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Thursday, January 18, 2024

Re: My Opinion letter: Presidential Decree on disarming and expulsion is ineffective

Shockingly, the Presidential Decree on disarming and expulsion is ineffective in addressing the issue between Ngok and Twic Mayardit. The Presidential Decree on disarming and expulsion will fail to resolve the violent conflict between Ngok and Twic Mayardit. In addition, the Presidential Decree on disarming and expulsion violates the Constitution of South Sudan.

On January 16, 2024, President Kiir issues a Republican Order to immediately cease hostilities in the Abyei Special Administrative Area and Twic of Warrap State. Second, the Decree put on hold the Abyei Box. Lastly, President Kiir expelled the spiritual leader, Gai Machiek.

The Presidential Decree was in reference to Article 97 (3) of the Transitional Constitution of the Republic of South Sudan 2011. Article 97 (3) states, "The President of the Republic of South Sudan is the head of State and Government, the Commander-in-Chief of the Sudan People's Liberation Army, and the Supreme Commander of all the other regular forces. He or she represents the will of the people and shall exercise the powers vested in the office of the president by this Constitution. [In addition], Article 101(a) on functions of the President states, "The President shall preserve the security of South Sudan and protect its territorial integrity" (South Sudanese Government website for the Ministry of Justice and Constitutional Affairs, Transitional Constitution of the Republic of South Sudan 2011: <https://mojca.gov.ss/wp-content/uploads/2023/03/Transitional-Constitution-of-the-Republic-of-South-Sudan-2011.pdf>).

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The President has the authority to ensure security and protect the citizens of South Sudan under the two articles. However, President Kiir has failed to ensure the safety of the citizens of South Sudan. South Sudan is plagued by violence, and President Kiir has been silent.

President Kiir acted against our constitution when he issued a Presidential Decree on disarming and expulsion following the death of Deputy Governor Noon Deng in the war.

In his Decree, President Kiir declares, “All the relevant security organs MUST continue to carry on arms search and peaceful disarmament of the civil populations in Warrap, Western Bhar El Ghazal States, as well as other parts of the country. The security forces must ensure that the Nuer youth present in Twic and Ngok areas are moved back to the Nuer land....” (Radio tamazuj in Juba, January 17, 2024, Kiir orders the expulsion of the Nuer spiritual leader from Warrap: <https://radiotamazuj.org/en/news/article/kiir-orders-expulsion-of-nuer-spiritual-leader-from-warrap>).

President Kiir instructed security officials to keep peacefully disposing of firearms from civilian populations in Warrap, Western Bahr El Ghazal States, and elsewhere in the country. It is important for the security forces to ensure that the Nuer youth present in the Twic and Ngok regions return to their homeland.

Conversely, is it legal for the SSPDF to operate within Abyei's territory to disarm Abyei militias and remove Nuer militias? No, it is not legal for the SSPDF to conduct arms searches and peaceful disarmament within Abyei's territory and remove Nuer militias. The Presidential Decree directly violated the Constitution of South Sudan regarding the security arrangements in the Abyei Area.

Article 97(4)(c) declares that “The security arrangements in Abyei Area shall be in accordance with the provisions of the Abyei protocol, 2005 or in accordance with any alternative arrangements agreed upon by the two governments of South Sudan and of Sudan” (South Sudanese Government website for the Ministry of Justice and Constitutional Affairs, Transitional Constitution of the Republic of South Sudan 2011: <https://mojca.gov.ss/wp-content/uploads/2023/03/Transitional-Constitution-of-the-Republic-of-South-Sudan-2011.pdf>).

The Abyei Protocol of 2004 and the Comprehensive Peace Agreement (CPA) of 2005 require that the security arrangements in the Abyei Area be met through two governments.

The Abyei protocol states, “1.1.1 Abyei is a bridge between the north and the south, linking the people of Sudan. 1.1.2 The territory is defined as the area of the nine Ngok Dinka chiefdoms transferred to Kordofan in 1905. During the Interim Period, Abyei will be accorded special administrative status. Residents of Abyei will be both Western Kordofan and Bahr El Ghazal citizens, with representation in the legislatures of both states.”

Based on the Abyei Protocol on the Resolution of the Abyei Conflict, only two governments of South Sudan and Sudan must agree on the security arrangements of the Abyei Areas.

The Presidential Decree of President Kiir announces, “there must be an immediate cessation of hostilities by both communities, the governors of Warrap and Western Bahr El Ghazal States, and the Chief Administrator of Abyei Special Administrative Area and directed to continue engaging politicians, military leaders, traditional leaders, and other stakeholders in their respective areas in a bit to find a lasting peace between the two sisterly communities through the initiation of dialogues to reconcile the two communities. Land borders and boundaries in conflict-affected areas of Twic and Ngok Dinka...including the question of the Abyei box, must be put on hold” (Radio tamazuj in Juba, January 17, 2024, Kiir orders the expulsion of the Nuer spiritual leader from Warrap: <https://radiotamazuj.org/en/news/article/kiir-orders-expulsion-of-nuer-spiritual-leader-from-warrap>).

The Presidential Decree on the immediate cessation of hostilities between Ngok and Twic came late and after severe damages. The Presidential Decree became very weak because President Kiir had watched the two rival communities fight each other over an international border for over two years. After the Deputy Governor was killed on the front line fighting Twic Mayardit, President Kiir was alarmed while many people were killed, cattle raided, and houses burned to ash between Ngok and Twic Mayardit.

Furthermore, the Presidential Decree became ineffective because it mandated the postponement of the Abyei box rather than telling the truth that Ngok and UNISFA should move to the North Kiir River. It is true that the Presidential Decree was directly against Twic Mayardit because Ngok will not be disarmed as it is not part of South Sudan.

The South Sudanese government has supported fighting between Ngok and Twic Mayardit over the international border at the South Kiir River in violation of the South Sudanese Constitution. However, the Sudanese government respects the Comprehensive Peace Agreement (CPA) on the Resolution of the Abyei Conflict.

On September 26, 2022, the Sudanese government wrote its position paper on the final status of Abyei. The letter declared that the position of the Republic of Sudan is based on the “CPA of 2005 and the Abyei Protocol of 2004 on the resolution of the Abyei conflict. [It declares that] the Republic of Sudan refuses to operate Anthony airport in the Abyei area, which poses a clear violation of national sovereignty and demands the cessation of all activities at the airport, including the cessation of unilateral measures taken by the Republic of South Sudan to operate Agok airport, which is not under the sovereignty of the Civil Aviation Authority of the Republic of Sudan” (the Sudanese position paper on September 26, 2022, p. 1-2).

Comprehensive Peace Agreement (CPA), Chapter IV of the Resolution of Abyei Conflict, Section 1.4 states, “January 1, 1956, lines between north and south [are] inviolate” (P. 66).

The statement of the Republic of Sudan about the status of Abyei is evident. In accordance with the CPA of 205, the lines between north and south were made permanent based on the 1956 map.

It is obvious that the operation of Anthony Airport in the Abyei area violated Sudanese national sovereignty and demanded the cessation of all activities at the airport. However, the UNISFA and South Sudanese government kept operating Agok Airport unlawfully for the interest of the South

Sudanese government and Ngok, which fueled the violent conflict between Ngok and Twic Mayardit. The South Sudanese Government must stop using the Agok airport and let the UNISFA cross the South Kiir River to Abyei town.

In addition, the Presidential Decree didn't give us our land. The enemy of Twic Mayardit directed President Kiir to issue the Presidential Decree that the Abyei box would be put on hold, and the Abyei people would stay on Twic land illegally. That tactic is impossible. Twic Mayardit will not accept the Presidential Decree until Ngok moves to the North Kiir River. Only Twic Mayardit will respect the Presidential Decree that says Ngok and UNISFA must move to the North Kiir River.

Unfortunately, President Kiir ordered the expulsion of the Nuer Spiritual leader and other Nuer youth to leave Warrap State and be relocated to other States in the country except Warrap and the Abyei Special Administrative Area.

In addition, the Presidential Decree was weakened by the expulsion of an individual who fled their state to escape danger and demanded that they be returned to their state of prosecution. Gai Machiek departed from Unity State with his children, wives, and most of his clan, along with his cattle. The Presidential Decree violated freedom of movement and liberty to choose residence.

Article 27(1) on freedom of movement and residence states, "Every citizen shall have the right to freedom of movement and the liberty to choose his or her residence..." (South Sudanese Government website for the Ministry of Justice and Constitutional Affairs, Transitional Constitution of the Republic of South Sudan 2011: <https://mojca.gov.ss/wp-content/uploads/2023/03/Transitional-Constitution-of-the-Republic-of-South-Sudan-2011.pdf>).

Gai Machiek should not be handed to General Tut Gatluak, Presidential Advisor on National Security Affairs, and General Joseph Nguen Monytil, Unity State Governor, to burn Gai Machiek alive. According to our constitution, Gai Machiek has the right to freedom of movement and the liberty to choose his residence in South Sudan. Based on our constitution, Gai Machiek is privileged to remain in Twic, as he was in the region before the violent conflict began.

General Tut Gatluak, Presidential Advisor on National Security Affairs, and General Joseph Nguen Monytil, Unity State Governor, proposed that Twic be disarmed, and Gai Machiek be expelled from Twic Mayardit because they wanted to burn him alive. Therefore, Twic Mayardit will never allow Gai Machiek to be handed over to Tut Gatluak and Nguen Monytil just to burn him alive.

The Presidential Decree states, "The security forces must ensure that Gai Machiek, the Nuer Spiritual Leader, is expelled from the Ajak Kuac area in Warrap State and peacefully returned to Unity State or moved to another state of his choice within the Bahr El Ghazal region other than Warrap and Abyei Special Administrative Area," (Radio tamazuj in Juba, January 17, 2024, Kiir orders the expulsion of the Nuer spiritual leader from Warrap: <https://radiotamazuj.org/en/news/article/kiir-orders-expulsion-of-nuer-spiritual-leader-from-warrap>).

The Presidential Decree declared war against Twic Mayardit if the security forces tried to expel Gai Machiek from Twic Mayardit in violation of the Constitution of South Sudan.

The lasting solution should be as follows:

- (1) President Kiir should reverse his Presidential Decree on disarming Twic Mayardit and expulsion of Gai Machiek. Disarming Twic Mayardit and expelling Gai Machiek from Twic Mayardit are redlines and non-negotiable.
- (2) The government of South Sudan must acknowledge that the Ngok people were resettled in the South Kiir River as refugees of Sudan.
- (3) President Kiir should issue the Presidential Decree to let Ngok and UNISFA cross the Kiir River. The UNISFA must be relocated from the Twic areas such as Athony, Aneet, Agok, Abithong, and Wutpeeth, which are located south of Kiir River to the north of Kiir River.
- (4) Ngok must accept the 1956 map and cross the Kiir River to the north to maintain peace between Ngok and Twic Mayardit.
- (5) Ngok must confirm that the Kiir River is the international borderline between the Kordofan and Bhar El Ghazal regions.
- (6) If Ngok fails to recognize the Kiir River as the international border and refuses to cross the Kiir River to the north side, Twic County should be given the status of the administrative area to face the Abyei Administrative area for fair representation.
- (7) For peace to prevail between Ngok and Twic Mayardit, President Salva Kiir, First Vice President Dr. Riek Machar, Elder George Kongor Arop, General Awet Akot, Hon. Dr. Aldo Ajou Deng Akuei, General Deng Wol, General Aleu Ayieny Aleu, and General Bona Abang, must speak out the truth that the South Kiir River is the land of Twic Mayardit.
- (8) A seven-member national committee, including General Akol Koor Kuch, Chief Madhel Lang Juuk, Honorable Thiik Thiik Mayardit, and four members from Awiel, Ruweng, and Unity State, should be formed to coordinate the peace process between the two rival communities.
- (9) The land dispute between Ngok and Twic Mayardit will continue until President Salva Kiir issues the Presidential Order that the Abyei Administration and UNISFA should move to the north of the Kiir River.

Sincerely,



01-18-2024

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