

INTERNATIONAL MEDIATION IN SOUTH SUDAN: A PERSPECTIVE ON INTERNATIONAL LAW AND DISPUTE RESOLUTION

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ABSTRACT

The Intergovernmental Authority on Drought and Desertification was established in 1986 with a focus on drought and desertification, and re-launched in 1996 as the Intergovernmental Authority on Development (IGAD) with an expanded mandate that included conflict resolution. Expansion of the mandate was due in part to IGAD member states' long history of cooperation and conflict with one another. IGAD's conflict resolution attentions have historically focused on the north-south conflict in Sudan (and now the south-south conflict) and various conflicts in Somalia. The IGAD peace process to resolve Sudan's long running second-civil war (1983-2005) was launched in the early 1990s and gained traction in the late 1990s when Kenya was IGAD's chair. IGAD's mediation, led by General Lazaro Sumbeiywo, received significant support from the "Troika" (U.S., UK and Norway), particularly at the end of the process. The Comprehensive Peace Agreement (CPA) was signed in 2005 and paved the way for South Sudan's independence in 2011. Given IGAD's history it was well-positioned to take the lead role in mediating South Sudan's war. The IGAD mediation is led by a chief mediator, the former Ethiopian Foreign Minister, Seyoum Mesfin, who was joined by mediators from Kenya, General Lazaro Sumbeiywo, and Sudan, General Mohammed al-Dabbi. It is overseen by the Heads of State (HoS), also including Uganda.

Key Words: IGAD, Mediation, Conflict Resolution, BATNA, WATNA

INTRODUCTION: IGAD, SUDAN & CONFLICT

A large chunk of the deliberation and dialogue that has taken place between the North and the South is down to the immense measures of reconciliation that were carried out by the massive mediation work by the Intergovernmental Authority on Development (IGAD)¹. The mindless elongation of the civil war ensured that everyone on board recognized the need to end the war between and find a suitable common ground between the warring camps of the north and the south after years of fierce conflict during 1955 -1972 and 1983 – 2005. The peace-making efforts had started in all earnest from as early as 1992-1993 under the aegis of the Organisation of the African Unity (OAU), which resulted in the result oriented talks at Abuja². However, the desired objectives were not achieved by the parties and were thus, were a setback in the peace restoring process in Sudan. OAU's efforts and scope was thus limited after the Abuja talk failed³. After receiving such a setback, the Sudanese Government was compelled to explore further solutions and indulge in option generation, which lead to a fruitful meeting with the regional body of the Inter-Government Authority on Drought and Development (IGADD) during its 1993 summit⁴ demanding support from the organisation regarding the possibility to mediate in the on-going disputes in Sudan. This demand was met with support and was endorsed by establishing of an IGAD sub-committee on conflict resolution which had on its board, the presidents of Ethiopia, Kenya, Eritrea and Uganda. This turned out to be IGAD's first political mediation effort; until then the organization had mainly focused on ecological disaster relief work in Africa.

CIVIL UNREST AND UPHEAVAL

¹ Acronym for an eight country organization of east African states that includes: Djibouti, Eritrea, Ethiopia, Kenya, Somalia, Sudan, and Uganda.

² Steven Wondu and Ann Lesch, *Battle for Peace in Sudan: An Analysis of the Abuja Conferences, 1992-93* (Lanham, MD: University Press of America, 2000).

³ "Exclusive: IGAD-led peace talks are not convincing," South Sudan News Agency (SSNA), November 15, 2014.

⁴ In 1993, IGADD changed its name by dropping "Drought" and became known as IGAD.

The Sudan People's Liberation Movement/Army (SPLM/A); the movement that led the southern upheaval during the second phase of the civil war, despite having initial reservations against the Sudanese Government and the entire process of the IGAD, took baby steps towards a dispute resolution process in a positive manner. It had its own agendas for participating in the peace dialogue had several reasons for participating in the mediation process, including its innate inability to achieve victory in warfare. Eventually, the north-south mediation process continued for more than a decade, and experienced several progressive developments and many temporary setbacks, the latter owing to intra-Sudanese factors as well as external factors, such as the split within IGAD following the Ethiopia-Eritrea War from 1998 to 2000.⁵ Despite all these ongoing sideshows IGAD's commitment towards active mediation, alongside complete support from the African Union (AU),⁶ got materialised into the historic 2005 Comprehensive Peace agreement (CPA) between the south and the north, that ultimately culminated into the South Sudan's declaration of independence (on July 9, 2011). South Sudan's independence was an historic development, one that challenged the sacred African post-colonial principle of the sanctity of colonial borders. This would not have been possible with the same speed and efficiency without the active mediation efforts of IGAD and many AU members, which gave their extended support towards the larger cause of the south Sudanese against the ruling class that had been established under the north ruling elite.

Being described globally as one of the least growing states while being the youngest, the emerging South Sudan was an extremely fragile state which was trying its utmost to reach the level expected out of it in order to redeem itself. Celebration of this ground-breaking moment was almost immediately marred by instances of mass violence and rioting. This was not the first instance of such violence, as it had been observed that the defeat of the SPLM candidate General George Athor Deng clashed with forces of the SPLM. According to the narrative of General George, the clashes were based on the premise of the claim of inequitable and disparaging conduct of the SPLM while also levelling serious charges of genocide against its political rivals in regions like Jonglei, where innumerable casualties were reported and lakhs had to leave their homes and houses in

⁵ Ruth Iyob and Gilbert M. Khadiagala, *Sudan: The Elusive Quest for Peace* (Boulder: Lynne Rienner Publishers, 2006), 101-132.

⁶ The African Union (AU) was established in 2002, replacing the OAU.

search for safer venues to enjoy relative safety amongst the jungles. As a direct consequence of the act was the coinciding of the fact that there were huge numbers of the refugees in the form of internally displaced persons within the state of South Sudan, thus escalating the tensions that existed over there into an outbreak of an armed conflict.

CONFLICT DECONSTRUCTION THROUGH MEDIATION

This was the backdrop in which the IGAD had to confine itself in while holding the preliminary rounds of the Mediation talks with both sides of the warring parties of South Sudan. These negotiations and conflict resolution measures are up and over the existing disputes that exist between Sudan and South Sudan with respect to the claims over territory and land, as separate cause of actions give rise to their own set of unique headaches and issues. Despite these obstacles in the path of conflict resolution, the determined efforts of IGAD have borne fruit in more than one way. IGAD has been instrumental in bringing over the table a proposal for an ambitious electricity sharing proposal between the vital stakeholder interests of the two countries, Machar and Kiir. Several challenges remain unresolved, as the common meeting of parties in a neutral place every time is not something that is agreeable to both the parties. Addis Ababa, a choice of the IGAD for hosting the next series of talks, was found to be disputed by both the parties. Recently, for example, IGAD has been planning to promote a power-sharing arrangement between Kiir and Machar during its upcoming summit. However, this attempt to broker an agreement faces several obstacles, both logistically (such as making sure all of the invited and parties are able to attend the meeting in Addis Ababa, the location for the next round of summit talks) and largely owing to the fact that there is a general distrust amongst the parties over each other, and at times, at the dispute resolution procedure itself. Machar, on one hand, has accused the IGAD and with it almost the entire AU itself, of showing bias and doling of favourites to the towards the ruling government of the day, while on the other hand, the president of the ruling party has alleged charges of bias and favouritism, while accusing the entire United Nation Mission in Sudan (UNMIS) of giving unfounded aid in helping the cause and reach of the rebels'.

The attitude shown by both the parties is symptomatic of the assumptions that one of the parties is extracting a larger share of the deal on the table and the other is being made to bite the bullet and accept the option generation measures of the IDAG. Both the parties, thus, act in accordance to

the highest traditions of their respective cultures and bring forward the deep lying best interests on the table, to ensure long term prosperity and stability to an otherwise disturbed area and put the local interests at a higher priority instead of petty name calling and thoughtless mistrust.

ROLE OF IDAG IN EASTERN AFRICA: PAST, PRESENT AND FUTURE

Like life, there are no certainties in dispute settlement processes, especially when the parties indulge in hard positional bargaining like the parties in the instant case. In case the attempts of the IDAG do not bear the desired effects, then IDAG may, most likely, impose embargos on one or both sides such as ban on arms imports and travel blacklisting. Diplomatic sanctions may also be considered to pressurise and suffocate the malafide interests and their supplier chain. IGAD, while exploring other options is also looking at something that it calls the 'local connect' which means an attempt at reconciliation through unions like the National Platform for Peace and Reconciliation (NPPR), which is a local body consisting primarily of church groups and also comprises the well thinking members of the civil society organizations, the very people who face the burdens and troubles of living in situations that are akin to those of a war-zone and can claim to be the ones with the livid and vivid experience holders of the conflict as its sole victims. These efforts by the IGAD have resulted in a public dialogue amongst the polity of Sudan and South Sudan with their person, which was otherwise non-existent and has enabled another channel of communication for the IGAD to indulge in option generation for the peaceful co-existing future of the two countries.

Sudan and South Sudan are not the only places where the IGAD has been asked to render its services for peacekeeping negotiations, conflict resolution and international mediation. Apart from South Sudan, IGAD is heavily focussed and involved in mediating similar conflicts and disputes, such as in Somalia. IGAD's involvement in Somalia has been long dated and was first seen in the year 2005, when the Somalia Transitional Federal Government (STFG) was first established in Kenya, which was a good two years of hard negotiating approach of the IGAD, which sponsored and conducted the negotiations about resolving the disputes that had broken out between the many Somali clans and factions, leading to widespread civil unrest and strife in the already socially disintegrated area. In September 2006, the AU gave its nod and agreed to the setting up of the

much needed IGAD Peace Support Mission in Somalia (IGASOM) to keep up the support towards the STFG's moving from Mogadishu from Nairobi.⁷

IGAD continues to play a vital role and happens to be involved in many aspects of the Somali mediation efforts, including one between rival parties during recently concluded and hardly fought presidential elections in the country.⁸ IGAD's institutional experience accumulated over many years of hostile conditions and negotiating in strife and torn regions while continuing active mediation in East Africa, marked by both successes and failures, is an inspired path that has been treaded upon by the African community and decision makers alike and this shall hold them in good steam as these skills shall be in continuous demand in a region where old conflicts never really are extinguished and new conflicts are certain.

⁷ Cecilia Hull and Emma Svensson, *African Union Mission in Somalia (AMISOM): Exemplifying African Union Peacekeeping Challenges*, Report No. FOI-R--2596--SE, Stockholm: Swedish Defense Research Agency, 2008.

⁸ "http://igad.int/index.php?option=com_content&view=article&id=1001:igad-statement-on-the-election-of-president-in-south-west-region-of-somalia&catid=66:somalia&Itemid=179 IGAD Statement on the Election of the President of South West Region of Somalia.". Accessed on 9th February 2016.