

VTC Briefing on the situation in South Sudan

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Tomorrow (15 September 2020) the African Union (AU) Peace and Security Council (PSC) will hold a briefing session on the situation in South Sudan. This 944th session of the PSC is expected to consider the report of the Chairperson of the Commission on the latest situation in the country. The Special Representative of the Chairperson of the AU Commission for South Sudan, Joram Biswaro, is expected to introduce the report. It is also envisaged that the PSC receives update from the Office of the Legal Counsel regarding the request of the 917th session of the PSC for progress report on the process for the operationalization of the Hybrid Court.

The PSC will also receive the statements of the representative of South Sudan, the Interim Chairperson of the Revitalized-Joint Monitoring and Evaluation Commission, Sudan, as the Chair of the Intergovernmental Authority on Development (IGAD), and the representative of the UN.

The last time that PSC was briefed on South Sudan was in April 2020. The meeting is scheduled to take place via VTC.

It is exactly two years since the signing of the Revitalized Agreement on the Resolution of the Conflict in the Republic of South Sudan (R-ARCSS). Therefore, this meeting will provide an opportunity to take stock of the progress made in the implementation of the peace agreement and the challenges that still persist since the last meeting of the PSC.

As noted during the last session, the agreement reached by the parties to form an inclusive transitional government has certainly rescued the country back from the brink. The announcement of the formation of the R-TGoNU with an inclusive

new cabinet was very welcomed. This is essentially what has been considered as a progress. However, over the last couple of months since the formation of the R-TGoNU, the delays in fully operationalizing the governance structures and implementing the national security arrangements has been a source of major concern.

It has been noted that despite the formation of the R-TGoNU, the parties to the R-ARCSS were unable to agree on the distribution of responsibilities at the state and local government levels. As reported by R-JMEC, the resultant delay in the formation of state governments.

The Chairperson's report is expected to highlight developments since the last session. In June, bilateral discussions between President Salva Kiir Mayardit and the First Vice President Dr Riek Machar resulted in some progress with the two sides agreeing for ITGoNU headed by the president to nominate governors to the states of Unity, Eastern Equatoria, Warrap, Northern Bahr el Ghazal, Central Equatoria and Lakes; The SPLM/A-IO for the states of Upper Nile, Western Bahr el Ghazal, and Western Equatoria; and SSOA for Jonglei state. Despite the issuance by President Kiir of Republican Decrees No. 51/2020 and 53/2020 naming eight of the ten governors and three Chief Administrators of the Administrative Areas respectively, four of the six parties comprising the Other Political Parties (OPP) continue to object to this agreement as being contrary to the terms of the R-ARCSS.

This delay in the formation of the state and local government leadership has impacted negatively on the formation of the Transitional National Legislature (TNL), comprising both the Transitional National Legislative Assembly (TNLA) and the Council of States (CoS). Thus, this key component of the transitional institutions has as yet to be established. The delay also contributed to a security vacuum in several states; evidenced by escalating inter-communal violence in the states of Warrap, Lakes, Unity and Jonglei. Countless numbers of

individuals have been killed and others wounded in ongoing cattle rustling episodes and revenge attacks.

Another area of concern relates to the inadequate pace of progress in the implementation of the transitional security arrangements. Despite the PSC urging the parties to facilitate the 'unification, training and integration of the various armed groups to enable deployment of the Unified Forces', registration and screening, and detailed unification training have been suspended, and plans to complete graduation at all training centres within 30 days from 28 May 2020, followed by immediate redeployment of the NUF have not materialized. According to R-JMEC, high levels of the forces abandoning the cantonment sites and training centres due to severe food shortages, lack of medicines, and care facilities for the female personnel. The other area of immediate concern is the escalation of fighting, allegedly between the SSPDF/SPLA-IO and NAS with adverse effect on the protection of civilians.

The increase inter-communal violence coupled with the impact of the COVID-19 pandemic and the flood disaster has also been exacerbating the humanitarian situation in the country affecting the wellbeing of many South Sudanese people. There have been continued sexual and gender-based violence (SGBV) incidents, including rape and gang rape in some areas of the country. There has also been increasing reports of attacks against humanitarian workers, and a near-complete halt to the voluntary return of Internally Displaced Persons (IDPs), and refugees. Furthermore, the socio-economic situation has been extremely dire. It is in the face of all these challenges that the second anniversary of the peace agreement is being marked this month.

Two years after the signing of the peace agreement, the South Sudanese people are not yet experiencing the dividends of peace. Lack of political will and trust among the parties is a major obstacle for making any meaningful progress. It is absolutely imperative that they set aside their difference and

work together in a spirit of collegiality for the sake of the South Sudanese people who have endured so much for far too long. It is in this spirit that they can accelerate the implementation of the peace agreement and resolve the remaining outstanding issues. It is also vital that the financial constraints impeding progress are addressed as highlighted in the communique of the 917th PSC session. But it is only if there is meaningful commitment and action on the part of the South Sudanese stakeholders that the international community will be able to provide the necessary support. The Troika in a statement issued on 12 September 2020 observed “South Sudan’s leaders have a real opportunity to deliver the foundation of a stable and prosperous nation for all, and to demonstrate their commitment to peace. We urge them to demonstrate this as a matter of urgency and will work with South Sudan to support progress”.

The briefing from the Legal Counsel is expected to provide update on the status of operationalization of the Hybrid Court. While the legal instruments necessary for the formation of the Hybrid Court including the MoU between the AU and South Sudan have been drafted, these have as yet to be finalized with the signing of the MoU. The delay in the establishment of the TLA also means that the legislation envisaged in the R-ARSSC has as yet to be initiated.

It would be of interest to members of the PSC to know whether the legal instruments prepared through the Legal Counsel have reflected the useful guidance from the AU Transitional Justice Policy adopted by the AU Assembly in February 2019. Additionally, it would also be of interest where the process stands with respect to the other components of the transitional justice Chapter of the R-ARCSS. As the June 2020 R-JMEC report to IGAD noted, ‘Consistent with Articles 5.1.4 and 5.1.5 of the R-ARCSS, the RTGoNU is expected to receive support from the UN, AU and the African Commission on Human and People’s Rights (ACPHR) in furtherance of the

implementation of Chapter V of the R-ARCSS.’ It is worth noting that the ACHPR is undertaking work to deliver on this expectation pursuant to its Resolution 428 on the human rights situation in the Republic of South Sudan (ACHPR/Res.428(LXV)2019) which tasked the Country Rapporteur for South Sudan to engage with the AU Commission and the Government of South Sudan with proposals on the operationalization of Chapter V of the R-ARCSS.

The expected outcome of tomorrow’s meeting is a communique. The AUPSC may wish to welcome the progress made in the formation of the various components of the R-TGoNU including in resolving the issues surrounding the allocation and appointment of the leadership of state governments. The Council may express concern over the slow pace of progress in the implementation of the transitional security arrangements and the challenges observed since its last session including suspension of activities for unification, training and integration of various armed forces and incidents of fighting. The PSC may also reiterate its call for the parties to implement the establishment and operationalization of the expanded Transitional National Legislative Assembly (TNLA). The PSC may wish to call on the parties to demonstrate high levels of responsibility and urgency working together in a spirit of consensus and compromise to resolve all outstanding issues to complete the formation of the R-TGoNU in line with the peace agreement. With respect to the transitional justice chapter of the R-ARCSS, the PSC may welcome the engagement of the AU Commission to support the work towards the operationalization of the Hybrid Court and call on South Sudan to fully collaborate with the AU to address all challenges in the delivery of Chapter V of the peace agreement including with the contribution of the ACHPR and having regard to the useful guidance in the AU Transitional Justice Policy for finalizing the legal instruments and the MoU on the Hybrid Court.