

## THE ROAD BACK FROM ABYEI

Douglas H. Johnson<sup>1</sup>  
14 January 2011

*...the Parties are desirous of resolving the Sudan conflict in a just and sustainable manner by addressing the root causes of the conflict and by establishing a framework for governance through which power and wealth shall be equitably shared and human rights guaranteed....*

Machakos Protocol

Fighting broke out in and around the Abyei area just as voting in the Southern referendum began. No official details have been released yet, but unofficial UN statements report attacks on SPLA police posts by Misseriya gunmen on motorcycles and exchanges of heavy weapons fire elsewhere.

This is not just the work of herders armed with Kalashnikovs to protect their cattle from wild animals, nor a range war between rival Misseriya Arab and Ngok Dinka pastoralists. The attacks appear to have been inspired by false reports in the Khartoum media that the Ngok intended to unilaterally annex Abyei to the South on 9 January, the first day of the Southern referendum, and the day the citizens of Abyei should have begun voting in their own referendum. Misseriya gathering in the Southern Kordofan town of Muglad declared their intent to stop any such action.

Abyei has so far proved to be the most difficult part of the Comprehensive Peace Agreement (CPA) to implement, more difficult, even than the determination of the rest of the North-South boundary or the division of oil revenues. If Sudan is to travel the road back from Abyei to a sustainable peace, then the a resolution to the dispute should be based on the following:

- 1) A recognition of the root causes of Abyei's conflict, in line with the Machakos Protocol (cited above), the framework document for the CPA;
- 2) The full implementation of the *intent* of the Abyei Protocol of the CPA, through a referendum expressing the democratic will of the residents of the Abyei Area, as now defined by the Public Court of Arbitration's (PCA) 2009 ruling in the Hague;
- 3) A recognition by the US government that the recent interventions of their mediators have made a resolution less, rather than more likely, and a reversal of their current attempt to mediate through the imposition of a further territorial compromise;
- 4) The establishment of separate mechanisms to address the worries of cattle herders that their post-referendum access to essential pastures and water sources will be restricted.

---

<sup>1</sup> Dr. Douglas H. Johnson was a member of the Abeyi Boundaries Commission (2005) and is the author of *The Root Causes of Sudan's Civil Wars* (James Currey, 2003), and *When Boundaries become Borders: The Impact of Boundary-making in Southern Sudan's Frontier Zones* (Rift Valley Institute, 2010). This is an unsolicited commentary and represents the opinions of the author only.

### *The Root Causes of the Abyei Dispute*

Any resolution of the Abyei dispute must address the root causes, which are:

- the marginalization of the Ngok Dinka within the systems of parliamentary and local government since the 1950s;
- the progressive annexation of their territory by the Misseriya, with support of successive Khartoum regimes since the 1970s;
- the abrogation by Khartoum of the referendum promised in the Addis Ababa Agreement of 1972;
- the mobilization of Misseriya militias in the recent civil war during the 1980s and 1990s as a continuation of the policy of annexation.

The Ngok Dinka were the northern-most of three Dinka groups incorporated into the administration of Kordofan Province in 1905. The other two – the Twic and the Rueng – were subsequently re-absorbed into Bahr el-Ghazal and Upper Nile Provinces (now Warrap and Unity states). Relations between the Humr section of the Misseriya and the Ngok were mediated between the families of the paramount chiefs of the two peoples until after independence. The Ngok were included in the same parliamentary constituency as the Misseriya, but it was the Misseriya who dominated elections through the marriage alliance between their paramount, Babo Nimr, and the al-Mahdi family, whereby Babo Nimr's father-in-law was parachuted in as the Umma Party MP. The abolition of Native Administration in the 1970s further reduced the influence of customary leaders, subordinating them either to provincial councils dominated by a merchant class, or by military administrators during periods of army rule.

Violence spilling over from Bahr el-Ghazal during the civil war in the 1960s brought the first armed conflict between the Ngok and Misseriya since the 19th century, and it was at this time that the Misseriya began claiming and occupying the northern-most Ngok settlements. The violent displacement of Ngok from their villages by armed Misseriya, sometimes with the backing of members of the local police, was accelerated after the end of the first civil war in the 1970s when the Ngok were offered a referendum on whether they wanted to be incorporated into the newly-established Southern Region, or remain as part of Kordofan. Following the discovery of oil flowing beneath Abyei Khartoum blocked the referendum, in a move that preceded and led to the abrogation of the Addis Ababa Agreement in 1983. The Abyei referendum, therefore, is unfinished business.

Abyei saw the formation of guerrilla bands before the official beginning of the civil war in 1983, and the Misseriya were armed as militias by the governments of Nimeiri, Sadiq el-Mahdi and Omar el-Bashir, not only to raid into the Ngok Dinka territory, but also into Bahr el-Ghazal and Unity. The devastation they caused was recorded in a contemporary account, "The Road to Abyei", by John Ryle.<sup>2</sup> At this time the US government supported Khartoum, a US oil company helped supply the Misseriya militia, and western aid agencies collaborated with the government to settle Misseriya on former Ngok territory by drilling bore-hole wells to provide year-round water. "Food was a weapon; Abyei was a war zone...the agencies were giving legitimacy to a government that was betraying its own citizens."<sup>3</sup>

---

<sup>2</sup> John Ryle, "The Road to Abyei", *Granta* 26 (1989), pp 41-104.

<sup>3</sup> Ryle, "The Road to Abyei", p 66.

The Misseriya themselves were under pressure. As a result of national development policies set in Khartoum large-scale mechanized farming schemes encroached on their northern pastures and cultivations, while the exploitation of the oil fields between Muglad and Abyei town restricted their seasonal grazing tracks, all at a time when the region was experiencing a decline in annual rainfall. The southern grazing areas along the Kiir/Bahr el-Arab and further south became increasingly important to them. Collaboration with the government as a proxy militia promised not only access to, but control of this region, at the same time that it helped Khartoum secure the oil fields from possible guerrilla attack.

If the resolution of the Abyei conflict is to be true to the declaration in the Machakos Protocol that it will address the “root causes” of the problem, then it must provide a way to redress the balance between the displaced Ngok population and the seasonal migrant Misseriya population. It must also recognize that one reason why conflict erupted in Abyei before the beginning of the recent civil war was because of the failure of the government of the day to honour its promise to the Ngok of a referendum deciding which administration they were to join. It also must address the anxieties of the Misseriya about their future access to pastures and waterways that have become increasingly vital to the survival of their herds. The Abyei Protocol, for all its flaws, makes general provision for all of this. It is up to the governments in Khartoum and Juba, the Misseriya and the Ngok, and the international mediators to devise the mechanisms to achieve this.

#### *The ABC and the Hague Arbitration*

The Abyei Protocol defined the process by which the Abyei dispute is to be resolved, but it did not define the territory covered by Abyei; thus who was a resident of the Abyei area, and what oil revenues were derived from it were similarly undefined. This was supposed to be settled by the report of the Abyei Boundaries Commission (ABC), composed in equal measure of representatives from the government, the SPLM, and international experts appointed by the US, UK, and IGAD. The ABC presented its report to the Presidency (as stipulated in its terms of reference) on 14 July 2005, a few days after John Garang was sworn in as 1st Vice-President.

The ABC was tasked to define the Ngok Dinka territory as it had been in 1905, exactly a hundred years before. As there were no living witnesses who could testify, and contemporary documentation was sparse, this baseline date left considerable room for argument, and while both sides had previously agreed that the ABC report would be “final and binding”, it was immediately rejected by president Bashir and the National Congress Party (NCP). Disagreement over the boundary was allowed to drag on without resolution until 2008, when fighting between the Sudan Armed Forces (SAF) and the SPLA erupted in and around Abyei town. The dispute was then taken to the PCA in the Hague who ruled in 2009, reducing the territorial definition of Abyei to an area focused on the permanent settlements of the Ngok, but also giving their judicial interpretation that the principal intent of the Abyei Protocol was to empower the Ngok Dinka as a whole to choose their status in the referendum.<sup>4</sup>

---

<sup>4</sup> Permanent Court of Arbitration, *Final Award in the Matter of an Arbitration...between the Government of Sudan and the Sudan People's Liberation Movement/Army*, the Hague, 22 July 2009, pp 207-8. For a fuller account of the Abyei dispute see Douglas H. Johnson, “Why Abyei matters: the breaking point of Sudan’s (footnote 4 continued) comprehensive peace agreement?”, *African Affairs*, 107/426 (2008): 1-19, and *When Boundaries become Borders*, pp 29-41.

This ruling gave Khartoum much of what it wanted, which was control of the oil fields in the north-east corner of the ABC award. But by focusing on the area of Dinka permanent settlements, it excluded much of the area settled by the Misseriya during the war. Though demarcation of the new boundary was supposed to be completed in 2009, local elements of SAF and the Misseriya prevented the survey teams from doing so up to now.

Deng Alor, the former head of the SPLM delegation to the ABC, has described the progressive erosion of the definition of the Abyei area that followed the presentation of the report this way:

You know, when the issue of Abyei was discussed and resolved in Kenya [in the CPA negotiations], we thought that was the end of it. And we formed later a committee, the Abyei Boundaries Committee, to define the boundaries of the area. The protocol says the decision of the experts shall be final and binding.

When the experts came up with their decision and presented it in July 2005, President Bashir rejected the decision by the experts. That was the first violation of the Comprehensive Peace Agreement. Later, in 2008, they attacked the area, destroyed the area, burned the town of Abyei. As a result, SPLM and the National Congress went into a very long discussion. At the end, the National Congress suggested that the Dinka were given a bigger land, more than they really deserved, and they said we had to go for international arbitration.

The SPLM accepted to go for international arbitration. We went to The Hague; we spent almost one year. And in the end, the ruling the tribunal came up with, both of us accepted. The ruling was supposed to be, again, final and binding on the parties. Both of us celebrated, and we were going back home. Three or four months later the National Congress started to renege on The Hague ruling. This is where we are now.

Now they are coming again and saying, "You have to give us the northern part of Abyei [sic]"... We lost almost sixteen thousand square kilometers as the result of The Hague ruling. Now they want us to give them, again, something like 4,000 square kilometers....<sup>5</sup>

### *The US Mediation*

The current sticking point is the definition of who, for the purposes of voting in Abyei's referendum, should be considered a resident of Abyei? The PCA's ruling clearly includes all Ngok Dinka as residents. The argument of Khartoum and the Misseriya is that all Misseriya should be included as well.

In this they are being inconsistent. Both argued before the ABC and the PCA to restrict the definition of the Abyei area as much as possible. Having achieved this to a certain extent, they now want to apply an even broader definition of the Abyei area than the ABC produced so as to give the Misseriya voting rights, based on their seasonal use of the southern pastures. This is also inconsistent with the precedent established by the Southern Referendum Act, which does not give migrants who cross into the Southern Sudan on a seasonal basis voting rights in the Southern referendum.

The US mediators have been urging both sides to compromise their positions. Deng Alor recently summarized their discussions this way:

---

<sup>5</sup> Interview with Deng Alor, 29 December 2010 (<http://allafrica.com/stories/201012290943.html>).

We have been telling the mediators, the facilitators, the special envoy of President Obama [Scott Gration], the former president of South Africa, President Thabo Mbeki and his panel [from the African Union] – we have been trying to convince them that there is no way we can come up with a new model, after the one which was defined by The Hague. This is going to be a very bad precedent for the international community, that international courts could come up with decisions and rulings, and they are not implemented. That is going to be bad, a bad precedent. There will be no need for anyone to call for international arbitration, if you go [for arbitration] and decisions are not respected.

...Gration came last month, I think in his attempt to arrive at *any* solution - not necessarily a just solution [to Abyei]. We were in Addis Ababa in Ethiopia. That was the first time the issue of the division of the area into two came up.

Gration was saying there would be not enough time now for us to set up a commission for Abyei. And maybe the best for us to do would be just to transfer the area back to the south, the way it was transferred to the north by the British, (who) used an administrative decree. [Gration] said President Bashir could use a presidential decree to do that.

The National Congress said fine, you can do that, provided this area is divided into two - you give us the northern part. And I think he fell for that. When we came to the plenary and this issue was brought up [by the northern government], Gration immediately supported it. And this made the National Congress more difficult. They have become intransigent, because now they feel they have support from the United States.

We took it up with Gration and he insisted [on this approach]. He even tried to mobilize people for this, from the State Department and from the (Obama) administration. Senator [John] Kerry came, and he tried to convince us to accept the division of the area.

And we told him – “Senator, we respect your views, we respect your opinion, we are friends with the United States. But, you know, land is the most important thing for human beings. And, after all, you cannot reward these people. This land that you think is free, is empty. The northern part of Abyei – the people were forcefully displaced by the same people you are trying to reward by giving them the same land, while they have displaced the owners of the land. So there is no justice at all.”

So later, I think, the State Department decided that that was not the position of the United States, that the United States has no position. [The United States is now saying:] “It is what the parties agree. We are trying to bring the parties together; we are trying to mediate. We are trying to facilitate the talks, not to impose solutions on the parties.”

But General Gration still insists now, at the personal level, that SPLM should compromise by accepting a division of the land. This is his position up to date.<sup>6</sup>

If this is an accurate summary of the US positions (and what I know from working with Deng Alor on the ABC, I believe it to be reasonably accurate), then it displays some very worrying features. First, the US has abandoned any pretence of addressing the root causes of the dispute and in effect are validating the land grab of the northern settlements and dispossession of the Ngok during the war. Second, by proposing a further compromise of a compromise (the PCA ruling) of a compromise (the ABC report), the US is undermining the role of international mediation and arbitration. Third, the US is overlooking certain aspects of the PCA ruling which could be used as the basis for building an agreement that would reassure the Misseriya that their traditional grazing rights can be guaranteed; thus removing the stated reason for their objection to the Abyei referendum.

---

<sup>6</sup> Interview with Deng Alor, 29 December 2010 (<http://allafrica.com/stories/201012290943.html>).

### *Common Grazing Rights*

Abyei is an area of overlapping land use and shared secondary rights of seasonal access to land. It is not the only area of such overlapping rights along Sudan's north-south border, and Sudan has had long experience, both before and after independence, of managing shared rights between neighbouring communities. But the alienation of land for extensive government-sponsored mechanized farming schemes along the border region has reduced the area available for use by local communities, and has increased competition over shared rights, with some communities now trying to convert seasonal use into outright ownership.<sup>7</sup> To use a domestic property analogy, secondary rights can be said to represent an easement by one party through another party's property. The current situation in Abyei would be the same as if one party claimed full ownership on the basis of having an easement.

The Misseriya have attempted and failed three times to claim ownership of part or all of the Abyei area on the basis of seasonal use. The first time was in 1966, at the start of the dispute between the Misseriya and Ngok, when the Misseriya claimed prior ownership of the territory around the Ragaba al-Zarga/Ngol waterway in the northern part of the Abyei area. This was rejected by an all-Sudanese tribunal chaired by the head sheikh of the Hamar of northern Kordofan, Muneim Mansour (father of the former Minister of Finance, Ibrahim Muneim Mansour).<sup>8</sup> The Misseriya presented an expanded version of this claim to the ABC and the PCA, claiming prior ownership of the entire Abyei area up to and beyond the Kirr/Bahr al-Ghazal, but failed to convince either body. Despite these failures this is the line still being promoted by some Misseriya and elements of the NCP.

The Abyei Protocol specifically states "The Misseriya and other nomadic peoples retain their traditional rights to graze cattle and move across the territory of Abyei."<sup>9</sup> The PCA further strengthened this provision by ruling that "the transfer of sovereignty in the context of boundary delimitation should not be construed to extinguish traditional rights to the use of land."<sup>10</sup> The protocol does not indicate the mechanisms by which this right will be guaranteed and implemented, and neither Khartoum nor Juba have addressed this issue in any sustained way. The recent agreement reached between the Misseriya and Ngok in Kadugli deals only with access to pastures this year; it does not establish mechanisms by which access can be implemented routinely in the future.

It is time that both parties and the international community expend at least as much effort on creating the mechanisms for guaranteeing and implementing grazing rights as they have disputing the Abyei Protocol. Both migrant and host communities need to be convinced of their own security if the Abyei conflict is to be finally resolved.

### *Recommendations*

A final resolution to the Abyei dispute requires a simultaneous two-pronged approach:

---

<sup>7</sup> Johnson, *When Boundaries become Borders*, pp 24-6.

<sup>8</sup> *Abyei Boundaries Commission Report, part 2: Appendices* (14 July 2005), pp 187-90.

<sup>9</sup> Clause 1.1.3, *Protocol between the Government of Sudan (GOS) and the Sudan People's Liberation Movement/Army (SPLM/A) on the Resolution of Abyei Conflict* (Naivasha, Kenya: May 26th, 2004).

<sup>10</sup> PCA, *Final Award*, p 260.

- 1) the implementation of the referendum provision of the Abyei Protocol before the end of this year's dry season (May), and
- 2) the creation of long-term mechanisms to enable both the Misseriya and the Ngok to collaborate in secure annual movements of pastoralists through the Abyei area and neighbouring territories.

#### 1) Implementing the Abyei referendum

- a) The US government must reaffirm its commitment to the full implementation of the referendum provision of the Abyei Protocol, based on the PCA definition of the Abyei area;
- b) Those entitled to vote in the referendum should be permanent residents of the Abyei area as defined by the PCA; residence should be based on where they habitually reside during the rainy season; and should include any Ngok, Misseriya and other Sudanese who fulfil that requirement;
- c) The government in Khartoum should be reminded that the Abyei Protocol stipulates that "International monitors will be deployed to Abyei to ensure full implementation of these agreements" (clauses 1.2.5, 7.3 and 7.4); therefore there can be no retreat from the deployment of international peace-keeping forces or referendum monitors during the final six months of the Interim Period;
- d) That whatever alteration in the relations between the US and the government in Khartoum has been promised following the recognition of the result of the Southern referendum, must also be dependant on completing the referendum exercise in Abyei and recognizing its result.

#### 2) Securing the future of traditional grazing rights

- a) The provisions in the Abyei Protocol and the PCA ruling which establish the principle of the protection of traditional grazing rights should be widely publicized as the basis for resolving long-standing differences between the people of Abyei and their neighbours;
- b) The Government of South Sudan needs to give a practical demonstration of its repeated statements that the Misseriya will not be hindered in their seasonal migration into Abyei and neighbouring Unity, Warrap and Northern Bahr al-Ghazal states by outlining the security measures it will undertake to help the Misseriya protect their herds without resorting to carrying arms;
- c) Annual meetings, based on the model of those already concluded in Aweil in 2008 and Kadugli this year should be held to enable Misseriya and Ngok leaders to agree on the details of annual migrations. These can be facilitated by SPLM leaders in whom the Misseriya already have trust, such as Abd al-Aziz al-Hilu, deputy governor of South Kordofan state, and Paul Malong, governor of Northern Bahr al-Ghazal state;
- d) Both peoples should be involved in their own security by the creation of joint seasonal cattle guard forces to monitor grazing routes and pasture areas without having to depend exclusively on the national police and armed forces of either Sudan or South Sudan;
- e) The establishment of joint seasonal courts to settle disputes arising during the annual migrations.