

A Moment of Truth: The Misguided International Humanitarian Policy on the Abyei Area
A Kush Inc. White Paper

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Introduction

The United Nations, humanitarian agencies, donors and the international diplomatic community appear to be working under a misinterpretation of the Agreement on Temporary Arrangements for Administration and Security of the Abyei Area that was signed between the Sudan People's Liberation Movement (SPLM) and the Government of Sudan (GoS) on 20th June 2011 in Addis Ababa, Ethiopia. The primary objective of this Agreement is to protect and assist is the return of those displaced after the barbaric invasion of Abyei Area by the Sudan Armed Forces (SAF) in May 2011.

However, the international community is unable to aid the Abyei Area because it has incorrectly identified Abyei as part of North Sudan, placing Abyei outside its area of mandate. This misinterpretation is the latest in a long line of obstacles preventing the implementation of agreements concerning Abyei. The hostile activities of SAF and Arab militias, the conflict between the SPLM and GoS in the Southern Kordofan state, and the antagonistic attitude of GoS towards international organizations have collectively caused a deepening of the crisis for the Internally Displaced Peoples (IDPs) inside and outside the Abyei Area.

Abyei's Special Status

It is important to recognize that Abyei is a contested area between North and South Sudan and until its status is determined legally and politically, it retains a special status between both nations. The Abyei Protocol will not be complete until the referendum for the people of Abyei is held or a political settlement is reached by the Parties. The agreed arrangements would affirm the special status of Abyei Area and its dual jurisdiction in the North and South. Now that the two countries have officially split, this arrangement must be reinterpreted (i.e. Abyei retains a special status under the two Presidents pending the final resolution of the status of Abyei area).

For the sake of clarity, it must be stated that the recent Abyei agreement signed in Addis Ababa is temporary. The final status of Abyei Area shall be decided by either a popular referendum as stipulated in the Abyei Protocol or through another process to be agreed upon by the Parties to the CPA. In the interim, the Abyei Area will remain under the jurisdiction of the GoS and the Republic of South Sudan (RoSS). The Agreement clearly spells out how such dual jurisdiction

shall be arranged. First there will be an Abyei Joint Oversight Committee that will exercise, on behalf of the two Presidents (North and South), political and administrative oversight of the affairs of the Abyei Area. There will also be an Abyei Area Joint Administration with the Chief Administrator as a nominee of South Sudan and Deputy Chief Administrator as a nominee of the North. Third, there will be a Joint Military Observer Committee. Lastly, the RoSS and GoS shall jointly finance the Abyei Administration. The Agreement is focused upon concerns of security, protection of civilians and ensuring the return of IDPs to their home areas with dignity. It should not deny access to the people in Abyei Area nor reward the criminal actions of the North in its violent takeover of the area and atrocities committed. The Agreement is meant to create a conducive, environment for the safe and dignified return of the people of Abyei, and to ensure humanitarian access.

The newly amended Nationality Act of Sudan gives conditional citizenship to the members of Ngok Dinka of Abyei area pending the final resolution of the status of Abyei area. The Transitional Constitution of the Republic of South Sudan gives unconditional and inalienable rights for the members of the Ngok Dinka of Abyei to enjoy South Sudanese citizenship and nationality and all rights and freedoms guaranteed by the Constitution. This legal commitment by the two states to grant citizenship and nationality to the people of Abyei Area clearly affirms their dual citizenship. Having this dual citizenship and coupled with the special status of Abyei Area should have made it clear for the international organizations to have an unambiguous position towards the status of Abyei area rather than the current misguided position that dominates thinking within international organizations and stifles any humanitarian action to access and address the appalling humanitarian situation in Abyei area.

The misunderstanding of Abyei's status seems to arise from a misreading of an Abyei Protocol provision cited in the Addis Ababa Agreement which states that the 1956 border will be inviolate unless changed through the referendum or a decision agreed by the Parties. This provision does not conclude Abyei's status nor does it signify Abyei is under the exclusive jurisdiction of GoS. According to the Addis Ababa agreement, the principles of the Abyei Protocol continue to apply. And under the Protocol, Abyei holds a special administrative status in which the residents of Abyei are citizens of Western Kordofan and Bahr el Ghazal, with representation in both states. In the Protocol, Abyei is described as a bridge between the North and South. The misinterpretation of Abyei's present status is not based upon the tenets of the Addis Ababa Agreement or those of the Abyei Protocol. Instead it is a baseless rumor without any factual or substantive foundation, reinforced by Beshir's reckless declarations that Abyei Area is exclusively part of the North.

The Issue of Humanitarian Access

Having recognized the special status of Abyei between North and South Sudan, the humanitarian community must identify the best locations to access the area. Logistically it would be difficult to access Abyei from the North because the rear base for humanitarian support is Kadugli, in Southern Kordofan. The conflict situation in Kadugli and the denial of access to humanitarian agencies make it a poor choice for logistical and administrative support to Abyei. Furthermore, the same denial of access currently frustrating the humanitarian agencies in

Southern Kordofan will continue in Abyei if the NCP is allowed to dictate the terms of this access. Given the fact that Abyei is the territory of the nine Ngok Dinka chiefdoms, and that the NCP has launched repeated attacks against these same civilians indicates that it is unlikely that the NCP will support any humanitarian assistance or protection to them. To think otherwise is to ignore the mountainous evidence of obstruction of humanitarian work in Abyei during and before the CPA. Fortunately, the UN and US Government and other member states of the UN are now in a position to decide how to access Abyei area.

The Internally Displaced People of Abyei Area are spread out through areas south of Kiir River and the neighboring states of Warrap, Northern Bahr el Ghazal and Western Bahr el Ghazal. They place an additional stress on host communities already coping with difficult conditions, and simply wish to return to their homes. Consolidating the delivery of humanitarian assistance inside Abyei area would be beneficial for the IDPs, humanitarian agencies and Abyei authorities. The Abyei Administration is functioning from south of Kiir River in Agok town and is more able to assist its constituencies within Abyei. The traditional leaders are also carrying out their duties from Agok.

Omar Bashir's dissolution of the Abyei Administration was unilateral and illegal. The Abyei Administration is still recognized by the people of Abyei and the government of South Sudan and will continue to carry out its duties until the new administration is formed.

The following are recommendations for the UN, other humanitarian agencies and donors:

- Clearly establish the policy that Abyei Area has a special status between North and South pending the referendum and therefore can be accessed from either depending on which is more conducive.
- Help Abyei IDPs return home so they no longer burden the resources of their neighbors and are able to access resources in their own land.
- Coordinate relief efforts for Southern Kordofan from the South as coordination from the North is not logistically feasible.
- Coordinate humanitarian responses for Abyei from the South. GoS' crimes, obstructions and hostilities have clearly demonstrated that the North is decisively against the interests and well-being of the Abyei community.
- Help ensure that the Addis Ababa Agreement is implemented and that SAF and SPLA forces are immediately withdrawn out of Abyei Area so as to expedite the immediate return of IDPs to their home areas.
- Support the Ethiopian forces so that they are able to secure, assist, and protect the Abyei area.

The Consequences of Rewarding Brutality against Civilians

The last point that should be considered regarding the humanitarian policy on Abyei is whether or not the UN, humanitarian agencies, donors and the diplomatic community should knowingly reward brutality against civilians by capitulating to those who use violence and criminality as a means to achieve their political objectives. If agencies continue to operate solely from their Khartoum headquarters simply because Bashir unilaterally declares his ownership over Abyei in contradiction to all agreements and standards of reason, the reward will undoubtedly encourage GoS to continue its criminal behavior. The problems that have existed over the years will persist, and the Khartoum authorities will use the issue of access as a political tool, preventing humanitarian aid. Also, the NCP regime will be emboldened to continue their crimes against the people of Abyei and other areas such as Southern Kordofan. As the international community tries to build a normative framework based on the responsibility of sovereign nations to protect their civilian populations, the humanitarian policy on Abyei would stand out as a confusing aberration begging the question, what is different about Abyei whereby the brutality of a convicted war criminal is rewarded?

Conclusion

The misinterpretation of the Addis Ababa Agreement has severely affected the Abyei people while rewarding the perpetrators of the crimes. Correcting this mistake will send a signal to the respective Governments of North and South Sudan regarding human rights and international norms. Once humanitarian operations for Abyei are firmly based in the South, agencies will enjoy a supportive political environment that assists efforts rather than obstruct them. By shifting agency operations in Abyei to the South, the international community will send a message that the independence of South Sudan begins a new chapter based on the reality of two independent states. These states have a responsibility to resolve the issue of Abyei, and their claims of sovereignty over the area will be strengthened by their responsibility to protect and assist the people of Abyei and to abide by Agreements, not by unilateral declarations of ownership.