

Abyei Final Status: A Trajectory of Broken Commitments

Abyei: Between the Two Sudans, 2020

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1. Introduction:

Abyei is one of the issues that dominated the quality of relations between Sudan and South Sudan since the independence of Sudan in 1956 and it continues to do the same after the independence of South Sudan. The transfer of the Ngok Dinka by the British colonial administration in 1905 from Southern Sudan to Northern Sudan with the good intention of protecting them from the slave raids by the Arab nomads has turned into misery and suffering that will continue to haunt the Ngok Dinka of Abyei. The history of Abyei shows the pivotal role played by Abyei in the relations between the North and South Sudan.

Abyei has been described as a bridge between the northern and southern Sudan and the people of Abyei do despise now such description. One traditional leader of Ngok Dinka once told me that this narrative of Abyei as a bridge has lost its meaning as the bridge has been broken by repetitive history of dishonoring the political rights of the Ngok Dinka. Despite its potential role as a threat that stitches Sudan and South Sudan, Abyei is increasingly been perceived as a “dagger” in the current South Sudan-Sudan relations. This Chapter aims at providing an account of the trajectory of impasses and dishonoring of the political commitments aimed at resolving the final administrative status of Abyei area.

2. The Genesis and Trajectory of Broken Commitments:

The genesis of the trajectory of dishonoring the commitment to return the Ngok Dinka of Abyei to Southern Sudan can be traced to the period of the Anglo – Egyptian rule. Despite the fact that the Ngok Dinka, under the influence of their Chief Deng Majok, decided in 1951 to be part of administration in northern Sudan, they were reserved the right to withdraw from northern administration and to return to southern administration after five (5) years. Despite the disappointment of Chief Deng Majok of mistreatment of his people by the northern administration and the efforts by some elites of Ngok Dinka to exercise the right to return back to Southern Sudan before the independence of Sudan in 1956, the Anglo – Egyptian regime ended its rule hurriedly without acting on such rights of the people of Abyei area.

During the negotiations of the Addis Ababa Agreement in 1972 and in recognition of the role the people of Abyei played during the first civil war, the status of Abyei and its return to the administration of southern Sudan was discussed and resulted in sharp difference that threatened the conclusion of the peace agreement. At last a compromise was reached by expanding the definition of the territory of Southern Sudan as provided for in Article 3 (iii) of the Addis Ababa Peace Agreement 1972 to be: “the Provinces of Bahr El Ghazal, Equatoria and Upper Nile in

accordance with their boundaries as they stood on January 1, 1956, and any other areas that were culturally and geographically a part of Southern Complex as may be decided by a referendum.”

Similar to its contribution to the imposition of the ‘closed districts’ policy of 1922, and development of the ‘Southern Policy’ in 1930, Abyei has undoubtedly contributed to the redefinition of the territory of South Sudan to include not only the Ngok Dinka of Abyei but also other ethnic groups that were annexed to northern Sudan before the independence of Sudan in 1956. Although, the Addis Ababa Accord did not specify which areas were ‘culturally and geographically’ part of the ‘Southern complex’ nor did it provide a mechanism for identifying such areas, the Agreement provided a more encompassing political definition of Southern Sudan. In fact this new definition of the territory of Southern Sudan would have allowed the political elites in Southern Sudan to claim all areas such as Nuba Mountains and Blue Nile that were included in “the Closed Districts” Policy of 1922.

Despite the repetitive demands by the people of Abyei to decide the final administrative status of their area through the exercise of referendum as provided for in the Addis Ababa Peace Agreement, the Government of Sudan dishonored its commitment in the Agreement by denying the conduct of the referendum. Also the politics of the ruling elites in the Southern Regional Government that was so dependent on gaining allegiance from the ruling northern elites in Khartoum contributed as well in failure of the conduct of referendum for the people of Abyei. Despite the overwhelming and consistent demand by the Southern regional parliament for the conduct of Abyei referendum, various leaders of Southern Regional government were unable to raise the Abyei referendum with Khartoum and that contributed among other factors to the eruption of the second civil war in 1983.

3. Post-Addis Ababa Agreement: A new wave of broken promises

The second civil war that erupted in the early 1983 was largely caused by the failure of the northern ruling elites to implement the Addis Ababa Agreement; particularly the referendum for the people of Abyei where the second civil war started in 1981. Since the eruption of the second civil war, there were many agreements and declarations on the resolution of the conflict in Sudan concluded between and among the opposition groups on the one hand and between individual opposition group and the government of Sudan on the other hand about. These subsequent agreements and declarations provide an account of how the commitment in resolving the final status of Abyei in the Addis Ababa Agreement was neglected and undermined.

The Torit Resolutions in 1991:

The SPLM had been consistent in pursuing its political vision of establishing the New Sudan that is secular, democratic and united as articulated in its Manifesto of 1983. While this vision of the New Sudan was an attempt to address the root causes of conflict in the Sudan, it did not explicitly address the issue of Abyei, as the people of Abyei would like their area to be returned back to Southern Sudan regardless of whether Sudan is united or separated. This political agenda of the New Sudan was challenged when Dr Riek Machar and Dr Lam Akol broke out from the SPLM in August of 1991 and retreated to the agenda of self-determination for the people of Southern Sudan that was defined narrowly as per the boundaries of 1st January 1956. This was the beginning of

how the Southern elites failed to build on what had been achieved in the Addis Ababa Peace Agreement.

In reaction to the new political agenda of the SPLM splinter group of Dr. Riek and Dr Lam, the SPLM Political Military High Command met in Torit in September 1991 and decided in its Resolution 3.2 that: “in any future peace initiatives and talks, the position of the SPLM/A on the system of government shall be based on resolving the war through a united secular democratic Sudan, confederation, association of sovereign states or self-determination”.

This resolution; particularly the inclusion of the option of self-determination, was seen that the political project of the unified “New Sudan” was abandoned by the SPLM. However, the SPLM provided various options for managing diversity in the Sudan and the right of self-determination was not restricted to the people of South Sudan but to all the people of Sudan.

The Frankfurt Agreement, 1992:

In order to sharpen the division within the SPLM and to win over the SPLM splinter group, the government of Sudan of the National Islamic Front (NIF) initiated a meeting with Dr Lam Akol in Frankfurt in January 1992. This meeting resulted in a short agreement to be known as the “Frankfurt Agreement or Declaration” with far reaching political consequences. Specifically the Agreement stated that: “the people of the South shall exercise their right to freely choose the political and constitutional status that accords with their national aspirations, without ruling out any option.”

Although the Agreement did not state it explicitly the right of self-determination and secession for the people of Southern Sudan, it marked a critical political shift in the history of Sudan. It was for the first time that the northern ruling elites in Khartoum to recognize the right of self-determination for the people of Southern Sudan.

On the basis of the Frankfurt Agreement, the US administration initiated a meeting in Washington in October in 1993 between Dr. John Garang and Dr Riek Machar with the aim of unifying the various factions of the SPLM. Although this meeting did not succeed in unifying the SPLM, Dr John Garang and Dr Riek Machar signed separate statements that included a reference to the right of self-determination for Southern Sudan as the only way for bringing peace in the Sudan. The fact that Dr John Garang, the chairman of the SPLM, signed a statement that recognized the right of self-determination for the people of Southern Sudan and with no reference to the people of Abyei, Nuba Mountains and Blue Nile indicated that the SPLM had been lured to the narrow agenda of limited definition of Southern Sudan of 1956 and raised serious concerns about the commitment of the SPLM to its political project of the “New Sudan”.

The SPLM Chukudum Resolutions, 1994:

In order to have a clear, collective and unified political direction and to clarify its signed statement in Washington in 1993 and its resolutions in Torit in 1991, the SPLM convened its first national convention in Chukudum in April 1994. The Convention was attended by representatives from all liberated areas in the former three regions of Southern Sudan, Southern Kordofan, Southern Blue

Nile and the diaspora. In its Resolution 1, the Convention defined the New Sudan to consist of Bahr el Ghazal, Upper Nile, Equatoria, Southern Kordofan and Blue Nile. The Convention resolved to consider Abyei as part and parcel of Bahr el Ghazal region, the region from which Abyei was carved out in 1905. The Convention also resolved the right of self-determination not be restricted to the people of Southern Sudan but to all the oppressed people of the New Sudan as spelled in its Resolution 12.5.0 that states: “The National Convention also resolves that the Interim Period for such an Interim Arrangement shall not exceed two (2) years after which a referendum of self-determination shall be held to ascertain the wishes of the oppressed people of the New Sudan”.

With these resolutions of its National Convention, the SPLM did not only return Abyei area to Bahr el Ghazal region but it had adopted the expanded definition of the territory of Southern Sudan as provided for in the Addis Ababa Peace Agreement, 1972. However, with these resolutions, the SPLM was seen to be influenced by the Frankfurt Agreement and to have retreated from its initial political project of the “New Sudan” that included the entire Sudan. For the people of Abyei, the resolution of the SPLM National Convention of annexing Abyei area to Bahr el Ghazal was a major watershed in having clear political stance for resolving the final status of their area.

The IGAD Declaration of Principles, 1994

With the failure of peace talks between the Sudanese warring parties that were mediated by the Nigerian government in 1994, IGAD, on the basis of the principle of subsidiarity, took over the Sudan peace mediation as the regional organization that is closest to the crisis. In an attempt to resolving conflict in the Sudan, IGAD prepared in July 1994 a draft Declaration of Principles to guide the Sudan peace negotiations. In particular, Principle 2 of the Declaration stated clearly that: “The rights of self-determination of the people of South Sudan to determine their future status through a referendum must be affirmed.”

Although the government of Sudan initially rejected this IGAD Declaration and then accepted it later in 1997, the SPLM accepted this Declaration as basis for negotiating with the government of Sudan. The IGAD Declaration was also endorsed by the July 1994 Cairo Agreement concluded by the SPLM and Democratic Union Party (DUP). This made DUP to be the first Northern Sudanese party to accept the right of self-determination for the people of Southern Sudan (Salman, 2013). The fact that the SPLM accepted the IGAD Declaration without a clear reference to the special conflicts of Abyei, Nuba Mountains and Southern Blue Nile sent a negative signal of the fate of the New Sudan political agenda.

The Chukudum Agreement, December 1994

With DUP becoming closer to the SPLM after signing the Cairo Agreement, its political rivalry, the Umma Party, initiated negotiation with the SPLM as a way to politically outwit the DUP (ibid). This negotiation took place in Chukudum in the SPLM liberated areas in Southern Sudan and resulted in signing in December 1994 the “Chukudum Agreement”. Specifically, Article 3 of the Agreement states that the parties: “affirm their acceptance of the right of self-determination for the citizens of Southern Sudan, provided that such right to be exercised through free referendum to be monitored by international community.”

However, the parties recognize in Article 4 of the Agreement their disagreement on the exercise of such right of self-determination by the people of Abyei, Nuba Mountain and Ingassana Hills. While the SPLM in Article 4.1 of the Agreement demands such right of self-determination to be exercised by the people of Abyei, Nuba Mountains and Ingassana Hills, the Umma Party in Article 4.2. of the Agreement rejects the right of self-determination for Nuba Mountain, Abyei area and Ingassana Hills that are considered to be outside Southern Sudan. This position of the Umma Party contradicts the provision of Article 2 of the Agreement that affirms the right of self-determination as a basic right for peoples and nations.

Although the SPLM maintained strong position of such right of self-determination to be exercised by the people of Abyei area, Nuba Mountains and Ingassana Hills, there was a feeling of betrayal among the Abyei elites in the SPLM. Unlike other agreements and declarations, this Agreement was unique in explicitly excluding Abyei area in the definition of Southern Sudan. In their meeting with General Salva Kiir who signed the Agreement on behalf of the SPLM, the delegation of Abyei elites that included myself expressed their dissatisfaction with the Chukudum Agreement as the SPLM was expected to at least defend the definition of Southern Sudan as agreed upon in the Addis Ababa Agreement of 1972. The argument of the Umma Party that Abyei area falls outside the territory of Southern Sudan is based on the boundaries of 01/01/1956 that was adjusted in the Addis Ababa Agreement to include any other areas that were culturally and geographically a part of Southern Complex as may be decided by a referendum.

After the signing of the Chukudum Agreement, Mr Deng Alor organized in December 1994 a meeting in his house in Nairobi between Bona Malual accompanied by Ambrose Riny Thiik and some Abyei elites including myself present in Nairobi. In defending the Agreement that he brokered, Bona Malual tried to explain that the issue of Abyei has not been left out and it would be resolved at later stage. Bona Malual was blamed in the meeting for leaving Abyei out in the definition of the territory of Southern Sudan. Such blame was based on the fact that the elites of Abyei area looked up to Bona Malual as one of their leaders and sons of the area not only because his community, Kuac, is historically curved out from Abyei area but also because of his special relations with Dr Francis Deng and Dr Zacharia Bol. However, his recent statement that Abyei is unequivocally part of Sudan as per 1/1/1956 boundaries and his reiteration of the position of his political party, the Southern Front, that defined Southern Sudan in 1964 as per 1/1/1956 boundaries clearly reveal that Bona Malual still stands by the position of his political party in 1964.

Asmara Declaration, June 1995

It is argued that as the SPLM secured the acceptance of the right of self-determination for the people of Southern Sudan from the main leading Northern political parties, it worked to commit DUP and the Umma Party to sign one agreement (ibid). This resulted in the signing of the “Asmara Declaration” on 23rd June 1995 by all members of the National Democratic Alliance including DUP, Umma Party, the SPLM, Alliance of Sudanese African Parties, the Communist Party, the Legitimate Leadership, Trade Unions, Benja Conference and the Sudanese Alliance Forces.

Unlike other agreements and declarations, the Asmara Declaration provided a holistic approach in addressing the conflict in the Sudan. Besides recognizing the right of self-determination as the

basis for addressing the root causes of conflict in the Sudan, the Declaration recognizes the exercise of such right by the people of Southern Sudan, within the 1956 boundaries but to ascertain the views of people in the other war affected areas of Abyei, Nuba Mountains and Ingasana through referendum about their future political and administrative status.

Despite its definition of Southern Sudan within the 1956 boundaries, the Declaration provides comprehensive provisions for resolving the conflict in Abyei area and corrected the omission of Abyei, Nuba Mountains and Ingasana in the Chukudum Agreement. Specifically, Paragraph 5 of the Declaration states that: “Ascertaining the views of the people of Abyei area regarding their desire to remain within the administrative boundaries of Southern Kordofan state or to become part of Bahr el Ghazal region will be done through a referendum to be organized during the transition period, but before the South exercised its right of self-determination. If the result of the referendum showed the desire of the majority of the people of Abyei to become part of Bahr el Ghazal region, then they will exercise the right of self-determination as part of the people of Southern Sudan.”

In fact the SPLM succeeded to reflect in the Declaration most of the resolutions of its first national convention; particularly in addressing not only the conflict of Southern Sudan but also other conflicts in Abyei, Nuba Mountains and Ingasana. Although the Declaration was described as very optimistic and simplistic and guided by short-term aim of toppling the NIF government (ibid), this Declaration provided undoubtedly a solid basis for addressing the grievances of the people of the New Sudan.

The Khartoum and Fashoda Peace Agreements, 1997

With this considerable achievement by the SPLM in unifying all the Sudanese opposition groups under one umbrella of the NDA and guided by the Asmara Declaration to address the root causes of the conflict in the Sudan, the government of Sudan felt politically threatened and opted to look for political allies from Southern Sudan. It initiated peace negotiations with various Southern political groups such as the SPLM splinter group of Dr Riek Machar, the South Sudan United Democratic Salvation Front (UDSF), the Equatoria Defense Force (EDF), and the South Sudan Independents Group and concluded on 21st April 1997 a peace agreement known as the “Khartoum Peace Agreement.” Also the Fashoda Peace Agreement that was signed on 20th September 1997 by the government of Sudan and SPLM splinter group led by Dr Lam Akol endorsed the Khartoum Peace Agreement with minor amendments and additions.

This Agreement defines Southern Sudan as “Southern States”, the ten Southern states arising from the former provinces of Bahr el Ghazal, Equatoria and Upper Nile with their boundaries as stood on 1st January 1956. The Agreement also affirms that the people of South Sudan shall exercise the right of self-determination through a referendum. It is not surprising that the Agreement focuses mainly on addressing the grievances of the people of Southern Sudan. Despite its exclusion of Abyei area in its narrow definition of Southern Sudan, this Agreement recommends a conference to resolve the Abyei conflict instead of a referendum as agreed upon in the 1972 Addis Ababa Agreement. In particular, the General Principle 5 of the Agreement states that: “The problem of Abyei has been discussed and a final solution is referred to a conference on Abyei that will be convened in the area within the interim period.”

It is interesting how the mechanism for resolving the issue of Abyei was relegated in this Agreement to a vague conference to be held in the area. This Agreement is another example of how the political elites of South Sudan could have such a short memory to remember how the territory of Southern Sudan was defined in the 1972 Addis Ababa Peace Agreement. Given the leading role that the people of Abyei played in the second civil war, one would expect the Southern elites in this Agreement to retain at least what people of Abyei had achieved in the Addis Ababa Agreement in 1972. Although the two agreements were not implemented and a referendum for the people of Southern Sudan was not conducted, and the conference was not convened to resolve the final status of Abyei, the Southern elites who signed the two agreements showed clearly their readiness to compromise or even abandon the issue of Abyei.

The Machakos Protocol, 2002: The Abandonment of Abyei

With its successful political and diplomatic maneuver in convincing all Sudanese opposition groups in the Asmara Declaration to accept the right of self-determination as the effective way of resolving conflicts in the Sudan, the SPLM was well equipped to negotiate with the government of Sudan. Besides its political success, the SPLM was militarily strong and succeeded to reunite with its splinter group; South Sudan Defense Forces (SSDF) led by Dr Riek Machar, in January 2002.

Despite this enormous comparative advantage, the SPLM signed the “Machakos Protocol” with the government of Sudan on 20th July 2002 that affirms the right of self-determination for the people of Southern Sudan without any reference to conflicts in the Abyei area, Nuba Mountains and Ingasana Hills. Specifically, Article 1.2 of the Agreed Principles of the Protocol states that: “That the people of South Sudan have the right to self-determination, inter alia, through a referendum to determine their future status.”

Unlike the Khartoum Peace Agreement that was not taken seriously by the government of Sudan and international community, the Machakos Protocol was undoubtedly a serious turning point in the history of Sudan. The right of self-determination for the people of Southern Sudan was affirmed as a political right to be exercised through a referendum to be monitored by the international community. Despite its success in affirming the right of self-determination for the South, the Protocol has not only failed to recognize the conflicts in Abyei, Nuba Mountains and Southern Blue Nile but it also marked the abandonment of the New Sudan vision.

Similar to the Khartoum Peace Agreement, the Machakos Protocol fails to define South Sudan as provided for in the 1972 Addis Ababa Peace Agreement. For the people of Abyei, the Machakos Protocol was a betrayal and abandonment of the SPLM of their cause despite their enormous sacrifices in the second civil war. In fact the Khartoum Peace Agreement was even better than the Machakos Protocol as the issue of Abyei was at least discussed and a vague and weak mechanism for resolving it was provided. What angered more the people of Abyei, was that the Machakos Protocol was negotiated by the SPLM senior leaders of Bahr el Ghazal region (Gen. Salva Kiir, Nhial Deng and Deng Alor) and signed by Gen. Salva Kiir Mayardit; the lead negotiator of the SPLM.

4. The Abyei Protocol, 2004: The US Rescue Mission

After the signing of the Machakos Protocol and the exclusion of the issues related to other areas outside Southern Sudan, the government of Sudan was in a stronger position to resist any discussion and negotiation with the SPLM of the conflicts in Abyei, Nuba Mountains, Southern Blue Nile and Darfur. It was after serious pressure from the region and international community that the government of Sudan accepted to discuss the conflicts in the three areas but under the Kenyan mediation rather than under the IGAD mediation.

The discussion of the conflict in Abyei was one of the most difficult issues during the negotiation between the SPLM and the government of Sudan. While the government of Sudan claimed that Abyei is part of the northern Sudan, the SPLM argued for administrative decision to annex Abyei to the Bahr el Ghazal region where it was carved out by the colonial authorities. This argument of the SPLM was supported by the historical record that was provided by Douglas Johnson, a leading historian on Sudan and Southern Sudan, that clearly shows that the Ngok Dinka of Abyei were transferred in 1905 from Bahr el Ghazal province to Kordofan province as administrative measure to protect them of the slave raids of the Arab Misseriyya.

When the Security Arrangements Agreement was signed on 25th September 2003, Wealth Sharing Agreement on 7th January 2004 and then the Power Sharing Agreement was almost ready and about to be signed, the government of Sudan made it extremely impossible to conclude agreement with the SPLM on the three areas. Although the SPLM delayed the signing of the power sharing agreement until agreements were reached on the three areas, there was considerable pressure from some senior leaders of the SPLM on Dr John Garang, the leader of the SPLM and the SPLM lead negotiator, to conclude the peace agreement without the three areas and particularly Abyei area.

In order to unify the position of the SPLM on other conflicts in the three areas of Abyei, Southern Kordofan and Blue Nile. Dr John Garang called for a meeting of the leadership of the SPLM in Naivasha, Kenya. During this meeting some very senior leaders of the SPLM were very clear that Abyei should not be an obstacle to the peace in Southern Sudan; particularly after the right of self-determination was guaranteed for the South. Some of these leaders argued that the South should not be a hostage because of Abyei and that the peace agreement to be signed and then the issue of Abyei to be discussed and resolved at a later stage during the implementation of the peace agreement. However, Dr John Garang was clear that there would not be any peace agreement without Abyei, Nuba Mountains and Southern Blue Nile and convinced the meeting that the SPLM would not let down the people of the three areas.

With the impasse on Abyei that threatened the collapse of all protocols agreed upon by the SPLM and the government of Sudan, the US Special Envoy Senator John Danforth presented on the 19th March 2004 to the two parties a proposal entitled "Principles of Agreement on Abyei" with ultimatum to the parties of either to take it or leave it. The SPLM and the government of Sudan immediately adopted these Principles as the basis for the resolution of Abyei conflict that was signed on 26th May 2004. The most important principle is Principle 1.3 that states: "Simultaneously with the referendum for southern Sudan, the residents of Abyei will cast a separate ballot. The proposition voted on in the separate ballot will present the residents of Abyei

with the following choices, irrespective of the results of the southern referendum: (a) That Abyei retain its special administrative status in the north; (b) That Abyei be part of Bahr el Ghazal.”

Unlike Asmara Declaration that strategically put the timing of Abyei referendum to be before the conduct of Southern Sudan referendum, the US Proposal put the conduct of Abyei referendum to be at the same time of the conduct of Southern Sudan referendum. Other important aspect of these Principles is that Abyei area is defined as the area of the nine Ngok Dinka chiefdoms transferred to Kordofan Province in 1905. Also the Protocol provided for dual citizenship of the people of Abyei and an autonomous self-administration with special status. In a way the US Proposal on Abyei has succeeded to correct the serious omission in the Machakos Protocol that excluded Abyei area from the definition of the territory of Southern Sudan.

5. African Solutions to African Problems: Abyei as the litmus Test

Despite the signing of Abyei Protocol by the SPLM and the government of Sudan in 2005, its implementation proved to be the most difficult and it became one of the protocols of the CPA that has not been implemented. The government of Sudan rejected in July 2005 in one of the first meetings of the institution of the Presidency (President Bashir, First Vice President Dr. John Garang and Vice President Ali Osman) the final and binding report by the Abyei Boundaries Commission (ABC) that defines the area of Ngok Dinka transferred in 1905. Instead, the Sudan Armed Forces attacked and devastated Abyei area in 2008.

In an effort to save CPA and to maintain peace and stability after the invasion of Abyei in May 2008, President Bashir and President Salva signed on 8th June 2008 the Abyei Roadmap for the return of the displaced Ngok Dinka and implementation of Abyei Protocol. In this Roadmap, the SPLM as a signatory of the CPA and upon the request of the Government of Sudan accepted to take the matter of dispute over the report of ABC to the final and binding international arbitration. On 7th July 2008, the Government of Sudan and SPLM as signatories of the CPA signed the Arbitration Agreement on Delimiting (defining) the Abyei Area.

The Abyei Arbitration Tribunal under the facilitation of the Hague Permanent Court of Arbitration and after a process that took nine (9) months that involved the two Parties and almost the entire leaders of Ngok Dinka and Arab Misseriyia nomads passed its ruling on 22nd July 2009 and redefined the area of Ngok Dinka as approximately 10,460 square kilometers (almost 54 percent less than the area defined by the ABC) (Deng, 2010). The Tribunal noted that its decision is meant to ensure the inclusion and participation of most members of the Ngok Dinka in Abyei referendum as its main targeted community. While President Bashir welcomed the decision of the Abyei Arbitration Tribunal with emotional statement on 22nd July 2009 that they have won the case, President Salva on the same day described the decision as a victory for all Sudanese and reaffirmed the commitment of the SPLM to the full implementation of the decision as a final settlement of the issue of Abyei Area.

While the ruling of the Abyei Arbitration Tribunal was seen to resolve not only the determination of the area of the Ngok Dinka but also the eligible participants in Abyei referendum, President Bashir insisted that the Arab Misseriyia nomads to participate in Abyei referendum and refused to establish Abyei Referendum Commission to be chaired by a nominee of the SPLM as previously

agreed upon by the parties. Subsequently, the referendum of Abyei did not take place simultaneously with that of Southern Sudan on 9th January 2011 as stipulated in the CPA. Instead Sudan invaded Abyei again in May 2011 and displaced Ngok Dinka from their home areas.

The AU Roadmap: Final and Binding Resolution of the Final Status of Abyei

In order to rescue Abyei Protocol and to assist the return of Ngok Dinka to their home areas, the SPLM and the government of Sudan signed on 20th June 2011 the Agreement on the Temporary Arrangements for the Administration and Security of the Abyei Area. In particular the agreement provides for the process for resolving the final status of Abyei with a commitment by the Parties to consider, in good faith, proposals that the African Union High-level Implementation Panel (AUHIP) shall make to resolve the final status of Abyei. The AUHIP presented six proposals for resolving amicably the final status of Abyei as a win-win outcome but President Bashir and President Salva could not agree on any of these six proposals.

In an effort to put the two countries on track of peace, the AU Peace and Security Council (AUPSC) came on 24th April 2012 with a Roadmap that provides a framework within a time-bound of three months for resolving holistically all the pending issues between the two states including the final status of Abyei. The Roadmap made it very clear that if the Parties failed to agree on any of the pending issues, then the AUHIP will come with proposal that will be endorsed by the AUPSC as final and binding resolution and to be forwarded to the UN Security Council for implementation under Chapter VII of UN Charter.

Prior to the submission of its proposal to the AUPSC, President Mbeki, the chairperson of the AUHIP, wrote to President Bashir and President Salva, a letter dated 17th September 2012 urging them to work in spirit of mutual viability on a negotiated win-win outcome on the final status of Abyei. He substantiated the need for a negotiated outcome by arguing in his letter that since the two countries have accepted the ruling of the Permanent Court of Arbitration (PCA) that defines Abyei area as the area that the Ngok Dinka enjoyed the “dominant rights”, then the Misseriyia nomads will not be eligible to vote in the referendum and subsequently the majority Ngok Dinka would vote to be part of South Sudan; an outcome that will be a zero sum of “win-lose”.

When the Parties failed to agree on a negotiated way to resolve the issue of Abyei and consistent with the AU Roadmap, the AUHIP submitted to the AUPSC on 21st September 2012 a proposal on the final status of Abyei. This Proposal provides clarity and addresses fundamental questions of eligibility for Abyei Referendum (only residents but not nomads), the date of the referendum (October 2013), the chair of Abyei Referendum Commission (appointee of the AU Commission) and special status of Abyei area (status of state in two countries) and oil revenue from Abyei area to be allocated to Abyei state (30%), national government (50%) and localities north of Abyei area in Southern Kordofan State (20%) for five years.

The Proposal was prepared by three prominent African leaders (former President of South Africa, former President of Nigeria and former President of Burundi). There is no any other African solution to African problem than the AUHIP proposal on the final status of Abyei area. As Sudan has been calling for the issue of Abyei to be resolved within African context, the AUHIP Proposal on Abyei is an African solution prepared by African leaders without any influence from western

countries. This Proposal is one of the best achievements of the AUHIP as it is well informed and rooted in earlier agreements and above all it is bold in addressing the issues that prevented the conduct of Abyei Referendum on 9th January 2011.

The meeting of the AUPSC at the level of permanent representatives accepted on 24th October 2012 the AUHIP Proposal as representing a fair, equitable and workable solution to the final status of Abyei, which takes into account existing agreements entered into by the Parties, as well as the needs and interests of the communities on the ground. The AUPSC requested the two countries to engage each other to reach consensus on this proposal within a period of six weeks. It also decided that, in the event that the two countries fail to reach agreement on the final status of the Abyei, then the AUPSC will endorse the AUHIP's Proposal as final and binding, and would seek the endorsement by the UN Security Council of the same.

On 14th December 2012, the AUPSC meeting at the level of foreign ministers reiterated its acceptance of the AUHIP's Proposal on the final status of Abyei. Despite the refusal of Sudan to the AUHIP's Proposal and the deadline set by the AUPSC expired on 5th December 2012 for the two countries to agree on the AUHIP Proposal, the AUPSC instead of seeking the endorsement by the UN Security Council (UNSC) it referred the determination on the issue of the final status of Abyei to its meeting at the level of the heads of state and government.

On 24th January 2013, a summit between President Salva and President Bashir was held in Addis Ababa and the two Presidents failed to agree on the final status of Abyei. President Salva, in his address to the AUPSC meeting on 25th January 2013 at the level of heads of state and government, made it clear that he reached a deadlock with President Bashir on the final status of Abyei. The Council only reaffirmed its acceptance of the AUHIP's Proposal but did not forward the Proposal to the UNSC for endorsement as per its commitment in the Roadmap and after the failure of the two Presidents to agree on the final status of Abyei. Paradoxically, the Meeting strongly urged again the two presidents to resume their negotiations on the final status of Abyei as proposed by the AUHIP. It requested also the AUHIP, with the support of the IGAD Chair, to continue to assist the two presidents to urgently resolve the issue of Abyei, and requested the AUHIP to report to the Council in March 2013 to make further determination on the issue of Abyei.

Unfortunately the AUPSC did not meet in March 2013 to receive report from AUHIP on the status of negotiation of the Parties over its proposal. With the indecision and delay by the AUPSC to forward the AUHIP's Proposal to the UNSC for endorsement, the Ngok Dinka Paramount Chief Kuol Deng, who wanted to see his people to exercise their right of self-determination, was assassinated on 4th May 2013 by the government armed Misseryia militia. The Council then reacted by holding a meeting on 7th May 2013 after the assassination of the Ngok Dinka Paramount Chief and urged again the two presidents to reach agreement on the final status of Abyei.

On 24th May 2013, the two presidents met in Addis and failed to agree on the final status of Abyei and President Bashir made it clear that he rejected the AUHIP Proposal on Abyei. While it became apparent that President Bashir rejected the African solution to Abyei problem, the AUHIP reported on 29th July 2013 to the meeting of AUPSC at the level of ministers of foreign affairs. The AUHIP expressed its worry in its report that the Ngok Dinka may try to use the deadline of October 2013

to create a fait accompli. Given such circumstances of no agreement between the two countries, the AUHIP reiterated in its report the AUPSC's view that the AUHIP Proposal in its entirety forms the basis for a fair, equitable and workable solution to the matter of Abyei and should be implemented as it stands and in accordance with the timetable as proposed, unless both governments of Sudan and South Sudan present agreed amendments to this proposal. Yet, the Meeting failed to forward the AUHIP Proposal to UNSC for endorsement.

Abyei Community Referendum: Fait Accompli

This trajectory of indecision and inconsistency in the decision-making process in the AUPSC over the final status of Abyei has contributed towards sacrificing the safety, security, and livelihoods of the Ngok Dinka. The most apparent iteration of this indecisiveness of the AU came when the Ngok Dinka Paramount Chief was assassinated. This has also created an environment that strengthens the Government of Sudan and its armed Arab Misseriya militia to benefit from the status quo not only by scooping 65,000 barrels of crude oil per day from Abyei area but also by cleansing the area of its Ngok Dinka inhabitants and settling the Arab Misseriya nomads in the northern part of Abyei area.

As the two countries and the AU failed to set a new date for the conduct of Abyei Referendum, the Ngok Dinka of Abyei decided to proceed with the conduct of their own referendum. On 18th October 2013, the people of Abyei represented by the nine Ngok Chiefdoms and the civil society organizations declared in a conference their intent to conduct their own referendum during 27th – 29th October 2013 as per the AUHIP Proposal. This declaration was meant to give chance for the two countries and the AU to set a new date for the conduct of Abyei referendum.

The conference confirmed the formation of Abyei Community Referendum High Committee. This Committee was mandated to facilitate the conduct of Abyei referendum, advocate for the recognition of the outcome of the referendum. The conference also passed the rules and regulations for the conduct of Abyei referendum. These rules were based on Abyei Protocol, 2005, the ruling of the Hague Permanent Court of Arbitration, 2009, the AU Proposal on the Final Status of Abyei, 2012. They also provide for the formation of Abyei Referendum Commission with clear definition of eligible voters to be members of Ngok Dinka and other residents with permanent abode in Abyei area as provided for in the AUHIP Proposal. On the basis of these rules, the High Committee appointed the Abyei Community Referendum Commission.

In reaction to the intention of the Ngok Dinka of Abyei to conduct their own referendum and based on the recommendation of AUHIP in July 2013 for the AUPSC to visit Abyei, the AUPSC decided to visit Abyei on 26th and 27th October 2013 but such a visit was denied by Government of Sudan. In its meeting on 26th October 2013, the AUPSC expressed its disappointment and regret that it was unable to visit Abyei and considered it as an obstruction to the discharge of its responsibilities and held those who obstructed its visit to bear full responsibility for any resulting negative development in the Area. With this obstruction of the work of AUPSC, the Government of Sudan did not only reject the final and binding AUHIP Proposal but also disrespected the institutions of AU.

With the failure of AUPSC to visit Abyei and with no new date set for the conduct of Abyei referendum, the Abyei Community Referendum Commission registered the eligible voters and

conducted the referendum peacefully over a period of three days. The outcome of the referendum overwhelming (99.98 percent) favored Abyei to be part of South Sudan. Most international and local observers and journalists were amazed by the way the referendum was orderly organized and conducted. Tim Flatman and Hannah Cross, independent international observers who witnessed the conduct of Abyei referendum, were satisfied with the high standards exhibited by Abyei referendum process. They described this referendum as peaceful, credible and conducted in a high level of transparency that accurately represents the genuine expression of the will of the people of Abyei.

After its failure to visit Abyei area, the AUPSC met in Addis on the same day of commencing of the conduct of the Community Referendum on 26th October 2013 and reiterated its earlier decisions on the Abyei issue; in particular its full acceptance of the AUHIP Proposal. The Council for the first time strongly urged the UNSC to extend its full support to the AUHIP Proposal, which it considers the best way forward in addressing the issue of Abyei. The Council explicitly demanded Sudan to refrain from obstructing its work and reminded Sudan of its obligations under the Peace and Security Council Protocol; particularly the agreement of the member states to accept and implement the decisions of the Council.

The AUPS eventually managed to visit Abyei area on 5th November 2013 after the conduct of Abyei Community Referendum and held its meeting in Abyei on 6th November 2013. Interestingly, the Council did not condemn the conduct of community referendum but it instead underscored the inalienable right of the people of Abyei to self-determination and recognized that it had listened to the expression of deep frustration, anger as well as reasons for the action of the Ngok Dinka community. It also reiterated its full acceptance of the Proposal submitted by AUHIP on the final status of Abyei and renewed its appeal to UNSC to urgently support the Proposal as the best way forward for the resolution of Abyei issue.

Since its full acceptance of the AUHIP Proposal and its appeal to UNSC to support the AUHIP Proposal in October and November 2013, the AUPSC has failed to officially forward the AUHIP Proposal to the UNSC for endorsement and support as per the AU Roadmap. Instead, the AUPSC has backtracked from its Roadmap and its full acceptance of the AUHIP Proposal by continuing, as reflected in its report to AU Assembly in July 2017, to urge the two governments of South Sudan and Sudan to commence discussions on the conduct of Abyei Referendum in line with the CPA.

The case of Abyei provides a compelling reason for necessary reforms in AU and its institutions to strengthen their institutional and organizational capabilities to deliver better and to meet the aspirations of the people of the continent. In particular the AU Peace and Security Council (AUPSC) that was established as standing decision-making body for the prevention, management and resolution of conflicts may need scrutiny. The failure of the Council not to forward the AUHIP Proposal to the UNSC and apparent lack of monitoring the implementation of its decisions and commitments put into doubt the call by AU of African solutions to African problems. In fact the failure of AU to resolve the final status Abyei; a simple case that exhausted all national, regional and international avenues for conflict resolution, is a litmus test for the inability of AU and its institutions to deliver peace and cherish the slogan of “African solutions to African problems”.

6. Conclusion: What does the future hold for the people of Abyei

This account of the trajectory of inability to resolve the final status of Abyei area shows as well the continuous search by the Ngok Dinka to find a peaceful and secured political environment. Despite this genuine search for the final status of Abyei, there are paradoxically voices in South Sudan; particularly from some Dinka elites of the former Warrap state, calling not only the Ngok Dinka as not South Sudanese but also unequivocally denied Abyei area as part of South Sudan.

A national minister from Warrap state in one of the meetings of the Council of Ministers in Juba commented that: “The people of Abyei are like people of Kashmir. Kashmir people do not occupy key positions in India and Pakistan. So Abyei people are not South Sudanese and should not occupy key positions in South Sudan”. This statement was made immediately after the appointment of Gen. Pieng Deng Kuol as the Inspector General of South Sudan Police. Also, I was described by the government of South Sudan in its report to UN Human Rights Commission as not a citizen of South Sudan as a result of symposium that I organized in University of Juba about 28 states created abruptly by President Salva Kiir. Also, Bona Malual; member and the patron of the Jieng Council of Elders (JCE) and the rapporteur of the National Dialogue of President Salva Kiir, described unequivocally that Abyei is not part of South Sudan.

Besides these statements made by senior government officials about the status of Abyei area, many senior civil servants from Abyei have been deliberately removed from their key positions in civil service; immediately after the conduct of Abyei Community Referendum in 2013. For example, Arop Bagat and Mustafa Biong; the most senior civil servants from Abyei area, were removed from their positions in the Ministry of Information. Also, Dr Monywaar Arop; one of the most senior medical doctors during the liberation struggle, was removed from his advisory position in the Ministry of Health. In addition, most SPLA senior officers from Abyei area such as Pieng Deng, Kuol Diem, Dr. Kuol Deng, Arop Moyak, Monydheng Deng were removed from the SPLA. Some of our senior ambassadors such as Dr. Francis Deng, Dr Chol Deng Alak and Dr Arop Deng (Haroun) were abruptly recalled back from their embassies. Also Gen. Pieng Deng, the former Inspector General of Police, was removed from his position before the end of his tenure of office.

Despite this deliberate targeting and isolation of the people of Abyei in the government of South Sudan, the patriotic contribution of the Ngok Dinka during the 21-years of liberation struggle is undisputable. The second civil war started not only in Abyei but its sons and daughters such as Miykol Deng and Bagat Agwek played a critical role in the early formation of SPLA and consolidation of its leadership. Their bravery during the liberation struggle was recognised by Commander Kerubino Bol, the then deputy chairman of the SPLM, who used to refer to any brave SPLA soldier as ‘Ma’Ngok’. It became a new military vocabulary in the SPLA for defining bravery. One would even say that Abyei area during the second civil war is one of the areas in South Sudan that has the highest percentage of martyrs in relation to its population.

Although such heroic contribution of the people Abyei is becoming blurred in the eyes of some elites in Juba, the people of South Sudan do recognize and appreciate such contribution. This is well reflected in the Transitional Constitution of the Republic of South Sudan, 2011 that defines Abyei area as a territory of South Sudan and its people as citizens and nationals of South Sudan.

Specifically, Article 97 of the Constitution states that: “The members of the nine Ngok Dinka Chiefdoms of Abyei Area shall have an inalienable right to enjoy South Sudanese citizenship and nationality and all rights and freedoms guaranteed by this Constitution”. When Abyei was invaded by Sudan in May 2011, the people of the South Sudan in all the ten states showed their solidarity with the people of Abyei by demonstrating against the invasion and mobilising resources for the displaced persons.