

AFRICAN UNION
الاتحاد الأفريقي



UNION AFRICAINE
UNIÃO AFRICANA

P.O. Box: 3243, Addis Ababa, Ethiopia, Tel.: (251-11) 551 38 22 Fax: (251-11) 551 93 21
Email: situationroom@africa-union.org

PEACE AND SECURITY COUNCIL
327TH MEETING AT THE LEVEL OF
HEADS OF STATE AND GOVERNMENT
14 JULY 2012
ADDIS ABABA, ETHIOPIA

PSC/AHG/4(CCCXXVII)

**REPORT OF THE CHAIRPERSON OF THE COMMISSION ON THE STATUS OF IMPLEMENTATION
OF THE PEACE AND SECURITY COUNCIL COMMUNIQUÉ PSC/MIN/COMM/3.(CCCXIX)
OF 24 APRIL 2012 ON THE SITUATION BETWEEN SUDAN AND SOUTH SUDAN**

**REPORT OF THE CHAIRPERSON OF THE COMMISSION ON THE STATUS OF IMPLEMENTATION
OF THE PEACE AND SECURITY COUNCIL COMMUNIQUÉ PSC/MIN/COMM/3.(CCCXIX)
OF 24 APRIL 2012 ON THE SITUATION BETWEEN SUDAN AND SOUTH SUDAN**

I. INTRODUCTION

1. This report is submitted pursuant to communiqué PSC/MIN/COMM/3.(CCCXIX) adopted by Council at its 319th meeting, held on 24 April 2012. In this communiqué, Council articulated a Roadmap for the ending of hostilities and the resolution of outstanding issues between the Republic of Sudan and the Republic of South Sudan.

2. The report, which contains a brief background on the post-secession negotiations, provides an update on the implementation of the various components of the Roadmap. It concludes with observations on the way forward and the steps expected from the Parties.

II. BACKGROUND

3. Since May 2010, at the initiative of the Parties, the African Union High-Level Implementation Panel (AUHIP) has been facilitating the negotiations on outstanding issues in the January 2005 Comprehensive Peace Agreement (CPA) and post-secession relations between the Government of Sudan and the Government of South Sudan, within the framework of the overriding principle of establishing two viable states, at peace with one another, cooperative and mutually supportive. The AUHIP-facilitated negotiations between the two countries have focused on security matters, oil and related financial arrangements, nationality, border issues, and the status of Abyei. Additionally, the Panel has engaged with the Government of Sudan and the Sudan People's Liberation Movement-North (SPLM-N) on the conflict in the "Two Areas" of Southern Kordofan and Blue Nile states, in Sudan.

4. During this period, the Parties reached a number of important security and related agreements. These include the Agreement on the Temporary Arrangements for the Administration and Security of the Abyei Area of 20 June 2011, the Agreement on Border Security and the Joint Political and Security Mechanism (JPSM) of 29 June 2011, a standing ministerial-level intergovernmental structure between the two States, the Agreement on the Border Monitoring Support Mission of 30 July 2011, the Decisions of the JPSM of 18 September 2011, and the Memorandum of Understanding (MoU) on Non-Aggression and Cooperation of 10 February 2012.

5. In March 2012, in the context of deteriorating relations and worsening economic conditions in both countries, the two sides agreed to work within a "new spirit", whereby they would negotiate as partners, in pursuit of their original strategic objective of "two viable states". It was also agreed that a summit meeting of the two Heads of State, President Omar Hassan al Bashir and President Salva Kiir Mayardit, would be held in Juba, in early April 2012, to cement this "new approach".

6. Unfortunately, this new spirit unraveled rapidly following the military attack on Heglig in April 2012, spurring a confrontation between the two countries. This situation considerably damaged the prospects for resuming negotiations, and raised the risk of an all-out war between the two countries, with its attendant negative consequences for the entire region.

7. It was in this context that Council, at its 319th meeting, adopted a Roadmap outlining a number of steps aimed at easing the then-prevailing tension, facilitating the resumption of negotiations on post-secession relations, and the normalization of the relations between the two states. The Roadmap falls into three parts, namely immediate security issues, the resumption of negotiations on all outstanding issues, and measures to address the conflict in Southern Kordofan and Blue Nile states.

8. With regard to security matters, the Roadmap called for: (i) the immediate cessation of hostilities, including aerial bombardment; (ii) the unconditional withdrawal of all armed forces to their side of the border; (iii) the cessation of harbouring of, or support to, rebel groups against the other State; (iv) the activation of the Safe Demilitarized Border Zone (SDBZ), in accordance with the AUHIP map of November 2011; (v) the activation of the Joint Border Verification and Monitoring Mechanism (JBVMM); (vi) the activation of the *ad hoc* Committee to receive allegations and counter-allegations of violations; (vii) the withdrawal of all armed forces from Abyei; and (viii) an end to hostile propaganda.

9. The communiqué also called on the Parties unconditionally to resume negotiations on all outstanding aspects in their post-secession relations, in particular on oil and related payments, borders, nationality issues and the final status of Abyei. It requested the Government of Sudan and the SPLM-North to enter into negotiations towards the resolution of the conflict in Southern Kordofan and Blue Nile states, and gave a role to the AUHIP in this regard. The deadline given by Council for the completion of the negotiations on the post-secession relations was three months from the adoption of the communiqué.

10. Council requested the Chairperson of the Commission to transmit the communiqué to the UN Security Council, for endorsement under Chapter VII of the UN Charter. On 2 May 2012, the Security Council endorsed the Roadmap, as requested, with the adoption of resolution 2046 (2012). In a communiqué issued on 3 May 2012, I welcomed the unanimous support of the Security Council for the AU Roadmap, as another illustration of the close partnership between the AU and the UN, particularly between Council and the Security Council, in the promotion of peace, security and stability in Africa. It should be noted that the deadline for the completion of negotiations was thereby set at 2 August 2012, 3 months from the date of adoption of resolution 2046 (2012).

11. Both Governments wrote to me formally, indicating their acceptance of the Roadmap. On 30 April 2012, I issued a communiqué welcoming South Sudan's formal acceptance of the Roadmap. On 2 May 2012, I issued another communiqué in which I welcomed Sudan's acceptance in principle of the Roadmap.

III. PROGRESS IN THE IMPLEMENTATION OF THE PROVISIONS OF THE ROADMAP AIMED AT EASING THE TENSION BETWEEN THE TWO COUNTRIES AND FACILITATING THE RESUMPTION OF THE POST-SECESSION NEGOTIATIONS

12. As indicated above, in its Roadmap, Council outlined a number of steps to be implemented by both Sudan and South Sudan, in order to ease the tension that was then prevailing on the ground, facilitate the resumption of negotiations on post-secession relations and the normalization of their relations. It should be noted that, since the adoption of the Roadmap and its subsequent endorsement by the Security Council, there has been a marked decrease in the levels of fighting. Some progress has also been achieved in the implementation of other aspects of the Roadmap.

13. The Roadmap obliged the Parties to redeploy their armed forces out of Abyei, in accordance with the 20 June 2011 Agreement on Temporary Administrative and Security Arrangements for Abyei. On 10 May 2012, the Government of the Republic of South Sudan completed the withdrawal of its 700-strong police from Abyei. I welcomed this step in a communiqué issued on 11 May, and commended the Government of South Sudan for making good of its pledge to withdraw from Abyei. On 29 May 2012, Sudan completed the withdrawal of its Armed Forces and Police Service from Abyei, leaving behind a company of oil police in Diffra to protect the oil installations. On 2 June 2012, I issued a statement welcoming the redeployment of the Sudanese forces from Abyei. I requested the Abyei Joint Oversight Commission (AJOC) to meet without further delay, to address the issue of security of the oil infrastructure in a way that respects the provisions of the Roadmap and the Security Council resolution. I also urged the Parties to reach agreement on the composition of the Abyei Area Council and the establishment of the Abyei Area Administration as soon as possible, to facilitate the speedy resumption of normal life for all the affected communities of Abyei.

14. The AJOC met in Addis Ababa on 8 June 2012, and provisionally agreed to the draft Terms of Reference (ToR) for the Joint Military Observers Committee (JMOC), which is a security mechanism comprising an equal number of members of the SAF and the SPLA and mandated to guarantee peace and security for the Abyei residents. It also took decisions related to the formation of the Abyei Police Service (APS), as well as decisions relating to the provision of humanitarian assistance. The AJOC met again on 5 July, in Abyei, and finalized the ToR for the JMOC.

15. Following the redeployment of the armed forces of both Governments, the only security force active in the areas of civilian habitation throughout Abyei is UNISFA, the United Nations Interim Security Force for Abyei, which is doing an outstanding work in ensuring security for

residents and pastoralists. Conditions are now propitious for the return of displaced people to their homes and the normalization of life in Abyei. At the time of finalization of this report, over 1,500 displaced persons had already returned to Abyei Town.

16. During the last round of negotiations, which took place in Addis Ababa from 21 to 28 June 2012 under the facilitation of the AUHIP, the Parties exchanged the names of their monitors to the JBVMM and agreed to send them to the JBVMM temporary Headquarters at Assosa, in Ethiopia. They also agreed to the ToR for the *ad hoc* Committee, and exchanged the names of their representatives on this body. The *ad hoc* Committee has yet to convene its first meeting.

17. The Roadmap committed the Parties to implement the SDBZ, in accordance with the administrative and security map that was produced by the AUHIP in November 2011 at the Parties own request. However, at the time of finalization of this report, there was still disagreement about certain areas of this map. On 27 June 2012, the Government of the Republic of South Sudan wrote to the AUHIP, stating its unconditional acceptance of the November 2011 map. The Government of Sudan objected to one section of the map, on the grounds that it does not conform to its interpretation of the administrative boundary between the northern and southern provinces of Sudan as they stood at independence, on 1 January 1956. The AUHIP has clarified that the SDBZ and its centre line are established as a temporary security measure, without prejudice to the ongoing negotiations on the final demarcation of the border or the resolution of the disputed areas. In June 2012, the Government of Sudan wrote to the President of the UN Security Council, raising the objection that the map did not conform to the maps produced by the United Nations. The United Nations Secretariat has clarified that that the UN maps were produced for operational purposes and should not be taken as indicating the recognition of any border.

18. Given the looming deadline for the completion of negotiations on outstanding issues, the Parties have been trying to reach a compromise on the SDBZ that would allow them to activate the JBVMM, improve security along the border, and make it possible fully to resume the negotiations on all outstanding matters in a more conducive environment. On 24 June 2012, at the request of the AUHIP, the leaders of the Parties' delegations initiated bilateral talks. After three days of discussion, the delegations informed the Panel that they were developing a comprehensive framework for resolving all outstanding issues, and requested an adjournment to enable them to consult with their Principals. They agreed to attempt a return to the "new approach" envisaged in March 2012. This approach would allow them to conduct their negotiations as partners, not as adversaries, and facilitate decision-making on the basis of strategic considerations. The two sides committed to resume negotiations in early July, and continue throughout the period up till 2 August 2012, with the view to reaching an agreement on the outstanding issues, under the facilitation of the AUHIP.

IV. PROGRESS IN ADDRESSING THE OUTSTANDING ISSUES IN THE POST-SECESSION RELATIONS BETWEEN SUDAN AND SOUTH SUDAN

19. As also indicated above, in its Roadmap, Council urged the Parties unconditionally to resume negotiations, under the auspices of the AUHIP and with the support of the Chairman of IGAD, to reach agreement on the following critical issues: (i) arrangements concerning oil and associated payments; (ii) the status of nationals of one country resident in the other, in accordance with the Framework Agreement initialed in March 2012; (iii) resolution of the status of disputed and claimed areas and the demarcation of the border; and (iv) the final status of Abyei.

Oil and related financial arrangements

20. Following the failure of the two Parties to reach an agreement on a package that would include tariffs and a Transitional Financial Arrangement (TFA), the Government of Sudan, in December 2011, decided to seize South Sudan's oil in lieu of payment to arrears owed to it. In January 2012, the Panel convened a series of negotiations in an attempt to prevent reciprocal unilateral actions by the Government of South Sudan. The AUHIP put forward a "Cover Agreement" on oil and transitional financial arrangements that included the following key elements: (i) tariffs; (ii) TFA; (iii) guaranteed provision of petroleum to refineries in Sudan; and (iv) settlement of arrears and claims.

21. Unfortunately, the AUHIP's efforts to halt the threat of an oil shutdown by the Government of South Sudan failed. Since February, no new discussions on oil and related payments have been held. The Parties have now agreed to resume negotiations on this issue.

Nationality issues

22. The Parties initialed a Framework Agreement on the Treatment of Nationals of the Other State in Addis Ababa, on 13 March 2012. The Agreement proposed a Joint High-Level Committee, which would oversee the adoption and implementation of joint measures relating to nationals of the other State. The Agreement also accorded the nationals of the other state the "four freedoms", namely freedom of residence, movement, economic activity and the right to acquire and dispose of property. Both Parties have expressed their continued commitment to the Agreement. However, conditions for its full implementation, including especially the "four freedoms," have not been conducive for progress. The next necessary step is for the two relevant Ministers to meet and agree implementation modalities and schedules.

Borders

23. While both Parties accept, consistent with the relevant provisions of the CPA, that the boundary between Sudan and South Sudan shall be that which existed on 1 January 1956, the day of Sudanese independence, they do not agree on where that line lies. During the CPA

Interim Period, the *Ad Hoc* Technical Border Committee identified four agreed disputed areas in which the location of the 1/1/56 line was not agreed. The Joint Political Committee subsequently added a fifth agreed disputed area. However, when South Sudan achieved independence, its Government maintained that there were additional areas to which it had claims that had not been accepted as disputed areas by the *Ad Hoc* Technical Border Committee.

24. The Parties have resumed negotiations on borders, in particular the resolution of the disputed areas. In March 2012, they initialed an agreement defining a process for the demarcation of the agreed areas of the border. At the time of finalization of this report, they were discussing the process for the resolution of disputed areas, the manner in which to address additional claimed areas, and ways in which to activate the third party binding resolution in the event that negotiated settlement is not reached.

Final status of Abyei

25. The Presidents of Sudan and South Sudan have agreed that the resolution of the final status of Abyei shall be addressed at the presidential level. The Panel has followed the principle that the 20 June 2011 Agreement should be implemented, and life for the residents of Abyei and for pastoral populations that migrate seasonally to Abyei should return to normal as far as possible, before the Panel puts forward any proposals for the final resolution of the issue. In the meantime, the commitment of the Parties, the Panel and the international community to the Abyei Protocol of the Comprehensive Peace Agreement remains intact.

26. In pursuit of the implementation of the 20 June 2011 Agreement and the normalization of life in Abyei, the Panel has supported the efforts of the AJOC to enact all necessary measures to establish the administration, bring displaced persons back to their homes, facilitate humanitarian assistance, and promote dialogue and cooperation between residents and pastoralists. It is critical that the Parties diligently form the Abyei Police Service, as well as take the necessary steps towards the establishment of the Abyei Executive Council and the Abyei Area Administration, for these bodies are indispensable in creating a conducive atmosphere for peace and security in the area.

V. CONFLICT IN SOUTHERN KORDOFAN AND BLUE NILE

27. In the Roadmap, Council reiterated the AU's conviction that there can be no military solution to the conflict in Southern Kordofan and Blue Nile states, and stressed therefore the urgent need for a political and negotiated solution, based on respect for diversity in unity. Council requested the Government of Sudan and the SPLM-North to extend full cooperation to the AUHIP and the Chair of IGAD, to reach a negotiated settlement on the basis of the Framework Agreement on Political Partnership between the National Congress Party (NCP) and the SPLM-N and Political and Security Arrangements in Blue Nile and Southern Kordofan states of 28 June 2011. Pending the convening of talks by the AUHIP, Council called on the

Government to accept the joint proposal submitted, on 7 February 2012, by the AU, the United Nations and the League of Arab States, to permit humanitarian access to the affected populations in the two states.

28. In follow up, the AUHIP is coordinating with the Chairman of IGAD, Prime Minister Meles Zenawi, on re-opening political dialogue on a resolution of the conflict in the Two Areas. The SPLM-N has accepted to restart the dialogue that had begun in June 2011. The Government of Sudan has indicated an in-principle acceptance of dialogue. The Panel is taking the necessary steps in this regard.

29. As Council would recall, the SPLM-N has expressed its willingness to implement without delay the joint proposal for humanitarian access in the Blue Nil and Southern Kordofan states. On 28 June 2012, the Government of Sudan expressed its acceptance of the joint proposal. In a communiqué issued on 29 June 2012, I welcomed this acceptance, underscoring the need to ensure that the affected populations in the two states have access to humanitarian assistance, while a lasting political solution is being sought. I urged all those responsible to ensure that the proposal is effectively and fully implemented, without further delay. I underlined the readiness of the AU to contribute personnel to the joint teams that would undertake humanitarian assessment in all the affected areas, as well as to deploy monitors to the two states, who would work closely with the Sudanese Parties to ensure neutrality, impartiality, accountability and transparency in the delivery of humanitarian assistance.

VI. OBSERVATIONS

30. Sudan and South Sudan have resolved to pursue their respective futures as two separate sovereign nations. In this context, the agreed overriding principle of establishing and sustaining a constructive and peaceful relationship between Sudan and South Sudan, which will promote the viability of both countries, is essential for each one. Equally important is the recognition by all that Sudan and South Sudan are both African nations, faced with challenges of governance and development common to countries across our continent. Each must govern a diverse nation that has experienced recurrent conflict over more than half a century, and each must undertake its own national process of democratization accordingly, while addressing at the same time the daunting task of socio-economic development. These issues would pose serious challenges to the two Governments even in the context of peace, stability and cooperation. In a state of conflict, either internally or between themselves, they would be insoluble.

31. In their engagement with Sudan and South Sudan since the security incidents in Heglig in April 2012, Council and the Commission have been motivated by the conviction that the conflict damages both Sudan and South Sudan, threatens the lives and livelihoods of the citizens of both countries, including especially nationals of one state resident in the other, puts in jeopardy the essential economic activities needed to sustain both states, and poses a threat to the stability of the entire region. The AU Roadmap, as endorsed by the UN Security Council,

provided the way forward for defusing the tension, facilitating the resumption of negotiations on the outstanding post-secession issues and the normalization of relations. I urge the two countries fully to implement their commitments under the Roadmap and to uphold the overriding principle of “two viable states” as the basis for their relations, which they adopted by the Parties in the November 2010 *“Framework for Resolving Outstanding Issues Relating to the Implementation of the Comprehensive Peace Agreement and the Future Relations of North and South Sudan”*.

32. While the implementation of the Roadmap has been rather slow and uneven, I am encouraged by the renewed commitment of the Parties to successfully conclude their negotiations and lay the foundation for lasting peace and good neighborliness between them. On 7 July 2012, the Parties, in a press conference, confirmed their agreement to return to a “new spirit” of strategic partnership. They elaborated a number of principles that underpin this strategic approach, including an unequivocal agreement never to resort to force to resolve their differences; mutual respect for sovereignty; and promotion of partnership and mutual benefit. They also informed the AUHIP that this new strategic approach had been fully endorsed by the entire leadership of both countries, and that they would return to negotiations on all outstanding issues, with a view to reaching a comprehensive agreement by 2 August 2012.

33. Efforts should also continue to address the issue of the Blue Nile and Southern Kordofan states. The fundamental political challenges in these two states are organically linked to the issues of the governance of diversity and democratization. The Panel will continue to work towards a lasting political solution with the support of the Chair of IGAD. Although the conflict in the two states is an internal matter to the Republic of Sudan, it inevitably has major repercussions on the relations between Sudan and South Sudan. In the meantime, the Commission will take the necessary steps towards the implementation of the joint proposal for humanitarian access to the affected populations in the two states.

34. I reiterate the Commission’s deep appreciation for the outstanding work of the AUHIP and its support team. The Panel has taken the approach of seeking agreement between the Parties rather than trying to impose the details of a settlement. This approach is informed by the following elements: (i) the role of the Panel is, at the insistence of the Parties, that of a facilitator rather than a mediator; (ii) the Parties are much more likely to implement an agreement willingly entered into, than an imposed formula; and (iii) the Roadmap is first and foremost a guide to reaching a destination, namely peace and security between the two countries, and that details of the exact route to that destination may be adjusted by mutual agreement. To this end, the Panel has encouraged the Parties to talk directly to one another as far as possible, rather than negotiating with the facilitator. I have no doubt that the Panel will continue to discharge its mandate with utmost commitment, aware as it is of Africa’s duty and responsibility to do whatever it can to help Sudan and South Sudan overcome their current challenges, in the interest of their people, the region and Africa as a whole. I recognize the full support extended to the AU and the Panel by our international partners, in particular the

Security Council. Continued unity of purpose and action within the international community is critical to the achievement of lasting peace between Sudan and South Sudan.