

Briefing on the Situation in Sudan

Automatic Heading TextDate | 6 September, 2019

Tomorrow (6 September) at 3pm the African Union (AU) Peace and Security Council (PSC) will hold a session on the situation in Sudan. Although it was not included in the program of work of the PSC initially, it was included on the agenda on the request of the AU Commission (AUC) Chairperson. Moussa Faki Mahamat, AUC Chairperson, is expected to brief the PSC. As per established PSC practice, the representatives of Sudan, and Ethiopia, as Chair of the regional body the Inter-Governmental Authority on Development (IGAD), are also expected to make statements.

The main agenda of the session is to review the transition process in Sudan and consider the lifting of the suspension of Sudan from the activities of the AU. It is to be recalled the PSC during its 854th session of 6 June 2019 took a decision suspending Sudan from participating in the activities of the AU. The major consideration for deciding to suspend Sudan as the PSC put was 'the lack of progress, since its (PSC's) initial meeting following the Coup d'Etat of 11 April 2019 in Sudan, towards the establishment of a civilian-led Transitional Authority as demanded by Council'. The PSC reached at this assessment following the illegal use of force by security forces on 3 June 2019 that led to the killing of large number of unarmed civilians in Khartoum. This manifested not only the lack of progress in the negotiation process between the Transitional Military Council (TMC), that seized power on 11 April unconstitutionally, and the Forces for Declaration of Freedom and Change (FDFC), which represented the protesters and various opposition forces, but also resulted in the suspension of the negotiation process. An announcement was also made by the TMC rescinding agreements

reached between the parties when the process broke down at the end of May. While suspending Sudan, the PSC not only rejected 'the unilateral actions taken by the Transitional Military Council, notably the suspension of dialogue with other Sudanese stakeholders' but also demanded that 'the Transitional Military Council and all other concerned Sudanese stakeholders abide by previously reached agreements on the setting up of a civilian-led Transitional Authority'.

Additionally, in demanding 'the immediate resumption of negotiations, without pre-conditions, between all Sudanese stakeholders towards the establishment of a civilian-led Transitional Authority,' the PSC tasked the AU Commission Chairperson to immediately take the necessary measures to further strengthen the AU Facilitation Team in Sudan and to liaise closely with the IGAD 'in bringing together the Sudanese stakeholders back to dialogue, in order to put in place a civilian-led Transitional Authority.'

Accordingly, notwithstanding the suspension the AU working together with Ethiopia, current Chair of IGAD, continued to engage the TMC and the FDFC for resumption of talks. In attempt to break the stalemate in the negotiation over the composition, power and leadership of the sovereign council, a body proposed to be in charge of Sudan during the transition process, Prime Minister Abiy Ahmed of Ethiopia following a visit to Khartoum tabled a compromise proposal. While the FDFC accepted the compromise proposal, the TMC agreed to resume negotiations on the basis of a reformulated AU Ethiopia proposal submitted to the parties at the end of June.

The first breakthrough happened on 5 July when the two sides agreed on the composition, power and leadership of the sovereign council. What has been agreed between the two sides was a power-sharing deal that allows the military instead of transferring power to a civilian-led transitional authority to be part of a negotiated transitional authority sharing power with the civilians. In a statement that he issued on 5 July,

AUC Chairperson welcomed the agreement reached. The parties continued negotiations over the constitutional declaration, the constitutional document for the transitional period.

They reached an agreement and initialed the constitutional declaration on 4 August. While welcoming the initialization of the constitutional declarations in a statement he issued on 5 August, AUC Chairperson recognized it as a development that 'lays the foundations for a democratic transition with a civilian-led government and is an important achievement for Africa in its desire to solve its own problems.' He also went on to call on 'all bilateral and multilateral partners to redouble their efforts to provide Sudan and its transitional authorities with the necessary support during this key phase of the country's history.'

In a major development signifying the conclusions of the mediation process for establishment of a negotiated transitional government, the two parties officially signed the Constitutional Declaration on 17 August, marking the beginning of the three-year transitional period agreed between the parties. On 21 August, the leader of the TMC, Lt-Gen Abdel Fattah Abdelrahman Burhan, has been sworn in as leader of the newly established sovereign council. The other members of the Council were also sworn in on the same day. While the TMC's reign came to an end, the leadership of the TMC was integrated into the Sovereign Council.

An important development in the implementation of the Constitutional Declaration was the naming of the new Prime Minister, Abdalla Hamdok, who was sworn in on 22 August. The various relevant transitional institutions namely the cabinet and the legislative body of the transitional government have as yet to be in place.

With the progress that has been made both in the negotiation process and importantly in the implementation of the Constitutional Declarations, the expectation is that AUC

Chairperson will in his briefing as significant achievements warranting commendation and understandably recommend to the PSC to consider the lifting of the suspension of Sudan. This would also be consistent with his earlier appeal from his statement of 5 August to all multilateral and bilateral partners of Sudan to extend support to the transitional government.

In its decisions since 15 April including in its communique of the 854th session, the PSC demanded the transfer of power by the TMC to a civilian-led transitional authority. This the PSC considered to be the path for Sudan to get out of not only the political crisis but also to end the unconstitutional seizure of power by the military. While the progress made in the transitional process in Sudan is significant and PSC members would welcome the various milestones achieved, there remain member states of the PSC who are unsure of whether the requirements set for lifting of suspension after unconstitutional changes of government took place.

From the practice of the PSC so far, three trends can be discerned in terms of lifting of suspension for unconstitutional changes of government. In rare cases, as was the case in 1997 in Sierra Leone suspension is lifted on the reinstatement of the government that was unconstitutionally deposed. As experiences, among others, in Madagascar, Guinea Bissau and in the Central African Republic show, the most common route for lifting of suspension from AU activities is the establishment of a democratically elected government, seen as a clear mark of restoration of constitutional order. Since what the PSC requested in its decisions was transfer of power to a civilian-led authority, these two avenues will not be applicable to the case of Sudan. The third avenue for lifting of suspension before elections are held is on the establishment of an agreed transitional government as the PSC did for Mali in October 2012.

Clearly if past practice of the PSC is any guide, this third path is the one most fit for the situation in Sudan. This depends on the determination by the PSC of whether 'effective establishment of civilian-led transitional authority' has been achieved. As noted above, instead of being a fully civilian-led transitional authority, the transitional government, as a product of a power-sharing deal with the TMC, is more civilian in its composition with the military enjoying leadership of the Sovereign Council. Also the leader of the TMC remains to be the leader of the Sovereign Council. As far as the full implementation of the transitional institutions of government is concerned, some of the major institutions such as the legislative council and the constitutional court are yet to be put in place. The cabinet is also in the process of being formed. Another issue for consideration is the establishment of the independent investigation into the killings of 3 June provided for in the communique of the 854th session of the PSC. Indeed, given that it was the AUC Chairperson that the communique tasked to initiate the investigation process, this would be one of the issues on which Faki is expected to update the PSC.

It is evident that the continuing role of the leadership of the TMC in the new transitional government and the unfinished process of the establishment of some of the important institutions

of the transitional government do not exactly reflect 'effective establishment of civilian-led transitional authority'. Yet, it is difficult to reject the continuing presence of the leadership of the TMC in the newly established transitional government given that the transitional authority was established based on negotiations sanctioned by the PSC, facilitated by the AU Commission and accepted by the civilian stakeholders of Sudan. An area where there is concern on the part of some PSC members that it may be premature to lift suspension relate to the non-completion of the establishment of some of the key institutions of the transitional government

and hence they may wish to wait until the cabinet, the legislative council and the constitutional court are constituted.

They may also wish to see progress in the independent investigation into the killings of unarmed civilians by security forces on 3 June as provided for in the PSC communique. However, the overall sentiment and inclination in the PSC seem to be to encourage the commendable progress made thus far by lifting the suspension. The expected outcome of the session is a communique. If the PSC ultimately opts for the lifting of the suspension, it may however demand for ensuring optimal satisfaction of the terms set in its communique of the 854th session that the transitional government allows and ensures that the independent investigations to be carried out.