talks where they stalled.

## **Points of Substantive Disagreement**

9. The GoS delegation's comments and remarks on the draft framework for resolution of outstanding issues arising out of elaboration of the Machakos Protocol provide clues to the GoS position. Important outstanding issues objected to by the GoS fall into three areas, namely, the national capital, power sharing and security arrangements. Surprisingly, the GoS document is silent on the three contested areas of Abyei, Nuba Mountains and Southern Blue Nile.

10. Justice Africa in this July in this briefing would like to depart from its usual style and present highlights of the GoS position and attempt to clarify important areas pertaining to the Sudanese agreements relevant to the next and hopefully final round of peace talks. In this response, we rely on the GoS response to the leaked draft and statements made in the international and Sudanese Arabic press.

### **State and Religion: The National Capital**

11. The GoS document states its position as follows:

“The Machakos Protocol declares with great confidence and relief:

“Further record that within the above context, the parties have reached a specific agreement on the Right of Self-determination for the people of South Sudan, State and Religion etc...

“And also it states under National Government:

“3.2.2 National enacted legislation having effect only in respect of the states outside Southern Sudan shall have as its source of legislation *Sharia* and the consensus of the people.

“See also the mechanism proposed by the Machakos Protocol for the revision of currently enacted legislation in 3.2.4 (I)&(ii).

“Yet, despite these clear provisions, the drafter of this document, under 3.0 Seat of the National Government and National Legislature went on to prescribe a number of provisions 3.1, 3.2, 3.3, 3.4, 3.5, & 3.6, that neither refer to the above stated specific agreement in the Machakos Protocol, or at least acknowledge its existence and binding nature, some of the enumerated provisions indeed violate the specific agreement or try to revise it in a manner that would be described as sneaky, and in light of discussions with the people we believe to be responsible for the framework and our well known position on the matter, and assurance by the resource person in the presence of the Special Envoy, that agreed (and signed) provisions shall not be tampered with, we feel that the credibility of the whole process is now seriously challenged. Any draft that in effect brings the binding nature of the Machakos Protocol in question is not going to enjoy support on our part, and shall not, we firmly believe, be initiated by the secretariat, or be encouraged, or endorsed by the friends of the peace process, otherwise the very foundation of this peace process will crumble, particularly as we know that the other great achievement of the Machakos Protocol Right to Self-Determination can be rendered as ridiculously meaningless, as State and Religion has been thanks to this unbalanced draft, that can be achieved through tactics similar to the ones used in achieving this present dubious feat, and everybody, who knows anything at all about the situation in Sudan know that the internal and external detractors who helped set the stage for this brazen retreat from a signed commitment, are as negative about self-determination, as they have shown to be about state and religion.”

12. The GoS outburst was on the proposal by the mediators regarding the Seat of the National Government and National Legislature: The draft proposal reads:

“The national capital shall be a symbol of unity that should reflect the diversity of the nation. Khartoum city shall be the Capital of the Republic of the Sudan. A district within the city of Khartoum, within which buildings and offices of the national government are situated, as well as the site of the National Parliament, shall be known as the capital district of the Sudan. This district shall be precisely designated by the parties during the Pre-Interim Period.

.... All existing legislation applicable to the District shall be reviewed by the Joint Committee of both Houses of the National Legislature.”

13. This proposal undoubtedly treats the issue of the capital in a manner that makes unity attractive for Southern Sudanese. Unfortunately, in the current Sudanese political context the proposal is seen by the Islamist and considerable number of Northerners as a charter for ‘secularism’, leaving it open to the accusation of ‘profaning the national capital with vice’ and similar.

14. The draft proposal also impugns the political legitimacy of the Islamist government by acceding a portion of the capital to be a Sharia Free Enclave. This appears to be the red line that the GoS would not cross even if that meant walking away from the peace process. Acceptance of such a proposal amounts to political suicide by the National Congress Party. Having mobilised its supporters and allies to defend the faith and the nation from the ‘crusaders’ and ‘imperialists’, to surrender on such a fundamental point, and then subject the government to the verdict of the electorate, would leave the NCP squeezed between the Popular Congress of Hassan al Turabi and the sectarian parties.

15. Did the Machakos Protocol settle the issue of the national capital? There is disagreement on this, not only among observers but also among those directly engaged. Undoubtedly, Machakos settled the issue of relation between religion and state in Northern Sudan. But this leaves ambiguity as to whether the national capital in a ‘one country two systems’ formula is politically as well as geographically part of the North. This a genuine ambiguity with good arguments to be made on either side.

16. Responsibility now falls on the GoS to come up with a formula better than the one offered by the mediators. The issue of the national capital could not be wished away by simply walking out of the peace process. It is a critical focus for tradeoff.

### **Security Arrangements**

17. The GoS responded to the mediator’s proposals in the following manner:

“The two delegations have not got the same opportunity to engage in preliminary discussions as they have got in the other areas.

“In the context of a united Sudan, there shall be a single united National Army Force (NAF).

“All armed forces shall be integrated in the National Armed Force (NAF) before the end of the interim period according to agreed arrangements.”

18. The GoS further called its proposal of single army as ‘representing a middle ground subject to further negotiations.’

19. Security arrangements for Southern Sudanese and the SPLA represents the bottom line that could lead to the breakdown of the peace talks. Fortunately, the GoS position on single army during the interim period, while a logical claim for most countries, is not consistent with recent Sudanese history, including especially its peace engagements with Southern armed groups. This is a simple case of double standards, and either negotiating in bad faith or trading on the mediator’s natural preference for a single army and their lack of detailed

knowledge of Sudanese recent history. The GoS positions in previous agreements with southern armed groups are as follows:

20. The Khartoum and Fashoda Peace Agreements of 1997 were very specific about the status of the forces during the interim period. This matter is dealt with under Chapter Six of these agreements:

\* Article 8(i) stipulates:

“The South Sudan Defence Force (SSDF) shall remain separate from the National Army and be stationed in their locations under their commands,”

\* Article 8 (iii) also states that:

“The size of the Sudanese Armed Forces in South Sudan shall be reduced to peace time level once peace is established.”

21. Furthermore, the security arrangements were codified by the GoS into law known as “The Southern States (Peace and Transitional Measures) Act, 1997”. This deals with the status of the forces, Joint military Technical Committee, The Cease-fire Military Committee, the General Amnesty Committee, etc. In particular, Article 60, sections (1) and (2), restate the above quoted provisions. Six years after the Khartoum and Fashoda Agreements were signed, the SPAF, SSDF and SPLA (United) remain as three separate armies in Sudan.

22. The GoS should therefore be reminded and asked to respect previous agreements it had signed with other Southern armed groups. Subsequently, this inconsistency raises questions to the GoS commitment to the IGAD peace process, Southern referendum and its result. It is also logical that the SPAF and SPLA armed forces cannot be unified before a final decision on the unity of Sudan is made by the Southern Sudanese in the referendum.

### **Power Sharing**

23. On this issue, the GoS argues as follows:

“The attempted resolution by the framework of the issue of the power sharing fails completely to recognize that the principle of power sharing shall apply both to the National Government and the RGOSS [Regional Government of Southern Sudan] and the states in Southern Sudan, it pays attention only to the demands of the SPLM as regards its (and not the South’s) share in the National Government, to the complete elimination of any accommodation of the National Congress Party in the Government of the Southern region.

“The post of the Deputy Chairman of the RGOSS should go to the other signatory to the agreement, using the same logic the framework takes for granted at the national level. The same goes for posts of governors in the Southern region. The framework is also silent about any percentages here as well as in the executive branch and state legislatures in South. This is a betrayal of the idea of inclusiveness the framework talks so often about, and it continues the trend of failing the cause of unity as above, and on top of that it follows the SPLM’s unwillingness to recognize that many Southerners are members of the National Congress Party and other parties.

“The so-called adjustment of the number of the states in the South is given to the Regional Assembly of South Sudan as a legislative function without any attempt at

justification, and furthermore the percentage representing the South in the council of states, is fixed at a certain percentage in violation of the principle of equal representation of all states in the Federation (4.5)

“The framework employs an appeasement approach, that ignore the totality approach when it comes to the qualitative representation in the National cabinet, as it says nothing about the incompatibility of the constitutionalisation of a defense ministry for the South with the opening up of all cabinet posts at national level for the SPLM (4.7.1)

“The framework is hopelessly oblivious of the danger that the obstinate lack of recognition of the non SPLM Southerners could pose to the sustainability of the peace.”

24. In this case, the GoS objections have some substance. It is true that the IGAD Draft proposal made no mention of the inclusion in the RGOSS of southern political parties other than SPLM.

25. The GoS has embarked on a mobilisation campaign of among Sudanese political and militia groups inside Sudan, arousing anti-peace agreement sentiments by highlighting the draft's omission of the inclusiveness principle for power sharing in Southern Sudan. Many Southern Sudanese share the GoS concern and the importance of Southern Sudanese political groups inclusiveness in RGOSS and Legislature. Many Southerners are also aware that the GoS campaign of inclusiveness is intended to divide Southern ranks regarding the peace process. GoS concern is clearly focused on its supporters in Southern Sudan, and not others.

26. It is recommended that the principle of power sharing percentages formula agreed by the parties to be applied to the National Government and Legislature should also apply to RGOSS. The percentages should be reversed so that the SPLM takes the highest percentage. Taking the proposed percentage of IGAD's Draft Framework the following percentages are suggested: 50% SPLM, 25% National Congress and 25% other Southern Sudanese political parties and Movements. These percentages hold for both the Executive and the Legislature in Southern Sudan including states level until elections are held during the interim period. The percentages of participation in the GOSS should be agreed upon by the parties as part and parcel of the peace agreement not to be left for a later stage. The inclusion is necessary to promote democratic practice and build consensus in Southern Sudan.

27. The debate over posts may turn out to be more a matter of principle than reality. The SPLA will face considerable difficulties in finding sufficient skilled and experienced personnel to fill all of its quotas in both National and Regional Governments.

28. The GoS also complained of the Vice President having powers that could tie the hands of the President, or in other words veto powers. This is not correct. The draft proposal mentioned three areas mentioned where the President must have the consent of the Vice President, namely: 1) declaration of states of emergency; 2) appointments that the President is required to make in terms of the Peace Agreement etc.; and 3) summoning, adjourning, or proroguing the National Legislature. These are all central to the implementation of the peace agreement. It cannot be left in the hands to the President alone as one party to the agreement. Smooth implementation of the Peace Agreement needs both parties to agree on such vital matters of the state functions

29. The GoS continues to argue for more than one Vice President. No plausible argument is advanced by the government to justify this demand apart from being the 'norm' in Sudan. It is transparently an attempt to provide a position for Ali Osman Mohamed Taha. The peace settlement need not accord with the recent practice of two Vice Presidents, because there are only two parties to the Peace Agreement. It is therefore logical that the two parties to the agreement should divide the Presidency: The National Congress takes the Presidency and the SPLM takes the Vice Presidency. The GoS concern that the Presidency should not revert to his deputy if he is unavailable has been taken care of. Providing an additional position of second Vice President creates an unnecessary and unfair inequality of power at the top.

## **The Marginalised Areas**

30. Surprisingly, the GoS is silent on the draft framework's position for resolution of the three contested areas. The document is reservedly balanced on the three areas. It advocates a referendum for Abyei before the elections to be held towards the end of the first half of the Interim Period, while proposing that Nuba Mountains and Southern Blue Nile should be autonomous regions within Northern Sudan, with the power to decide their own legal systems. Details for the regions' budgetary allocations are spelled out, along with a general specification that the regions are entitled to a proportional share of the North's allocation of governmental posts. Pending elections, the constitutional post appointments (Governor) are approved by the Presidency. Khartoum's omission of any mention of these areas can be read either as an implicit acceptance of the mediators' compromise position, or sticking to a very hard line, which refuses to acknowledge the legitimacy of any internationally-mediated negotiations over these areas, and reserves the option of raising objections in the forthcoming round and pulling out again.

31. Many Nuba people are concerned that the Nakuru formula will leave them in a vulnerable position. There is no reference to the future of the SPLA fighters in the marginalised areas, and the President's power of appointing the Governor may be a point of contention.

## **The North**

32. One of the factors propelling Khartoum's alarm over the peace process is fear of democratisation and its implications. This was dramatically brought home by the elections at the Khartoum University Student Union, in which the government list was soundly defeated, coming third behind a combined opposition list, and an Islamist rival. It obtained just 20% of the vote compared to 51% for the NDA list. Khartoum University politics have long been regarded both as a bellwether of national politics, and as a stronghold of the National Islamic Front. During the 1990s, Hassan al Turabi had argued that the Islamists had built up such a strong following in Sudan that they could afford to relax their military grip and move towards democracy, confident that they would win. An uncertain hypothesis even when the Islamists were united, this is being shown to be highly questionable with the Turabi faction in opposition.

33. In a future election, it seems probable that regional identities will play a strong role in influencing voting patterns. The NCP sees much of the Islamist constituency it built up over the last decades slipping away, either back to the traditional sectarian parties, or to emergent

regional blocs such as the rebels in Darfur. For this reason, the DUP and NCP are being pushed closer together, as they share much of the same constituency.

34. The GoS has been beating the drum of fear of separation in a bid to rally the Northern forces together. The GoS describes the 'Nakuru Document' as a charter for the separation of Southern Sudan, and has called upon all Northern parties to defend the unity of the country. It further called for a National Consensus Charter between the NCP and the Northern opposition parties. This was met with scepticism by a number of parties, notably the Umma Party of Sadiq el Mahdi. The NCP is still intensifying its efforts on this.

## **Darfur**

35. The conflict in Darfur continues and intensifies, with the GoS apparently determined on a military solution. There were tentative openings of a negotiation process, which succeeded in obtaining the release of the captured Air Force general, Ibrahim Bushra Ismail, but no more. The GoS refuses to extend any political recognition to the SLA, insisting that they are merely brigands. The SLA insists that it is a political movement and should be treated as such.

36. However, with the rebellion firmly based in the traditional leadership of much of the region, the GoS approach can only deepen the problem. The SLA rebels have attacked two important garrisons in north-western Darfur, Tina and Kutum, and claimed to have captured them. The rebel's ability to operate over such large distances in short periods of time demonstrates their support among the Zaghawa people of the area. Meanwhile, the fighting—in one of Sudan's poorest and most food insecure areas—is creating immense hardship. Darfur has long suffered from high levels of banditry, and it is likely that the rebellion has also seen a breakdown in law and order.

37. There is no military solution to the insurrection in Darfur. The GoS must recognise that this is a political problem. Evidently it would not be appropriate to privilege the SLA over other political parties represented in the region, simply because it has taken up arms. But a roundtable conference including representation from all political forces, including the SLA, will be necessary at some point. The only issue is, how long the fighting will be allowed to continue and at what human cost before such negotiations begin.

## **The South**

38. There are currently no ongoing activities on the South-South grass-roots dialogue process. The need for a Southern leadership consultation that can include the non-SPLA armed groups, and address the questions of internal reconciliation in the South, remain as pressing as before.

39. Many Southern political forces and civil society groups not in government supported the 'Nakuru Document', with an emphasis on inclusiveness regarding power sharing in Southern Sudan.

40. Justice Africa received a clarification from the UNPC-T organisation committee (Task Force) on our para 14 of the June Briefing. They took offence at some JA comments and in particular the impression of non-inclusiveness, hijacking NSCC process and questions raised regarding the conference. JA would like to reiterate that its comments were not baseless. It is



correct that some stakeholders in Upper Nile including the SSLM expressed their exclusion from the Upper Nile Peace Conference and even issued a press release to that effect. JA does not agree with nor endorse much of the content of SSLM's press release. It is also correct that there were disagreements among the partners regarding the Upper Nile Peace Conference. JA did not describe the Upper Nile Conference as a failure but acknowledged that whatever the concerns and doubts it was a step towards dialogue in the footsteps of Wunlit and Liliir.

41. JA would like to unreservedly apologise for any offence its comments (June Briefing) regarding Upper Nile Peace Conference might have caused. No offence was intended as JA holds the members of the UNPC-T committee and the Inter-Denominational Committee and all peace activists in high regard. JA has no intention to undercut or trivialise any peace-building effort and expresses solidarity with all peace efforts in Sudan, especially South-South dialogue at all levels.

## **The Region**

42. As it announced its withdrawal from the IGAD peace talks, the GoS pre-emptively announced that it anticipated Egyptian support for its unity stand. Immediately, Khartoum called upon Cairo for solidarity. However, it has been disappointed: Egyptian support has not gone beyond the rhetorical level of calling for 'more balanced' proposals. Evidently, Cairo sees the Machakos-Nakuru process as Sudan's best chance for unity. Africa's other regional powers, such as South Africa, concur. Despite having established cordial relationships with its other neighbours (excepting Eritrea), the GoS has nowhere to turn in the region for an alternative.

43. The GoS has reluctantly admitted that some of its officers in Juba have been involved in continuing to support the LRA in its operations in Uganda. The Ugandans provided proof of this, compelling Khartoum to concede.

## **The United States**

44. Senator Jack Danforth, the U.S. Special Envoy, visited Sudan in mid-July, in a significant step to increase his visibility and involvement. His meeting with John Garang was described by the SPLA as 'candid and frank', pointing to the Senator's readiness to stand up to the SPLA leader and insist on an accelerated progress towards a settlement. Reportedly, his meetings with the Khartoum leadership were less tough.

45. The Sudan Peace Act has passed through Congress. This condemned the GoS for abuses including slavery, and set a deadline of 21 October for peace. Should this date be reached without a peace settlement, and the fault is deemed to lie with the GoS, then the Administration should revert to the previous policy of isolating and condemning Khartoum. This will entail imposing sanctions, or to be precise, maintaining the still-existing U.S. sanctions, and providing an additional \$100 million annually to Southern Sudan. As the U.S. is already committing some \$180 million to humanitarian and development programmes in the South, this would make Southern Sudan into one of the biggest beneficiaries of American largesse in Africa.

46. Evidently, Washington continues to speak with different voices. While Senator Danforth continues to have the confidence and backing of President Bush, the U.S. approach of

pressing for a quick peace will prevail. Should there be no agreement by September or October, it is likely that the pro-peace momentum in the Administration will begin to evaporate. However, will this mean that the U.S. adopts a new policy of aggressively backing the SPLA, in effect supporting a clandestine separatist war? The high cost, slender military prospects and lack of strategic U.S. interest should militate against such a choice. Should the Administration follow this track, it would be purely for ideological reasons.

47. The dominant role of the U.S. is deeply alarming to the GoS, which fears that America will be the guarantor of the peace process, and that Washington politics will remain in hock to the religious right. Having long resisted formally involving the UN in the Sudanese conflict, the GoS is now considering the virtues of a much more active UN role in monitoring the agreement.

## **Conclusion**

48. Time is running out for a settlement. The 'holistic' approach taken by the mediators is approaching its logical conclusion, which is that the remaining differences between the parties will be bridged chiefly by imposing a compromise. If this is to succeed, it will require a combination of diplomatic finesse and leverage. While the diplomacy will involve a number of actors including the Kenyans, British and Norwegians, the leverage can only come from the U.S., and in the U.S., from a higher-level of political engagement, to administer a short, sharp bout of political pressure.

49. The seventh round of the Sudanese peace talks is the most crucial. It will be a test of the firmness and even-handedness of the IGAD Secretariat and its international partners. It is important to continue to speak with one voice and ensure that no party can walk out of the peace process with impunity. The seventh round must also fix a realistic deadline and clear road map for the conclusion of the peace talks. The cessation of hostilities agreement will expire at the end of September.

50. The difficulties of the last month underline that achieving a settlement is only half the climb. Implementing the agreement will be complicated, protracted and difficult business.