

Abyei: Sudan's West Bank

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South Sudan's July 9, 2011 Independence Day is fast approaching, but ongoing violence in Abyei, including the deliberate burning of villages by northern-aligned forces and the displacement of 20,000 people, threatens to undo progress toward peace in Sudan. At this moment, Enough presents an assessment of the current situation and recommendations for a sustainable solution from Douglas H. Johnson. A member of the Abyei Boundaries Commission, Johnson is the author of *The Root Causes of Sudan's Civil Wars*, and *When Boundaries Become Borders: The Impact of Boundary-making in Southern Sudan's Frontier Zones*. This report reflects the personal views of the author and do not necessarily represent those of the Enough Project.

Introduction and executive summary

The Abyei area has often been called Sudan's Kashmir, a territory claimed by two nations. It could more aptly be described as Sudan's West Bank, where a local population is being progressively dislodged and displaced by government-backed settlements. The Abyei Protocol in the Comprehensive Peace Agreement, or CPA, was supposed to address the root causes of this dispute but has yet to be implemented.

Recent fighting in the Abyei area, involving Sudan Armed Forces, or SAF, and allied militias, throws doubt on Khartoum's commitment to the full and final implementation of the CPA. It demonstrates Khartoum's willingness to continue limited warfare against the Sudan People's Liberation Movement/Army, or SPLM/A, along the North-South border and to support the continued dispossession of local populations and their replacement with settler populations allied to the government.

International mediation by the United States and the African Union sacrificed a resolution to the Abyei conflict based on existing agreements in order to guarantee acceptance for the January southern referendum; thus making a just and equitable resolution to the dispute more difficult to achieve before the July 9, 2011 termination of the CPA interim period.

Failure to implement the intent of the Abyei Protocol in both letter and spirit has implications for the uncompleted Popular Consultation processes in the sensitive border states of Blue Nile and South Kordofan.

A resolution to the Abyei crisis is urgently needed if a peaceful end to the civil war promised by the CPA is to be fulfilled. In order to achieve this:

- The U.S. government must publicly reaffirm that the ideal solution is the implementation of the referendum provision of the Abyei Protocol, to be carried out within the territory defined by the Permanent Court of Arbitration, or PCA, and according to the terms of the Abyei Referendum Act passed by Sudan's National Assembly and signed by President Bashir, and insist on Khartoum's compliance. The referendum can be implemented by the Abyei administration before the end of the dry season (May).
- Any alternative to conducting the referendum must recognize the dominant rights of the Ngok Dinka to the Abyei area and their desire to be part of the administration of South Sudan, and that any Misseriya representation in the administration of seasonal migrations must be based on a recognition of those dominant rights.
- The safe return of Abyei's residents must be carried out by an international peacekeeping and monitoring force prepared to act if opposed by violence.
- Short-term provisions and long-term mechanisms must be put in place to enable both the Misseriya and the Ngok to collaborate in secure annual movements of pastoralists through the Abyei area and neighbouring territories.

Recent events

On the night of February 27, 2011, the police post at Tordach, a village in the territory of the Bongo section of the Ngok Dinka, was attacked by a force of some 100 armed men. This raid was followed up by two more attacks the following day in which 75 police and civilians were reported killed. Unconfirmed reports put the size of the raiding force as high as 1,000, of which only about 250 were armed civilians. Most of the raiders were in uniform, some were identified as known members of the SAF 31st Brigade, which is stationed to the north of the Abyei area. The weapons they used are reported to have included PKM light machine guns, 12.7 mm heavy machine guns, R.P.G.-7 rocket launchers and other rocket-propelled grenades, 60 mm and 82 mm mortars, and SPG-9 antitank guns. Other attacks around the villages of Maker Abior and Noong took place on March 2-3 with a combined force of SAF, units of the Popular Defence Force, or PDF, militia, and armed Misseriya confronted by a much smaller force of Abyei administration Police and armed Ngok Dinka civilians. Following the fighting two helicopters were seen evacuating injured soldiers of the raiders.¹



As with previous raids in January 2011, when men on motorcycles attacked local police posts using heavy weapons, this was not a fight between pastoralists protecting their herds or disputing over grazing areas. In fact the Ngok Dinka chairman of the Abyei branch of the ruling National Congress Party, or NCP, reported to the U.N. Mission in Sudan, or UNMIS, that the attackers were mainly members of the PDF rather than Misseriya herdsmen, and a SAF-SPLA Joint Military Team further reported that only Misseriya militias from the north were involved, while Misseriya migrants then pasturing around Tordach did not take part in the fighting.² Satellite photos of the burned villages of Maker Abior and Tordach show devastation similar to images of *janjaweed* militia activity in Darfur and are evidence of a return to the scorched-earth policy against civilian settlements practiced by government forces during the recently concluded civil war.³

A family flees Abyei town by truck during fighting in late February that left over 100 dead and prompted tens of thousands of civilians to flee.

The timing of the attacks disrupted the implementation of an agreement reached between the Ngok and Misseriya in Kadugli in January following the earlier fighting. The Kadugli agreement set the rate of compensation to be paid by each side for deaths occurring in clashes the previous year, confirmed the mechanism for agreeing on the Misseriya migration routes this dry season, and set a limit on the number of weapons allowed to protect the herds. A low-level delegation of Misseriya met with the Abyei Administration and Ngok paramount and section chiefs on February 22 but declined to discuss migration routes in the absence of their senior tribal leaders. A second meeting to be attended by the Misseriya leadership and South Kordofan administrators was scheduled for February 25 but was postponed to February 28. The attacks on police

on February 27 prevented this meeting from taking place.⁴ The failure of the South Kordofan administrators and senior Misseriya tribal leaders to meet with their counterparts in the Abyei administration and Ngok Dinka was a contributory cause to the outbreak of fighting, and is consistent with the delaying tactics the NCP used throughout the CPA negotiations of 2002-2005.

The main intention of these attacks, coupled with belligerent statements from Khartoum, is to remove the southern Sudanese Abyei administration Police from Abyei. Neither the Joint Integrated Units, or JIUs, nor the UNMIS troops have ever intervened to protect the Abyei civilians from armed raiders, and Abyei residents have objected to the re-introduction of armed forces they cannot trust. According to the Abyei administration, the Abyei Administration Police are a legally constituted force. Though their presence has contributed to escalating tensions on the ground, their removal without a concomitant demilitarization of territory between Abyei's northern boundary and Muglad would leave the Abyei Area vulnerable to armed seizure by Khartoum's forces.

The recent fighting, involving as it has regular units of SAF and their local allies, is the most serious sign yet that, despite public pronouncements so enthusiastically hailed by the international community, Khartoum is not committed to a full implementation of the final stages of the CPA and its declarations of friendly relations with the new Republic of South Sudan cannot be taken at face value.

A burnt dwelling in Tordach, where violence first broke out in late February.



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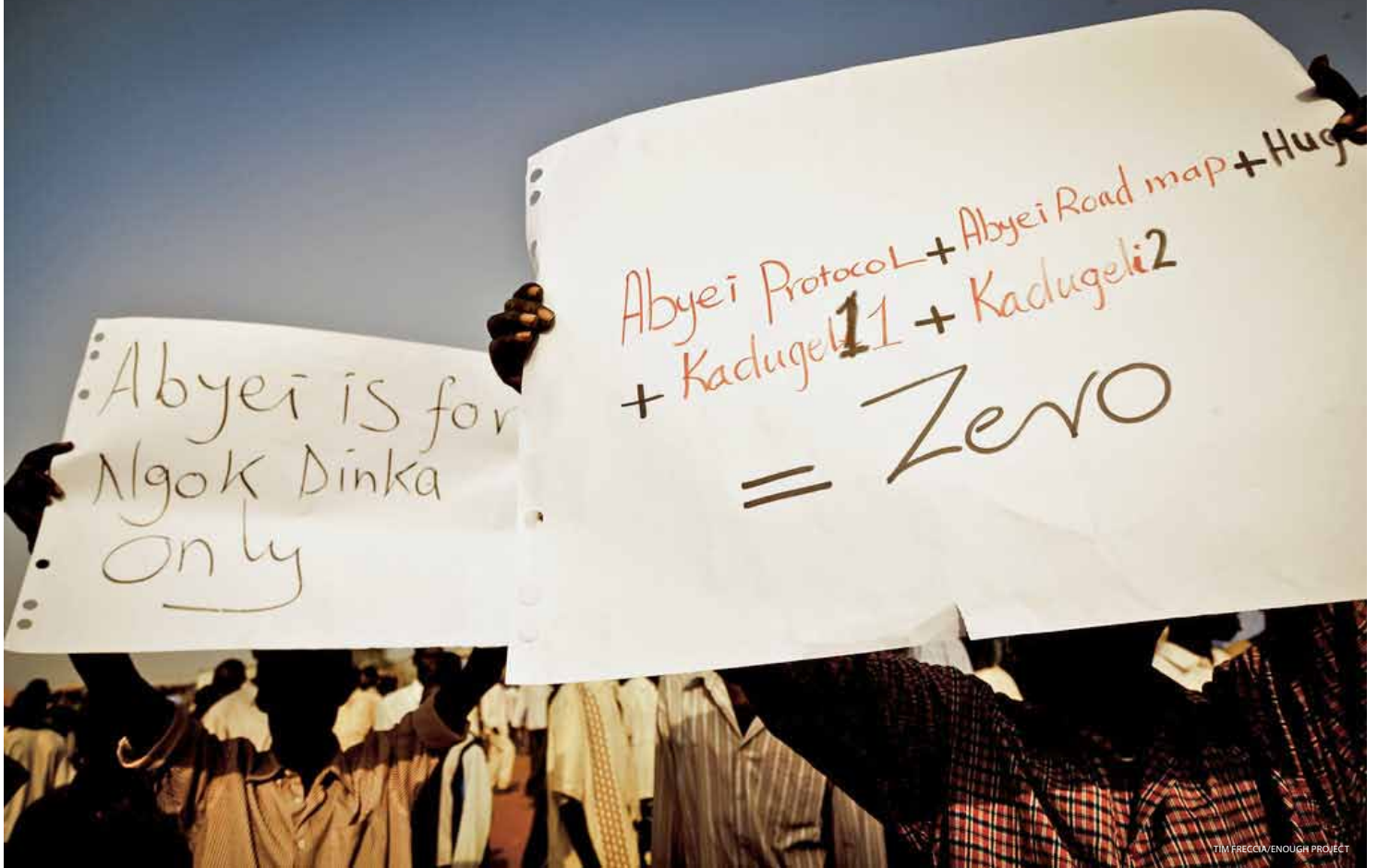
The roots of conflict in Abyei

The Ngok Dinka are the only permanent inhabitants of the network of waterways flowing into the Bahr el-Arab/Kiir river now defined as the Abyei area. The Misseriya Baggara have their permanent settlements further to the north, in the Muglad-Babanusa region. Both groups make use of the seasonal grazing lands south of the belt of stabilized sand dunes that separate them, and which includes the Ngok permanent villages. The southern grazing grounds have become increasingly important to the Misseriya as their own territory has come under increased pressure from the expansion of government-leased mechanized farming schemes and the expansion of the oil industry. The Abyei area also straddles the Muglad Basin where most of the active oil fields outside South Sudan are located.

The Ngok have always been a minority within this part of South Kordofan and for this reason many campaigned for a referendum promised by the Addis Ababa Agreement of 1972 to allow them to choose to join the newly-created Southern Region. Displacement of the Ngok from their northernmost settlements by armed groups of Misseriya began in the 1970s when the Misseriya feared that they would lose access to the southern pastures through such a referendum, and the government in Khartoum wished to keep control of the oil fields. The late 1970s and early 1980s saw a rising level of violence in the area, with organized guerrilla bands operating in Abyei before the beginning of the 1983-2005 civil war.⁵ The Ngok were among the first to join the SPLM/A, while the Misseriya were recruited into government-armed militias raiding civilian populations in Abyei, the Nuba Mountains, and neighbouring southern states. Some of these militias were supported by Chevron, a U.S. oil company whose bases they were supposed to protect. Several thousand Ngok Dinka were displaced by fighting and war-induced famine and the government settled Misseriya in abandoned Dinka territory.⁶

A just resolution to the Abyei conflict therefore needs to include the restoration of the Ngok Dinka's right to decide an administrative change by referendum, the return of displaced Ngok to their own land, and guaranteed access to traditional grazing areas for both Ngok and Misseriya.

The Abyei Protocol made provision for an interim administration, wealth-sharing of oil revenues, and a referendum for the Ngok Dinka and other residents to determine whether Abyei would join the South or remain in the North. It also stipulated that the outcome of the referendum would not affect traditional grazing rights. It did not define the territory to be administered, but left that decision to an Abyei Boundaries Commission, whose determination was to be 'final and binding' on both parties.



The failure of international mediation

The failure of the presidency to implement the 2005 Abyei Boundaries Commission report led eventually to the outbreak of fighting in May 2008 when the SAF 31st Brigade and armed Misseriya destroyed Abyei town, and the UNMIS garrison refused to intervene to protect displaced civilians. The issue was then taken to the Permanent Court of Arbitration in the Hague who redefined the Abyei area to focus on the territory of Ngok Dinka permanent settlements, but also gave 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.⁷ Implementation of the boundary decision was prevented by the opposition of the 31st Brigade and groups of armed Misseriya on the ground.

In December 2009 the Abyei Referendum Act was passed by the National Assembly and signed by President Bashir. The act gave the Abyei Referendum Commission the sole authority to decide who was a resident of the Abyei area and who had the right to vote in the referendum, which was supposed to be held simultaneously with the southern referendum, beginning on January 9, 2011. The commission was never formed, however, because the NCP majority in the National Assembly refused to accept any of the nominees the SPLM put forward to head the commission.

Abyei protestors wield signs outside of the U.N. compound calling for full implementation of the many internationally-backed agreements previously reached on the volatile border region.

In July 2010 Salah Gosh, former head of National Intelligence and State Security, or NISS, and presidential adviser on security, announced that the PCA ruling did not resolve the dispute and attempted to renegotiate the Abyei Protocol. The NCP presented the Misseriya, whom the government had used as a militia against Dinka civilians during the war, as the real victims of the Abyei dispute and argued not only that they should be given voting rights, but that they should have equal representation in the Abyei administration. This was inconsistent with previous NCP arguments made before both 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 reversed themselves to apply an even broader definition of the Abyei area than the ABC produced so as to give all Misseriya voting rights, based on their seasonal use of the southern pastures. This was also inconsistent with the precedent established by the Southern Referendum Act, which did not give seasonal migrants to the South voting rights in the southern referendum.

A series of meetings involving the United States and the African Union as mediators were held between September and December. The U.S. urged both sides to compromise, and came up with a number of proposals to define Misseriya voting rights, or to allocate them tracts of land, many of which were embodied in the African Union document presented to both sides in November. Neither the United States nor the African Union

Hundreds of Abyei citizens protest outside of the UNMIS compound in town, angered by the lack of U.N. intervention during the clashes in February.



recommended implementing the Abyei Protocol within the territory defined by the PCA. The chief concern of the United States seemed to be preventing the Abyei issue from derailing the southern referendum. The NCP is now claiming they have the support of the United States in asserting Misseriya rights over Abyei. Salah Gosh went even farther, and immediately before the resumption of fighting in February claimed that Abyei is “northern and will remain northern.”⁸

The SPLM have put forward several proposals that would give the Misseriya a role in the administration of the seasonal migration routes, but the United States has been pressing them to recognize Misseriya “political rights” in the administration of Abyei. Again, this is inconsistent with the provisions made for seasonal migrants into other parts of South Sudan. The inherent contradiction in the U.S. position is that by insisting that the SPLM concede political rights to the Misseriya, they have denied the Ngok their political rights, not only in the free exercise of a referendum, but of reciprocal representation in the administration of South Kordofan, where the northern pastures of the Ngok are now located. To abandon the referendum is to abandon a commitment to democratic transition. This is a point that seems to be lost on the United States administration and African Union, who also have failed to realize that though there may be two sides to every question, each side is not equally right.

The United States and African Union proposals abandoned any pretense of addressing the root causes of the Abyei dispute and in effect validated the land grab of the northern settlements and dispossession of the Ngok during the war. By proposing a further compromise to a compromise (the PCA ruling) of a compromise (the ABC report), the United States further undermined the role of international mediation and arbitration by acquiescing in the abandonment of agreements already reached through mediation. Both the United States and African Union also overlooked those aspects of the Abyei Protocol and the PCA ruling that confirmed the traditional grazing rights of the Misseriya which, if institutionalized, could remove the stated reason for their objection to the Abyei referendum.

Government of South Sudan President Salva Kiir and the SPLM have been willing in principle to ensure Misseriya access to pastures and water, as long as it is clear that access does not confer joint ownership of Ngok Dinka land. There can be a separate authority, jointly run by the Abyei and South Kordofan governments, whose responsibility would be the administration of roads and migration routes through Abyei, on which the Misseriya and Ngok together would have majority representation. This would involve the Misseriya in the administration of seasonal migrations and guarantee their traditional grazing rights, but not in the general administration of the territory.

But compromising on the principles embodied in the Machakos and Abyei Protocols presents another danger to the CPA, providing precedent for the NCP to continue to undermine the mechanisms intended to provide for communities in northern Sudan

that fought on the side of the South during the war. After the talks on Abyei adjourned in October 2010, Malik Agar, the elected SPLM governor of Blue Nile state, came to Juba to advise Salva Kiir not to return to the talks unless he was sure he could get what he wanted over Abyei. For the people of Blue Nile state, as for the other residents of South Kordofan, the fate of the “Popular Consultations” they are allowed by the CPA could be compromised by a failure to implement the Abyei referendum as intended. The SPLM leadership in both states is pushing for greater self-government than their states currently enjoy. If the NCP feels emboldened by support from the U.S. to abandon signed agreements over Abyei, they will certainly resist any demand for greater popular democracy in these border states.

Recommendations

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

1. The implementation of the referendum provision of the Abyei Protocol before the end of this year’s dry season (May).
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 U.S. government must reaffirm that the ideal solution is the recognition of the democratic rights of the Ngok Dinka (as confirmed by the PCA ruling) and the full implementation of the referendum provision of the Abyei Protocol, based on the PCA definition of the Abyei area; and that voter registration should be conducted by the Abyei administration.
- b. The U.S. government should reaffirm that prior to the referendum a firm agreement should be reached on Misseriya representation in an administrative body with authority to manage seasonal migrations.
- 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 peacekeeping forces or referendum monitors during the final months of the interim period.

- d. The territory between the northern boundary of the Abyei area and Muglad should also be demilitarized, and if the security of the area is to be devolved to an UNMIS force, then it must be fully committed to using all means available to protect civilians from external armed bodies.
- e. Whatever alteration in the relations between the United States and the government in Khartoum has been promised following the recognition of the result of the southern referendum, must also be dependant on completing a peaceful referendum exercise in Abyei and recognizing its result.

The transfer of Abyei to the South by decree is a less satisfactory alternative to a democratic choice by referendum, though it would recognize the dominant rights of the Ngok Dinka to the Abyei area and their evident desire to be part of the administration of South Sudan. Misseriya representation in the administration of seasonal migrations would have to be based on an explicit recognition of those dominant rights.

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. A border authority with responsibility for maintaining open roads and migration routes of both Misseriya and Ngok, jointly supervised by the Abyei and South Kordofan governments, should be established where Misseriya and Ngok have equal representation and together form the majority.
- d. Bi-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.
- e. 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.

- f. The Abyei Administration should establish joint seasonal courts to settle disputes arising during the annual migrations.

Many of these points have been included in proposals already on the table and have been accepted at various levels by the SPLM and some of the Misseriya and Ngok leadership. So far Juba has shown a greater commitment to implementing them than has Khartoum. An agreement of this sort over Abyei could be used as the basis for the management of seasonal movements along other parts of the North-South border.

Endnotes

- 1 Civil Society, "Abyei Events Report" (2011).
- 2 Seth Kumi, "CAD-Abyei DSR, 27 February 2011" (UNMIS Civil Affairs-Abyei, 2011); Guang Cong, "Update on Abyei 03/03" (UNMIS, Abyei, Sector VI).
- 3 Satellite Sentinel Project, "Flashpoint: Abyei" (2011), available at <http://www.satsentinel.org/flashpoint-abyei>.
- 4 Seth Kumi/UNMIS to Guang Cong/UNMIS, Subject: CAD-Abyei DSR, 22 February, 2011, email dated 23/02/2011; Seth Kumi to Francois Grignon, "Misseriya views on clashes in Todach".
- 5 National Archives of South Sudan, "Report of the Abyei Facts Finding Intellectuals Delegation between Dec. the 20th. 1980 - Jan. 5th. 1981"; David C. Cole and Richard Huntington, "Between a Swamp and a Hard Place: Development Challenges in Remote Rural Africa" (Cambridge: Harvard Institute for International Development, 1997), chapter 2.
- 6 John Ryle, "The Road to Abyei," *Granta* 26 (1989): 41-104.
- 7 Permanent Court of Arbitration, the Hague. "Final Award in the Matter of an Arbitration...between the Government of Sudan and the Sudan People's Liberation Movement/Army" (2009), p. 207-8.
- 8 "Abyei 'northern and will remain northern' - NCP official says," *Sudan Tribune*, February 21, 2011, available at <http://www.sudantribune.com/Abyei-northern-and-will-remain,38068>.

Enough is a project of the Center for American Progress to end genocide and crimes against humanity. Founded in 2007, Enough focuses on the crises in Sudan, eastern Congo, and areas affected by the Lord's Resistance Army. Enough's strategy papers and briefings provide sharp field analysis and targeted policy recommendations based on a "3P" crisis response strategy: promoting durable peace, providing civilian protection, and punishing perpetrators of atrocities. Enough works with concerned citizens, advocates, and policy makers to prevent, mitigate, and resolve these crises. To learn more about Enough and what you can do to help, go to www.enoughproject.org.

