



THE SUDD INSTITUTE

RESEARCH FOR A PEACEFUL, JUST AND PROSPEROUS SOUTH SUDAN

P. O. Box 34, Juba, South Sudan • Tel: +211 (0)956 305 780
Email: thesudd.institute@gmail.com • www.suddinstitute.org

Weekly Review

August 25, 2015

Untangling the Deal Breakers in the Partially Signed South Sudanese Peace Agreement and the Options on the Table

Nhial Titmamer

Introduction

After months of fighting and on and off negotiations, the IGAD Plus finally set a deadline of August 17th, 2015 to end a conflict that has displaced over a million people and killed tens of thousands. The effort resulted in a partially signed deal. One of the main parties, the government, declined to sign due to a number of issues and asked for a 15-day timeframe to consult with its constituents. The SPLM in Opposition (SPLM-IO) and other stakeholders, including the SPLM Leaders (Former Detainees), civil society organizations, and faith-based groups, signed the deal. However, the deal remains non-binding until the government signs it.

The deadline was set with severe consequences should the parties fail to strike a deal. What are the deal breakers¹ for the government and what are the options on the table? This weekly review highlights and analyses the contentious issues in the partially signed agreement and a number of options on the table.

The government delegation led by President Kiir Mayardit said it refused to sign the deal because of a number of contentious issues, including demilitarization of Juba within the radius of 25 kilometers, executive power sharing which commits the President to jointly make decisions with the 1st Vice President on key matters such as declaration of war, state of emergency, and power sharing in the states. The manner in which the peace mediation was conducted also played a key role as a deal breaker.

Before signing the agreement, the armed opposition led by Former Vice President Riek Machar pressed for federal system and compensation of the victims of the conflict.

¹ A deal breaker is an issue that makes a party to withdraw or not sign an agreement or a deal, according to Oxford dictionary.

Federalism has throughout the negotiations proven to be controversial as the parties found it difficult to agree on a particular system of governance. It is also an issue of great concern to many stakeholders beyond the warring parties, particularly the people of Equatoria region, the Nuer and Dinka who have their own understanding of federalism. However, since Dr. Riek's armed opposition has signed the document, these issues have logically ceased to be considered as deal breakers on their sides.

The next sections of the review focus on the issues the government considered problematic in the proposed agreement.

The deal breakers

Demilitarization

First, demilitarization of Juba has been deeply unpopular among military ranks and file of the SPLA in Bilpam and cross the country. Our conversations with some military officers point to this unpopularity. The military is one of the key constituents of the President. When he left for Addis Ababa, he had already done his consultation with them and was going to sign a new version of the agreement which was supposed to incorporate some of the resolutions of the August 10 Uganda's meeting of IGAD frontline countries. The President felt that the military would not agree with him if he signed the document before conducting newer consultations. For the military, removing them from Juba is not acceptable for two main reasons. First, they consider it an infringement on the sovereignty of the country. Secondly, doing so suggests that they are being driven to the bush out of their capital, one of a few places with a semblance of civilization. In other words, the move implies an SPLA ban from Juba.

On the one hand, some people argue that the President's move not to sign the deal demonstrates that he was careful about a potential backlash that might come from the military and wanted to ensure that he brought them on board before he could sign. Since this is about bringing peace, the rationale is that one does not want to stop war by signing a peace deal that creates another war, this crowd argues, citing potential spoilers. On the other hand, the move was seen by others as a strategy to buy time and find an opportunity to renegotiate some of the concerns not considered in the partially signed document.

What was in the minds of the mediators when they proposed the demilitarization of Juba? One of the reasons behind it is to avoid the repeat of the December 15, 2013, which led to the current civil war. However, demilitarization within the radius of 25 kilometers is not a guarantee against or a prevention of any future conflict as fighting can still happen even 100 kilometers outside Juba or any city. While this might have been proposed with good intention, it seems to fall short of the target, which in this case is to prevent a future conflict and protect civilians. In other words, the approach is not focused on protecting the people and preventing a future conflict but is rather focused on protecting the elite that will work in the new transitional government of national unity. This is problematic because any approach

that focuses on expedient needs of elites cannot bring lasting peace. The agreement seems to maintain up to a certain extent structures that can still lead to future conflicts. These structures include separate protection units for the President and the 1st Vice President, which actually existed before the conflict erupted.

Is it really necessary to demilitarize Juba? I guess the mediators meant to say ‘we should neutralize the military so that it does not get involved in politics.’ For many people, the military is a symbol of sovereignty and a source of national pride, thus neutralizing it to be above petty politics makes sense. IGAD Plus should realize that one of the controversial factors is the fact that such a proposal came from them instead of coming directly from South Sudanese.

How does the partially signed document address the issue of demilitarization after this objection was made by the government delegation? The current version is palatable compared to the original proposal. The word redeployment has been inserted instead of demilitarization. Of course, redeployment out of a place and demilitarization can still mean the same thing. However, what makes the changes in the partially signed document better than before is the fact that a number of South Sudanese military units instead of foreign forces will still be deployed in the capital to protect the President, 1st Vice President, Vice President, ministers, deputy ministers, heads of commissions and corporations and other very important personnel. There will also be units to protect the military barracks, bases, warehouses and other important installations within the capital. Bentiu, Bor and Malakal will also be protected by South Sudanese joint integrated police. The size of these units will be determined during the Permanent Ceasefire and Transitional Security Arrangement (PCTSA) workshop. Perhaps the biggest concern with the original version was that foreigners would be deployed in the capital after demilitarization. Now that this has been changed, the military generals could be brought on board by the President even though it could still be a tough sale.

Power sharing

Power sharing has also proven to be a serious deal breaker both throughout the periods of negotiations and in the partially signed document. The mediators started with President – Vice President - Prime Minister Power sharing model, which proved controversial. Again the mediators switched to President- 1st Vice President – Vice President Model, an option currently in the partially signed deal. The former model restricts the power percentages to the national level; however, the latest model includes power-sharing percentages across the ten states.

What is controversial about this model? First, the government argues that the powers accorded to the 1st Vice President on joint decision-making matters will paralyze the presidency. Therefore, it proposed two positions of Vice President with equal status. How having two vice presidents of equal status saves the government from a potential dysfunction

is not properly explained. The government delegation based on its reaction on August 16² seemed to have no reservations on the joint decision-making. In fact, the signed document states that should a disagreement arise, the matter can be referred to a council of ministers to resolve it by voting 67% of at least 23 members of the council of ministers. This mechanism may not be enough, particularly if one of the parties in the presidency is determined to win by all means³, which can be a source of potential conflict. With partners who have little trust for each other, any small dispute may take the country back to the same situation, just as the dispute within the SPLM party ruined the working relationship between the President and the former Vice President and spilled over to the military, engulfing the whole nation. Nevertheless, whether this mechanism will paralyze the function of the government and the presidency and may lead to another conflict partly depends on the working relationship of those who will be sharing power. As we know, the working relationship between the two grew hostile over time, leading to the sacking of the latter in July 2013. Our experiences tell us that there will be many potential issues that will cause dispute. What should be sought is a mechanism to ensure that the two work together without any difficulties. In addition, issues of dispute should be watched carefully and resolved before they develop into a conflict.

Second, with regards to power sharing at the state levels, the partially signed version has new changes which give the government 46% and armed opposition 40% and other political parties and SPLM Leaders (former detainees) 14% as opposed to the original proposal which gave armed opposition 53%, government 33% and political parties and SPLM Leaders 14%. The new changes reflected in the partially signed document also include 85% for the government and 15% in other seven states, which was not the case in the original document. The government had originally proposed to take 70% of the national power, and give 20% to the SPLM/SPLA-IO, and 10% to other political parties⁴ and had declined to share power at the state levels.

While there is a gain for the government in the three states of Upper Nile, the arrangement has provided a considerable gain for the armed opposition by giving it a combined total power percentage of 66%⁵ from other seven states, something it did not have in the original document. This has given armed opposition something to give their supporters in other seven

² See Proposed Compromise Agreement on the Resolution of the Conflict in the Republic of South Sudan Addis Ababa, Ethiopia Dated 16 August 2015.

³ The mechanism provided to resolve disputes during the implementation are not sufficient as they could be manipulated by either of the sides. Signs should be watched to avoid a potential conflict should the government decide to sign the agreement.

⁴ See Proposed Compromise Agreement on the Resolution of the Conflict in the Republic of South Sudan Addis Ababa, Ethiopia Dated 16 August 2015.

⁵ 66% is a combined total power ratio for the SPLM IO in seven states after subtracting combined reduction of 39% from the original ratios in the three states of Upper Nile region.

states. At the same time, the plan has given the government a simple majority in the Upper Nile region when this is compared with armed opposition's power ratios. However, the government does not consider this gain as sufficient because it thinks that the armed opposition, SPLM Leaders and other political parties will have a combined majority of 56% at the level of the three states in the Upper Nile region. In a normal game of politics, whoever gets a majority in this situation can be determined if interests of the players converge and this could be arrived at if parties play by the normal rules of politics.

After this reduction of power percentage, any rationale negotiator in the position of the government would still be unhappy with some aspects of this deal. The armed opposition was definitely justified to sign off on such an arrangement because it gives it some concessions in the areas it did not have anything before. The armed opposition would have more likely opposed some aspects of this deal if it were altered on the basis of the IGAD's frontline states' meeting outcomes as shown by its condemnation of the meeting⁶.

The mediation process

The manner in which the mediation process was conducted makes it a serious deal breaker. The parties got little time to negotiate one on one. Whenever they got a chance to negotiate directly and narrow the gaps, as it was the case in Bahir Dar last year, they got sent back for consultations. When they got back from consultations, they came back with hardened positions and had to start over again. There was no consistency in terms of format and in keeping track of the issues already addressed. For example, whenever mediators made a proposal, heads of state and government modified and pressured the parties to sign it as is. The case in point is the protocol on the agreement principles, which was signed on August 25 2014. In fact, the original proposal, which was slated for signing on 24 August, was the favorite of the SPLM IO. It was modified and signed on 25 August. Dr. Riek did not agree to the changes made and therefore declined to sign, just as President Kiir declined to sign the proposed compromise peace agreement. This goes to show that the mediation process has been as much a serious deal breaker as the issues mentioned above.

In addition, the mediation has been setting deadlines, one of which was 17 August. One thing with deadlines is that they put pressure on the parties and force them to sign something they do not wholeheartedly agree to. Expert literature⁷ on deadlines for peace processes shows that peace deals negotiated under the pressure of deadlines are more likely to falter. It is not

⁶ The SPLM/SPLA IO cited this in a press statement released following the Uganda's meeting of the four frontline states of IGAD namely Ethiopia, Kenya, Sudan and Uganda. The statement said the SPLM/SPLA IO would not accept Kampala's draft text as the basis for negotiation.

⁷ Pinfari, M. 2010. *Time to agree: Time pressure and 'deadline diplomacy' in peace negotiations*. PhD thesis, London School of Economics and Political Science, United Kingdom. This work finds out high time pressures are linked to broad and limited agreements while low level of time pressure are associated to durable peace.

the deadline per se which is bad. However, an unreasonable deadline, which gives parties little time to negotiate and come to a reasonable compromise is problematic. This peace deal will be hard to implement as the mediation team focused on signing something instead of making sure the parties willingly and freely compromise.

This brings us to what we consider the most important defining factor in why the President did not sign the deal that evening of August 17, 2015. When President Kiir went to Addis on August 16, he did knowing that at least some of his serious reservations would be considered in the new version of the proposed agreement. However, the President was slammed with what the government delegation saw as the Ethiopian Mediator's arrogant posture and the dangling threat of the US "plan B" to force him to sign whether he liked it or not. The idea that a head of supposedly independent state must have his arm twisted and forced into signing a deal he has reservations rubbed the President the wrong way and decided to not sign the agreement and asked to be given time to consult and reconsider the reservations.

The split in the SPLM-IO, other underlying factors and their potential impacts on the deal

The split within the SPLM-IO saw a break away by Generals Peter Gatdet, Gathoth Gatkuoth, Gabriel Tanginya and other influential politicians. This could be one of the underlying factors for the President's decision not to sign the deal as he might see this as a futile effort since these generals may spoil the deal. This is so because on the one hand, some people argue that the President is justified to have not signed since most of the strong generals who were with Dr. Riek are no longer with him and are threatening to fight both the government and the SPLM-IO.

The generals, five influential politicians, and elders from the SPLM IO, have openly voiced their opposition to the proposed compromised peace agreement, which, according to them, gives President Kiir and former Vice President Riek a chance to lead the transitional government of national unity. The breakaway group wants a transitional government without both leaders.

Perhaps it is hard to underrate the potential role this new breakaway group may play in continuing the destruction. While the government had earlier allegedly asked to withdraw from the talks due to the break away by this group, raising concerns over whom to deal with, it did not raise this as the reason for not signing the partially signed document. However, this breakaway generals and politicians can be serious spoilers of the IGAD Plus peace process.

While complaints about interference with sovereignty of South Sudan has centered on the proposal to demilitarize Juba and deploy foreign forces, this has changed in the partially signed document. However, two main issues in the agreement that seemingly interfere to a certain extent with sovereignty, include the proposed Hybrid Court for South Sudan (HCSS) and Joint Monitoring and Evaluation Commission (JMEC). On the one hand, critics of the plan in the deal argue that the JMEC is a trusteeship council in disguise just to fulfill the

mission recommended in the African Union's Commission of Inquiry on South Sudan. On the other hand, proponents think that it is a good idea to have a monitoring and evaluation mechanism in place to detect challenges and obstacles and provide solutions to ensure a smooth implementation. However, whether this body will interfere with the internal affairs of South Sudan will be proven by time. Concerning the HCSS, proponents argue that this is better than referring the atrocities to the International Criminal Court, notwithstanding the fact that South Sudan is not a party to the Rome Statute which created the ICC. While both parties may fear being targeted by the HCSS, the problem with its mandate is that it is limited to December 15 onward. A true and sustainable healing will come from a transitional justice mechanism that should at least cover the atrocities committed from 1983 – 2005 and 2013 to 2015. Focusing only on December 15, 2015 onward will not bring lasting healing.

Other underlying issues that should be given attention include local conflict particularly in Unity, Upper Nile and Jonglei states. Power sharing in those states may exacerbate the already existing conflicts between communities. A particular attention should be given to rivalry between Bul Nuer and other Nuer sections in Unity State and also between Ngok Dinka in Upper State and communities of Shilluk and Nuer. General Chol Thon, the new governor of Upper Nile State, who was appointed before the President left for Addis Ababa on August 16, may not easily give his position to an SPLM IO governor. In other words, players at the state levels can be serious spoilers. The earlier these are addressed the better. Sustainability of this deal will in large part depend on the compromise of the players at the state levels.

Options on the table

Looking up from this morass, most South Sudanese would say that a peace agreement, no matter how weak it may be, has got to be better than war. But what the government seemed to want is a way to give any agreement it would sign with the armed opposition a chance in life by decreasing the number of spoilers and obstacles to its implementation as much as possible. However, given the international focus on President Kiir's supposed refusal to sign, the government had only a limited number of options on the table. It could either consult, request to renegotiate areas of concern if allowed by the mediators, or consult and convince the stakeholders and agree to sign the deal.

News has been released that the President will sign the deal on August 26. The President's decision to sign the deal might have been influenced by the fact that the government is in a difficult position in the eyes of the international community after the rest had signed. In an international context, it is a losing factor to be seen as the only bad guy. The signing by other parties was a game changer as it had literally turned the tide against the government. So the President might have decided to sign to clean his image, just like the rest have done by signing. However, the implementation stage may prove soon to be the most difficult and frustrating part of this peace process as some aspects have not been willingly and freely compromised. If it is not handled carefully, the implementation may cause another war (God

forbid) as many stakeholders whose interests have been threatened might have allowed the signing as a strategy to ease international pressure on them and not because they willingly agree to compromise.

The IGAD Plus should move quickly to address the issue of the SPLM/SPLA IO breakaway generals and politicians. In addition, it should address the local conflicts in the war-affected areas. Furthermore, it should give a serious attention to dissatisfaction by the hardliners on both sides. Otherwise, this deal may just end up an effort in futility.

About Sudd Institute

The Sudd Institute is an independent research organization that conducts and facilitates policy relevant research and training to inform public policy and practice, to create opportunities for discussion and debate, and to improve analytical capacity in South Sudan. The Sudd Institute's intention is to significantly improve the quality, impact, and accountability of local, national, and international policy- and decision-making in South Sudan in order to promote a more peaceful, just and prosperous society.

About the Author

Nhial Titmamer is Research and Training Officer at the Sudd Institute. He is also the Institute's lead person in environmental, energy and natural resources issues in South Sudan. Nhial received his undergraduate and graduate education in Environmental Studies and Sustainable Energy in Canada where he spent stints as an environmental consultant and research associate in environmental studies. Nhial is the co-founder of the NewSudanVision.com and has been an active member of the South Sudanese community in the Diaspora through which he has been involved in informed activism in issues about South Sudan.