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## Article 31 on South Sudan

### **Developments in South Sudan Conflict: what are the limits of a mediator is the question here?**

Our Articles 1 to 3 and 5 to 30 were situation analyses of the conflict in South Sudan. Our articles 4 (A), 4 (B) and 4 (C) were the first of our series on “Who is Who”. This article (31) is dedicated to answering a technical question from a “Concerned African” close to the circles of IGAD mediation.

#### **What was the Question?**

In an e-mail dialogue we wrote to our Concerned African Colleague:

##### **Quote**

When reading and re-reading the statement<sup>1</sup> I kept wondering what “hat” was Ato Mesfin wearing when he delivered the statement!

I also wondered why IGAD sends a “mediator” and not an “IGAD” senior officer who would have been more appropriate and he/she would have had the right to talk “Politics” and “Content”. Statements (By Ato Mesfin) such as “Inclusivity must remain the principle that guides the peace process, and this entails participation of stakeholders without discrimination. *This should not be negotiable*” This is too “judgemental”. This is what a judge or an arbitrator would say; but not a “mediator”. The document is full of starkly judgemental statements.

My worry is that not only the “political will”<sup>2</sup> of the parties wanes out, but the confidence in the process as well.

##### **Unquote**

#### **What are the limits of a mediator?**

At first we thought we would respond by e-mail message addressed only to the person concerned. Then we realised that this may be an opportunity for us (The Group of 140 in our mailing list) to dig deeper in the issue in the hope that some of what we say may help firm up and add “Professional Stamina” to the Peace Process. We do hope that regional and international experts can participate to the discussion and analysis.

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<sup>1</sup> Statement by Ato Seyoum Mesfin addressing the UN Security Council on June 27<sup>th</sup>, 2014.

<sup>2</sup> The Statement by Ato Mesfin alluded to the lack of political will by the two parties.

## Learning from history without lecturing

*Please bear with us while we make fully answer the question.*

Julius Nyerere was tasked by the OAU and the Regional African Leaders to mediate the Burundi bloody conflict 1993-2005 (12 years and beyond). A violent conflict that claimed 300,000 killed and 800,000 Hutu put in “Regroupment or Relocation Camps” or better known as “Concentration Camps”. As great as he was, he failed miserably in mediation. Burundi's government had accused Mr Nyerere of favouring the Hutu rebels, and said he had become an impediment to a settlement. Mwalimu died on October 14<sup>th</sup> 1999 leaving the Hutu and Tutsi Burundians possibly worse off than when he took over the mediation process in 1995. In 4 years he had little if any success. One of his failures was the application of “massive direct pressure” on the parties.

One of Nyerere’s fatal mistakes was barring (Yes, he assumed power) Jean-Bosco Ndayikengurukiy’s army to join the talks. The main cause of the failure was that Ndayikengurukiy was a Primary Stakeholder with considerable following and firepower after his split from Conseil National Pour la Defense de la Democratie (CNDD).

Mr Mandela replaced the late former Tanzanian president, Julius Nyerere, as mediator. He was tasked three month later in January 2000 by the very same OAU to carry on the work (though failed) of Mwalimu.

But Mandela was refused by the two large and strong factions of the armed Hutu Groups! Why?

The leader of the Hutu rebel Forces for the Defence of Democracy, Jean Bosco Ndayikengurukiye, openly accused Mr Mandela of backing Burundi's Tutsi military government when he was president of South Africa. That legacy was enough to discredit him with the Hutus.

The hard-line Hutu Palipahutu faction also rejected Mr Mandela's appointment, saying it could not guarantee his safety if he travelled to Burundi

When such groups refused to come to the table Mandela labelled them as “terrorists”! When the group of 6 Tutsis became weary of the process he labelled them as “irresponsible” In both cases he forgot that he was no longer the president of SA; and if he were, Burundians were not his citizens.

One of the few wisdoms of Mandela during his mediation time was “We can't sideline anybody who can ***create instability*** in the country,' he said. “We must find ways of accommodating them in these discussions, either by inviting them to join ***or by addressing them separately***, but we cannot ignore them.' Those would be “Primary Stakeholder”.

One of his innovations was applying the principle of “***Sufficient Consensus***” when there were large numbers of stakeholders but only a couple of *real weight*. If the issue of the Group 11 (now Group 9) and the issue of Secondary Stakeholders Trap that Mediation has fallen in cannot be

resolved by putting them where they belong, may be a system of “*Sufficient Consensus*” may need to be instituted.

Soon into the mission, Mandela realised the “National Agenda” of the regional heads of State and in particular Tanzania and Uganda. That leads to “Intense Direct Pressures” and that is not always productive and may even be counter-productive. He preferred “disinterested pressure” from leaders outside the region and Bill Clinton and Omar Bongo came to help him.

One of Mandela’s main obstacles was security arrangements! (Bingo! We have been hammering on that from day one for South Sudan). The Hutu rebels were demanding to be integrated into the Tutsi-dominated army, and to make up at least half of the force. But many Tutsis feared that if they lose control of the military, there will be little to prevent Burundi from succumbing to a repetition of the 1994 genocide in neighbouring Rwanda. (Does that resonate with the situation in South Sudan? Has anyone asked what the SPLM/A-IO wants in and from security arrangements? We have. It is not a pleasant story).

Despite the Burundian rebels' call for the restoration of democracy, Mr Mandela's advisers (He had giants in conflict issues such as Nicholas Haysom) say fresh elections were not even on the agenda. They were considering a nominated “transitional” administration of at least five years, with a 10-year mandate also a possibility!

Did Mandela REALLY succeed or fail? We will not go into the details of that as it requires research with the lens of those days.

### **Examples Slips of the tongue? Assumption of Power, Wisdom, or sheer lack of rules of mediation?**

#### **Excerpts of uttering that affected or summed up situations for us to note:**

“PLEASE join the modern world,” said Nelson Mandela to Burundi's politicians. No one in Burundi was happy with such a blunt comment.

“We have a section of the leadership which does not care for the slaughter of innocent people”. Mandela in August 28<sup>th</sup> 2000 when only 13 of 19 armed groups signed the Arusha Agreement and 6 refused to sign. That gained him the anger of the 6 mainly Tutsi hardliners and it was not until 2005 that tranquility became in the horizon of Burundi. But until 2008 there were armed troubles.

Ugandan President Yoweri Museveni (The habitual bully), who chaired the regional initiative, decried the "adverse effects" of prolonging the peace talks. Besides extending the suffering of Burundians, it had led to unnecessary spending and a "disproportionate claim on the time of regional leaders”, he said. Very insensitive as usual.

"The only threat would be if there are influences from outside." "The Burundians must make not just a political change, but a *psychological mind shift* and learn to live with each other, work together and know they belong to one nation," Jakkie Potgieter. A very wise advice.

## Compare that with:

“The two parties to the conflict create one excuse after another as they attempt to scuttle, narrow, or delay the process. Each leader appears to be riding two horses at the same time. These compelled the mediation to adjourn the meeting at the beginning of this week.” Seyoum Mesfin in his statement to the UNSC June 27<sup>th</sup> 2014. Is that ALL that compelled Mediation to adjourn meetings? Are there reasons not imputable to the two main “Protagonists” or other satellite actors? Reasons that are probably imputable ONLY to the Mediation Envoys and the “Process”?

“However, my fear is that they might be *victims of a zero-sum mindset* in which victory can only be gained by the total defeat of the other”. This is Ato Mesfin again in his statement to the UNSC. This may fall “just short” of an insult that should not come from a person mediating between two belligerent parties.

“If the parties *continue to make a mockery* of the agreements they have signed” Mesfin to the UNSC. This is harshly judgemental. Were the agreements executable in the first place? Were they durable and based on the solid foundation of free will consent and “disinterested pressure” only?

“*Inclusivity* must remain the principle that guides the peace process, and this entails participation of stakeholders without discrimination. *This should not be negotiable*” Ato Mesfin. Who says it is not negotiable? Non-negotiable positions and issues need to be determined ONLY by the belligerent parties and not by Mediation.

“The Council should consider holding its session in Addis Ababa *where the parties in the conflict could be available* for engagement with the Council.” Mesfin once more to the UNSC. This is clearly self-serving (for Ethiopia). It is also false as the parties may not be “available” there. Limiting such a high intensity and violent conflict and its mediation to the immediate vicinity of South Sudan without the good offices of other African nation that have no “own agenda” is not helping. One of Mandela’s good tactics in Burundi’s case was bringing President Omar Bongo of Gabon to the scene.

“I can take cows to the river, but I cannot force them again to drink” Lazarus Sumbeiywo in Addis Ababa. While it may be true in the case of “cows”, the connotations are rather “Crude”. It *is* also the job of Mediation to “assist” cows to drink.

We believe that one of the downsides of Ato Mesfin’s statement to the UNSC, and indeed his personal travel there and not an IGAD representative at arm’s length from Mediation, was moving the “Centre of Gravity” of the process out of Addis; for whatever reason. The next week president Kiir came out preferring “An African Solution”.

As a result of the lack of ability of Mediation to control the Process and the unfortunate statements of Ato Mesfin to the UNSC and the mess created in the last session of talks, we alluded to the frustration of the SPLM/A-IO and their switch to firm up their governance institutions. Please refer to our article # 30. When this document was being prepared for release, a well informed “quasi insider” coined a worrying statement: Quote

"Riak Machar left the job of holding the IGAD diplomatic front to some trusted elements while he moved the political fight elsewhere, i.e. to the creation of a government-in-exile which he will hopefully bolster to prepare it for a power takeover once the military situation will allow it"

We cannot identify him/her more as we do not have permission to do that.

One of the sounds of wisdom in the Burundi case was that of the ICG in 2000 giving recommendations to Mandela regarding the Rebels:

- A preferential framework for consultations between the rebels and the Facilitation team must be set up in order to guarantee them adequate information on what has been gained by the peace process, and to allow the soldiers and political leaders of the armed movements to express their views on the ceasefire, the reform of the army, their future (as a group and individually) and the transition.
- A suspension to hostilities should be negotiated as the first stage of a permanent ceasefire, with the objective of identifying the rebel forces and testing how much control the leaders have over their men.
- The FDD (National Council for the Defense of Democracy or Forces for the Defense of Democracy) and the *Forces pour la Libération Nationale* FNL need to be convinced that they should detach themselves from Kabila's defence force and commit themselves strongly to a strictly Burundian process. They must be made to understand that by continuing to fight on DRC territory they risk being permanently regarded as "negative forces to be disarmed" by the negotiators in Arusha and thus losing their status as interlocutors.

One wonders: Where is this kind of analysis and wisdom in the case of South Sudan!

**Now, to answer the question of the Concerned African Citizen on the mediator or “Third Party Neutral” or (TPN) we will list simple principles:**

- 1- First Principle: The TPN must know the task very clearly.
- 2- Second Principle: The TPN must decide how much time he/she has to do the process. It cannot go on forever. Also when to start and when to finish and when to have *reasoned* recess.
- 3- Third principle: What tools are available to the TPN. Has he/she got enough resources? Is he/she sure that he/she has enough experience to handle the process if the dispute is serious? Does he/she need back up from additional stakeholders?
- 4- The TPN must be concerned ONLY with the process not with the content or the outcome. They do not need to know much about the content to be a TPN/Mediator and do successful process. But they will need expert advisors.
- 5- They are not allowed to pass judgment on any of the parties. They do not say to their self or loudly: this one is stupid, or this one is a liar, or that one is rude or that one has zero sum mind set. That is NOT the mediator's business. Mediation can only pass judgment on things relating to the process. When to have a recess. When to use shuttle diplomacy. When to arrange for interventions to resolve deadlocks. When to remind the parties with the ground rules.

- 6- Mediation must preserve the dignity of both (all) parties who have the dispute and make sure they preserve the dignity of each other. Mediation must also keep the respect for both parties and that they keep the respect for each other. Why? Because dignity and respect foster trust. Without trust people cannot negotiate.
- 7- Mediation must make sure, from the beginning, to clarify the mandate they have to both parties. Also make sure Mediation has permission from them in any action they take during the process. **Mediation works for the parties and the parties do not work for Mediation.** \$17.5 million have, so far, been spent on Addis mediation. Those who donated it did so for Mediation to serve the two parties of the conflict.
- 8- Mediation needs to make sure that the place where they hold the process is suitable, safe and comfortable. The shuttle of the South Sudan process between hotels in Addis in the early days of the process was a true shame.
- 9- Mediation must give all its time and attention to the process. Not only that, but mediation must make sure the parties know and feel that ALL attention is only for the process.
- 10- Listen-Listen-Listen.
- 11- Mediation must concentrate on the process not on the outcome. The process is your business. The outcome is the business of the parties if they decide to make peace.
- 12- External stakeholders can be of help but they can also bring disaster.

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