

Government of Sudan
Response to
The AUHIP
Possible Options of the Final Status of the Abyei Area
and
Proposal on the Referendum
Presented to the Addis Ababa Summit
23rd-25th September 2012

Introduction

1. On Saturday 22 September 2012, the President of the Republic of Sudan received the letter of H.E. Thabo Mbeki, the Chairperson on the AUHIP, dated 21 September 2012.
2. Two documents were enclosed with the letter:
 - a. A document entitled 'Proposal on the Final Status of the Abyei Area', dated September 21, 2012. The letter says that the Proposal contained in that document is made upon the request of President Omar Hassan al-Bashir and President Salva Kiir Mayardit.
 - b. A document entitled 'AUHIP Proposals towards a Resolution of the Issue of Abyei', which was initially presented to the Parties on November 27, 2010. The covering letter refers to this document as follows:

Your Excellency will also recall that in November 2010, we presented to the then Presidency a document containing various possible options for the resolution of the Abyei question. We also enclose this document in case Your Excellencies might find any of its contents useful as you consider the important matter of the final status.

3. In the first part of this response of the Government of Sudan we present our comments on the first document. Moreover, as we find some of the contents of the second document useful, we will also make our comments as to what it contains in the second part. In addition, because we believe that the non-implementation of the Agreement on Temporary Arrangements of 20 June 2011 is having its negative implications on adopting and implementing the agreed final status solution, we will make our concern about this matter known in the third part of this response.

First Part

Comments on the Document entitled 'Proposal on the Final Status of the Abyei Area', dated September 21, 2012

The Proposal Contradicts the Abyei Protocol, the Abyei Referendum Act and Negates the Cumulative Nature of this Process:

1. The Referendum of Abyei is agreed in the Abyei Protocol. Furthermore, the Abyei Referendum Act 2010 detailed all the technicalities of conducting the Abyei Referendum. Although, it is natural that any Proposal on the Abyei referendum is expected to adhere to those agreed terms of reference, the Proposal had contradicted the Abyei Protocol and the Abyei Referendum in so many aspects as this Part details.
2. Whereas everything that concerns the Abyei referendum is agreed, the only obstacle that prevented conducting the Abyei referendum, as contemplated in the Abyei Protocol and the Abyei Referendum Act, is the failure to decide the issue of eligibility of voters. The two Parties agreed that the Ngok Dinka who reside in the area, and all other Sudanese residing in the area are eligible to vote. However, the two

Parties failed to agree the criteria required for the participation of the Messirya nomads who customarily reside in the area.

3. Consequently, the eligibility of the Messirya nomads to vote is the heart of the disagreement that should be addressed by any proposal on conducting the referendum with the positions of the two parties in mind.
4. The US Envoy had presented in 2011 a reconciliatory proposal that gave the Messirya who reside in the area for a minimum of 185 days the right to vote in the Abyei referendum. Even as the Government of Sudan accepted that proposal, the SPLM did not; leading to the failure of conducting the Abyei referendum simultaneously with the referendum of Southern Sudan on 9th January 2011.
5. Consequently, a Proposal on the referendum should abide by the Abyei Protocol, the Abyei Referendum Act, start from where former proposals left and focus at resolving the only pending issue of the criteria of the eligibility to vote.

The Proposal Adopted the Position of One Party as to the Eligibility Criteria and Disregarded the Other Position:

6. Rather than breaking new grounds or building on former proposals of the mediators, the AUHIP Proposal endorses the position of one Party about the eligibility criteria and ignores entirely the position of the other party. By stating that *'the criteria for qualifying under Paragraph 26(b) shall be permanent abode within the Abyei Area'* the AUHIP adopts the very position of the SPLM. Mediation is all about agreement on middle ground. Hence it is atypical and rather out of the ordinary in a mediation process to endorse one Party's position on the main

contentious issue as this Proposal does. Consequently, it was only expected that South Sudan will accept the Proposal *in toto* as it did. The instantaneous acceptance of the Proposal by H.E. Salva Kiir Mayardit at the opening session of the Summit and his repetition of the same stand in the evening session asking only for its immediate implementation without the need for further negotiations is a testimony to this.

7. Conversely, the Government of Sudan, whose position on this matter is ignored altogether, has no alternative but to categorically reject the Proposal in its entirety. We formulate as follows our reasons for this decided rejection:
 - a. This Proposal contradicts the Abyei Protocol which does not provide for 'permanent' abode or residence as a condition for voting in the referendum. It also contradicts the Abyei Protocol by not observing the parity between the Messirya and Dinka Ngok in power sharing and resource sharing.
 - b. The proposed formulation of how to qualify for voting serves no purpose other than singling out the Messirya nomads whose lifestyle is inimical to the concept of 'permanent abode'. It is futile to think of any referendum on Abyei that excludes one of its two communities. Far from advancing a win-win formula, such exclusion, if agreed, is a likely recipe for instability and strife in the Abyei Area.
 - c. The Proposal contradicts international law and particularly the obligations undertaken by the two States under the ILO Convention on the Indigenous and Tribal Communities 1989. Rather than being free to ignore the Messirya rights the two States are obliged to take measures 'to safeguard the right of the

peoples concerned to use lands not exclusively occupied by them, but to which they have traditionally had access for their subsistence and traditional activities'. Moreover, it is imperative on the two States to pay particular attention 'to the situation of nomadic peoples and shifting cultivators', to see to it that their land is not disposed of without their free consent. It is indeed a violation of human rights to discriminate against any group of people on the basis of their livelihood.

Other Points of the Proposal:

8. Under the pretext of giving the Messirya additional rights to make the referendum a win-win scenario, the Proposal stripped the Messirya of the rights guaranteed to them under the Protocol.
9. In particular the Proposal diluted the equal status granted to the Messirya in Abyei. Whereas the Protocol names the Messirya as equal partners with their Ngok Dinka counterparts in sharing oil revenue and power, the Proposal avoids talking about the Messirya in any context other than pastoral grazing.
10. The Proposal compares the Messirya's *sui generis* rights in Abyei with the generic pastoralist rights under the concept of soft borders envisaged for other parts of the border of Sudan and South Sudan. This suggests that the Messirya rights in Abyei are analogous to the nomadic pastoral rights and obliterates the special nature of those rights as land possession and occupation rights.
11. Whereas the revenue sharing formula of the Abyei Protocol treats the Messirya and the Ngok Dinka on equal par, the Proposal avoids this

approach and talks of shares for oil revenue to be allocated for the Ngok Dinka within Abyei Area, as opposed to shares to be allocated outside the area to keep the Messirya away. The economic development of the Messirya country outside of Abyei Area is welcome; yet, this does not mean that such development is to be associated with denying the Messirya their basic land rights and citizenship in Abyei Area.

Second Part

Comments on the Document Entitled 'AUHIP Proposals towards a Resolution of the Issue of Abyei'

Dated November 27, 2010

1. Because the Proposal presented by the AUHIP adopts the position of one Party and ignores the Sudan's position, the Government of Sudan finds it appropriate and useful to draw on the captioned document.
2. The Government of Sudan hails the professional and sincere effort exerted in preparing the document of November 27, 2010. The said document had reflected the positions of the Parties in a balanced and fair manner and after tabulating all options possible recommended the narrowing of the choice of the Parties to two options, namely the fifth and the sixth.
3. The Government of Sudan reiterates its former position of accepting in principle the sixth option of partitioning Abyei Area by a Presidential Decree.

4. The Government of Sudan agrees with the document that 'this option is based on accommodating the interests of both sides through administrative partition of Abyei, providing for northern part of Abyei to be administered by (northern) Sudan while the southern part is transferred to (southern) Sudan.'
5. In the event that the Southern Sudan accepts the sixth option, the Government of Sudan is ready to immediately start negotiating how to effect the partitioning. This process is to be done with the full participation of the joint administration that shall be formed to assist in the process and with representatives of the two communities.

Third Part

Implications of the Failure to Implement the Agreement on Temporary Administrative and Security Arrangements for the Abyei Area of 20 June 2011 on the Final Status

1. The Agreement on Temporary Administrative and Security Arrangements for the Abyei Area of 20 June 2011 is conceived by the Parties as the stop-gap measure to guarantee peace and stability in the Abyei Area until the final status is agreed and implemented. Additionally, the Agreement also sets the administration required to assist in preparing the ground for and implementing the final status solution.
2. Consequently, it goes without saying that this Agreement is to be implemented in full before any final status arrangement is to be agreed. The current polarity in the Abyei Area that results from the absence of a joint administration does not assist in creating the

conducive atmosphere required for promoting a win-win solution; particularly after the recent violations of the SPLM *de facto* illegitimate administration that were condemned by the UN Secretary General on 9 September 2012 and the UNIFSA.

3. The Government of Sudan draws the attention of the AUHIP to the fact that failure of the SPLM to select from the list of the NCP nominees is the reason behind the failure to form the joint administration. The SPLM is insisting that terms other than what the Agreement say had been inserted into it overnight and that those covert terms were to be respected even though they contradict the spirit and letter of the Agreement. The Agreement does not provide that the nominees of the Parties shall be of a particular ethnicity, as the SPLM claimed last year, or residents of the area as Minister Deng Alor contended in the evening session. A testimony to this is the fact that both of the current Co-chairs of the AJOC are not residing in the Abyei Area. Additionally, the appointment of any person to the administration is having nothing to do with his/her eligibility to vote.

4. The Proposal that the AJOC can replace the joint administration and take over the job assigned to the latter in the Abyei Referendum Act encourages tolerating partial implementation of the Agreement. This risky attitude serves no purpose other than perpetuating the *de facto* illegitimate administration of the SPLM in the Abyei Area. Moreover, allocation of the tasks of the joint administration to AJOC contravenes the Abyei Referendum Act and does not take into account the incapacities that are inherent in the supervisory nature and set up of the AJOC.

5. The other institutions that the Parties agreed upon in the Abyei Referendum Act need to be formed before the referendum is conducted. In addition to the fact that those entities are the bodies legally mandated to undertake this critical job, they are also the fora where the two communities of the area assume ownership of the referendum process and take part in determining their destiny. UN and AU roles, which are welcome, are nonetheless of supportive and monitoring nature and cannot be a substitute to the national organs.

Conclusions

1. While the AUHIP is authorized by the Parties to advance proposals alternative to the referendum, to make it possible to agree on a win-win solution, it is counterproductive to push the Parties to a new stalemate by advancing a Proposal on the referendum that endorses the position of one Party on the main contested issue.
2. The Government of the Sudan still finds the Sixth Proposal contained in the 'AUHIP Proposals towards a Resolution of the Issue of Abyei', dated November 27, 2010, relevant and is ready to start negotiating its implementation.
3. Formation of the temporary administration in accordance with the Agreement on Temporary Arrangements 2011 is top priority. In particular, it would not be possible to conceive of an agreement on a final status in Abyei in the absence of a joint civil administration to assist in promoting it, security of the area and the implementation of the agreed solution.

Addis Ababa, 25 September 2012.