

# SUDANREPORT

## Failed governance and political turbulence in Abyei Area of Sudan

Abdalbasit Saeed

SR 2015: 1



# Acknowledgement

The author appreciates observations and comments from the ARUSS research management team, both at the Chr. Michelsen Institute (CMI) and in Khartoum, which led to the restructuring of early drafts. The team's assistance and support has been constructive in strengthening both the argument and method of presentation of the material. The author is particularly indebted to Professor Leif Ole Manger at the University of Bergen for undertaking the hard task of assisting to restructure the draft report.

# Note on the Author

The author is a socio-cultural anthropologist for whom Southwest Kordofan - where Abyei area is located- is the native home. He is currently working as Independent Researcher/ Consultant. He graduated at the Faculty of Economic and Social Studies, University of Khartoum (1971), and obtained the M.A. Degree (1978) at the Institute of African and Asian Studies, University of Khartoum. He earned the Ph.D. degree (1982), at the Faculty of Liberal Arts, University of Connecticut, Storrs, Ct.; USA. Currently, the author is also actively involved in other civic community 'activities', through elected positions such as: (1) Deputy Chairman, the Sudan National Civic Forum; and (2) Secretary General, The National Justice Party-Sudan.

# Abstract

This report is the result of deskwork review of two major documents, signed in 2005 on Abyei area conflict, in order to expose factors that contributed to non-implementation of Abyei Protocol and the rejection, by the Sudan government, of the Abyei Boundaries Commission Report. The main argument is that the Abyei area conflict which presents a landmark of government failure to manage socio-cultural diversity in Sudan, has been generated over the ages by a complex array of overlapping historical, economic, ethnic/social, and territorial factors that have not been sufficiently addressed to date by local, national, or international actors. The conflict presents a number of issues that are still in need of careful treatment to avoid risking a return to war in the region, including: land possession and ownership, especially as it relates to shared surface resources such as pasturelands and water; the demarcation of a territorial border between the two Sudans, also linked to sovereignty claims; as well as claims to subterranean resources, such as oil and natural gas. The attitudes of the two communities, instilled by the different phases of Abyei area conflict, shaped the behavior of people: creating a constant need for patron-to-client protection, creating ethnicity-driven ideologies for self-defense, and in the end, creating fundamental rifts between the two ethnic groups.

Such historical and socio-cultural factors have not only prolonged and magnified the conflict, but also deepened economic poverty and made implementation of signed accords and local harmony difficult to achieve. The deadlock is generated by factors exogenous to the local communities, the Missiriyae and the Ngok-Dinka ethnic groups, particularly after the separation of South Sudan in 2011. Thus, it not only threatens a return to open war between the two Sudans, but also suggests that a second look at some basic documents is in order to determine whether alternate in-roads might be pursued. In addition, the totalitarian governments of the two Sudans have persistently used Abyei area as battleground for their tactical maneuvers, intrigues, and political games. As a result, both Sudans have failed to abide by the operational rules of signed accords and stalled in negotiations during the years 2005 to 2014, including mediation efforts by AU, the AUHIP and the IGAD. The contradictory positions of the two Sudans also contributed to non-implementation of agreements both sides willfully signed. It is also evident that misperceptions about the area have characterized negotiations at all phases of the conflict. The governing elite in Sudan mistakenly accepted US Special Envoy Senator John Danforth's mischaracterization of Missiriyae as nomads, leading them to adopt negative reactions to the Protocol and the later Abyei Boundaries Commission Report, thus, generating local hostilities and stifling implementation. The Protocol depreciated 'politically' by the end of the CPA Interim Period not only because of the intransigence of the two Sudans in the negotiating process, but also because it ignored important similarities between the livelihoods of Missiriyae and Ngok-Dinka, and affirmatively emphasized differences between them.

# Abbreviations and acronyms

AAA	Abyei Area Administration
AADAA	Arbitration Agreement on Delimiting Abyei Area
AAPA	Addis Ababa Peace Agreement, 1972
AATA	Abyei Area Tribunal Award
AAR	Abyei Area Referendum
ABC	Abyei Boundaries Commission
ABCR	Abyei Boundaries Commission Report
AJOC	Abyei Joint Oversight Committee
APS	Abyei Police Service
AU	African Union
AUHIP	African Union High Implementation Panel
CPA	Comprehensive Peace Agreement
GOS	Government of Sudan
GOSS	Government of South Sudan
JBVMM	Joint Border Verification and Monitoring Mechanism
JMOC	Joint Military Observer Committee
JPSM	Joint Political and Security Mechanism
MDG	Millennium Development Goals
PCA	Permanent Court of Arbitration
PDF	Popular Defense Forces
Abyei Protocol	Protocol on Resolution of Abyei Conflict
SAF	Sudan Armed Forces
SPLA	Sudan People's Liberation Army
SPLM	Sudan People's Liberation Movement
UN	United Nations
UNAMID	UN Mission in Darfur
UNISFA	UN Interim Security Force for Abyei
UNMAS	UN Mine Action Service
UNSC	UN Security Council

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# Executive summary

Sudan continues to face the challenges of its failure to manage multiple diversities, to abandon internal violence, and to promote peace, nurture democratic transformation, and strengthen equitable development. The United Nations Mission in Darfur (UNAMID) has determined that the final resolution of Sudan's crisis in Darfur will only be achievable within a wider national transformation. The African Union High Implementation Panel (AUHIP) has, similarly concluded (1) that the conflict in the Blue Nile and South Kordofan threatens to jeopardize prospects for stability in Sudan and to undermine good relations with South Sudan; (2) that a durable settlement of Sudan's crisis in the regions of Blue Nile and South Kordofan cannot be achieved without putting in place agreed inclusive national political arrangements that remove the grievances fuelling internal violence; and (3) that for the sake of the directly affected communities it is imperative that negotiations to resolve the conflict be resumed as soon as possible.

The Abyei area conflict is an example of the failure of the governments of the two Sudans not only to manage diversity and to resolve differences among communities, but also to prevent these differences from intensifying to the point that they become destructive. The governments' emphasis on ideology and perpetuation of stereotypes about the two communities has driven a wedge between the Ngok-Dinka and Missiriyae ethnic groups that reside in the area. Both communities have been led to believe that they constantly require protection by their respective armed forces, lest they should lose the land of Abyei (in the case of the Ngok-Dinka) or lose opportunities to graze livestock in the Bahr-al-Arab River Basin (in the case of the Missiriyae).<sup>1</sup> The Sudan Armed Forces (SAF) in Sudan and the SPLA in South Sudan have fostered this perception to guarantee the dependence of Missiriya and the Ngok-Dinka on them.

If we assume that "option 6"<sup>2</sup> is the best option for resolving the Abyei area conflict once and for all, national authorities in the two Sudans as well as AUHIP mediators need to realize that for this option to work, both the Missiriyae and the Ngok-Dinka must be persuaded that if they comply with the partitioning of the Abyei area and the sharing of resources, national and international stakeholders will respect their security and allow for reasonable socio-economic development in the area. For this to

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<sup>1</sup>The Ngok-Dinka designate the lower sector of Bahr-al-Arab, the Kiir River .... The Sudan Government designates the whole river basin area as Bahr-al-Arab. It has become the most recent international waterway between the two Sudans after the separation of South Sudan, in 2011. The Ngok-Dinka oral narrative tells that they are a Nilotic group consisting of nine sub-sections, also described as chiefdoms, who "... migrated from Upper Nile ... reached Abyei in 1710 and occupied the riverine area between Bahr-al-Arab/Kiir River and Ragaba-ez-Zarga"; (ABCR: 2005: 31). They believe that Abyei is 'Ngok-land', in which they raised livestock in a short-distance trans-humance pattern alternating from low land to high-land, according to the season, along the numerous watercourses and pools feeding into Kiir River main channel.

<sup>2</sup>The AUHIP (27-11- 2010) presented proposals, constituted in eight options, are presented to the two Sudans for resolving Abyei issues. Option (8.6) is based on accommodating the interests of both sides through administrative partition of Abyei, providing for the northern part of Abyei to be administered by northern Sudan while the southern part is transferred to southern Sudan. The Panel anticipates that this option comes closest to achieving a balanced response to the respective aspirations of the Ngok-Dinka and Missiriyae as well as the principles contained. Accordingly, the AUHIP suggests that the Parties should settle on this Option, comprised of twelve clauses, and compare it with other options.

happen, however, AUHIP needs to revisit the 2010 proposition and make adjustments consistent with developments that have taken place since the separation of South Sudan in 2011, including UN Resolution 2046 (2012).

The Abyei area conflict has been left to fester for too long, and a durable settlement that will make both Sudans equally happy might not materialize soon. The contending parties must compromise. If they cannot reach a middle ground, international guarantors should impose it on them.

# Findings

The motivations behind the two parties' failure to implement the Abyei Protocol are difficult to identify because the secrets of political deals behind closed doors are still guarded by political leaders who were involved in the process of negotiating the Protocol and its related accords. Researchers may have to wait before they are able to obtain sufficient evidence to definitely understand how the agreement died. Nonetheless, a few considerations may provide some insights into what happened.

First, the Abyei Protocol was realized under conditions that mitigated against its acceptance among the local communities. US Special Envoy Senator John Danforth and his colleagues were insufficiently in command of the situation on the ground when they drafted the Protocol. They emphasized concerns relevant only to the governing parties and marginalized the concerns of the local communities. And they delivered the Protocol prematurely to the parties, seemingly, on a take-it-or-leave-it basis.

In particular, by conceptualizing the Missiriyae as nomads and emphasizing their differences from the Ngok-Dinka instead of their similarities, the US drafters sowed seeds of discontent among the Missiriyae regarding the Protocol. Following the Protocol, the Missiriyae rejected mediation attempts, instead unwittingly falling into games of political tactic that primarily served the interests of their patron, the GOS/NCP. Because of the concerns that resulted from the circumstances of its drafting, the Protocol failed to retain relevance when more immediate issues came to the forefront during the CPA Interim Period, including the Sudan Revolutionary Front (SRF) and worsening internal wars in the two Sudans.

Second, the intransigence of the parties to the Abyei Protocol contributed to its demise. The north and the south not only failed to reach compromise on key issues, but also alienated other national social and political stakeholders from being included as constructive actors in a country-wide process of reconciliation. For example, the two parties held tight to the CPA as a "bilateral baby" that only the two of them could nurse. When the baby died in its third year, there was no external structure to hold the two Sudans together. As a further example of the inability of the parties to reach any sort of compromise on key issues, the national constitutions of the two Sudans contain contradictory statements; each country unilaterally claims sovereignty over the Abyei territory.

In order to reach agreement, the two Sudans must respect each other as equal sovereign states. They also must behave responsibly to earn the respect of their own peoples as well as of their neighbors. As AUHIP has observed, "Sudan and South Sudan are linked by immutable facts of geography and history. There is no viable alternative except for them to affirm these ties and develop closer, cooperative relations with each other in the economic, social, political and security spheres."

In particular, the two Sudans should recognize and revitalize the Abyei Boundaries Commission Report (ABCR), a document from which they could extract appropriate clauses for a revitalized preliminary accord. The two Sudans could also request that AUHIP create a new "African Commission on the Abyei Area Conflict" to spend six months examining the developments that shaped the political economy of southwest Kordofan between 1905 and 2005, in order to produce a complementary report that could resolve the issue once and for all.

# Additional observations and recommendations

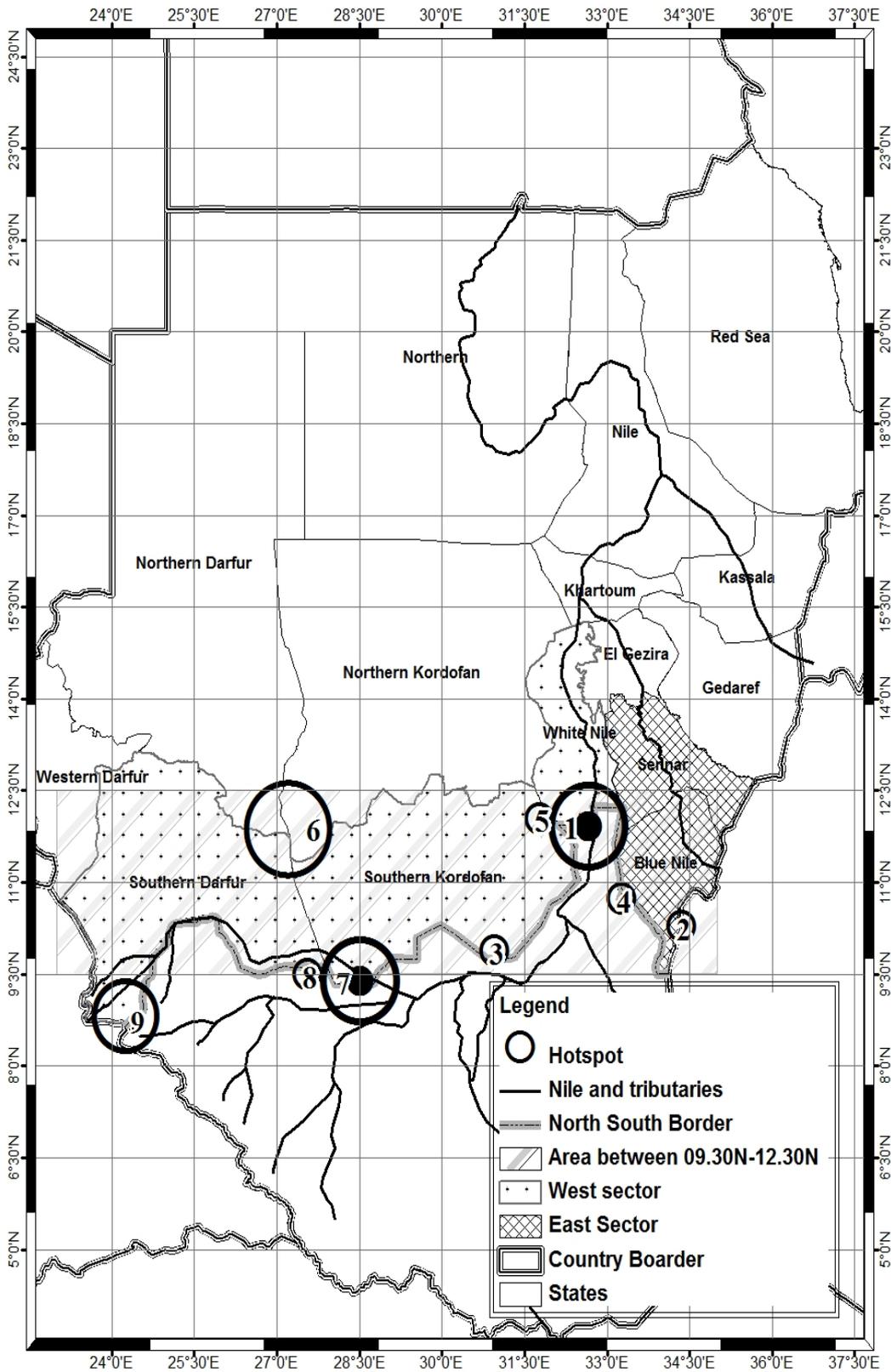
Revisiting the two basic documents on the Abyei area conflict leads to the following observations:

1. Drivers of state fragility are amply apparent in the socioeconomic formation of both Sudans, as reflected in continued internal wars for control of state power.
2. Local and national actors in both Sudans have made mistakes that have led to chronic mistrust and political ill will. Specifically, the parties have espoused conflicting interests, made false pledges, and reneged on signed accords. These actions have led to sensitivities that make durable settlement an elusive goal.
3. While disagreement and intransigence have become a trademark of the two Sudans in their negotiations, the neutrality by AUHIP mediators and their insufficient command of local history and culture has relegated sensitive issues in the Abyei area to the low status of just a border dispute between two states.
4. The AUHIP's slow pace and lack of pressure has led to a failure in imposing the will of the international community, requiring the two Sudans to implement their signed agreements.<sup>3</sup>
5. The wrong questions have been raised at the local level in the Missiriyae and Ngok-Dinka communities. Asking who arrived first in the Abyei area will only derail attempts to appropriately conceptualizing the problem and find viable solutions. Both groups were both hunters and gathers, herding cattle and cultivating small patches of land for subsistence. The state was controlled by colonial powers for most of the time the two communities cohabited the area. These tribal communities had no sovereignty over land, then as now.
6. The Missiriyae and Ngok-Dinka involvement in armed violence in the area as allies of the two contending armies has resulted in a significant loss of human lives and livestock wealth. It has also deepened and widened poverty among both groups and increased dependency on relief handouts since the mid-1980s. As a consequence, both communities are now dependent on the two ruling parties and their armed forces for security and basic services – the NCP/SAF in the case of the Missiriya and the SPLM/A in the case of the Ngok-Dinka. In practical terms, this has impeded the groups' abilities to make their own decisions, based on their genuine interests. Furthermore, the reliance on divergent political parties has led to divergent political positions in the area.

In short, stakeholders must consider a number of practical issues as they consider what the future holds for cooperative relations between the Missiriyae and the Ngok-Dinka in southwest Kordofan. The text and spirit of the CPA (including the text of the Abyei Protocol itself) may contain key insights for stakeholders during on-going and future negotiations aimed at settling the conflict in this area.

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<sup>3</sup> See UNSC Resolution 2046 (2012).



**Map No. 2: "Potential hotspots and disputed sectors on the borderline"**

# Introduction

## Overview of the Abyei area where Missiriyae and Ngok-Dinka live

The Kordofan Region comprises three states: South Kordofan, North Kordofan, and West Kordofan. The region is extensive, covering 383,000 square kilometers and four broad ecological zones (ranging from desert to arid/semi-arid regions to the Sahel-savannah transition zone to low- and medium rain savannah). It is predominantly an area of rain-fed cropping, mobile livestock production, range and forestry product utilization (mainly gum Arabic, fuel wood, and wild fruits). The estimated population growth is 1.6%, compared to a national average of 2.8%. Females comprise 53% of the population, although there is considerable variation in this statistic throughout the region due to civil war and displacement.

The Abyei area, located in a remote corner of southwest Kordofan, is an area that has been cohabited by the Ngok-Dinka and the Missiriyae since the mid-18th century (approximately 1744 to 1765). Before local war between these groups erupted in 1965, they communally shared water and pasture resources for livestock herding, subsistence cultivation, and the collection of gum Arabic from acacia gardens. The war caused an acute rupture in the culture of resource sharing that had hitherto existed for more than 160 years.

Annex Table-1 gives a brief overview of the present livelihood situation in the Abyei area. The salient feature is that non-official data estimates by the author (2013) show that the area is heavily populated during the dry season (234 persons per square kilometer), when agro-pastoralists from the two ethnic groups converge to utilize the surface resources of water and pasture. During this time resource competition for pasture and water is evident. There is no dependable estimate of cattle numbers; because of the fragile security situation herders are too far “in the bush” to be assessed. Some 90% of the population finds employment in animal herding and cultivating subsistence crops.

In terms of health, the one hospital located in Abyei town serves an estimated population of 250,000, of whom approximately 45% are under the age of 15. Malnourishment varies between 25 and 35%, depending on the age group. Endemic tropical diseases include malaria, guinea-worm, and bilharzias. The infant mortality rate in the area is 127 per 1000 live births. Life expectancy at birth is 52 years. The maternal mortality rate is 600 to 800 per 100,000 live births. The total fertility rate is 8.6 per woman, and the average household size is six persons.

## Justifications for a revisit to basic documents on the Abyei area conflict

For several years, the Abyei area conflict has remained an intractable problem, unresolvable by local, national, or international actors. This deadlock threatens a return to open war between the two Sudans. The conflict began in the 1960s when the Missiriyae and the Ngok-Dinka, local ethnic groups in the area, began engaging in violence against each other in the context of the war between the northern and southern parts of Sudan. Ethiopia's 1972 mediation, which ended in the Addis Ababa Peace Agreement (AAPA), addressed the Abyei area conflict by resolving that the people of the Abyei area should be given the right to a referendum. The agreement lasted for 11 years, but the Abyei area referendum (AAR) was not realized.

The people of the Abyei area became active in hostilities when war broke out again in 1983. They joined the ensuing peace negotiations, which continued for 30 months between 2002 and 2005 and culminated with the Abyei Protocol, which became part of the Comprehensive Peace Agreement (CPA) signed on July 9, 2005.<sup>4</sup> However, the Abyei Protocol was not implemented and the AAR was not delivered. Instead, in 2011 South Sudan voted for separation from Sudan in 2011, and the Abyei area conflict was left to fester. Until local, national, and international actors find a solution, this conflict continues to create a high risk of violence.

The Abyei area conflict results from a complex array of overlapping historical, economic, ethnic, and territorial factors that have as of yet been insufficiently addressed. Eighteenth century invasions, occupation, and slave practices across the Savannah Belt of Africa contributed to the present day situation, as did 19th century invasions by migratory groups of tribes, including the Rizeigat group from Darfur. The conflict also arises in part from the practices and macro-level policies in place during Sudan's colonial period under both Turko-Egyptian (1821-1884) and Anglo-Egyptian (1898-1955) rule, as well as during the Mahdiya national state era that occurred between the two periods of colonization (1885–1898).

For example, documentary evidence and oral narratives from the colonial periods show that the process of enslavement was linked to archaic ideologies about race and ethnicity at the micro-level in the Abyei area. As a result, national regimes controlling the area viewed the area as “a Nilotic/Southern enclave in the North”<sup>5</sup>; this mischaracterization helped sow the seeds of the present dispute. British authorities in the region during the colonization period envisaged “... the position of the Ngok Dinka as *a friendly buffer state between the Homr and Bahr el Ghazal ...*”, (K.D.D. Henderson, quoted in ABCR, Part-1; 2005:24; italics added); whereas Howell, P.P. (quoted in ABCR, Part-II; 2005:185; italics added ), says: “... the Ngok provide an *excellent buffer between the north and the south ...*”. This perception of the area is also continued in Abyei Protocol (Article 1.1; cl., 1.1.1) saying, “*Abyei is a bridge between the north and the south, linking the people of Sudan*”.

The current conflict presents questions about a number of issues, including (1) land possession and ownership, especially as it relates to shared surface resources, such as pasturelands and water; (2) the demarcation of a territorial border between the two Sudans; and (3) subterranean resources, such as

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<sup>4</sup> The CPA, signed 9 January, 2005, and witnessed by envoys from 13 countries and international organizations, is a compendium of six agreements consolidated in one document: the Machakos Protocol, which concluded on 20 July 2002 and granted South Sudan the right to self-determination, to be exercised *inter alia* through a referendum; the Agreement on Security Arrangements, which concluded on 25 September 2003 and confirmed the existence of two separate armed forces (the Sudan Armed Forces, or “SAF,” and SPLA) as well as the Joint Integrated Units (JIUs) from the two armed forces, each with its own command, during the interim period (all three forces were to be treated equally as part of Sudan's National Armed Forces); the Agreement on Wealth Sharing, which concluded on 7 January 2004 and dealt mainly with the sharing of natural resources (particularly oil) between the North and the South; the Power Sharing Protocol, which concluded on 26 May 2004; the Two Areas Protocols (TAP), which also initialled on 26 May 2004 and gave more powers to South Kordofan and Blue Nile, calling for popular consultations on implementation of the agreement before the end of the interim period; and the Abyei Protocol (formally titled “The Protocol on the Resolution of the Abyei Conflict,” or “Abyei Protocol”), and adopted by first initials of the GOS and SPLM on 26 May 2004 and officially signed as part of the CPA on 9 January 2005 is the subject of this discussion. In recognition of its stipulations the ABC was constituted and its final ABCR was presented on 14 July 2005. Thus the two documents became official in 2005.

<sup>5</sup>The Ngok-Dinka is the only Nilotic group who claim permanent residence to the north of Bahr-al-Arab water course. Other Dinka groups such as the Twij-Dinka or Malwal-Dinka have their home land to the South of the river. The Dinka groups are spread all along Bahr-al-Arab, from source-to-mouth.

oil and natural gas, which SPLM/A has treated as legitimate military targets since the late mid-1980s. These issues require careful treatment to avoid risking a return to war in the region.<sup>6</sup>

Misperceptions about the area have characterized negotiations at all phases of the conflict. The governing elite in Sudan mistakenly accepted US Special Envoy Senator John Danforth's mischaracterization of the Missiriyae<sup>7</sup> as nomads when the Abyei Protocol was adopted on 19 March, 2004 (ABCR:4). The Protocol not only ignored important similarities between the livelihoods of the Missiriyae and Ngok-Dinka, but it affirmatively emphasized differences between them. This led to the Missiriyae's negative reaction to the Protocol and the later Abyei Boundaries Commission Report (ABCR),<sup>8</sup> generated local hostilities, and stifled implementation.

Deficiencies in implementing the Abyei Protocol have exacerbated the negative effects of this problematic contextual framework. In particular, four unmet conditions in the Abyei Protocol have contributed to the lack of peace in the area: (1) At the end of the six-year CPA Interim Period, the stipulation on "special administrative status" for the Abyei area was not in place. (2) The stipulated Abyei area referendum has not been delivered to the residents of the Abyei area (due to the uncompromising positions of the two Sudans on residency and voter rights). (3) The sharing of oil resources in the area was not implemented in such a way as to benefit the two local communities. (4) The two main ruling parties – the National Congress Party (NCP) in Sudan and the Sudan Peoples' Liberation Movement (SPLM) in South Sudan – have consistently failed to launch and bring to fruition "peace and reconciliation process for Abyei that shall work for harmony and peaceful co-existence in the Area" (Abyei Protocol, Article 9).

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<sup>6</sup> Paraphrasing a press statement, Lieutenant General Mahdi Babo Nimir warned, (1) There is an impending war in Abyei Area, and a return to "Square-One"; (2) That Abyei "problem" is now hanging between "the Earth and the Skies"; (3) That the Missiriyae are capable of taking it back at any time, "today rather than tomorrow"; (4) That the Missiriyae are applying restraint by respecting the efforts of the Government to reach a solution to the problems; (5) General Madi called on the President of Sudan and the President of South Sudan to put the issues of Abyei Area on top of the agenda during the expected summit meeting between the two of them in the near future. (Lieutenant General Mahdi Babo Nimer, "The Missiriyae Warn of Implosion of the Situation in Abyei Area"; As-Sayha newspaper, issue # 75, dated 31-October, 2014; Khartoum-Sudan). Mahdi Babo was the SAF's chief of staff when the Islamist *coup d'état* took place in June 1989, marking the advent of the Ingaz regime. However, he made the statement above in Khartoum in his capacity as one of the Missiriyae leaders.

<sup>7</sup> The people who are known today by the transliterated name "Missiriyae" are cattle herding "Baggara" groups. There are five Missiriyae groups in the Sudan, each of them used to be led by of a Nazir, (native administration leader/paramount chief) prior to the 1970s. They include, in Kordofan, the Humor (A'jaira and Falaita) and Missiriyae-Zurg as well as Missiriyae-Nittaiga and Missiriyae-Jabal in Darfur. Missiriyae groups in Kordofan used to pursue a predominantly pastoral nomadic form of livelihoods throughout the 19<sup>th</sup>. Century. From the 1920s onwards they got gradually transformed to semi-nomadic/agro-pastoralist forms of livelihoods due to the introduction of cotton cultivation and collection of Gum Arabic, the two main cash crops. However, the manner in which the name "Missiriyae" is transliterated/ spelled in English texts takes varied forms. Of course, spelling Arabic names is not a matter of personal preference of the author when using them in texts that subscribe to the English language. The best option is to adopt basic transliteration rules, on the basis of the manner in which they are pronounced by the indigenous users. The author adopts 'Missiriyae' and 'Humor', except in quotations from other sources, including, by Sudanese Arabic speakers who do not follow strict transliteration rules.

<sup>8</sup> As will be discussed further in this report, the Abyei Boundaries Commission (ABC) was set up pursuant to the Abyei Protocol (article 5, clause 1). The ABC issued the ABCR on 22 July 2005 in an effort to define and demarcate the Abyei area and advance smooth implementation of Abyei Protocol, but to no avail. The government of Sudan (GOS) instantly rejected the ABCR, marking its first violation of the CPA. In response to that rejection, the SPLM withdrew for six months from the Government of National Unity (GNU). In addition, the GOS's rejection of the ABCR incited outcries and armed violence in the Abyei area itself. In short, the GOS's rejection of the ABCR had clearly negative implications on peaceful resolution of the Abyei area conflict.

The deadlocked positions of the two major political Partners, since 2011, prompted some researchers to question the nature of the Abyei area conflict. Is it a case of a local problem having national implications, or a case of a national problem left to fester in a local arena? Whichever way one looks at the issues, attempts at solving the problem through purely practical measures have resulted in a stalemate. The two Sudans have failed not only to implement willfully signed accords but also to make the compromises that are required to reach a durable settlement. Strife and animosity continued during and after the six-year CPA Interim Period, including violation of the Abyei area by Sudan Armed Forces (SAF) and allied Popular Defense Forces (PDF) in May 2008, as well as the short-lived incursion of the South Sudan Army into Hijleej<sup>9</sup> in May 2011 and the assassination of Ngok-Dinka Paramount Chief Kuol Deng Majok in 2012. Why have the two parties consistently failed to transcend their challenges or to manage multiple diversities in the conflagration?

This stalemate between the two Sudans suggests that a second look at some basic documents is in order to determine whether alternate in-roads might be pursued. This report engages in such a review by revisiting two basic documents on the Abyei area conflict, five years after the CPA's expiration in 2011: the Abyei Protocol and the ABCR. Both documents were produced, and signed as official texts, in 2005. As a result of this review, the author attributes the demise of the Abyei Protocol to two things: Firstly, the Protocol was hastily prepared and prematurely presented to NCP and SPLM, and they adopted it too quickly. Secondly, the parties have continued to be intransigent, engaging in game playing tactics to stall implementation.

## The effect of totalitarian governance on the Abyei area conflict

The Abyei area conflict demonstrates a situation where two totalitarian governments have used a small geographic area as a battleground for their tactical maneuvers, intrigues, and political games. As a result, both Sudans have failed to abide by the operational rules of signed accords and stalled in negotiations during the years 2005 to 2014. This has led to non-implementation of agreements both sides willfully signed. And all this has all occurred in spite of the African Union High-level Implementation Panel's (AUHIP's) efforts at mediation during the last five years.

Both Sudan and South Sudan have elements of a totalitarian government. In both countries, the government is vested in a single head of state, the president. The president is also the president of the single ruling party – the NCP in Sudan and the SPLM in South Sudan – and the supreme military

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<sup>9</sup>The following statement by the Council of the European Union needs no further elaboration: (1) The EU is deeply concerned about the escalating conflict between Sudan and South Sudan. (2) The EU calls on the Governments of Sudan and South Sudan to stop immediately attacks on each other's territory, whether directly or through proxies, cease hostilities, withdraw all security personnel from Abyei and avoid further provocative actions, including inflammatory rhetoric. It urges both sides to establish the joint border verification and monitoring mechanism without further delay. (3) In this context and following *international condemnation of the seizure and occupation of Heglig by the South Sudanese armed forces* the EU welcomes the recent statement by the Government of South Sudan that it is withdrawing its forces from Heglig. It *calls on South Sudan not to mount any further such attacks and urges the Government of Sudan not to attack SPLA forces as they withdraw*. (4) The EU condemns continued aerial bombardments and reported ground incursions into South Sudan by the Sudan Armed Forces. (5) *The use of force will not resolve any of the outstanding issues between the two countries*. The EU urges both to return to existing negotiating process under the auspices of the AU High-level Implementation Panel (AUHIP) and renew efforts in good faith to reach agreement through peaceful dialogue. (6) *The Government of Sudan and SPLM-North must engage in an inclusive political process to resolve conflict in South Kordofan and Blue Nile*. (Council conclusions on Sudan and South Sudan, 3159th Foreign Affairs Council meeting, Luxembourg, 23 April 2012)

commander – over the Sudan Armed Forces (SAF) in Sudan and the South Sudan Armed Forces (SSAF) in South Sudan. Finally, the president of both nations is the incumbent prime minister and accordingly oversees public civil affairs and the administrative bureaucracy.

Ultimately, this means that the president of each country frames negotiating positions for the country. That is, both sides have taken contradictory and inconsistent positions towards each other, which led to difficulties in obtaining alignment of political or economic positions at any given time. For example, cabinet ministers, senior delegates, and ranking officials of the two countries reflect the president's views. Thus, the fluid nature of the parties' positions make it difficult for them to create a durable settlement. Most importantly for this report, this also means that discourses with AUHIP mediators are framed by the views of high-level political leaders rather than the communities whose livelihoods are actually at stake.

Furthermore, the UNAMID has determined that final resolution of Sudan's crisis in Darfur will only be achievable within the context of a wider national transformation. Similarly, the AUHIP has concluded (1) that the conflict in Blue Nile and South Kordofan threatens to jeopardize prospects for stability in Sudan and to undermine good relations between Sudan and South Sudan; (2) that a durable settlement of Sudan's crisis in Blue Nile and South Kordofan (where Abyei is located) cannot be achieved without putting in place agreed inclusive national political arrangements that remove grievances fueling internal violence; and (3) that it is imperative to resume negotiations to resolve this conflict as soon as possible, for the sake of those directly affected.

## Overview of report

This introduction has presented the context of the problem, including justifications for revisiting the basic documents on the Abyei area conflict. As the next chapters will show, colonial and post-colonial governance were the genesis of the problem. The attitudes instilled by these different regimes shaped the behavior of people in the Abyei area – particularly in terms of creating a constant need for patron-to-client protection, creating ethnicity-driven reasons for self-defense, and, in the end, creating fundamental rifts between the two ethnic groups. These historical factors have prolonged and magnified the conflict, making implementation of signed accords and local harmony difficult to achieve.

The first chapter provides a general overview of the relevance of colonial history to the Abyei borderland situation. It begins by discussing the transfer of the Abyei area to the Kordofan Province in 1905 and describes how this resulted in a local dispute that grew in complexity to become a national problem, thus requiring international attention in the context of the AAPA of 1972. As the situation grew in complexity, further diplomatic processes were deemed necessary, including by the United Nations and the African Union. However, the two Sudans did not comply with these agreements either. Moving from the general to the particular, the chapter then considers the conflict in the local context and attempts to create a timeline of the micro-situation in the area, focusing on the relationship between local actors and classifying the types of conflict that have arisen over time.

The second chapter focuses on the two basic documents targeted for review: the Abyei Protocol and the ABCR. It starts by reiterating the study objectives and main questions and then provides an overview of the text, structure, content, and conclusions of the two basic documents and a discussion of their interconnections. The discussion of the ABCR starts with assertion that Sudan was in dire need of the ABC, and its formation was in harmony with the CPA. However, the NCP and SPLM interlocutors had divergent positions on key issues, which resulted in controversies when the

report was presented to them. Controversy also resulted from shifting positions of national and sub-national stakeholders, including the Missiriyae. The chapter also shows in tabular form disputed points between local and national actors and depicts implications for the Abyei area.

The third chapter presents the author's relational analysis and overall conclusions about the mistakes in policy and negotiations that led the actors not only to deadlocked positions but also to failure to honor CPA obligations, including the Abyei Protocol. The failure of the Abyei area referendum to occur is a key part of the implementation problem, primarily because the referendum is closely related to defining South Sudan's territories and sovereignties.

## CHAPTER ONE: GENERAL HISTORICAL OVERVIEW

### 1.1 The General Context

#### 1.1.1 The relevance of colonial history to the Abyei borderland situation

The history of Sudan over the past two centuries has been characterized by multiple wars driven by competition and exploitation of resources as well as poorly documented population migrations in the largely uncontrolled western hinterlands and upper reaches of the Central Nile Valley. Understanding the major actors leading to civil conflict in Sudan requires thinking about both time and space, tracing both geographic and historical threads.

Medieval tributary states and sultanates, particularly the sultanates of Darfur, seem to have opened a wide margin of movement for nomadic communities, which spanned Sub-Saharan Africa across the Belt of African States and ventured into new frontiers along tributaries of the Nile. This eastward migration led to wars of occupation between the Missiriyae and the Rizeigat in southwest Kordofan in the 18th and 19th centuries. These nomadic movements also laid the basis for inequitable horizontal relationships between the African communities of the time. For example, migrating groups not only depopulated the areas they occupied but also claimed to have found them empty when in the 20th century beleaguered communities such as the Ngok-Dinka reclaimed their home areas. In

addition, Arab slave traders reportedly used the vast western hinterlands of the Central Nile Valley as a hunting ground for human booty. When Anglo-Egyptian colonists arrived in the late 19th century, they reportedly attempted to curb the practice, but only partially succeeded.

The Anglo-Egyptian colonists (1898-1955) acknowledged local tradition as a central modality for access to resources and introduced two important changes that have had lasting impact on the current borderlands between Sudan and South Sudan. Firstly, they introduced cotton tenancy cultivation in the central clay plains as part of the Gezira Scheme (1911). This was accompanied by construction of a railway line that reached El-Obeid in 1913 and the later the introduction of cotton plantation agriculture in the Nuba Mountains of southern Kordofan in 1918. The implication of this for the local inhabitants was that it dislocated and pushed the agro-pastoral groups living in the area southward to new frontiers, including the Blue Nile, which had hitherto been occupied by settled cultivators. This southward movement continues today in response to seasonal climatic variations, rain patterns, and the decline of soil fertility due to prolonged exploitation. Secondly, colonists introduced a reformed model of an archaic form of tribal leadership in the form of native administration of tribal society. This governance structure was used to implement “indirect rule” of the colonized territories. For example, the Sheiks’ Ordinance (1922) gave bounded tribal domains or homelands (*dar*) to nomadic pastoralist groups who gradually adopted partial agriculture of cash crops (cotton) and staple food crops (sorghum and millet). The impact of these changes continues to affect current day land use and livelihoods in the area.

The idea of native administration was premised on acceptance by colonial authorities of customary tribal rules and practices as the basis for maintaining law and order in the periphery. Yet at the same time, the colonists instituted laws such as the 1925 Land Settlement and Registration Ordinance, which defined land as the property of the state. The post-colonial state continued the practice, even going so far as to reconfirm the idea of state ownership of land in a 1970 law that assumed the 1925 legal postulates had been fulfilled and all land was registered in the name of the government (even in areas with no cadastral registry). This has resulted in current confusion over the status of land in the Abyei area. In particular, the central government has been totally unable to observe its own laws – that is, to assert dominion over land – for risk of losing support of local tribal groups and their military contingents (the Missiriyae PDF and the Ngok-Dinka pro-SPLM militias).

In addition, prolonged colonial oppression, as well as the Mahdiya national state (which was unable to promote positive inter-community interactions) left behind a weak physical infrastructure and production base. By 1955, the situation in the Abyei area had devolved into a violent conflict situation that made it impossible for the state to assert constitutional, legal, or political legitimacy in any meaningful manner, whether vertically or horizontally. The geographic isolation of remote communities in the region, particularly in marginalized areas currently in the turbulent borderlands, made them particularly suitable bases for insurgent activity for over 60 years. The failure of the post-colonial governing elite to realize the historical and economic genesis of this conflict and address the socio-cultural, religious, and ethnic ramifications of it resulted in a cancerous spread of war that had engulfed all tributaries of the Nile by the 1990s.

### 1.1.2 The transfer of the Abyei area to Kordofan Province in 1905

The history of the Abyei area conflict began before the Ngok-Dinka ethnic group (which included nine separate chiefdoms) was transferred from Bahr-al-Ghazal to the administrative

jurisdiction of Kordofan by the Anglo-Egyptian colonial administration in March 1905<sup>10</sup>. The speed (apparently only four weeks) with which the colonial governor general of Sudan (Major General Wingate) made the now-controversial administrative decision to transfer the territory was minimally questioned in contemporary literature. How did this transfer come about? The following paragraphs provide a brief historical overview:

In 1903, the Anglo-Egyptian colonists established the Missiriyae native administration was established for the Misiriyae-Zurug and Humr-Ajaira.<sup>11</sup> At the time, the colonial administration had no precise survey maps of the area, and the area also was not demarcated on the ground. However, statements in 1903 indicated that the southern boundary of the Kordofan Province stood at “Bahr-el-Arab and Bahr-el-Ghazal to Lake No” and total land area of Kordofan was 167 square miles (267.2 square kilometers).

Soon after this native administration was established, the Missiriyae began collecting tribute from the Ngok-Dinka, asserting that they were acting on order of the government when in fact they were merely trying to enrich themselves. On 29 January 1905, Sheikh Rihan Gorkwei of Twij-Dinka complained to Bimbashi Bayldon, Condominium administrator in Kordofan (noted in ABCR, 2005: 196), that a party of Missiriyae Homr Arabs under Sheikh Ali Gulla, armed with some 15 rifles, had raided his district on the grounds that they were sent to collect cattle for the government (Sudan Intelligence Report No. 127, Feb. 1905; quoted in ABCR 2005: p...). As a result of such complaints, the colonists considered it advisable to place the Ngok-Dinka under the same governor as the Missiriyae Arabs of whose conduct they had complained.

Specifically, the Governor General of Sudan, Major General Sir R. Wingate, issued a memorandum in March 1905 that said, “The district of Sultan Rob ‘Arob Biong Alor’ and Okwei ‘Shaikh Rihan Gorkwei’ to the South of Bahr el Arab, and formerly a portion of the Bahr el Ghazal

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<sup>10</sup> “Local disputes are common around the Bahr Al-‘Arab River basin. Conflicts between the Ngok-Dinka and the Missiriyae in southwest Kordofan, which took place in the first decade (1898–1905) of British colonial rule (1898–1956) against the backdrop of the nineteenth-century practice of slavery, prompted the colonial authorities to transfer the Ngok-Dinka in 1905 to be administered jointly with the Missiriyae by Kordofan Province. In that year, a tribal meeting was organized by the authorities to encourage the two communities to coexist peacefully. A ‘traditional’ mechanism for peaceful neighborliness was created (S. Ibrahim 2004:3). It was called the Brotherhood Agreement between Missiriyae and Ngok-Dinka (1905). Local customary practices arising from the 1905 pact were consolidated between the two communities and, over time, were accepted as Ngok-Dinka/ Missiriyae ‘tradition’. The pact was sustained for sixty years, only to be broken in 1965 when violent conflict erupted, resulting in the loss of lives and precipitating mistrust. The 1905 Brotherhood Agreement was signed by representatives of the two communities (S. Ibrahim 2004). Its provisions were observed for six decades. In spite of much social interaction and intermingling, suspicion and mistrust between the two communities generated intermittent and protracted disputes and conflict. Limited violent encounters did occur. They augmented and transformed intergroup relations towards ethnic violence, particularly from the mid-1960s, due to factors external to the two neighboring communities, made worse by two decades (1983–2004) of conflict and war between the SAF and the SPLA. The two communities were entrenched in war-related alliances with the contending armies, premised on an ideology of ‘self-defense’ generated by the two armies to lure local communities into the conflict. The Ngok-Dinka and the Missiriyae were not sufficiently aware of the full dimensions and implications of such alliances and the ideologies of self-defense that they engendered. As a result, Abyei area has become the centre of local, national and international attention.” (Saeed, Abdalbasit; in print (2015: 192), “Oil Exploration and Conflict in Sudan: the predicament for pastoralists in North-South borderline states”, in Casciarri, B., Assal, M., and Ireton, F., (eds.); *Multidimensional Change in the Republic of Sudan (1989-2011): Reshaping Livelihoods, Conflicts & Identities*; Berghahn Books; NY.)

<sup>11</sup> At the time, the leader of the Missiriyae-Zurug was Mohammed al-Faquir al-Juburi (nominated by Beshir Bey Kambal) and the leader of the Humr-Ajaira was Ali al-Julla (nominated by Abdal-Raheem Abu-Dhagal).

Province, have been incorporated into Kordofan”, (Government of the Sudan First Presentation, April 11<sup>th</sup>, 2005, Nairobi-Kenya). However, this transfer did not actually identify the precise area of land to be transferred (even though such clarification had been requested by Sheikh Riham Gorkwei of Twij).<sup>12</sup>

### 1.1.3 The Abyei local dispute grows in complexity to a national problem

Documentary evidence from Anglo-Egyptian administrators shows that the colonialists were themselves divided regarding whether the transfer of the Abyei area to Kordofan should occur. In 1905 the British opted for the easier answer to the problems of Missiriyae exploitation of the Ngok-Dinka – transfer of Ngok-Dinka to Kordofan under the same governor. That “easy” answer proved to be an inappropriate choice, however, when the British started implementing the “closed districts policy” in 1922. While implementing this policy, the British created the Nuba Mountains Province in 1927 and returned the Twij-Dinka from Kordofan to the Bahr-al-Ghazal Province, leaving the Ngok-Dinka behind. They also transferred other communities, together with the land those communities occupied, from north to south, and vice versa.

Although the history of southwest Kordofan (1905-1965) is not written in detail, colonial documents show three main processes. First, there was the process of administrative consultations with local ethnic groups in the 1930s leading to the creation in 1953 of the Missiriyae Rural District Council (RDC). This was accompanied, at the level of economic development, by the introduction of rainfed cotton cultivation as a cash crop in southwest Kordofan (1918-1932), including the installation of cotton ginning factories. For example, in 1937, the western Nuba Mountains confederation, including the Daju population, were “... included as administrative units of the Messeria Rural District Council”, (quoted in ABCR, 2005:185). In the meantime, in 1937-1949, the British authorities also initiated a third process of consultation for realigning the Ngok-Dinka with other Nilotic groups in the South. The Anglo-Egyptian colonial authorities repeatedly asked the Ngok-Dinka chiefs whether they wanted to join their kin in the south. Failing to secure the concurrence of the Ngok-Dinka to join the Twij-Dinka in Bahr-al-Ghazal, the colonialists opted for placing them in southwest Kordofan with the Missiriyae RDC.

Howell (1948: 26-27, quoted in ABCR 2005: 185) explained the Ngok-Dinka situation as follows:

“Simply stated, the problem is this. Are the Ngok to find their future linked entirely with the North and included in Dar Messiria Distric Council or are they to be amalgamated with the Twij, Rueng or other Dinka? They themselves . . . are wholly in favour of the North . . . At the same time this raises understandable difficulties . . . their absolute refusal to accept Messiria representation in the legislative Assembly. . . . The decision must be made in the next year or two (1948 or ‘49) for better or for worse. If the decision is to include them in the North, then they must form part of” the Messeria RDC”.

The table below provides an overview of documentary evidence about the process of including the Ngok-Dinka in the Missiriyae Rural District Council. The Kordofan Province Annual Report for 1951/52 (September 13, 1952, quoted in ABCR 2005: 186) provided: “During the year {1952} the

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<sup>12</sup> Note also that the administrative organs and road structure of the then infant Bahr-el-Ghazal Province had yet to be established.

Ngok decided to amalgamate with the Messeria district council and not with the Dinka Goral in Bahr el Ghazal, when it should come into being. They have reserved the right to withdraw from the Messeria council after five years if they so wish.”

<b>Text box 1: The process of including the Ngok-Dinka in the Missiriyae Rural District Council (RDC)</b>	
17 July 1947	The Kordofan Monthly Dairy (July 1947: 3, quoted in ABCR: 185) reported, “At a meeting of all tribal authorities at Muglad it was agreed that the Ngok-Dinka and Nuba confederations would eventually have to be included as administrative units” of the Messeria RDC.
1952	Michael Tibbs (1999: 59, quoted in ABCR 2005: 186) explained that upon being appointed assistant district commissioner in Messeria in 1952, his mandate required him to “look after the southern Nilotic tribe, the Ngok-Dinka,” who were not part of the RDC.
1952	Michael and Anne Tibbs (1999: 167, quoted in ABCR 2005: 186) explained, “When we first came to the Messeria (1952), the Ngok were not part of the relatively new District Council. <i>The Arabs had not wanted the Dinka to be part of ‘their’ Council and the Ngok did not want to be an obvious minority amongst the Arabs.</i> Lenthly negotiations had gone on, . . . the Ngok were admitted and attended their first council meeting at the beginning of 1953.”
Jan. 1953	Michael and Anne Tibbs, (1999: 127, quoted in ABCR 2005: 186) also wrote, “Messeria District Council Meeting, Lagowa, January 1953: This was an important meeting. It was the first attended by the Ngok-Dinka, led by Deng Majok . . . until now, the Ngok-Dinka had been out side the Messeria Council. A lot of patient negotiations had gone on over the last two years (1951 and 1952) to convince them (the Ngok-Dinka) that if they decided to come in, they would not be swamped by the Arab majority. The Arabs had to be persuaded that the Dinka should be treated as equal citizens . . . We had the meeting in the school hall . . . one member got up and said that . . . <i>Dinka should go home where they belonged.</i> ” This was the beginning of self-determination in the area.
1954	The district commissioner, of the Dar Messeria District (Tibbs, August 18, 1954), reported, “The future of the Ngok-Dinka was decided at a meeting in Abyei in March 1951, when the Ngok finally decided that they would prefer to stay north, and join the Messeria Council. The Council formally approved this at Lagowa in January 1952. (The Ngok-Dinka attended the first Council meeting at Lagowa in January 1953). The Ngok are full participants in the Council; but, are not members of the Messeria tribe, do not come under the nazirate Umum, and have their own court which appeals to the District Commissioner, and not to the Resident Magistrate.”

The concerns that surfaced between the two local communities included growing discontent among the Ngok-Dinka regarding the increased frequency of disputes with Missiriyae involving loss of life since the rise of the civil war (1962) in South Sudan under Anya-Nya-I, as well as the increase in local ethnic differences. In the 1950s, the Abyei area conflict had been a strictly local ethnic dispute, fought with sticks and spears and mediated through local custom and practice. However, by the mid-1960s the warring groups were using shotguns, which resulted in increased fatalities and required central government intervention and mediation. The Ngok-Dinka were further encouraged to violence by the 1962 rise and spread of the Anyanya-1 armed insurgency in South Sudan.

The Ngok-Dinka say that they acquired firearms for self-defense in the face of attacks by the better equipped Missiriyae and to support Anyanya-1 against the SAF (which is the major military supporter of the Missiriyae). The height of contentions occurred in 1965, when the Missiriyae burned to death 72 unarmed southerners (mainly Dinka) who had had been “collected” in the police station in Babanousa town, purportedly for “protection.” News of this event raised the anti-Arab (anti-Missiriyae) sentiment among southerners in general, and among the Ngok-Dinka in particular.

The Babanousa massacre also brought to an end six decades of a brotherhood pact that had been signed between the Missiriyae and the Ngok-Dinka in 1905, and it displaced the Ngok-Dinka from Ragaba-ez-Zarga. It also ended the tribal conflict phase of turbulent relations as evidenced by the abstention of Ngok-Dinka paramount-chief Deng Majok from drinking water, eating, or spending any single night in Muglad, the town in the center of the Missiriyae, until his death in 1969 (see footnote No.10 above). The 1965 massacre also ushered in a new phase in which both groups felt the need for “consolidated self-defense” through patronage of a more superior ally. This self-defense imperative became an ideology justifying subsequent alliances involving both Missiriyae and Ngok-Dinka.

Following this attack by the Missiriyae, the Ngok-Dinka founded a militia and joined Anyanya-1. As the violence intensified in the early 1970s, it was imperative for Sudan’s neighbors to interfere to mediate the conflict. Oral testimony by the late Ngok-Dinka paramount-chief, Kuol Deng Majok provides an overview of the situation in the 1970s and 1980s:

In the early 1970s, before the Addis Ababa Agreement, the Dinka were accused of being rebels. . . people were killed and the area devastated at random . . . After the Addis Ababa Agreement . . . Relative peace was restored . . . . But in 1976, more clashes . . . . The government was deeply involved . . . . We tried to send some people back . . . specially after the Kadugli meeting of September 1977. But in November 1977 . . . Arabs attacked our people . . . and looted cattle . . . . From there, we knew that the area was to be depopulated. The Dinka lost faith in . . . tribal peace conferences. In December 1980, problems occurred . . . . The Dinka, from there, decided that the only way to defend themselves was to be armed. (quoted in ABCR, 2005: 121-122)

For the Missiriyae, consolidated self-defense involved not only seeking government/SAF support but also founding nomadic camp-based, fareeg-based, lineage-based, and/or clan-based “Maraheel militia forces.” These later developed into tribal militia led by maraheel-Ameers to protect mobile livestock herds along seasonal trekking routes for each clan separately.<sup>13</sup>

In this manner the pursuit of self-defense took root, simultaneously, among Missiriyae and Ngok-Dinka. This pursuit aligned perfectly with the defense-driven ideologies of the two contending armies (the SAF against Anyanya-I and Anyanya-II from 1962 to 1972, as well as against the SPLA from 1983 to 2005). As the Missiriyae and the Ngok-Dinka bought into the defense driven ideologies of their respective military patrons, the two armies sought support from the local populations of the two pastoralist groups. Hence, the two ethnic groups behaved as local clients for the two armies. By the time the CPA was signed in 2005, the Abyei area problem was already an issue of international concern that commanded the attention of the AU, IGAD, and UNSC.

In sum, the complexity of Abyei area conflict resulted from a history of multiple governance regimes that helped foster antagonistic attitudes and local violence. For example, taking the current Ingaz regime as example, a few things can be noted: First, from the start the regime has emphasized ideology and cultural predispositions more than rational thought. Second, the state has never given

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<sup>13</sup> There are now some 17 clan-Ameers in areas inhabited by the Missiriyae (Humor, Falaita, and Zurg) compared to one Ameer (the paramount chief) for the Ngok-Dinka. The difference in the potential striking force of the Missiriyae Maraheel forces is apparent. The Maraheel forces were further formalized by the government in 1990s to become the Popular Defense Forces (PDF), infamous for brute force under SAF command, training, provisioning, and redeployment.

priority to resolving the conflict on the basis of the direct interests of the primary stakeholders (the local Missiriyae and Ngok-Dinka), but rather has focused on using its apparatuses of organized suppression (the SAF, police, and intelligence) to maintain security. This repressive policy track may have been the easier political choice, but has been ineffective at solving the region's problems. Third, between 1983 and 2005 the North-South War slowly crept into other parts of the Sudan, capturing any semblance of rationality the governing elite might have had and allowing them to become captive to a culture of violence premised on religious, ethnic, racist, and internal-colonialist predispositions from the 19th century.

## 1.2 The Abyei conflict: A national problem requiring international attention

### 1.2.1 The Addis Ababa Peace Agreement-1972 and Abyei Protocol 2005

The Abyei area conflict rose from a localized issue to a national problem in the context of the 1972 AAPA. This agreement stipulated a referendum on regional self-government for the southern provinces. Abyei, in the North, was referenced only by a proxy statement in chapter II, article 3(iii): “. . . and any other areas that were culturally and geographically a part of the Southern complex as may be decided by a referendum.” According to this proposition/redefinition in terms of “culturally and geographically” based identity, Abyei area which had not been part of the southern provinces, was accorded preferential administrative treatment in the early 1970s, including through the appointment of administrative personnel and police cadres of Ngok-Dinka origin. All in all, the provisions for the Abyei situation in the AAPA-1972, negotiated and mediated through the good-offices of Emperor Hale-Silasi of Ethiopia, that were not honored provided the basis for the Ngok-Dinka's right to a referendum. Non-implementation of the Abyei referendum, during 1972-1983, added a further layer in the backlog of unmet promises. Manger et al. (2003) said, “The failure to implement that provision was one of the factors that led to political discontent in Abyei in the early 1980s, the formation of one of the first Anyanya-II guerrilla groups in 1981, and the foundation of the SPLM/A with the involvement of Abyei citizens in 1983.”

By the 1990s, a second war between the northern and southern parts of Sudan (which lasted from 1983 to 2005) had engulfed all tributaries of the Nile River, spreading violence everywhere. The Abyei problem began to arouse international concern. The Abyei area was discussed in the Three Areas platform of negotiations leading to the CPA, primarily because prominent commanders in SPLM emerged with origins in Abyei. Failure by the GOS and the SPLM to agree on the Abyei issue triggered intervention by the US Special Envoy Senator John Danforth, who presented a proposal entitled “Principles of Agreement on Abyei” or the “Abyei Protocol.” In retrospect, the Abyei Protocol was most likely prematurely delivered to the CPA's major parties.

In the context of CPA negotiations, the Abyei area conflict became a problem of concern to major world powers and the United Nations. The CPA confirmed the boundary to be inviolate as of 1 January 1956. However, the constitution of South Sudan, issued on 22 February 2011, claimed the area as part of South Sudan territory and sovereignty, even before South Sudan's declaration of independence from South Sudan on 9 July 2011 and in spite of the fact that the Abyei referendum has

yet to be conducted. On 27 February 2011, Sudan rejected the inclusion of Abyei in South Sudan and threatened to revoke recognition of South Sudan's independence if it persisted in maintaining ownership of Abyei in its constitution.<sup>14</sup>

South Sudan has refused to change its position on annexing the Abyei area to its territory. This not only complicates the situation for the territory and its people, but it also creates a border dispute requiring adjudication between two sovereign states: a predecessor state (Sudan) and a successor state (South Sudan). South Sudan's claim to sovereignty poses an immediate threat to peace and security in the region and must be redressed promptly and expeditiously by the AUHIP. Otherwise, any solution to other issues in the Abyei area conflict will remain hostage to the position taken by South Sudan in its constitution. From Sudan's standpoint, any agreement that falls short of abdication of South Sudan on annexing the Abyei area cannot be sustained.

## 1.2.2 United Nations and AUHIP: Non-compliance by the two Sudans

By resolution, the UNSC<sup>15</sup> delegated powers and competencies to the African Union in accordance with chapters VI and VII of the UN Charter. In turn the AU delegated powers to the AU Peace and Security Council (AU-PSC), the AU High-level Implementation Panel (AUHIP), and IGAD, as well as instituting the joint peacekeeping force for Abyei (UNISFA).

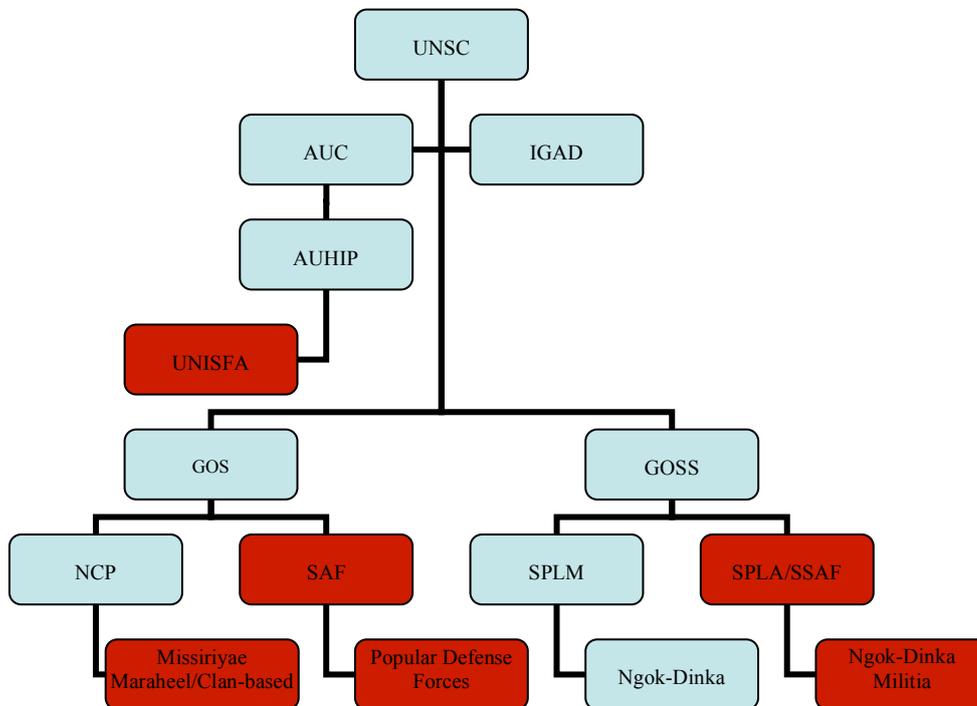
Recent statements by the UNSC and the AUHIP confirm the intransigence of the two Sudans. Regarding the 2012 situation, the UNSC stated, "[N]o further progress was made on the establishment of the Abyei area Administration owing to South Sudan's continued objection to the Sudan's nominee for the position of Chair of the Legislative Council." The UN Secretary General also directed "the South Sudanese co-Chair of the Abyei Joint Oversight Committee, Luka Biong Deng, directing the former Abyei Area Administration to immediately relocate its secretariat from its current location in Agok to Abyei town," explaining, "This administrative order constitutes a violation of the 20 June 2011 Agreement and Security Council resolutions 1990 (2011) and 2046 (2012)."

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<sup>14</sup> Note, however, that Sudan's position to revoke recognition is a non-starter because recognition cannot be withdrawn once granted.

<sup>15</sup> The UN Security Council, on 2 May, 2012 acting under the binding Chapter VII of the United Nations Charter, unanimously adopted resolution 2046 (2012), called on Sudan, South Sudan, for immediate halt to fighting and resumption of negotiations, and decided that the parties must formally convey their commitments to end hostilities. The Council decided that, in addition, Sudan and South Sudan must unconditionally resume negotiations under the auspices of the AUHIP to reach consensus on oil and related payments, the status of nationals of one country residing in the other, demarcation of borders and the final status of the disputed Abyei area.

**Figure 1:** Relationships between international, Sudan and South Sudan national actors in Abyei area, mandated to AUC under Chapters VI and VII of the UN Charter



The AUHIP has observed,

[The] Council called upon the Government of Sudan and the SPLM-N to enter into direct negotiations to seek a political solution to the conflict in the Two Areas . . . . The Parties have not yet acted upon these calls. . . . [The] Council called on the Government of Sudan and the SPLM-N to enable urgent humanitarian assistance to reach the affected population in the Two Areas, and additionally called for a ceasefire for these purposes . . . The Parties have not yet acted on these calls. . . . The Panel . . . further notes that if either of the two Parties persist in failing to permit such assistance, it will not be possible for Council to discourage any other mechanisms for humanitarian assistance . . . not necessarily in full conformity with preferred principles of impartiality and transparency. (Full text: AUHIP Mediation Report, Addis Ababa; 28 Jan.2013)

Douglass Johnson (2011:3), a member of the ABC, narrated how the divergent interests of the two Sudans not only caused failure to subscribe to the Abyei Protocol (now formally transcended upon expiry of the CPA Interim Period), but also allowed political leaders of the two Sudans to become accomplices to the Protocol’s own premature demise:

The ABC experts came up with their “final and binding” decision and presented it to the Presidency on 9 July 2005. President al-Bashir rejected the decision of the ABC experts. His rejection constituted the first violation of the CPA. In May 2008, the SAF attacked Abyei area, destroyed and burned Abyei town. As a result, SPLM and the NCP went into excruciating discussion. At the end, the National Congress suggested

that the Ngok-Dinka were given a land bigger than they really deserved. The NCP suggested that the two parties (NCP and SPLM) have to go for international arbitration. The SPLM accepted to go for international arbitration. In the end, the ruling of the PCA tribunal, final and binding on the parties, came up. It was accepted and celebrated by both the sides. Three or four months later the National Congress (Party) started to renege on The Hague (PCA) ruling, bringing forthwith the second violation of the CPA. . . Now (2010) the NCP are coming again and saying, “You have to give us the northern part of Abyei.” Note that the people of Abyei believe that they lost almost sixteen thousand square kilometers (16000 km<sup>2</sup>), from the total area that had had been stipulated in the ABC Report. Now, the NCP want the SPLM to give-up, something close to 4,000 km<sup>2</sup>.

## 1.3 The conflict in the local context

### 1.3.1 Periodization of the micro-situation in the Abyei area

Particular phases of the Abyei area’s history can be situated in the history of the encompassing area of Sudan in the 19th and 20th centuries in order to understand how policy positions and choices made by the two Sudans, their respective armies (SAF and SPLA), their ruling parties (NCP and SPLM), and their local political patronage clients (the Misiriyae and the Ngok-Dinka) have influenced the Abyei area conflict.<sup>16</sup> This section highlights events relevant to Kordofan and how these events have had implications for local communities in the Abyei area. Five phases comprise the history of the Abyei area:

The first phase covered the 48 year period from 1850 to 1898 when the Ngok-Dinka yearned for protection from Rizeigat enslavement. This phase, at the level of Abyei area, overlapped with the Turko-Egyptian colonization period (1820-1884) and the Mahdiya warrior state period (1885-1898). This resulted in the Ngok-Dinka paramount chief traveling (in the company of Missiriyae) to meet the Mahdi, show allegiance, and (presumably) enlist protection against Rizeigat slavery in exchange for tribute payments.

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<sup>16</sup> The situation becomes more complex when other actors are considered – including the United Nations (including UNIFSA peacekeepers), AUHIP, external state parties, and oil companies – as well as when the historical phases are considered in the context of the political regimes in which they were situated. For example, Nimeri’s 1984 downfall was followed by an experiment at liberal multi-party democracy that ultimately failed in 1989 when a military coup d’état brought the Ingaz regime to power 1989. The Ingaz regime failed to manage internal diversities and proved to be a persistent warrior state even unto its own people. The regime’s military forces engaged in games of intrigue and organized suppression that bore a resemblance to the Mahdiya warrior state of the 19th century. Both regimes claimed to govern by Islamic precepts, acting through the barrel of a gun to subdue perceived outlaws and achieve “peace,” whilst destroying human lives and natural resources as well as increasing external public debt and bringing 70% of the population under the poverty line.

**Textbox-2:****Short history notes on Missiriyae economic conditions both as nomads during the Madhiya period (1885-1899) and as agro-pastoralists during the early Condominium**

- R.P. Howell (1948: 74, quoted in ABCR 2005: 181-182) stated, “During the Mahdia, the majority of the Homr and a minority of the Zurug, joined the Khalifa’s forces and attained positions of influence. In dar Homr the remainder lived a precarious existence at home with *occasional outbreaks of open rebellion*.”
- R.P. Howell (ibid.) went on to explain, “During the Mahdia the (Zurug) country was more or less depopulated of cattle. Those who did not join the Khalifa’s forces, and remained at home, were themselves subject to attack during the unsettled times which followed. Many were forced to purely agricultural practices with only a few stock still in their possession.”
- Major E.B. Wilkinson (1902, quoted in ABCR 2005: 181-182) said, “Keilak (Falaita) is a series of tukls badly built and inhabited by Homr Arabs who possessed few flocks, few horses, and *appear to live on the Nubas*.”
- Mahon Pasha (1902, quoted in ABCR 2005: 181) observed, “The Baggara are fairly well-off (in 1902). The Messeria (Zurg) are the most energetic, having large herds and good crops, the Hawazma are the most idle, and *the Humr the poorest and most troublesome*.”

During oral presentations to the ABC, the Missiriyae were keen “to stress that contrary to the accepted view, the Missiriyae were also farmers as well as pastoralists. They grew millet and cotton, besides keeping livestock” (ABCR: 31).

1. Lieutenant Colonel Watkiss Lloyed (1908: 34, quoted in ABCR 2005: 170) stated, “The black mud . . . is crossed by sandy belts running . . . from Muglad to Baraka, where people have their cultivation.”
2. J.W. Robertson (1936: . . ., quoted in ABCR 2005: 171) explained, “Dar Humr is a wide Dar, but is very waterless. . . . *The Humr are semi nomadic* – They spend six months of the year on the great semi circle from Grinti to Keilak . . . and tributary wadis ‘regabas.’”
3. K.D.D. Henderson (1935: 166, quoted in ABCR 2005: 191) said, “Dar Humr is large enough to support a considerable sedentary population, if the area between Muglad and Kwak is systematically opened up by wells.”
4. The Kordofan Province Annual Report (1952/53: 50, quoted in ABCR 2005: 191) provides, “In . . . the Messeria (Zurug) District cotton cultivation is developing rapidly and plans are being made to open up hitherto unexploited areas for cultivation and grazing by the digging of haffirs and the sinking of bores” (parenthesis added).
5. I. Cunnison (1954: 63, quoted in ABCR 2005: 191) explained, “The introduction of cotton (at Nyama, 1920s) is the first major piece of economic development of Dar Humr. Even with the Ajaira section who have only had cotton for three years, changes in their structure are already becoming evident. They are coming to have two homes – their *permanent garden dwellings in the Muglad*, and their cotton settlements in the Bahr. In the Muglad however each man’s permanent place is within his own garden. Settlements on the Bahr are much larger and cotton cultivators of one Khashm-byet (lineage) may group together to form one village.”
6. Michael and Ann Tibbs (1999: 58, quoted in ABCR 2005: 202) wrote, “The southern migration took the Messeria Arabs right into and through the Ngok Dinka territory . . . The traditional pattern of migration had begun to change (1952). Some of the family would stay behind to look after gum gardens, others to tend cultivations of millet in the Muglad, while rain grown cotton was beginning (1953) to be cultivated in the south of the district” (parenthesis added).
7. Shumu Hargas Marida said in an oral history, “I have been told . . . that we are just a pastoralist tribe that has nothing to do with agriculture. But Cunnison (an anthropologist who did research and stayed in Humr area in 1952) said that we had cultivated cotton in Sidana. And he had personally taken part in that activity. Others had also planted cotton at Abudharaj, Mahamud Hamdin had cultivated cotton in Nyama. Cunnison had photos of bulls carrying cotton from those three places” (ABCR: Part-2, 14 July, 2005: 89).
8. Dud Nasir Hamad says, “We have cattle . . . and therefore we do not want war” (ibid.: 40).
9. Ibrahim Ahmad Kuku explained, “They (Ngok) had to cross the river Kiir or Bahr-el-Arab for farming. They came and farmed with us, here. This was 1956” (ibid.: 48).

Shortly following this period, the Missiriyae's<sup>17</sup> pursuit of tribute replaced the Rizeigat's enslavement. This resulted in complaints which culminated with the Anglo-Egyptian administrative transfer of the Abyei region to Kordofan and the beginning of the second phase, from 1905 to 1965. During this phase the Abyei ethnic dispute continued in a more peaceful manner in the context of the 1905 brotherhood pact. This pact sustained workable local relationships well into the post-colonial period. An important event during this phase was the transfer of the Abyei area from Bahr-al-Ghazal Province to Kordofan in 1905 by Major General Wingate, the British governor general of Sudan. British administrators in southwest Kordofan launched an administrative process between 1937 and 1952 to create the Missiriyae Rural District Council, which included the Ngok-Dinka. This was seen as the best available option for ironing out differences between the ethnic groups and to save the faltering closed districts policy in the north.

The third phase covered 1965 to 1972 and was an important part of the development of the Abyei area conflict. In 1965 the area witnessed open war after the Missiriyae used gasoline to burn to death 72 southerners. Many Ngok-Dinka were displaced and scattered in all directions, but mostly towards the south. The then 62-year-old brotherhood pact between the two groups collapsed. Abyei issues were subsequently discussed in the 1972 AAPA under the auspices of Emperor Halle-Silassy of Ethiopia who mediated with Nimeiri for agreement.

In the fourth phase, from 1972 to 1983, the Abyei area conflict began to be recognized as a national problem. During this time attempts to implement the 1972 AAPA were made, but they ultimately failed, ending in disappointment for the Abyei people. Incidentally, during this time leaders of the internal wars described the Abyei conflagration as "neocolonialism/internal colonialism."

In the fifth phase, the Abyei area conflict arose as an issue of international concern under the South-North-Oil-War, particularly during the 2002-2005 CPA negotiations. SPLM/A had high hopes during these negotiations, but it appears that the GOS/NCP delegation played the negotiating game better, carrying all passengers aboard the "Naivasha boat" to the other shore, that is, until the CPA was signed. During the CPA's Interim Period, the CPA guarantors and commissions interacting with the parties at different levels realized that the boat had holes they had never thought to reckon with. Implementation of the Abyei Protocol was finally sacrificed at the altar of the two parties' intransigence.

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<sup>17</sup>During the period of Turko-Egyptian rule (1820-1884) the Missiriyae remained as elephant hunters, wild honey gatherers, and cattle and sheep herders. They were typical nomads, following the herd throughout a wide area, from Odaya to Ragaba-ez-Zarga/ Ngol (approximately 400 kilometers), according to the seasons. "Only in few places (Fauwel ...) do the Homr Arabs remain throughout the year" (Count Gleichen 1905: 157, *The Anglo-Egyptian Sudan*, quoted in ABCR 2005: 189). In 1865, Zubeir Pasha appointed Ali Messar as the head of Homr and collected 1,000 head of cattle as tribute. In 1875, Zubeir appointed Subahi (a Jaali *Jallabi* at el-Odaya) as Sanjak of Homr. For two years Homr paid tribute to Subahi in favor of Zubeir. The Homr allied with Rabeih Zubeir and el-Haj Zubeir, as well as Subahi, against the government of Kordofan (at el-Obeid) with the Zurg as allies of government. In 1879, Subahi's Bazinger with Homr cavalry decisively defeated the Zurg and scattered them. Gordon allowed Subahi to remain as Sanjak of el-Odaya with a guard of 600 Dinka slave riflemen. In 1880 Ali Wad el-Khatim was appointed Sanjak at Odaya to replace Subahi. The latter resisted and killed Ali with support from slave riflemen, after which he fled to the Nuba Mountains. In 1880 the Missiriyae Zurg reoccupied El-Odaya.

### 1.3.2 The relationship between local actors

“Historically, the Missiriyae and Ngok-Dinka experienced both good and bad relationships” (Johnson, 2003: ...). According to the Missiriyae oral narrative, the Missiriyae “been in Abyei since the middle of the eighteenth century” (ABCR 2005: 30), and the earliest documented contacts between the Missiriyae and the Ngok-Dinka occurred in 1744<sup>18</sup>. They were mainly nomadic cattle herders in a regular seasonal north-to-south movement, practicing limited cultivation, until the end of the 19th century. Starting in the 1920s, the Missiriyae began cultivating cotton, a cash crop. According to the Ngok-Dinka oral narrative, the Ngok-Dinka were a Nilotic group that also raised livestock in a short-distance migration pattern between low and high land along the numerous water courses and pools feeding into the Bahr-al-Arab River’s main channel.<sup>19</sup> They believe that Abyei is Ngok land.

The following table provides an attempt at historically placing disputes between the Ngok-Dinka and the Missiriyae, based on oral testimony to the ABC:

	<i>Chief</i>	<i>Chiefdom</i>	<i>Warrior age-set</i>	<i>When was this?</i>
1	Kol	Achak	Lelkiel	Reign of Kol
2	Kuot Awit	Achak	Minyiel	Reign of Kuot Awit
3	Yak	Achak	Jongyom+Marol	Mahdiyya period
4	KurLuak	Achak	Kwach Nyok	Anglo-Egyptian colonial period
5	Kuot	Achak	Nyor	1960s

*Source: Testimony by Mijak Kuot (ABCR 2005: 150), adapted by author*

Both communities saw hard times of oppression during Turko-Egyptian colonization (1820-1884). The Ngok-Dinka experienced slave-raiding by the Rizeigat who had occupied Ragaba-Umbiero, the current Abyei town area, for 48 years. The Missiriyae experienced heavy taxation, which substantially reduced their cattle herds. These practices continued during the Mahdiya period (1885-1898). Ngok-Dinka oral narratives speak of several wars with the Missiriyae, but could only reckon them by the paramount chief under whose reign the war happened and the age-set that provided the fighting or striking force, as shown in the following table extracted by the author from information contained in the ABCR. Documentary evidence on “tribal wars” does not exist for the Abyei area

<sup>18</sup> A few general observations are in place to help situating pre-colonial conditions in which the Missiriyae and Ngok-Dinka lived. Francis M. Deng dates the first Homr contact with Ngok-Dinka at 1744. The Missiriyae invaded the Shatt (another ethnic group) in the Muglad Area, drove them away, and killed their king (“*denga*”). The Ngok-Dinka found the Shatt on Ragaba-ez-Zarga/ Ngol, drove them out, and scattered them west and south. In the 1850s, the Rizeigat invaded the Humr at Muglad, but could not dislodge them. Instead, the Rizeigat withdrew and turned southwards, invaded the Ngok-Dinka and occupied Ragaba-Umbiero. Sometime between 1850 and 1855, the Rizeigat occupied Ragaba-Um-Biero and enslaved the Ngok-Dinka. This continued for 48 years, resulting in grievances and causing the Ngok-Dinka to seek Mahdiya protection. In 1855, to avoid Rizeigat pressure, Arob Biong and Alor Ajing moved with followers from Dawasse and Ragaba-Um-Biero to resettle at Mathiang (later, Sultan Arob) to the south of the Bahr-al-Arab River, in fear of enslavement raids by the Rizeigat. The last 30 or so years of the 19th century was a turbulent era for the entire Missiriyae group, including the Homr (Ajaira and Falaita) as well as the Zurg. Meanwhile, “... the Dinka tolerated the Missiriyae, but neither of them wanted the Rizeigat from Darfur there” (ABCR 2005: 203).

<sup>19</sup> The Ngok-Dinka people consist of nine chiefdoms that “migrated from Upper Nile . . . [,] reached Abyei in 1710 and occupied the reverine area between Bahr-al-Arab/Kiir River and Ragaba-ez-Zarga/ Ngol” (ABCR 2005: 31).

transferred to Kordofan in 1905. There are scattered references to Missiriyae relations during the 19th century, with neighbors to the North (the Hamar) bearing minimal mention of Ngok-Dinka.

Since the Rizeigat had occupied the Abyei area from approximately 1850 to 1898 and took the Ngok-Dinka as slaves, it is not conceivable that the Humr, who had had first contact in 1744 in Muglad area with no history of enslavement, reached the area as late as the 19th century. It also is not conceivable that the Humr crossed Ragaba-Um-Biero to reach the Bahr-al-Arab River without forcefully dislodging the Rizeigat. There is no evidence of the Missiriyae fighting the Rizeigat in Ragaba-Um-Biero (part of the Abyei area) after they had stalled them in 1850. However, there is evidence that the Missiriyae spanned the sandy-Goz area between Hassoba and Kailak during the 18th and 19th centuries. Therefore, it is logical to deduce that the Missiriyae earned the title of “indigenous people of Ragaba-ez-Zarga,” after having lived there for 155 years *before* the Anglo-Egyptian colonization (1898) or 160 years before the transfer of the Ngok-Dinka to Kordofan in 1905. It is, therefore, unreasonable for the ABCR and the PCA Award to relegate them to secondary land rights there, especially considering their livelihoods as livestock herders who also engaged in cultivation (like the Ngok-Dinka). The difference between the groups is a matter of degree, rather than of substantively different land use. It is unfortunate that the documents produced on the issue emphasize the differences rather the similarities in the livelihoods of these two people, thus denying the Missiriyae full access rights and residency in Abyei.

During the Anglo-Egyptian colonial period (1898-1955), and particularly after the signing of the 1905 brotherhood pact, the Ngok-Dinka saw relative calm, mainly because the Rizeigat had retreated to Darfur and the Missiriyae did not pursue enslavement, but rather the collection of tribute, which proved to be the direct reason for the transfer of Ngok-Dinka to Kordofan. In 1965, however, this relative calm turned into open war on the backdrop of the rise of North-South War (see footnote No. 10 above). This led to the Ngok-Dinka looking for protection from Missiriyae adversaries.

The author’s view is that these disputes mainly revolved around surface resources such as pasture and water needed by the two semi-nomadic communities. Pasture was abundant and the rainfall calendar was more regular before 1955, so resource competition was not prevalent at that time. Rather, prior to 1955, grievances between the two ethnic groups arose out of a backlog of historical grievances of enslavement left behind by the Rizeigat occupation of the Ngok-Dinka area for 48 years. The Rizeigat withdrew from the Abyei area at almost exactly the same time the Anglo-Egyptian occupation took place. Even though the Humr (who were farther North in Ragaba-ez-Zarga/Ngol) had no history of enslaving the Ngok-Dinka in the second half of the 19th century, the Ngok-Dinka remembered that their captors were of fair-skinned, Arab origin.<sup>20</sup> To them, there was little difference between the fair-skinned Rizeigat and Humor; both were Arabs.

In short, the first decade of Anglo-Egyptian occupation allowed the Ngok-Dink’s real concern – protection from Arab raids – to surface. Their memory of Rizeigat enslavement was still alive, only one decade away from 1905. The Torit Town garrison mutiny of 1955 was an act of revolt occasioned by an armed garrison in the Sudan Defense Force that also signaled the possibility of a social revolution in the South, attracting the Ngok-Dinka to support their Nilotic kinsfolk. It appears that the Ngok-Dinka subconsciously stereotyped the Misiriyae to have inherited the Rizeigat enslavement practices or at least to support the central government (which was dominated by people of Arab

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<sup>20</sup> In fact, the ABCR explains that the Humr could not have reached Bahr-al-Arab with their herds prior to 1916 (that is, during World War I).

origin). This was only exacerbated by the Missiriyae's extractive practice of requiring tribute from the Ngok-Dinka. The Ngok-Dinka, therefore, opted to support the Anyanya-1 insurgency in South Sudan that resulted in the first war against the SAF in 1962. It is logical, therefore, to assume the incidence of local violence (1962-1965), between Missiriyae and the Ngok-Dinka, on the rise of militarized activity in the deeper South under the leadership of Anya-Nya-I.

Starting in 1983, the Ngok-Dinka allied with the SPLM/A, in part because of frustration over the unfulfilled promise of a referendum. As Manger et al. (2003), explain, "The failure to implement that provision was one of the factors that led to political discontent in Abyei in the early 1980s, the formation of one of the first Anyanya-II guerrilla groups in 1981, and foundation of the SPLM/A with involvement of Abyei citizens in 1983."

## 1.4 Classification of types of conflict in the region

The postcolonial conflicts in the Sudan borderlands can generally be classified into two main categories: geocentric conflicts and political-liberal conflicts. Geocentric conflicts occurred from the time of the Torit garrison armed mutiny occurred, marking a military showdown in August 1955 against the Sudan Defense Force, until the start of armed confrontation led by Anyanya-1 in the period of 1962 to 1972. These conflicts arose from southern Sudanese concerns about autonomy to manage their own affairs. There was no claim to separation; they only demanded the federal system of governance that had been promised during the period of self-determination in 1972, but was not granted. The governing liberal elite labeled Anyanya-1 as an insurgent armed movement directed against the central state. This characterization exacerbated socio-political, cultural, and economic grievances on the part of the south. It not only marked the failure of post-colonial policies on state-building, but also led to southern militarization.

Political-liberal conflicts characterized the second war led by SPLM/A from 1983 to 2005 and the current ongoing phase of the war that started in June 2011. National politicians in both the ruling NCP and the SPLM-North Sudan failed to address political and economic challenges, especially the diversity of interests among local ethnic communities. At the point of expiration of the CPA the national governing elite had wasted too much time squabbling about macro issues without taking into account the views of the local populations.

Certainly, political and economic factors underlie both types of conflict, particularly those concerning the allocation (or misallocation) of resources and power. Ethnic differences also constitute an important aspect of the conflict, although they do not alone explain the how the conflict has emerged and persisted. In multiethnic communities, like the Sudan borderlands, people compete for community-based access rights to social services, such as education and healthcare, as well as for resources. But other factors causing civil strife come from social, cultural, and political factors, such as growing poverty and economic inequality in the area. Local communities may feel that raising arms is the only solution against injustice. Yet this conflict only diminishes economic growth in the area, including by creating greater gender inequality. Failure to address economic inequality in the area not only impedes poverty reduction but also makes the area vulnerability to social, political, and economic unrest.

The Abyei area has become a litmus test case of inaction, indifference, and failure by the authorities in both Sudans, not only to resolve the local and national land dispute, but also to mitigate

the festering effects of continued mistrust based on false promises and non-implementation of signed agreements. Chronic deadlock has characterized all levels of negotiation and mediation and has allowed disputes to become violent. Why has the Abyei conflict progressively defied all attempts at reaching a solution? Which factors contributed to the failure of the Abyei Protocol?

## CHAPTER TWO: A FOCUS ON THE TWO BASIC DOCUMENTS

### 2.1 Study objectives and main questions

The overall objective for revisiting basic documents on the Abyei Conflict is to uncover contradictions of national level actors, to sensitize authorities, and to revitalize policymakers in searching for new directions. In particular, revisiting these documents may stimulate social and political leaders to look for solutions involving the Missiriyae and Ngok-Dinka as stakeholders directly affected by cyclical violence over the past five decades. This study can also draw lessons from the Abyei situation to help the governments of the two Sudans put in place national transformational policy frameworks that can secure and protect the lives, livelihoods, and human rights of other borderland agro-pastoralists. The African Union framework policy on pastoral areas in Africa (2010) may be a good starting point for realizing these objectives.

What went wrong during the six-year Interim Period that frustrated implementation of the Abyei Protocol? Are there inherent weaknesses in the Abyei Protocol's text (whether semantic, conceptual, or political) that contributed to faulty implementation? Why did the Sudanese government and the Missiraye reject the ABCR? Could revisiting these documents revitalize the spirit of the Abyei Protocol and produce durable settlement or, or would it be better to let the Abyei Protocol "rest in peace"? This chapter begins by providing an overview of these key texts, and the next chapter attempts to answer some of these questions based on the findings of this study.

## 2.2 The Abyei Protocol: A synopsis of text, structure, and content

### 2.2.1 The context of the Protocol

Peace negotiations between the government of Sudan (GOS) and SPLM/A started in March 2002 and continued for 30 months, leading to the conclusion of at least six agreements and protocols that were consolidated and finally signed as the CPA on 9 January 2005. Critical moments during the negotiating process were often smoothed over by signing more agreements. One such critical moment was the parties' negotiations about the Abyei area, which lies on the border between North and South Sudan.

The Abyei area had been a focus of contention since Sudan's independence in 1956. The GOS's initial position was that the area should not be an agenda item for negotiations because (1) the area was not part of South Sudan, (2) the border was not subject to negotiations or change, and (3) the borders between the North and the South were to remain as they stood on independence day. The SPLM/A delegation countered that the Abyei area needed to be addressed during CPA negotiations because (1) it was an exception to the sanctity of Sudan's 1956 borders and (2) the Abyei dispute had been addressed in the AAPA of 1972, but the provisions had not been honored.

The United States, as a mediator in the process, attempted to resolve these divergent positions. The delegations relented, and the Abyei Protocol was born. However, although the GOS agreed to include the area on the negotiating agenda, the GOS insisted that only the area transferred to the North in 1905 should be the subject of negotiations. This area was a small triangle known as the Wingate triangle, which fell to the south of the Bahr-al-Arab River.

### 2.2.2 The Protocol's structure and content

The Abyei Protocol is a single document entitled "Principles of Agreement on Abyei," dated 19 March 2004 (ABCR Part-2 2005: 4-13). US Special Envoy Senator John Danforth presented the document to the first vice-president of Sudan and the chair of SPLM/A (the Sudanese chief delegates to the CPA negotiations) under the auspices of the Inter-Governmental Authority on Development (IGAD). The SPLM/A declared adoption of the text on the same day, as presented. The GOS declared adoption two days later in a telephone conversation between the president of Sudan and the president of the United States.

The Abyei Protocol contains nine articles, 37 clauses, and 27 sub-clauses.

- Article 1 designates Abyei as a bridge linking the people of Sudan and defines the Abyei territory as "the area of the nine Ngok-Dinka chiefdoms transferred to Kordofan in 1905." It declares, "The Misseriya and other nomadic peoples retain their traditional rights to graze cattle and move across the territory of Abyei." This section also introduces conditions that are to apply during the CPA Interim Period, including that residents of the area will be citizens of both Western Kordofan and Bahr-el-Ghazal, that a local executive council will administer the area, and that oil reserves from the area will be divided six ways during the Interim Period. International monitors are to be deployed to Abyei "to ensure full implementation of these agreements."

- Article 2 provides the Abyei administrative structure, giving the region special administrative status under the presidency and managed by an inclusive representative executive council to be elected by Abyei residents.
- Article 3 deals with financial resource allocation and management, as well as other entitlements, during the Interim Period.
- Article 4 deals with public participation and establishes the Abyei Area Council. One of the Council's responsibilities is to participate in and promote of reconciliation in the area.
- Article 5 establishes the Abyei Boundary Commission (ABC) under the presidency. The ABC is charged "to define and demarcate the area of the nine Ngok-Dinka Chiefdoms transferred to Kordofan in 1905." The ABC was originally expected to finish its work within the first two years of the Interim Period, but this time period was shortened to six months in a subsequent agreement between NCP and SPLM.
- Article 6 defines "Residents of the Area" as "[t]he members of the Ngok Dinka community and other Sudanese residing in the area." It declares that "[t]he criteria of residence shall be worked out by the Abyei Referendum Commission."
- Article 7, worded closely after the Agreement on Security Arrangements in the CPA, sets forth security arrangements and establishes the Abyei area Security Committee.
- Article 8 establishes the Abyei Referendum Commission under the presidency and determines that the 1 January 1956 border between North and South shall be inviolate.
- Article 9 determines that the presidency shall start peace and reconciliation processes for the Abyei area as a matter of urgency when the peace agreement is signed.

### 2.2.3 Aftermath of the Abyei Protocol: Too many signed, but un-honored, agreements

Table 2.3.1 shows a chronology of signed documents involving or related to the Abyei area conflict. The 1972 AAPA included the possibility of a referendum for the people of Abyei, thus elevating the local-level dispute of the 1960s to an issue of national concern, and further to regional concern. After 1972, a pattern of behavior emerged in the management of the conflict. That is, every time the actors in the two Sudans became deadlocked in negotiations, they would resort to inharmonious behavior, which often led to violence in the region. This would be followed by negotiations to end the showdown, terminating in fresh accords that were never honored, as well. This was the case in the following situations:

- On 14 July 2005 the ABC Report was presented to the combined presidency of the Government of National Unity (GNU, comprising both GOS/NCP and SPLM/A). GOS/NCP and the Missiriyae rejected the ABCR, while SPLM/A accepted it.
- A little over two years later, in October 2007, the SPLM withdrew from the GNU, protesting that GOS/NCP had reneged on implementation of the Abyei Protocol. This led to fighting in the town of Abyei between SAF and SPLA.

- On 23 May 2008, approximately halfway through the CPA Interim Period, another outbreak of fighting occurred in the town of Abyei.
  
- Pressure on the battlefield and from the international community resulted in the signing of five accords considered redeeming for SPLM. This put an end to the GOS/NCP's dragging during the first half of the CPA Interim Period.
  - One of these accords was the Road Map Accord for IDPs Return and Implementation of Abyei Protocol, signed on 8 June 2008. This accord confirmed a role for the United Nations Mission in Sudan (UNMIS) in the Abyei peacekeeping process. This was a significant achievement for SPLM/A.
  - Other accords appeared to reward SPLM for its withdrawal from the GNU, including the Memorandum of Understanding on Abyei Arbitration (which as signed 21 June 2008); the Arbitration Agreement on Delimiting the Abyei area (which was signed 7 July 2008 and referred to a binding decision on the Abyei conflict by the Permanent Court of Arbitration); and an accord constituting the PCA tribunal for the Abyei area (which was signed in, October 2008).

May 1983	Nimeiri abrogation of the AAPA renewed the North-South civil war
<b>CPA negotiations phase to end the war, conclusion of six protocols in 30 months</b>	
19 Mar. 2004	John Danforth, US special envoy to Sudan, presented “Principles for the Protocol on Resolution of Abyei Conflict” (Abyei Protocol), immediately adopted by GOS/SPLM.
26 May 2004	GOS and SPLM/A sign, by first initials, the Abyei Protocol
17 Dec. 2004	The Abyei Annex is signed, providing understandings on the Abyei Boundaries Commission (ABC)
31 Dec. 2004	The Implementation Modalities of on Abyei Protocol, signed
31 Dec. 2004	The title of the Abyei Protocol is changed to “Protocol between Government of Sudan and Sudan People’s Liberation Movement/Army on the Resolution of the Abyei Conflict,” using the term “conflict” instead of “dispute”
9 Jan. 2005	Comprehensive Peace Agreement (CPA), signed between GOS and SPLM/A
12 Mar. 2005	Text of Terms of Reference for Abyei Boundaries Commission, signed
15 Mar. 2005	Selection of members of the ABC, completed
11 Apr. 2005	Rules of Procedure for the ABC, signed
June 2005	Preparation of ABCR completed, whilst Interim Constitution of Sudan is deliberated
14 July 2005	ABCR Report (ABCR) presented to GOS and SPLM/A, rejected by GOS, but accepted by SPLM/A
Oct. 2007	SPLM withdraw from GNU, protest no-implementation by NCP & no-accept ABCR
23 May 2008	Outbreak of fighting in Abyei town between SAF and SPLA
8 June 2008	Road Map signed for IDPs Return and Implementation of Abyei Protocol, introducing a role for the UNMIS in the Abyei peacekeeping process
21 June 2008	Memorandum of Understanding on Abyei Arbitration signed
7 July 2008	Arbitration Agreement on Delimiting Abyei Area signed between GOS and SPLM/A, referring to binding decision on Abyei dispute, by PCA
Oct. 2008	PCA tribunal for Abyei conflict constituted
22 July 2009	Issuance of the Abyei Area Tribunal Award (AATA) of PCA on Abyei dispute
22 July 2009	GOS and SPLM/A accept and celebrate AATA, the Misiriyae reject it 10 weeks later
30 Dec. 2009	South Sudan Referendum Act adopted
June 2010	South Sudan Referendum Commission established
June 2010	Mekelle Memorandum of Understanding concluded between NCP and SPLM on Post Referendum Issues and Arrangements, no mention of Abyei
Oct. 2010	Addis Ababa meeting of NCP and SPLM fails to resolve outstanding issues on Abyei
9 Jan. 2011	Planned date, S.Sudan and Abyei referenda, but Abyei referendum does not occur.
9 Jan. 2011	Clashes (3 days) between the Misiriyae and the Ngok-Dinka in the Abyei area
13-17 Jan. 2011	Kadugli Agreement concluded between the Misiriyae and the Ngok-Dinka to end ongoing clashes, agreement collapses a few weeks later
Feb. 2011	Clashes continue between the Misiriyae and the Ngok-Dinka in the Abyei area
3 Mar. 2011	President of UNSC issues a statement expressing concern over the situation in Abyei
4 Mar. 2011	Agreement concluded between GOS and SPLM, contains text on Abyei situation
11 Mar. 2011	GOSS accuses GOS of plotting overthrow of Juba government and announces suspension of talks and contacts with GOS on pending issues (Abyei included), GOSS declares it will lodge formal complaint with UNSC
21 Mar. 2011	UNSC consider “Reports of Secretary General on Sudan” but take no further action
9 Apr. 2011	Sudan terminates mandate of JIU’s, maintaining one battalion in Abyei and oil fields
22 Apr. 2011	Draft constitution for South Sudan issued, includes Abyei area in South Sudan
27 Apr. 2011	Sudan rejects inclusion of Abyei in South Sudan and threatens to revoke recognition of South Sudan’s independence if it mains ownership of Abyei in its constitution
9 July 2011	South Sudan formally secedes from Sudan and emerges as an independent nation

## 2.3 The Abyei Boundary Commission Report (ABCR)

### 2.3.1 Genuine commission, inharmonious counterparts

The Abyei Boundaries Commission (ABC) was formed of five members each from the GOS and the SPLM, as the two primary counterparts responsible for implementing the CPA. Five experts were added – one each from the US, UK, and three other African countries. The ABC was established “to define and demarcate the area of the nine Ngok Dinka chiefdoms transferred to Kordofan in 1905” (Abyei Protocol, Article-5.; cl. 5.1) and to agree on how to delimit the area that had had been transferred to Kordofan in 1905. The GOS contended that the area lay to the south of the Bahr-al-Arab River and consisted of the small Wingate Triangle, while the SPLM contended that the area lay both to the north and the south of the Bahr-al-Arab River.

The original text of Abyei Protocol required the ABC to submit its report (the ABCR) within two years. However, the GOS and SPLM changed this requirement, limiting this time to six months during the pre-Interim Period. According to the ABC’s rules of procedure, representatives of the GOS and the SPLM were to submit preliminary presentations to the ABC by April 2005. Subsequently, the ABC visited the Abyei area for six days to collect oral and documentary evidence from the two local communities. In the ABCR, the ABC reported that the oral testimony it was able to collect in 2005 was vague. Disputes about the land mainly centered around surface resources of water and pasture for the mobile herds of the then nomadic Missiriyae and agro-pastoralist Ngok-Dinka communities. The ABC consolidated evidence on relations between the two ethnic groups by looking at past conflicts. This included information about the principal reason for the land transfer of the nine Ngok-Dinka chiefdoms to Kordofan – allegedly, “armed raids on the Dinka by the Missiriyae” – and the resulting destabilization of the Ngok-Dinka community as well as effects on both communities’ land use patterns (ABCR 2005: 21). As well, the ABC considered Ngok-Dinka oral testimony regarding “five wars with the Arabs” (see Table 1.3.2 above).

### 2.3.2 Conclusions of the ABCR

The ABC submitted its report on 14 July 2005. The report was immediately accepted by the SPLM/A, but rejected by GOS/NCP and the Missiriyae. The dispute centered around whether or not the ABC experts had exceeded the mandate given to them in 2005. Specifically, the ABCR made the following findings and conclusions:

- It concluded that there was no clearly demarcated boundary of the area transferred from Bahr el-Ghazal to Kordofan in 1905 (ABCR 2005: 20). “[N]o map exists showing the area inhabited by the Ngok Dinka in 1905. Nor is there sufficient documentation produced in that year by Anglo-Egyptian Condominium authorities that adequately spell out the administrative situation that existed in that area at that time” (ibid.: 4).
- It rejected the GOS claim that the area transferred in 1905 lay entirely south of the Bahr-al-Arab River. It also rejected the SPLM/Ngok-Dinka claim that the Abyei area boundary with Missiriyae should run from Lake Keilak to Muglad Town (ibid.).
- It classified land rights into three categories: dominant, secondary, and shared rights. Dominant rights were full-rights, evidenced by permanent settlements. Secondary rights

involved seasonal use of land. Shared rights were secondary rights exercised by two or more communities. On this basis, the ABCR arrived at the following conclusions:

- The Ngok-Dinka “have a legitimate dominant claim to the territory from Kordofan/Bahr-al-Ghazal boundary north to latitude 10°10’N,” extending from the boundary with Darfur Province in the west to Upper Nile Province in the east, as the boundaries stood at independence on 1 January 1956 (ibid.: 21).
  - The Missiriyae share with Ngok-Dinka isolated occupation and use rights, from latitude 10°10’N, to latitude 10°35’N (ibid.: 21). Thus, this area was to be divided between them. The northern boundary was to be located at latitude 10°22’30”N.
  - The western boundary is Kordofan-Darfur boundary, as on 1-1-1956.
  - The southern boundary is the Kordofan-Bahr el-Ghazal-Upper Nile boundary, as on 1 January 1956.
  - The eastern boundary extends the line of the Kordofan-Upper Nile boundary.
- It found the following:
    - The SPLM/A claim that the Ngok-Dinka/Missiriyae boundary extends from Muglad to Keilak had no foundation. This ruled out any possibility that the boundary was at El-Oddaya (ibid.: 13).
    - The evidence is “compelling” that “in no way were the Ngok newcomers in the early twentieth century” (ibid.). Specifically, there was “no evidence that the Ngok requested refuge from Abu-Gurun or Ali Julla . . . . The assertion ‘by GOS and Missiriyae’ that the Ngok-Dinka were destitute is rendered doubtful by contemporary observations made by British officials in the early 1900 . . . . Governor Mahon observed that Ngok were well-off . . . in contrast . . . to the relative poverty of the Humr” (ibid.).
    - The Humr in the early 20th century were concentrated near the Ngol River, not Bahr-al-Arab, much less to the south of Bahr-al-Arab. It was not until some years later (than 1916) that Humr extended their dry-season grazing farther south to Bahr-al-Arab. The Missiriyae followed the savanna belt and environmental evidence argued against any longer-term Humr occupation of the Bahr-al-Arab river system. The Missiriyae also never made a formal claim during the Condominium to any land south of Bahr-al-Arab.
  - The ABC concluded that the government delegation failed to prove its claim that there was a recognized administrative boundary in 1905, that the Ngok-Dinka territory was confined to the area south of the Bahr al-Arab before 1905, or that only the territory south of Bahr al-Arab was transferred to Kordofan jurisdiction in 1905.

### 2.3.3 Positions of national and sub-national stakeholders

The SPLM and the Ngok-Dinka accepted the ABCR, but the GOS rejected it, claiming that the ABC had exceeded its mandate by taking into consideration developments in Abyei area after it was transferred to the North in 1905 and that the ABC had assessed the area’s territorial boundary when it should have only addressed the area’s administrative boundary. The Missiriyae also rejected the ABCR 10 weeks later, after giving the GOS enough time to frame the Missiriyae response. The fact that the GOS framed this response can be deduced from the fact that the immediate Missiriyae “reserved response” was quite different than the “formal” response that occurred 10 weeks later.<sup>21</sup>

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<sup>21</sup> The GOS also made contradictory statements to the ABC, including the following: “(1) The issue of land ownership is an issue of vested legal rights which is unsusceptible to political compromise: i.e., no party can make any concession with regard to such issue; (2) To determine what had exactly taken place one hundred

As one example of the miscommunications that surrounded the ABCR, the GOS criticized the ABCR by saying that the experts were tasked with identifying the administrative boundary between Kordofan and Bahr al-Ghazal, not tribal boundaries. Nonetheless, the administrative boundary was never the intention of the Abyei Protocol. In response, Douglas Johnson, a member of the ABC, stated,

It was the government delegation who misinterpreted the protocol... If the government is uncertain about the evidence and its meaning, they should call the experts back to have them explain it. Since the government, retrospectively, entertained doubt about and rejected the ABCR, thus indicating non-clarity about the text or “the intention of the Abyei Protocol, they should ask the Americans for clarification.”

Johnson went on to explain that the GOS failed to prove its claim that there was a recognized administrative boundary in 1905, that the Ngok-Dinka territory was confined to the area south of the Bahr-al-Arab before 1905, or that only the territory south of Bahr-al-Arab was transferred to Kordofan jurisdiction in 1905.

Yet in spite of the GOS’s claims, the ABCR was professionally compact. And if a recognized administrative boundary had existed before 1905, why would the ABC have been necessary in the first place? What was required was to determine where the Ngok-Dinka lived at the time of transfer in 1905.

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years ago (1905), is a matter that shall be left for historians and experts, not facilitators or mediators; (3) The decision shall be based on scientific research, not compromise” (GOS Presentation to the ABC, ‘The Will of the Parties’). In relation to these statements, it should be pointed out that the ABC included learned professors from African universities who were committed to scientific procedure required by the GOS senior delegate. Thus, the ABCR was not prepared by facilitators or mediators.

<b>Table 2.3.3: Points of Dispute between Local and National Stakeholders, ABC assessment</b>		
<b>MISSIRIYAE CLAIMS</b>		<b>NGOK-DINKA CLAIMS</b>
The land from their northern permanent settlements to the south of Bahr-al-Arab has been theirs for several centuries.	1	They occupied the Bahr-al-Arab/Kir River area from 1745 to 1755, well before the Missiriyae arrived in Muglad area (between 1765 and 1775), later meeting Baggara at Turda. Therefore, they were not guests.
The Ngok-Dinka were newcomers who were destitute and had were allowed to reside in recent times as guests south of the river.	2	During and after 1905, the Ngok-Dinka's permanent settlements were situated both to the north and the south of the Bahr-al-Arab River.
The Misiriyae territory originally extended south of Bahr-al-Arab as far as the current Kordofan/Bahr-al-Ghazal border.	3	There were no major changes to the Ngok-Dinka areas of permanent residence or grazing from 1905 to 1965.
No boundaries existed between the Misiriyae and the Ngok-Dinka.	4	While agreeing that there were boundaries with Missiriyae, the Ngok-Dinka emphasized that there had been no major changes to their places of residence or grazing before or after 1905, except after the war in 1965.
The whole area was under Kordofan jurisdiction, never under Bahr-al-Ghazal.	5	No Dinka claim is made to the contrary. However, no boundaries existed at the time.
<b>Misiriyae supported their claims by:</b>	6	<b>Ngok Dinka supported their claims by:</b>
Claiming that the Ngok-Dinka never paid taxes to Bahr-al-Ghazal.	6.1	Giving detailed account of place-names for permanent settlements/ grazing for (9) chiefdoms
Asserting that the Ngok-Dinka were administratively treated as a section of the Misiriyae, with their paramount chief coming beneath the Misiriyae Nazir.	6.2	Persistently insisting that the Misiriyae are nomads, then as now. N.B. The author sees this statement to be true before 1905, but not for 1920s and later.
Explaining that the Misiriyae had cotton plantations in places such as Nyama (northern-most area claimed by Ngok-Dinka)	6.3	No Ngok-Dinka claim is made to the contrary. However, the Missiriyae claim is in a time frame, 1920s, much irrelevant to 1905 mandate of the ABC.
<b>GOS/NCP CLAIMS</b>		<b>SPLM/GOSS CLAIMS</b>
The only area transferred from Bahr-al-Ghazal to Kordofan in 1905 was a strip of land south of Bahr-al-Arab.	7	A larger area encompassing both sides of the river was transferred to Kordofan.
The Ngok-Dinka lived only south of Bahr-al-Arab prior to 1905.	8	The Ngok-Dinka have established claims to an area extending from Kordofan-Bahr-al-Ghazal Boundary to north of Ragaba Zarga/Ngol.
The Ngok-Dinka migrated to north of the river only after the transfer to Kordofan.	9	The Ngok-Dinka were well established in Ragab-ez-Zarga/Ngol river at least one generation before Missiriyae arrived at Muglad.
The Abyei area should be defined as lying south of Bahr-al-Arab and excluding all territory to the north of the river, including Abyei town itself.	10	The boundary should run in a straight line along latitude 10:35' N.
<b>The ABC concluded that:</b>		
The GOS assertion that only Ngok-Dinka territory south of Bahr-al-Arab was transferred to Kordofan is was incorrect.		

### 2.3.4 The ABCR situated in history

It is relevant to recall some facts from colonial history to situate the positions of local and national actors. The Anglo-Egyptian forces conquered Sudan in 1898 and temporarily maintained the hitherto existing Mahdiya sub-national boundaries as a basis for administration, including the borders between the North and the South. Concurrently, the Rizeigat, who had been occupying the Abyei area since 1850, withdrew to Darfur.<sup>22</sup> In 1903 colonial authorities appointed native leaders for the Missiriyae tribal communities in southwest Kordofan and in 1905 the colonial authorities transferred the Ngok-Dinka's nine chiefdoms from Bahr-al-Ghazal to Kordofan provincial authority. The territory in question took the designation of the Abyei area. As the affected groups (namely, the A'jaira clans of the Hmor and the Ngok-Dinka) lived on mobile livestock herding and small-scale cultivation, no physical resettlement or relocation of people was involved in this transfer, and no geographical boundaries were recognized between them. Nonetheless, in 1913, the common border between Bahr-al-Ghazal and Kordofan was adjusted on paper. This action consisted only of redrawing maps to reflect redistricting. No delineation or demarcation occurred on the ground itself.

### 2.3.5 The Abyei Arbitration Tribunal Award: an attempt to close the debate

After three years of deadlock, the GOS proposed and SPLM agreed that the two parties submit to international arbitration. On 7 July 2008, GOS/NCP and SPML/A signed the Arbitration Agreement on Delimiting the Abyei Area, depositing it with the Secretary General of the Permanent Court of Arbitration (PCA) on 11 July 2008. The Abyei arbitration tribunal was fully constituted on 30 October 2008, and the tribunal rendered its final and binding verdict on 22 July 2009. This tribunal should have ended four years of disagreement between the GOS/NCP and SPLM/A, yet game playing persisted.

Specifically, the PCA concluded the following:

- The ABC did not exceed its mandate in interpreting its mandate as it did. The predominantly tribal interpretation adopted by ABC was not unreasonable, and the text of applicable instruments, in particular, procedural provisions in the CPA and the drafting history of the Abyei Protocol, supported this conclusion. Nonetheless, since the ABC's interpretation of the boundaries was subject to a reasonableness test (rather than a correctness test), its conclusion did not suggest that an opposite, predominantly territorial, interpretation was any less reasonable.
- The ABC did not exceed its mandate with respect to its decision to adopt latitude 10°10'N as the northern limit of the area of permanent Ngok-Dinka habitation transferred in 1905. It also did not exceed its mandate in deciding the southern boundary of the Abyei area (this boundary was also uncontroversial in earlier proceedings).
- However, ABC did exceed its mandate regarding drawing of northernmost limit of the Ngok-Dinka and Missiriyae's "shared rights" area at latitude 10°35'N (and, by implication, the northern limit of the Abyei area at latitude 10°22'N) because it did not provide sufficient reasoning. The ABC also exceeded its mandate regarding the eastern and western boundary lines because it failed to provide sufficient reasoning.

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<sup>22</sup> Documentary evidence has no conclusive details on this event.

- Given that the ABC had acted in excess of its mandate, the PCA turned to its own mandate, that of defining the eastern and western boundaries of the Abyei area. It concluded that the eastern boundary of the Abyei area runs along longitude 29°00'00"E, from latitude 10°10'00"N south to the Kordofan–Upper Nile boundary (as defined on 1 January 1956) and that the western boundary of the area runs along longitude 27°50'00"E, from latitude 10°10'00"N south to the Kordofan–Darfur boundary (as defined on 1 January 1956), following the Darfur-Kordofan boundary until it meets the southern boundary of the Abyei area.

### 2.3.6 Shifting positions of the Missiriyae

Both the GOS and the SPLM initially declared acceptance of the AATA and pledged to enforce it expeditiously and in good faith. The social and political leadership of the two local primary stakeholders, the Missiriyae and the Ngok-Dinka, also announced acceptance of the AATA. However, two of the Missiriyae-Hmor-Ajaira clans, the Awlad-Kamil and the Mazaghnae, expressed discomfort with the decision because of their usual seasonal movement across the central part of Abyei area (locally known as the Central Murhal).

The immediate reserved-response of Hmor-Ajaira clan from which the chiefs of Homr used to arise, was as follows. The land area of Abyei is designated by AATA as belonging to the Ngok-Dinka. The Missiriyae believe that this piece of land is taken away from them and handed over to the Ngok-Dinka, by the Sudan Government, as a result of an unfair verdict made by the Abyei Arbitration Tribunal. They demand compensation to Missiriyae, by GOS. The Missiriyae also think that they are, as a result, alienated from dry season water sources at Ragaba-ez-Zarga which they have been frequenting for centuries. They conclude that, if Abyei area referendum is made, and if the Ngok-Dinka chooses to join South Sudan, they will be barred from accessing Ragaba-ez-Zarga water sources, in which case it will be a matter of sheer survival; a matter of life or death; a catch-22 puzzle: i.e., “damn-if-you do, damned if you don’t”. This is mainly because the Missiriyae herd their livestock while carrying arms, always, for personal protection. The Ngok-Dinka, on the other hand believe that the presence of arms in the hands of the Missiriyae is tantamount to a security threat of the first order. It is a threat to Ngok-Dinka community security and survival: “arms in hand”, of Missiriyae, equals “hand-on-trigger” for Ngok-Dinka. Such being the case, a perennial war of contradictory survival interests is suicidal scenario. The Missiriyae, by implication therefore, are deeply concerned that their future livestock survival opportunities will be seriously impaired, particularly if in the 2011 referenda (now, transcended by the lapse of the interim period and the independence of South Sudan), the Ngok-Dinka choose to join the South and the South elects to become independent. The Missiriyae also believe that statements made in Abyei Protocol, alluding to limit Missiriyae rights only to water and grazing pasture cannot be ensured if they herd livestock, arms-in-hand which the Ngok-Dinka perceive as hand-on-trigger.

**Textbox-3: The Missiriyae's immediate reserved response on the AATA**

Paraphrasing the words of tribal chief of the Awlad-Kamil and Mazaghnae clans, Ameer Mukhtar Babu Nimer stated,

My land at the Ragaba-ez-Zarga (Ngol) has been taken away from me, and has been given to the Ngok-Dinka. I am not going to challenge the verdict of Abyei Arbitration Tribunal Award, as this is a final and binding decision on Sudan Government. Anything I might say, to reflect feelings of my people, I will direct my words and views of my people to the Head of State, President Omer al-Basheer. I know that the President approved compensation for the people in the North who have been adversely impacted by the Meroe Dam, both in cash and in-kind. My question: 'Is the President going to compensate the Missiriyae people, or not, for our land that has been given away by Sudan Government to Ngok-Dinka?' If the President is not going to compensate us, then we will have a different say and approach.

The GOS and SPLM did not respond to this statement, which appears to be the only comment the Missiriyae have made over the years that suggests the possibility of a durable settlement of the dispute. Yet no major party took the Missiriyae's statement seriously or tried to capitalize on the statement to find out if they were serious about selling their access rights to the Ngok-Dinka. This statement is the first time that the Missiriyae made an offer resembling some form of a trade-off – accepting not to challenge the verdict of the AATA while at the same time asking whether the president might compensate the Missiriyae people.

**Source:** *Saeed Abdalbasit, unpublished, (2009:1), "Green Crescent Initiative for Peace Building: An attempt at short, medium and longer-term solution recognizing Abyei Arbitration Tribunal Award"*

On 4 October 2009, the Missiriyae convened a meeting in which they changed their former stance of not challenging the AATA to a more confrontational position. Specifically, they argued that the Missiriyae were on the GOS's side, but they held the NCP responsible for the PCA outcome. They went on to declare that they unanimously rejected the AATA because it deprived them of 26 villages to the benefit of the Ngok-Dinka. They also unanimously rejected any attempts by any other authority to demarcate the Abyei territory boundaries prior to 1 January 1956. Finally, they declared that they were going to form a military body.

**Textbox-4: The Missiriyae's framed position on the PCA award, 10 weeks later**

Ten weeks after the AATA was rendered, on 4 October 2009, the Misiriyae (including the Humr-A'jaira, Falaita', and Zurg) held a one-day tribal conference in Sittaib town. Two thousand representatives congregated from the localities of Lagawa, Kailak, al-Salam, Babanusa, and Abyei.

The conference was chaired by Hamady al-Dudu, the deputy Ameer for the Imara of Awlad-Kamil and Mazaghnae clans. Three papers were presented: (1) on ..., by ...; (2) on ..., by Salman Mohammed Salman (a lawyer); and (3) a paper by ad-Dudu Hurgasse on behalf of the Popular Defense Forces (PDF).

Mukhtar Babo Nimer, Ameer of the Awlad-Kamil and Mazaghnae (A'jaira) clans, also addressed the tribal conference. His main points were that the Misiriyae could not accept to lose both in time of war and in time of peace, especially since they fought on the side of the GOS in Kordofan and continue to be on the side of the GOS. He called on the GOS to compensate the Missiriyae for its territorial losses, explaining, "We are not in a state of war with the Ngok-Dinka ... *All documents prove that the land is owned by the Misiriyae.* It has been stripped from us by the PCA."

The Missiriyae conference resulted in two key resolutions, which were handed to UN representative at the meeting, as follows:

- First, the Missiriyae unanimously rejected the AATA because it deprived the Missiriyae of 26 villages for the benefit of the Ngok-Dinka and the Missiriyae were not party to the PCA and never authorized anyone to speak on their behalf.
- Second, the Missiriyae unanimously rejected any attempts by any other authority to demarcate the Abyei territory, prior to demarcating the boundary between North and South as of 1 January 1956.

The Missiriyae indicated that they were committed to the 1 January 1956 boundary and called for a peaceful solution with the Ngok-Dinka, namely, that the Ngok-Dinka abandon the AATA. Nonetheless, the Missiriyae indicated that, while it would not resort to war unless forced to do so, it would form a military body. (Note that this is contrary to the CPA, which states that any such forces can exist only as allied groups to the SAF and/or the SPLA.)

The Missiriyae also indicated that it held the NCP responsible for PCA outcomes and that it planned to appeal the AATA at The Hague and at the Constitutional Court in Sudan. (Note that an appeal is not allowable at The Hague because the AATA is final and binding on GOS/NCP and GOSS/SPLM.)

# CHAPTER THREE: ANALYSIS AND CONCLUSIONS

## 3.1 Overall conclusions

The The deadlocked Abyei area conflict has arisen from the failure of the two Sudans to reach a durable settlement that can address the poverty, low human development situation, economic exclusion, and inequality in the region, as well as the prolonged effects of cyclical violence due to the spread of illegal arms among civilians. “Disagreement” has been the catch-word each time the two Sudans have met to deliberate on the Abyei issue since 1972, including after South Sudan’s independence in 2011. Presumably, this is why the Abyei area has suffered five decades of protracted violence, with no end in sight.

At the end of the CPA Interim Period, Sudan was one of the poorest countries of the world, with US \$50 billion in public external debt (85% of GDP). This has been coupled with approximately US \$40 billion in costs from US sanctions and boycotts perpetrated since 1997. Unsound fiscal management, aggravated by progressive proliferation of internal wars, has only exacerbated the economic situation over the past 10 years. Collectively, these factors have led to the state’s current political and economic bankruptcy.

In relation to the Abyei area conflict, the state has shown a recurring tendency not only to renege on fulfilling obligations in signed accords (including accords specifically dealing with the conflict) but also to defer opportunities to explore solutions to end the conflict. The GOS’s adoption of fragile state positions and inaction in spite of the AUHIP’s mediation efforts<sup>23</sup>) suggest a high risk that the situation might degenerate into open confrontation, not only locally between the Missiriyae and the Ngok-Dinka, but also between Sudan and South Sudan. If the situation in the Abyei region is not prompted addressed, the minor differences between the two ethnic groups may fester and grow, leading to a full-blown conflict.

The positions and behavior of national authorities in the two Sudans, as reflected in reports by the UNSC and AUHIP seem to be at the heart of the inability of the area to achieve a durable settlement. The text and spirit of the CPA protocols, particularly the Machakos Protocol of the agreement which contain key values and principles for good governance that have been neglected in

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<sup>23</sup> Specifically, the AUHIP reported,

Following the outbreak of fighting along the border between Sudan and South Sudan, . . . (the Peace and Security Council) convened a meeting . . . at which it adopted a communiqué incorporating a Roadmap for implementation by Sudan and South Sudan to ease the tension between the two countries, facilitate the resumption of negotiations on post-secession relations and outstanding issues in the . . . CPA, and assist in the normalization of relations between the two States. . . . The Roadmap was endorsed by the UN Security Council. . . . A number of outstanding issues between the two States remained unresolved. Subsequently, Council met . . . to consider reports of the AUHIP on progress made by the Parties . . . [W]ith the support of the Chair of IGAD, the AUHIP convened a Summit meeting between the Presidents of South Sudan and Sudan, . . . to address outstanding issues. This Summit agreed on the need for the expedited, unconditional and coordinated implementation of all elements of the 27 September 2012 Agreements. (AUHIP Mediation Report, Addis Ababa, 28 January, 2013: 1).

recent years, including the Abyei Protocol. These values need to be re-inserted into future discussions of the problem, in order to reach durable settlement.

Three types of factors contributed to failure to implement the Abyei Protocol:

- Firstly, natural resources-based factors: Over the years a conflict has arisen regarding who should control natural resources in the area, but a complicating matter is the determination of which natural resources should be addressed. From the vantage point of the Missiriyae, pasturelands and water in dry season are the key resources at stake, but from the vantage point of the central government, the key resource at stake are the oil reserves in the area.
- Secondly, political boundary factors: In particular, the government has failed to determine the Abyei area's administrative status once and for all. Even if this were determined, though, one must ask whether the situation would change as a practical matter. The local communities primarily herd livestock and pursue water resources and do not recognize political boundaries.
- Thirdly, political and ideological factors: These factors are centered around the Abyei area referendum, which has yet to be carried out. The government's failure to hold the referendum has created a hot spot of political contention about the identity of the people living in the region and has contributed to Sudan and South Sudan's conflicting claims of sovereignty. So long as this referendum remains unimplemented, a peaceful coexistence between the Missiriyae and the Ngok-Dinka will be difficult to attain.

Understanding these factors and how they relate to each other is essential to crafting a durable solution to the problems in the area. One could even argue that these factors correspond to the five phases of Abyei area conflict, as would be shown, instantly. Nonetheless, these issues have yet to attract concerns of the governing elite.

Three additional layers of the Abyei problem are associated with these three sets of factors. At the base is a layer of existential issues – generalized poverty and weak socioeconomic services, which result in low human development in the area (including, for example, water scarcity during dry season months and illiteracy). A second layer includes ideological claims based on the “fossils” of historical perceived identity concerns that differentiate the Missiriyae from the Ngok-Dinka. These include religion (Muslim versus non-Muslim), race/ethnicity (Arab versus non-Arab), and lifestyle (nomad versus settled). The stakeholders tasked with managing these diversities have unfortunately bought into these subjective stereotypes. For example, the ABCR states, “There is no shadow of doubt among the Missiriyae (A'jaira, Falaita and Zurug) that the Ngok-Dinka are Southern, Nilotic tribe, (our-Dinka = our a'beed), (who) should go home where they belong” (2005: 162). Focusing on these ideological stereotypes drives the repeated collapse of accords, contributing to the inability to reach any durable solution.

A third layer is overall government policy regarding the area, which has as of yet been primarily top down. The government's policies have revolved around resource exploitation and rent seeking, in alliance with multinational oil companies. This layer would actually be the easiest to resolve, since all that would be required would be a resource division between the two countries, and this has already been in place since the separation of South Sudan in 2011. Nonetheless, the countries must prioritize putting a stop to rent seeking, which has been characterized as “equitable resource sharing” between NCP and SPLM to secure financing for their operations. The CPA contained a number of relevant wealth sharing provisions that could address this problem, contained in the Wealth Sharing Protocol which was signed on 9 January 2005, as part of the agreement.

The longer the two governments delay negotiating a settlement of the Abyei area conflict and other internal wars, the more time bush leaders of current insurgencies in Blue Nile, Kordofan and Darfur have to consolidate alliances. For example, the Sudan Revolutionary Front (SRF), created between 2012 and 2013 under the leadership of SPLM-North Sudan is likely to increase its demands for resource sharing. In fact, the SRF is already trying to obtain control of 50% of surface and subterranean resources within the administrative boundaries of the countries' respective territories, instead of the 2% enshrined in the Abyei Protocol (but not delivered during the CPA Interim Period).

The contradictory statements in each country's national constitution about the status of the Abyei territory is a classic example of the current intractability of the parties. These conflicting claims show that the issue was not adequately addressed in interactions with AUHIP mediators and helps explain why the Abyei area has suffered from five decades of conflict without any durable settlement in sight, as well as why the two countries have failed to implement AUHIP resolutions on the area, (see footnote No.2). In short, the Abyei area conflict demonstrates a lack of will by local and national stakeholders to address key issues. Instead, they have allowed minor differences between the two Sudans to fester and grow due to the mistrust and political ill will that has grown out of the countries' contradictory positions and non-implementation of signed accords.

## 3.2 Specific blunders

One primary mistake the two Sudans made was to behave contrary to the commitments they made in the CPA protocols. For example the Machakos Protocol (one of the six protocols) says, "[T]he 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. . . ." Yet South Sudan ignored this agreement to resolve the conflict "justly and sustainably" by unilaterally annexing the Abyei area to its territory in its constitution, as follows:

The territory of the Republic of South Sudan comprises all lands and air space that constituted the three former Southern Provinces . . . as they stood on January 1, 1956 . . . and the Abyei area, the territory of the nine Ngok Dinka chiefdoms transferred from Bahr al Ghazal Province to Kordofan Province in 1905 as defined by the Abyei area Arbitration Tribunal Award of July 2009. (Constitution of The Republic of South Sudan, 2011: clause 1.2)

This is just one example showing non-compliance by South Sudan to the terms and conditions they willfully signed.

Surprisingly, the GOS has not issued any official statement of objection in principle to this stipulation, although the president of Sudan rejected it in an oral statement on 27 April 2011. The president also threatened to revoke Sudan's recognition of independence for South Sudan if it persisted in claiming ownership over the Abyei area. The GOS has not taken any further action since then. While non-objection does not constitute *de jure* admission of the sovereignty of South Sudan over the territory of Abyei area, it does mislead international and regional stakeholders. For example, AUHIP mediators and facilitators have not picked up on the contradictions in the two countries' constitutions, even though the GOS and the GOSS continue to take flatly opposing stances on the issue.

An example of GOS states, “The issue of land ownership is an issue of vested legal rights which is insusceptible to political compromise: i.e., no party can make any concessions with regard to such issue . . . [It] is a matter that shall be left for historians and experts, not facilitators or mediators” (GOS presentation to the ABC); while the GOSS has said, “[L]and is the most important thing for human beings”, (Deng Alor – GOSS senior delegate quoted in Johnson. 2011: . . .).<sup>24</sup> It remains to be seen whether the GOS will reconsider its negotiating position in the context of the AUHIP mediation process. An essential premise of mediation is the feasibility of political compromise, but the GOS holds that its land rights are not subject to compromise. If the GOS persists in this extreme position, and the GOSS hold equally to its stance, there will be no compromise, no agreement, and no durable settlement.

Hurried adoption of the Abyei Protocol also led to complications. The Protocol was a prematurely delivered document that merely served the political ends of the US drafters. The parties accepted the Protocol without questioning the wisdom behind some of the words and structure. This has led to conflicting interpretations of the text and, accordingly, an inability for the parties to implement it. The parties added a footnote expressly stating, “The Parties hereby declare to adopt these Principles as the basis for the resolution of Abyei Conflict.”<sup>25</sup> The parties would have been better served by taking the time to scrupulously evaluate their positions before making such a declaration.

Other errors also appear in the document itself. For example, one clause states, “The Missiriyae and other nomadic peoples retain their traditional rights to graze cattle and move across the territory of Abyei.” Yet the Missiriyae were not nomads in 2004 when the Abyei Protocol was adopted. Furthermore, there were no other cattle herding communities to justify allowing “other nomadic peoples” to also lay claim to the lands designated for the Ngok-Dinka. This clause crudely and dangerously conflates the classic definition of having a nomadic livelihood (constant household mobility with the herd, living off the herd products with no permanent dwelling place) with the reality since 1920 (partial settlement of cattle dependent “nomads” and the adoption of cash crop cultivation that has transformed the Missiriyae into partially settled agro-pastoralists).

In addition, defining the Missiriyae as nomads denies them the inalienable human right to unimpeded access to watering in the Ragaba-ez-Zarga, which is tantamount to infringement of the right to life, as the sandy-Goz areas where they come from during the dry season, are “waterless”, according to maps included in the ABCR. The Missiriyae’s partial settlement for six months each year in Ragaba-ez-Zarga should give them secondary rights of access “to graze (and water) cattle and move across the territory of Abyei” as well as primary rights to reside, own land for seasonal cultivation (which they pursued for 50 years before 1905), develop local markets for commodity exchange (livestock and crops), and invest, transact, and otherwise interact in the national economy.

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<sup>24</sup> Minister Deng Alor has been referenced in a conversation with Gratian as saying:

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 [not] free, is [not] 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.”

<sup>25</sup> This footnote was presented to the parties’ senior delegates on 19 March, 2004.

The Abyei Protocol ignored similarities between the Missiriyae and Ngok-Dinka's livelihoods, instead emphasizing differences between the Nilotics in the South and "others" in the North. Documents show that the Missiriyae and Ngok-Dinka were *both* pursuing both cultivation and cattle herding at the time of the Abyei Protocol, but contemporary stakeholders from South Sudan, preoccupied with sanctity to the text of Abyei Protocol and the PCA ruling, have insisted that the Missiriyae were just nomads. In doing so, they are ignoring the ABCR as a definitive report of the situation as it stood in 1905 (based on evidence collected by the ABC). The ABCR confirms the change of the Missiriyae's livelihood from the Mahdiya period (late 19th century) to the Anglo-Egyptian colonization period (through the 1920s).

Unfortunately, for the Missiriyae, it seems that the Sudan delegation to the ABC, which rejected wholesale the ABCR, did not recognize the report's conclusion about changes in the Missiriyae's livelihood as important for resolving the Abyei area conflict. The changes that took place after 1905 transformed the Missiriyae from nomadism to agro-pastoralism. The evidence is abundantly clear that classic nomadism could not characterize the Missiriyae after the early decades of the 20th century, when they began to engage in cotton cash-cropping in Southern Kordofan (including in Lagawa and Nyama). Textbox 4 sets forth additional documentary evidence of this position. Danforth's mischaracterization of the Missiriyae as nomads not only antagonized them against the entire peace process but also inspired them to take extreme positions against all subsequent initiatives. For example, the Missiriyae have not accepted any proposals for solutions since 2005 and have not presented any peace offers to other partners or actors (except one pseudo-initiative, which was ignored by NCP/SPLM in whereby they presented the suggestion to receive monetary compensation by the president of Sudan. Rather, the Missiriyae has become a key contributor to negative implementation outcomes.

In addition, the following mistakes cumulatively constitute a big blunder: first, is the mistake of the drafters - accepted by the parties - that the Abyei Protocol characterized the Abyei area as "a bridge between the north and the south, linking the people of Sudan"; second, is the change effected by NCP and SPLM from the original perception in the Abyei Protocol providing that the ABC should complete its work within the first two years of the CPA Interim Period. The two parties changed the timeframe to only six months. Third, the GOS and GOSS, accepted the provision, by the drafters, that the ABC members would determine the ABC's rules of procedure. Fourth, the parties accepted - without deeper scrutiny - the Protocol's provision that, "If . . . an agreed position by the two sides is not achieved, the experts will have the final say" (ibid.). The GOS also misinterpreted clauses of the Protocol that provided, "In determining their findings, the experts . . . shall consult . . . relevant sources . . . with a view to arriving at a decision that shall be based on scientific analysis and research," and that the ABC members would prepare the final report, and that this report would "be final and binding on the parties" (clause 14). These mistakes not only led the parties to diverging positions and contradictory interpretations on the text of the "Principles" but also resulted in chronic stalemate during negotiations, because they had not been put to careful examination when initially presented by Danforth et &.

### 3.3 How the lack of a referendum contributes to non-implementation

South Sudan's referendum on self-determination was to be conducted simultaneously with a referendum for the people of Abyei area. The people of the Abyei area were to be allowed to vote for either of two options, irrespective of the results of southern referendum, that is, (1) that Abyei retain its special administrative status in the north or (2) that Abyei be part of Bahr el-Ghazal (Warrap) in South Sudan. Ten years have now passed since the Abyei Protocol was signed, but no referendum has occurred. This referendum is a sticky issue because it relates to the definition of South Sudan's territories and sovereignties, cardinal principles of the CPA. At the same time, however, the referendum has also become non-implementable, due to differences over the definition of who should be considered a resident of Abyei for purposes of voting in the referendum. The PCA's ruling clearly includes all the Ngok-Dinka as eligible residents, but does not recognize the Missiriyae as residents. The SPLM and the GOSS accept this position, but the GOS argues that the Missiriyae should be included as eligible voters.

Ironically, the NCP argued for restricting the spatial definition of the Abyei area as much as possible in its addresses to both the ABC and the PCA. However, after the PCA reduced the Abyei area from 25,000 to 10,460 kilometers squared, the NCP turned full circle and demanded the application of an even broader definition for eligible voters of the Abyei area than the ABC had done when it defined the space of Abyei area. The NCP now wants to give voting rights to all the Misiriyae, based on their seasonal use of the southern pastures.

The Missiriyae population was 408,000 in 2008, according to a census in that year, which did not include the Abyei area. Subsequently, a 2010 complementary census of South Kordofan which also excluded the Abyei area, that had been demanded by SPLA-Chapter, determined that the population of southwest Kordofan was only 308,000. The Abyei area, not counted in 2008 and 2010, was informally estimated for the Ngok-Dinka population, by the author in May 2013, at a total figure of 125,000 persons.<sup>26</sup> If the Missiriyae were allowed to take part in the Abyei area referendum, approximately 200,000 Missiriyae voters and 64,000 Ngok-Dinka voters would participate. This 3:1 ratio would not only mean a landslide in favor of the Missiriyae, but also helps explain the NCP's change in position, demanding that all the Missiriyae eligible voters should participate. For the SPLM, the NCP's position not only contradicts earlier limitations the NCP had demanded for restricting the definition of the land area of Abyei territory, but also is inconsistent with the precedent established by the Southern Referendum Act, which did not give voting rights in the southern referendum to migrants who cross into South Sudan on seasonal basis.

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<sup>26</sup> This figure derives from the number of voters (64,000) who were eligible to participate in the unilateral plebiscite conducted by Ngok-Dinka. The number of children under 15 years is 45% of total population. The number of young adults (15-17 years old) is estimated at 3% of total population. Thus the total number of eligible voters (52%) among the Ngok-Dinka (64000) would be in a numeric disadvantage against an estimated 104000 would be eligible Missiriyae voters, hence a ratio of 2:1.

### 3.4 Missiriyae and Ngok-Dinka: Memory black-holes and framed logic

The history of the Abyei area is mired with “memory black holes.” Oral testimony is often based on folklore that may provides a selective view of what really happened and makes the type of scientific investigation demanded by the GOS and pursued by the ABC nearly impossible.<sup>27</sup> The evidentiary basis for resolving the dispute is oral histories of the Missiriyae and Ngok-Dinka, where illiteracy prevailed among more than 75% of the population at the height of hostilities between 1965 and 1994. The 60 to 90 year old narrators giving oral testimony could only share their personal views of the situation, based on their life experiences, blurred memories, and stories handed down through the generations. To make matters worse, the younger generations have grown up believing that the short-term memories of their elders justify the two communities persisting in pitting themselves against each other. These evidentiary difficulties shed light on why the two groups – not comprehending the national and global impact of their actions – have sought defense from their respective patrons. It is also no surprise that the ABCR observed that oral testimony of the two communities coincided with the official positions of their state-level patrons. In other words, the Missiriyae and Ngok-Dinka responses appear to have been framed.

The GOS confirmed these discrepancies in its final presentation to the ABC:

Some accounts were given of events long before and immediately prior to 1905, but details of actual events in 1905 were scanty . . . made reference to later periods . . . and drew inferences from these periods about the situation that pertained in 1905, (ABCR:10). Ngok and Missiriyae gave contradictory accounts, and there were no substantive areas of agreement, with the exception: no one denied that both the Missiriyae and Ngok had made use of the same territory in recent times. Where they differed was whether such use constituted “ownership” of Abyei area, (ABCR:ibid).

On the one hand, the Missiriyae asserted that the land from their northern permanent settlements to south of Bahr-al-Arab had been theirs for several centuries, and the Ngok-Dinka were only allowed to reside in the southern river area in recent times as “tenants.” On the other hand, the Ngok-Dinka (supported by the Twich, Rek and Rueng Dinka) argued that they were not mere tenants because they occupied the Bahr-al-Arab and Ragab ez-Zarga river areas before the Missiriyae arrived in the area. In addition, they asserted that they had permanent settlements on both sides of the Bahr-al-

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<sup>27</sup> The author is surprised that the Missiriyae who have testimony in the ABCR made statements of disdain, contempt, and condemnation about the educational level of the Ngok-Dinka, for example, that “the educated Ngok created the current dispute” (ABCR 2005: 31), that “[k]nowing the history of Abyei does not require education” (Oral testimony by Saeed Rahama Degam Azoza, quoted in *ibid.*: 87), and that for “the sons of Abyei, . . . their education is the problem” (Abdujali Bakar Ismael, quoted in *ibid.*: 92-93). The Missiriyae who testified to the ABC seemed to want the Ngok-Dinka to remain as illiterate as they had been 100 years earlier. Yet these statements also seem to show that the Missiriyae who testified to the ABC realize that education strengthens identity consciousness. The Missiriyae are, nonetheless only 20% literate, (Fifth National Census of Sudan, 2008).

Arab River both before and after 1905. Unfortunately, because there was no agreement in the oral testimony, it could not conclusively prove either side's position.<sup>28</sup>

Compared to the complexity of the respective positions of the high-level stakeholders, the positions of the two local communities', were tuned to the positions of their respective allies. Not surprisingly, the two groups' testimonies were not only weak and full of gaps, but were also of low value to the ABC because they followed the logic of their patrons. The ABC's terms of reference had specifically provided that the commission's members operate "with a view to arriving at a decision that shall be based on research and scientific analysis" (article 3.4), yet the ABCR explained,

Ambassador Dirdeiry (GOS Chief representative in ABC) concurred with the conclusion of the ABC experts that the oral testimony obtained from the field, in the main, reflected the official positions of the two parties and was of little help in establishing evidence that could enable the Commission in reaching firm conclusions (ABCR, *ibid*: 27).

In this context, scientific deduction could not generate objective solutions. Sadly, the GOS's statements conflated issues of the usefulness of requiring humans to scientifically deduce the true facts with issues of the political exigency in finding a solution.

### 3.5 Victims of intransigence or of a prematurely presented agreement?

In retrospect, while the Abyei Protocol did have antecedents as referenced in the 1972 AAPA, these references (which preceded the CPA by 33 years) did not in any way justify Danforth's hurried delivery of a premature document to resolve the situation. This document was presented to the deadlocked negotiating parties. It did not allow them other options for settlement. The author thinks that it presents a take it or leave it situation. The two parties to the CPA, under pressure from the major world powers, signed by first initials the Abyei Protocol hastily on 26 May 2004. To try to resolve the many shortcomings of the Protocol itself, the parties had to deliberate and sign too many additional accords. In the end, the Protocol's many shortcomings ultimately led to its failure in the third year of implementation.

At the time the Protocol was presented, relations between the US and Sudan were at an all-time low. As is also the case today, Sudan suffered from boycott and economic sanctions that had been perpetrated by the United States since 1997. Hence, the Abyei Protocol was not an innocent, neutral document. Rather, it was an instrument of pressure used by the forceful to bully the weak. The Protocol was accepted under duress and was therefore a coerced accord within the CPA.

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<sup>28</sup> Importantly, the ABCR does not discuss how either the Missiriya or Ngok-Dinka define and use the concept of ownership in relation to land. Neither group has a conceptualization of private property ("land ownership") different from "cattle ownership." Both groups follow a principle of communal ownership: the primary authority to buy and sell livestock resides with the senior head of the nuclear family but is exercised in consultation with other adult family members (male and female).

Furthermore, instead of charting a path for solving challenges faced by the two local communities in Abyei area, the Protocol addressed general concerns at the level of the GOS and the SPLM. The Protocol ultimately set forth not just “Principles,” but also commands for creating a complex governance structure for the Abyei area (which only constituted 0.0042 of 1% of Sudan’s total area at the time). The Protocol dealt with macro-level financial management, geographic boundary delimitation and demarcation, and security arrangements, but only minimally addressed the heart of the matter – reconciliation in the Abyei area. In fact, the Protocol served the opposite purpose by setting forth extreme stipulations depriving the Missiriyae of residency status and participation in Abyei area referendum and limiting the group’s rights of access to resources only to the ability to “graze cattle and move across the territory of Abyei” (article 1, cl.1.1.3). These provisions offended the collective consciousness of the Missiriyae and challenge Sudan’s ability to care for and protect its citizens.

The Abyei Protocol was not a carefully crafted document. It appears to have been drafted hastily by US Special Envoy Senator John Danforth and his colleagues, to catch up with the process of negotiations in Niavash-Kenya. The rushed drafting of the Protocol is amply evidenced by the multiplicity of further accords that followed its adoption. These annexes were needed to fill gaps and make up for oversights during the drafting phase. In spite of the document’s inherent deficiencies, however, it was presented to the two parties as a “take it or leave it” measure that they could hardly reject in the context of the Niavasha situation and pressure from the international community. Accordingly, the Abyei Protocol was instantly adopted “in principle” as presented on 19 April 2004.

Furthermore, as previously noted, the Abyei Protocol inaccurately described the Abyei area as a bridge between the north and the south. It had already been described as a buffer during the Anglo-Egyptian colonization period. In 1948, Howell called the area an “excellent buffer between the North and the South,” explaining,

My own view . . . is that the Ngok must fling in with the North. . . . The Homr regard them as “our Dinka” with slightly superior and conceited attitude of patronage . . . of the old tradition of slavery . . . . Hence the Ngok provide an excellent buffer between the North and the South and in my own view should remain so. (1948: 26-27, quoted in ABCR 2005: 185)

This vision of the Abyei area as a bridge was a 1970s metaphor crafted by Nimairi’s governing elite to ideologically justify postulates in the defunct 1972 AAPA. Nevertheless, this assumption has been utterly defeated, since the country has separated into two separate countries. The metaphor was merely a fallacy by well-wishers; local cyclical violence never disappeared, either after the signing of the ill-fated 1972 agreement nor after the consummation of the Abyei Protocol in 2005. From the time of the British administrators (1948) to the post-colonial governing elite (2005), the role of the area in the north-south conflict has little changed.

Other assumptions made by the GOS also proved to be false, for example that “residents of the area are agreed to be citizens of both the North and the South” and that “Abyei shall have representation in the legislatures of both Southern Kordofan and Bahr-al-Ghazal” (GOS presentation to the ABC). All these perceptions form part of the tragedy that Sudan itself helped to perpetuate.

## 3.6 Concluding remarks

The author has studied the Abyei Protocol and the ABCR in order to better understand the factors that contributed to the Protocol's failure. These documents are treasures that contain a wealth of historical material for a variety of thematic analyses that young researchers today could undertake. The ABCR helps explain why implementation of the Abyei Protocol stalemated and finally died by the end date of the CPA.

To ask the right questions about the issue, however, "wrong questions," such as who arrived first in the area, must be let lie. Notably, Nilotic communities generally lived in the tributaries of the upper Nile valley long before nomadic groups arrived from beyond the River Tchad Basin. The Missiriyae's prolonged use of land in the area, even if seasonal, must have constituted a valid claim to Ragaba-ez-Zarga. In addition, cattle herding groups of Nilotic origin, had had been straddling Bahr-al-Arab long before ethnic groups of Arab origin reached southwest Kordofan, in the mid-18th century. From colonial documentary evidence, although not mentioning the process of Rizeigat occupation and enslavement of people in Abyei area, the ABCR has determined that the Humr could not have reached Bahr-al-Arab with their herds prior to 1916, thus eliminating the possibility of reaching Bahr-al-Arab even during the 18th century. Rather, they likely arrived to the area during the First World War, between 1914 and 1918.

The ABC presented an excellent and compact report, and although the GOS rejected it, it is the best collection of evidence on the Abyei area history. However, the report has a critical weakness in that it describes the Missiriyae as not residing in Ragaba-ez-Zarga. The ABCR set forth this conclusion in spite of the fact that the evidence the ABC compiled (both oral and documentary) showed that the Missiriyae had lived in the area for six months out of every dry season since 1744, when they established first contact with the Ngok-Dinka (who were already in the area).

In summary, the ABCR reached an unreasonable conclusion. The ABC did not challenge the text of Abyei Protocol in the same methodical manner that it challenged the mistakes of travelers who misapprehended and mistook for the Bahr-al-Arab River the Ragaba-ez-Zarga when they arrived at it. The ABC not only perpetuated the mistakes of the drafters of Abyei Protocol, but also created more complications for Sudan rather than assisting the north and the south in finding solutions for their problems. The ABCR denied the Missiriyae the right to residence, the right to own agricultural land, and the right to invest in Ragaba-ez-Zarga, in spite of evidence supporting the Missiriyae's practice of living, cultivating crops, and herding livestock there for 160 consecutive years, (1744-1905). The PCA continued this error.

This leads to an important question: How could the ABC and the PCA expect a responsible government (even that of a "pariah state" as Sudan was then characterized) to accept that the only area in which its people, the Missiriyae, had access to water in the dry season would be annexed to a successor state (South Sudan) when the Ngok-Dinka voted (by a 1% probability) to join the GOSS? Even the maps used as evidence in the ABCR showed the designated "Shared Area" as persistently waterless in the dry season. This is not only a case of the denial of the basic human right to water but also shows why the stiff positions of the two Sudans could not be softened in order to implement the PCA ruling, why the Abyei Protocol died during the CPA Interim Period, and why negotiations continue to stall. Before the countries will move past this deadlock, South Sudan needs to do two things: First, it must abdicate on annexing Abyei area as stipulated in its constitution. Second, it must compromise and accede to the AUHIP proposition (no. 6 of 2010) that gives the Missiriyae one third

of the PCA determined area (that is, the area of Ragaba-ez-Zarga). If South Sudan could initiate a compromising stance on this issue, the GOS might return with a compromise to swap an equal area of surface resources, possibly in Block-2 (Heglig).<sup>29</sup>

There is no quick fix solution to the complex issues surrounding the Abyei area conflict, so long as the key actors continue to dwell on surface issues rather than addressing the undermost roots of the problem of underdevelopment. The two fragile states – both economically and politically bankrupt – are unable to provide the huge financial resources required for development. Consequently, the governing elite in both countries tend to divert their constituencies from directly pertinent solutions that relate to enhancing the livelihoods of the two communities. Instead, the elite focus on ideological causes for the dispute, such as sovereignty and security concerns related to a 1956 boundary line that is totally insignificant to the Missiriyae and Ngok-Dinka themselves. By continuing to conflate ethnic and territorial dimensions, the governing elites sustain the two communities' structural dependence on the NCP/SAF and SPLM/A, as well as justifying continued resort to violence in the area. The perpetuation of such divisive ideologies thwarts the parties reaching and honoring agreements about the dispute and preserves the status quo situation of “no war, not peace.” In addition, by deferring solutions to critical local conflict, insurgent leaders have time to develop strategies to increase their demands in all the war-ridden parts of the country, including Blue Nile, Kordofan, and Darfur. This explains in large part why the Abyei Protocol died at the end of the CPA Interim Period, and subsequent attempts at agreement have stifled.<sup>30</sup>

Two additional points bear mentioning: First, the Abyei area conflict has resulted in a significant loss of human life and livestock, which has further deepened and widened poverty among the local communities and increased dependency on relief handouts since the mid-1980s. As a result, the two communities have become structurally constrained in their decision-making by their respective patrons, upon whom they rely for security. This military and political patronage has perpetuated stereotypes and led to conflicting policy positions by the two communities. Second, at the country level, where intransigence has become a trademark of inharmonious negotiating positions, AUHIP mediators have relegated the Abyei area conflict to just another border dispute between two states, governed by the 1964 OAU declaration that “...all Member States pledge themselves to respect the borders existing on their achievement of national independence ...”, (Resolution AHG/RES.16 (1) on border disputes between African states, Cairo, Egypt, July 1964<sup>31</sup>).

Stakeholders at all levels of the Abyei area conflict have made blunders that have brought implementation to a standstill. Given the depreciating political importance of the Protocol, it seems that a similar experiment is unlikely to create genuine peace unless interlocutors of the two Sudans

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<sup>29</sup> Subterranean oil resources may not cause a hurdle here as they are determined by longitude and latitude, according to the PCA ruling:

<sup>30</sup> The AUHIP's 2013 report also demonstrates the demise of the Abyei Protocol, as it does not refer to the text of the Protocol.

<sup>31</sup> The OAU which was created in May 1963, sought to protect Africa's newly independent states by declaring their colonial boundaries inviolable and forbidding interference in their internal affairs. This led to serious violations of human rights being ignored in some African countries. With the end of the Cold War by 1990, civil conflicts increased on the continent. A genocide in Rwanda in 1994 resulted in about 800,000 deaths. The United Nations (UN) sometimes ignored its responsibilities to keep the peace in Africa, and the OAU often lacked the capacity and resources for peacekeeping interventions.

revitalize the values espoused in the CPA. In particular, stakeholders need to take three things into account with regard to the Abyei area conflict:

- first, securing the safety of the Ngok-Dinka in the context of the stipulated special administrative status in which the Missiriyae are redefined as eligible citizens with rights to live, invest and own land in Abyei area;
- second, securing equitable resource access-rights, including unrestricted movement and grazing of livestock for the Missiriyae; and
- third, providing for (i) funding support and financial benefits to the local populations by both governments, the international community and oil companies; (ii) collaboration between the Ngok-Dinka and Missiriyae to accommodate their ethnic differences; and (iii) proper long-term management (by the governments and beneficiary oil companies) of the negative impact of oil development, including watershed issues, pollution, transportation, and militarization.

In doing this, local and national stakeholders in the two Sudans need to remember that accepting an international accord and then renegeing on it is counterproductive and results in mistrust on both sides. In addition, they need to recognize that the AATA of 2009 is a final and binding legal verdict tendered by the PCA and which both parties accepted and pledged to implement. The sooner this verdict is honored and realized, the better. Finally and perhaps most importantly, the stakeholders need to realize that Sudan and South Sudan are linked by immutable facts of geography and history. There is no viable alternative except for them to affirm their ties and develop cooperative relations with each other in the economic, social, political, and security spheres. Part of doing this is to show a willingness to compromise to reach agreements, and then honor those agreements. This alone will establish an appropriate basis for harmonious bilateral relations.

Ultimately, the UNSC (chapters VI and VII) and the AU should not allow parties to dishonor (by chance or design) decisions made by competent international legal platforms. After five years of delay by local and national stakeholders in the two Sudans, it is high time for international actors to concertedly and forcefully urge the parties to comply with and implement their signed accords as well as the AATA.

The Abyei area conflict has become a classic case of indifference and inaction by local, national, and international stakeholders in implementing international agreements and decisions. On the one hand, the premature presentation of the Abyei Protocol by Danworth resulted in an agreement that was problematic at its inception and only became more troublesome as it was interpreted over the years. On the other hand, the NCP and SPLM contributed to the inability of the Protocol to lead to any lasting solution by engaging in tactics to thwart those charged with honestly and neutrally assessing the situation. In short, the current stalemate has resulted both from premature presentation by the drafters and the intransigence of the parties in compliance.

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ISSN 1890-7059  
ISBN 978-82-8062-513-7

This report is the result of deskwork review of two major documents, signed in 2005 on Abyei area conflict, in order to expose factors that contributed to non-implementation of Abyei Protocol and the rejection, by the Sudan government, of the Abyei Boundaries Commission Report. The main argument is that the Abyei area conflict which presents a landmark of government failure to manage socio-cultural diversity in Sudan, has been generated over the ages by a complex array of overlapping historical, economic, ethnic/social, and territorial factors that have not been sufficiently addressed to date by local, national, or international actors. The conflict presents a number of issues that are still in need of careful treatment to avoid risking a return to war in the region, including: land possession and ownership, especially as it relates to shared surface resources such as pasturelands and water; the demarcation of a territorial border between the two Sudans, also linked to sovereignty claims; as well as claims to subterranean resources, such as oil and natural gas. The attitudes of the two communities, instilled by the different phases of Abyei area conflict, shaped the behavior of people: creating a constant need for patron-to-client protection, creating ethnicity-driven ideologies for self-defense, and in the end, creating fundamental rifts between the two ethnic groups.

The programme Assisting Regional Universities in Sudan and South Sudan (ARUSS) aims to build academic bridges between Sudan and South Sudan. The overall objective is to enhance the quality and relevance of teaching and research in regional universities.

As part of the program, research is carried out on a number of topics which are deemed important for lasting peace and development within and between the two countries. Efforts are also made to influence policy debates and improve the basis for decision making in both countries as well as among international actors. ARUSS is supported by the Norwegian Ministry of Foreign Affairs.