

ABYEI BOUNDARIES COMMISSION REPORT

PART 1

14 JULY, 2005

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PREFACE

The Protocol Between the Government of Sudan (GOS) and the Sudan People's Liberation Movement/Army (SPLM/A) on The Resolution of the Abyei Conflict, signed at Naivasha, Kenya, May 26, 2004 provides that the Presidency shall establish the "Abyei Boundaries Commission (ABC) to define and demarcate the area of the nine Dinka Chiefdoms transferred to Kordofan in 1905."

The Protocol states that the Commission "shall include, *inter alia*, experts, representatives of the local communities and the local administration."

The final text of the Abyei Annex, "Understanding on Abyei Boundaries Commission," adopted by the two principals on December 17, 2004, states that the composition of the ABC shall include five members representing the GOS, five representing the SPLM/A, and five impartial experts nominated by the US (1), the UK (1), and IGAD (3). The ABC "shall listen to representatives of the people of Abyei Area and the neighbours, and shall also listen to presentations of the two Parties." In addition, the experts in the Commission "shall consult the British Archives and other relevant sources on Sudan wherever they may be available with a view to arriving at a decision that shall be based on scientific analysis and research."

The Annex also provides that the experts shall determine the rules of procedure of the ABC and that "the report of the experts, arrived at as prescribed" by those rules of procedure "shall be final and binding on the Parties." Consistent with this proviso, the Rules of Procedure for the Abyei Boundaries Commission, which the experts presented to the Parties on April 11, 2005 and were accepted by the Parties, state that the "Commission will endeavor to reach a decision by consensus. If, however, an agreed position by the two sides is not achieved, the experts will have the final say." This rule is consistent with the language of the Abyei Annex to the effect that the report of the experts shall be final and binding on the Parties.

On April 12, 2005 the GOS and SPLM/A members of the ABC submitted to the experts the two parties' preliminary presentations. The next day the ABC flew to Khartoum and on to Abyei Town, arriving there on the morning of April 14. Over the ensuing six days, the ABC heard testimony from the Sudanese in Abyei Town, areas to the northeast and northwest of there, Agok, and Muglad. The ABC returned to Khartoum on April 26, and the experts flew from there to

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Nairobi, where they reviewed their notes on the testimony heard in southern Sudan and consulted with IGAD.

The experts returned to Khartoum on April 27 and for the next two weeks examined historical documents at the Sudan National Records Office, maps at the Sudan National Survey Authority, and additional documents at the University of Khartoum library. They also listened to testimony of a group of Ngok Dinka living in Khartoum and a group of Twich Dinka also residing there.

No 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 government authorities that adequately spell out the administrative situation that existed in that area at that time. Therefore, it was necessary for the experts to avail themselves of relevant historical material produced both before and after 1905, as well as during that year, to determine as accurately as possible the area of the nine Ngok Dinka chiefdoms as it was in 1905. In doing this the experts are mindful that the drafters of the American proposal which was incorporated into the Abyei Protocol have stated: "It was clearly our view when we submitted our proposal that the area transferred in 1905 was roughly equivalent to the area of Abyei that was demarcated in later [years]." This position was, according the American participants, conveyed to the two sides at the Naivasha talks.*

Returning to Nairobi on May 11, the experts met with IGAD Special Envoy Lt.-General Lazaro Sumbeiywo the next day to report to him the progress that had been made and the work that had yet to be done. They made known to him the need for the professional services of a cartographer. On May 16 the experts convened again at the IGAD office to meet and brief the fifth expert, Professor Shadrack B.O. Gutto. The following day after another meeting with Professor Gutto – ABC Chairman Petterson, UK appointee Johnson, and IGAD appointee Muriuki travelled to England.

During their stay in England from May 17 to May 27, the three experts first went to Oxford University, where they examined documents at Rhodes House Library and documents and maps at the Bodleian Library. Subsequently, they met with former District Commissioner Michael Tibbs in Sussex and with Ian Cunnison, anthropologist and author of *Baggara Arabs*, in Hull. They also travelled to Durham, where they reviewed documents and maps at the Sudan Archive of the

* Email from Jeffrey Millington to the American Embassy, Nairobi, Kenya, April 27, 2005.

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University of Durham. During this same period, Professors Berhanu and Gutto undertook additional research in Addis Ababa and Pretoria, respectively.

All five experts reconvened in Nairobi on June 14 and 15, and on June 16 and 17 the GOS and the SPLM/A made their final presentations. The experts then continued their deliberations, completing them on June 20. On that same day, they met again with Lt.-General Sumbeiywo. He agreed with their pledge not to reveal to any person or institution the substance of their decision before they present it to the Sudanese Presidency.

In the preparation of this report, a simplified phonetic script has been used for writing Arabic and Dinka names.

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ACKNOWLEDGEMENTS

The experts of the Abyei Boundaries Commission were greatly assisted in their work by various organisations and many individuals. We would like to express our deep appreciation for the work done on our behalf and services provided for us by the following:

The IGAD Secretariat, Nairobi.

The Government of Sudan, with special thanks to Ambassador El-Dirdeiry Mohammed Ahmed.

The Sudan People's Liberation Movement/Army, with special thanks to Commander Deng Alor Kuol.

Ambassador El-Dirdeiry, Commander Deng Alor Kuol, and Deputy Governor Ahmed El-Salih for the wise counsel they gave to the people who attended our meetings in Abyei Town and the surroundings, Agok, and Muglad.

The authorities in Abyei Town and Muglad, who gave us accommodation, meals, transport, and venues for our meetings.

The Agok authorities, who gave us meals and a venue for our meeting.

The Joint Military Command, which provided aircraft for our trip into the field.

The UNDP operation in Agok, which provided us with accommodation and transportation.

Ali Karrar, Director of the National Records Office, Khartoum, and his staff.

Mohammed Khair M. Ali, Director General of the Sudan National Survey Authority, and his staff.

The staff of the Sudan Library, University of Khartoum.

Saif Al-Islam Mohammed of the Sudanese Ministry of Foreign Affairs.

John Pinfold, Librarian of Rhodes House Library, Oxford, and his staff.

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The staff of the Geography Map Room, Bodleian Library, Oxford.

Jane Hogan and her staff in the Special Collections, Palace Green Library, University of Durham.

Richard Huntington, David Cole, and Maryam Niamir-Fuller for making available material from the Harvard Abyei Integrated Rural Development Project.

Michael and Anne Tibbs, and Professor Ian Cunnison, who generously gave their time and answered our questions as we excavated their memories of the area as it was over fifty years ago.

Robert Mwangi Gitau of Tourist Maps (Kenya) Limited and former Chief Mapping Officer with the Survey of Kenya, for drawing the maps that accompany this report.

Finally, the Sudanese people who gave their testimony to the ABC, and all others who gave their direct or indirect assistance to the experts.

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LIST OF DELEGATES

TO THE ABYEI BOUNDARIES COMMISSION

GOS DELEGATION

1. Ambassador El-Dirdeiry Mohammed Ahmed	Head of Delegation
2. Mr. Ahmed Assalih Soloha	Member
3. Mr. Abdul Rasoul El-Nur	Member
4. Mr. Zakaria Atem	Member
5. Mr. Ahmed Abdalla Adam	Member

SPLM DELEGATION

1. Commander Deng Alor Kuol	Head of Delegation
2. Mr. James Lual Deng	Member
3. Mr. Victor Akok	Member
4. Mr. James Ajing Path	Member
5. Mr. Deng Arop Kuol	Member

EXPERTS

1. Ambassador Donald Petterson	Chairman, USA appointee
2. Professor Godfrey Muriuki	IGAD appointee
3. Professor Kassahun Berhanu	IGAD appointee
4. Dr. Douglas H. Johnson	UK appointee
5. Professor Shadrack B.O. Gutto	IGAD appointee

IGAD SECRETARIAT

1. Mrs. Felicita W. Keiru
2. Mr. Boniface Mwaka
3. Mrs. Virginia Gitau
4. Ms. Soila Kasaine

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SUMMARY OF EXPERTS' REPORT AND DECISION

Role of the ABC experts: As the preface to this report notes, the Annex to the Abyei Protocol and the Rules of Procedure adopted by the Abyei Boundaries Commission (ABC) state, in essence, that if the fifteen-person ABC is unable to reach a consensual decision on what the Abyei Area's boundaries should be, the ABC experts' decision shall be final and binding on the parties. Also as noted in the preface, the Abyei Area has been defined as the area of the nine Ngok Dinka chiefdoms transferred from Bahr el-Ghazal to Kordofan in 1905 (**Appendix 1**).

As it happened, the two sides, i.e., the Government of Sudan (GOS) and the Sudan People's Liberation Movement/Army (SPLM/A), were unable to reconcile their differences on the Abyei issue. Thus the decision arrived at by the five ABC experts shall be the determinant of the boundaries in question.

It should be emphasised that in reaching their decision the experts did not accept or reject either the GOS or the SPLM/A final positions. Rather, they used both positions as points of departure for their investigations, which drew additionally on Anglo-Egyptian Condominium government documents. They also used the testimony they heard in the Sudan, observations made to them by British sources familiar with the Abyei Area prior to independence, and relevant secondary sources.

Popular misunderstanding about the impact of establishing a boundary: The experts found in their meetings with people in the Abyei Area that there was considerable misunderstanding about the effect that setting a boundary for the area will have. The experts therefore want to stress that the boundary that is defined and demarcated will not be a barrier to the interaction between the Misseriya and Ngok Dinka communities. The decision should have no practical effect on the traditional grazing patterns of the two communities as those patterns were followed for many years until they were disrupted by armed conflict. The experts trust that the Presidency will take measures to ensure that word of this is widely disseminated, particularly among the two communities.

The testimony: The ABC held fourteen meetings in the Abyei area, hearing formal testimony of 104 persons (47 Dinka, 57 Misseriya) between April 14 and April 20. All testimony was gathered in public meetings, where the witnesses spoke under oath, could hear the testimony of others, and could be heard by a large audience as well. The places where the testimony was given were: Abyei

Town, Goleh/Langar, Pawol, Dembloya/Dak Jur, Lau, Umm Bilael/Tordach, Chigei/Thigei, Lukji/Kol Yith, Agok (in SPLM/A territory), and Muglad town.* Time was made available for questions from the ABC at only seven of the meetings – in Abyei Town, Agok, and Muglad town. An additional visit was made to Mathiang in SPLM/A territory, but no meeting was held there. Further testimony was taken from representatives of the Ngok and Twich Dinka in Khartoum. In all 125 persons were interviewed (**Appendix 4**).

At the outset of each session the ABC Chairman explained the Commission's objectives. Spokesmen for the GOS and the SPLM/A delegations of the ABC then spoke, stressing that the outcome of the Commission's deliberations would not affect the free movement of either group of people or their traditional access to land. The two sides then presented their own positions concerning the mandate of the ABC and their contrasting definitions of the area under consideration. As a result, no one at the meetings was left in any doubt about where each side stood. This was reflected in the statements subsequently given by many of the witnesses which made it clear that not only were they speaking to the position of either the government or the SPLM/A, but that they also sometimes attempted to refute claims made at earlier meetings at which they were not present.

Some accounts were given of events long before and immediately prior to 1905, but details of actual events in 1905 were scanty. Many witnesses – Ngok Dinka, Misseriya, and other Dinka – made reference to later periods and later events (even after independence), and drew inferences from those periods about the situation that existed in 1905.

Most of the oral testimony from the Ngok Dinka and the Misseriya presented the ABC with two sharply differing versions of what constitutes the Abyei Area. No one denied that both the Misseriya and Ngok had made use of the same territory in recent times. Where they differed on this was whether such use constituted "ownership" of the Area. As was true with the final presentations of the GOS and SPLM/A (**Appendix 3**), the oral testimony by itself did not validate one case or the other.

The Misseriya position: The Misseriya contended that the land from their northern permanent settlements to south of the Bahr el-Arab has been theirs for several centuries, that the Ngok are newcomers who were destitute and had, at their own request, been allowed to reside in the southern river area in recent

*Where applicable, the different Misseriya and Ngok Dinka nomenclature for place names is indicated by a slash (/) between them.

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times as guests, that there are no boundaries between the two groups, and that the whole area has been under the administrative jurisdiction of Kordofan, never under the jurisdiction of Bahr el-Ghazal. In support of these claims some witnesses stated that the Ngok had never paid taxes to Bahr el-Ghazal, that the Ngok had been administratively treated as a section of the Misseriya with their paramount chief coming beneath the Nazir of the Misseriya, and that the Misseriya had cotton plantations in such places as Nyama (the northern-most area also claimed by the Ngok).

The Ngok position: The Ngok, supported by testimony from the Twich, Rek, and Rueng Dinka, contended that they had occupied the river area (Bahr el-Arab/Kir, Ragaba ez-Zarga/Ngol) before the Misseriya arrived in the Muglad area; that therefore they were not guests; that before, during and after 1905 their permanent settlements were situated both north and south of the Bahr el-Arab/Kir; and that there had been no major changes to their areas of permanent settlement or grazing from 1905 to 1965. They gave a detailed account of place names for permanent settlements and grazing grounds for each of the nine Ngok chiefdoms.

GOS and SPLM/A positions: The Government of Sudan's position is that the only area transferred from Bahr el-Ghazal to Kordofan in 1905 was a strip of land south of the Bahr el-Arab/Kir; that the Ngok Dinka lived south of the Bahr el-Arab/Kir prior to 1905, and migrated to the territory north of the river only after coming under the direct administration of Kordofan. Therefore the Abyei Area should be defined as lying south of the Bahr el-Arab/Kir, and excluding all territory to the north of the river, including Abyei Town itself. This is opposed by the SPLM/A position, which is that the Ngok Dinka have established historical claims to an area extending from the existing Kordofan/Bahr el-Ghazal boundary to north of the Ragaba ez-Zarga/Ngol, and that the boundary should run in a straight line along latitude 10°35' N (**Appendix 3**).

Examination of historical records: Because the initial presentations of the GOS and SPLM/A, along with the oral testimony of the two communities, largely contradicted each other, and did not conclusively prove either side's position, the ABC experts set out to obtain as much evidence as they could from archives and other sources in Sudan, the United Kingdom, South Africa and Ethiopia. They confined themselves mainly to records contemporary with or referring to the period of the Anglo-Egyptian Condominium (1899-1956). They note that a 1905 map showing the Ngok territory does not exist. Nor do the historical records of the then government definitively attest to the Ngok boundaries of that time. In

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analysing the material collected, the experts have applied the generally accepted historical method of comparing oral with written material. They have also been guided by established legal principles in determining land rights in former British-administered African territories, including the Sudan (**Appendix 2**).

PROPOSITIONS

Certain propositions emerged from the GOS and SPLM/A presentations and from the oral testimony. To test those propositions, the experts subjected each one to analysis based on relevant historical evidence. An exposition of the evidence and the analysis applied to each proposition is contained in a separate section of the full report and in **Appendices 4, 5 and 6**. A summary of the propositions and evidence, along with the experts' findings, is given here.

Proposition 1: *The Ngok Dinka territory originally extended to El Oddaya, and the boundary between the Ngok and Misseriya should run from Lake Keilak to Muglad.* (Ngok oral testimony)

There are very few contemporary records of any kind referring to the region between El Oddaya and the Bahr el-Arab before the beginning of the twentieth century. One of the few sources is an itinerary recorded by W.G. Browne, which he obtained while residing in Darfur in 1794-95, and which places the Misseriya in Baraka (near Muglad) and the Dinka a five-day journey to the southeast. K.D.D. Henderson, who was district commissioner in Nahud in the early 1930s, confirmed this itinerary. Henderson put the arrival of the Baggara Arabs in Muglad in the decade 1765-1775.

It is beyond question that Muglad was, and remains, the heart of Dar Misseriya. Henderson characterised Muglad as "the key to Dar Homr."^{*} Kordofan district officers, traveling in southern Kordofan in 1901 and 1902, reported that Muglad was the headquarters of the Humr. They also reported that Keilak was in Humr territory. Writing in 1954, Ian Cunnison, the anthropologist who lived among the Humr in the early 1950s, stated: "The Muglad is regarded by the Humr as their

* The people who today are known as Misseriya are Baggara Arabs who in the eighteenth century were composed of two tribal divisions, the Humr and the Zurg. The latter were referred to as Misseriya. The Humr settled in the Muglad/Babanusa area, the Zurg farther east. In 1942, the British amalgamated the two groups, who henceforth were both called the Misseriya. References to Misseriya in British records before 1942 should be generally understood as referring to the Zurg, and not the Humr.

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home. Their arrival there from the Bahr is the occasion of great rejoicing and anticipation."

It is clear that the claim that the Ngok-Misseriya boundary lies between Muglad and Keilak has no foundation. This naturally rules out any possibility that the boundary was at El Oddaya.

Proposition 2: *Misseriya territory originally extended south of the Bahr el-Arab as far as the current Kordofan-Bahr el-Ghazal border.* (Misseriya oral testimony)

The known dry-season grazing areas of the Humr in the early twentieth century were concentrated near the Ngol River, not the Bahr el-Arab, much less to the south of the Bahr el-Arab. In January 1908 and again in October of that year, Governor of Kordofan Province Watkiss Lloyd reported that the Humr took their cattle to the Bahr el Humr (Ngol) in the dry season.

This observation was repeated by District Commissioner R.B. Bence-Pembroke in a report written in 1916: "As soon as the grass and the fly permit, the [Humr] Agaira disappear to remote watering places on the Bahr el Homr." It was not until some years later that the Humr extended their dry-season grazing farther south to the Bahr el-Arab. This was illustrated in a 1923 report filed by a Bahr el-Ghazal official, Major Titherington, complaining of incursions there by Arabs with their cattle.

Cunnison has pointed out that the Misseriya migration into the Sudan followed the savannah belt, a natural environment neither semi-desert (to the north) nor seasonal swamp (to the south). For their part, the Ngok settled along rivers and waterways. The Humr and Ngok have occupied their different environments long enough to be reflected in their different breeds of cattle. The environmental evidence argues against any long-term Humr occupation of the river system (Bahr).

It is instructive to look at how a parallel case was resolved. In the early twentieth century a dispute between the Malwal Dinka of Bahr el-Ghazal Province and the Rizeigat Arabs of Darfur was a constant source of tension. A decision by the Condominium government in 1924 recognised the Rizeigat claim and gave them a southern boundary that was twelve miles south of the Bahr el-Arab. No such decision was ever made regarding the Ngok and the Misseriya, inasmuch as during the Condominium period the Misseriya never formally claimed any territory south of the Bahr el-Arab.

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Proposition 3: *The Ngok are newcomers to the territory, having left the Zeraf Island in the Upper Nile in the nineteenth century, and were brought in as destitute refugees at their own request to Humr leaders. (Misseriya oral testimony and GOS presentation)*

If W.G. Browne's evidence (cited in Proposition 1, above) establishes that the Misseriya were in the Muglad-Baraka area, it establishes with equal force that the Dinka were settled in the Ragaba ez-Zarga by the same date. For in his study of the migration of the Misseriya, Henderson wrote: "Under Kwal Dit of the Abyor section, the Ngork [Ngok] moved west along the Gnoi [Ngol]....This was one generation before the Baggara came south to Turda." Henderson put the arrival of Kwal Dit on the Ngol at 1745-1755.

Historical research carried out in Upper Nile demonstrates that there is no connection between the Ngok migration into Kordofan, and the events surrounding the nineteenth century eastward expansion of the Nuer into the Zeraf Island.

The evidence is compelling, then, that in no way were the Ngok newcomers in the early twentieth century.

There is no evidence that the Ngok requested refuge from Abu Gurun or Ali Julla. The latter, in fact, was carrying out raids against the Ngok and Twich Dinka in the early years of the twentieth century and would, therefore, hardly be someone to whom the Ngok would make a request for refuge. Not many years earlier, it was the Ngok who came to the aid of Misseriya. As Henderson noted in his study of Misseriya migration, non-Mahdist Humr were chased out of their country by the Mahdists, and some survivors "found asylum until [1898] with Chief Arob Biong in the swamps of Baralil."

The assertion that the Ngok Dinka were destitute is rendered doubtful by contemporary observations made by British officials in the early 1900s. For example, on a trip from El Obeid to "Sultan Rob's country" in 1902, Governor Mahon observed that the Ngok were "well off and owned immense heads of cattle." This was in contrast to other observations that pointed to the relative poverty of the Humr.

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Proposition 4: *The inclusion of the Abyei Area in "Dar Messeria" District is recognition that Ngok territory belongs to Dar Misseriya.* (Misseriya oral testimony and GOS presentation)

Again, the Ngok did not ask for or receive refuge from the Humr. They did not physically move from one area to another. What occurred in 1905 was that because of Dinka complaints about Humr raids, the British authorities decided to transfer the Ngok and part of the Twich Dinka from the administrative control of Bahr el-Ghazal Province to Kordofan Province. This action put the Ngok and the Humr under the authority of the same governor (a fact cited in both the GOS and SPLM/A presentations).

Despite the adoption by many Ngok of Arab dress and their assimilation of certain northern cultural traits, the Ngok preserved their autonomy. Michael Tibbs, the last British District Commissioner for Dar Misseriya, has said that in 1952, when the Ngok became a part of the District Council, joining into it with the Misseriya, they were not members of the Misseriya tribe, did not come under the jurisdiction of the Misseriya leadership, and had their own court.

Proposition 5: *The Ngok were administered as part of the Misseriya, both in taxation and in the court system.* (Misseriya oral testimony and GOS presentation)

The record shows that the Ngok were administered separately. For example, in 1908 in the list of tribute paid to Kordofan Province, the Dinka are included separately from the Arabs. There were separate entries for the Ngok in the 1932 Kordofan budget, which also showed the Ngok paying taxes directly to the Kordofan government, not through the Humr Nazir. Misseriya tax lists from the late 1940s do not list the Ngok.

The evidence from the Condominium records is conclusive that the Ngok Dinka courts were independent of the Misseriya courts and were administered separately throughout the period of the Condominium. Chief Kwol Arop's court functioned informally throughout the 1920s, until it was designated Court Number 12 (separate from the Misseriya courts) in 1936. In that year outgoing District Commissioner J.W. Robertson described separate court systems for the Humr and the Ngok. Of the latter, he wrote: "The Dinka Court is a flourishing concern...." At the end of the Condominium in 1954 Michael Tibbs recorded that the Ngok continued to have their own court (see Proposition 4, above).

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Proposition 6: *The Misseriya claim that specific locations north of Abyei Town (e.g., Goleh/Langar, Pawol, Dembloya/Dak Jur, Umm Bilael/Tordach, Chigei/Thigei, Lukji/Kol Yith, Lau, Nyama) have belonged to them since the time of the Turkiyya, through 1905, to the present. (Misseriya oral testimony)*

In addressing this proposition it is necessary to establish the existence of "dominant" (permanent) and "secondary" (seasonal) rights of occupation and use of land or territory (**Appendix 2**).

Although this claim was stated to the experts at each of those places, there was no physical evidence to support the claim of dominant rights of occupation or use. There were no permanent structures in any of them or other indications of substance that they are now or ever were Misseriya permanent settlements.

There is good reason to believe that the nomadic Misseriya had few permanent settlements outside their headquarters in Muglad. In 1902 Major E.B. Wilkinson remarked on some "badly built" huts of the Feleita Humr at Keilak, where the Feleita moved their cattle in the dry season. He saw no indications of permanent Misseriya settlements farther south on his trip from El Obeid to "Dar Jange [Dinka]". Writing in 1948, British anthropologist-official Paul Howell described the transportable nature of Misseriya dwellings and household goods. He made no mention of permanent settlements. In his book on the Baggara, Ian Cunnison states that the Humr "are continually on the move, and do not have permanent houses anywhere." In an interview with three of the experts May 22, 2005 he said: "The Humr had no land claims, no permanent settlements, no houses, unlike the Dinka." He added that the Misseriya do have permanent areas in the Muglad where they cultivate.

The secondary rights of the Misseriya to all of these locations visited by the Commission, however, were established and were not disputed by the Ngok.

Nyama, which the Commission was not able to visit, is a place of considerable importance to both peoples. It is a site of clay soil within the Goz where water can usually be found throughout the year. It has been an abundant source of fish for the Ngok at the end of the rainy season and towards the beginning of the dry. The Misseriya began cultivating cotton there, as part of government-supported schemes, in the early 1950s. Neither side was able to conclusively establish a claim of dominant rights to Nyama, but both have been able to demonstrate secondary (seasonal) rights.

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Proposition 7: *The only area affected by the 1905 decision of the Condominium authorities to administer the Ngok Dinka as part of Kordofan was an area south of the Bahr el-Arab; and that the Ngok Dinka settled in territory north of the river only after 1905. (GOS presentation)*

The Government of Sudan maintains that at the time of the decision to place the area of the Ngok Dinka under the authority of Kordofan Province, Arop Biong, paramount chief of the Ngok, and his people were living south of the Bahr el-Arab, that the Bahr el-Arab was recognised by the Condominium government as Arop Biong's northern boundary with the Humr, and that the only area transferred to the jurisdiction of Kordofan was the territory south of the Bahr el-Arab occupied by the Ngok and Twich Dinka. At first glance, the evidence adduced by the government in support of its interpretation of the 1905 boundary is persuasive. It is based on contemporary documents contained in annual reports of both Kordofan and Bahr el-Ghazal provinces which include explicit statements about the Bahr el-Arab being the boundary between the two provinces and contemporary or near contemporary maps showing the boundary between the two provinces as running along the Bahr el-Arab.

Keys to this rationale by the GOS are a 1904 Sudan Intelligence Department map and Major Wilkinson's account of his 1902 journey from El Obeid to "Dar Jange".

Reading the Wilkinson account, it is logical to conclude, as the GOS has done, that Humr Arabs were living in the vicinity of the Bahr el-Arab and that Wilkinson came to no Ngok Dinka villages until he was fifteen miles south of that river. However, if one plots on a modern map the mileage that Wilkinson carefully marked down for each stage of the journey, it becomes clear that the river he called the Bahr el-Arab was actually the Ragaba ez-Zarga/Ngol. For example, Wilkinson recorded that at mile 261 ½ from his starting point, he arrived at Kuek, where he encountered Arab dry-season settlements and many cattle. Ten miles later he reached Fula Hamadai and about fifteen miles farther on he came to Fauwel (Pawol). Then, about fourteen miles to the southeast of Fauwel, Wilkinson reached what he said was the Bahr el-Arab. He was wrong. Fourteen miles or so southeast of Fauwel lies the Ngol. Wilkinson wrote that some 28 miles to the south of that river, "the Kir River, or Bahr El Jange, is struck, as one reaches the settlement of Sultan Rob [Arop Biong]." The Kir was, as later became known, the Bahr el-Arab.

Wilkinson was not alone in erroneously demarcating geographical features in the Sudan. For example, traveling from Wau to Arop Biong's area in 1904, Major

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Percival described the Kir as being 50 miles south of the Bahr el-Arab. Other reports make it clear that administrative officials mistook the Ragaba ez-Zarga/Ngol for the Bahr el-Arab, and thought the Kir was a different river.

The experts' research revealed to them that there was considerable geographical confusion about the Bahr el-Arab and Bahr el-Ghazal regions for the first two decades of the Condominium rule. This was part of a broad range of geographical inaccuracies regarding most of the Sudan in that time.

1905-06 surveys correctly identified the Kir as the Bahr el-Arab and the Ragaba ez-Zarga/Ngol for what it actually was (and labeled it the "Bahr el-Humr"). It was not until 1908, however, that local administrators in Kordofan consistently described the Ragaba ez-Zarga as the "Bahr el-Humr" in their official reports.

The maps submitted by the government in support of this proposition do not reflect those corrections.

The government's assertion that only the Ngok Dinka territory south of the Bahr el-Arab was transferred to Kordofan is, although understandable, incorrect.

Contemporary documents before 1905 record that the Ngok Dinka occupied an area that extended from the Bahr el-Arab/Kir north to at least the Ragaba ez-Zarga/Ngol. In the immediate aftermath of the Mahdiyya both the Humr and the Ngok benefited from the British administration's general policy in the Sudan to encourage peoples to return to their original homelands in order to revive abandoned rural areas. Documents which report internal movements within Ngok Dinka territory after 1905 cannot, therefore, be taken as evidence of mass population migration from one territory to a new territory.

Proposition 8: *There was a continuity in the territory occupied and used by the nine Ngok Dinka chiefdoms which was unchanged between 1905 and 1965, when armed conflict between the Ngok and the Misseriya began.* (Ngok oral testimony and SPLM/A presentation)

In assessing this claim it must be recognised that contemporary documents are incomplete in that no British official ever visited the Ngok in the rainy season; therefore they did not observe the Ngok rainy-season use of some of the northern-most territories now under dispute. However, in keeping with the Condominium administration's general policy of encouraging the full use of tribal territories by their original inhabitants, it is evident that over a period of years

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successive administrators accepted a continuity of settlement and use, even if they did not observe it personally.

The administrative record of the Condominium period, along with the testimony of persons familiar with this area at the end of the Condominium, establishes that there was a continuity of Ngok Dinka settlements in the area of the Bahr el-Arab/Kir, the Umm Bieiro, the Ragaba Lau, and the Ragaba ez-Zarga/Ngol. For instance, in 1909 Kordofan official C.A. Willis wrote that Ngok settlements were found all along the Jurf (Bahr el-Arab) and that "Dinka influence extended a considerable distance further North at one time." Michael Tibbs states categorically that there was continuity of the Ngok settlements up to the end of the Condominium. Ian Cunnison was equally definite in stating that the general area in which the Ngok maintained their permanent settlements remained the same over the years. At the peace agreement between the Misseriya Humr and the Ngok Dinka in March 1965 both sides agreed that the Ngok could return to their homesteads at "Ragaba Zarga and other places where they used to live" and that the Arabs would have unrestricted access to all ragabas that they had been frequenting before the outbreak of hostilities.

From the above evidence it stands to reason that the Ngok had established dominant rights of occupation along the Ragaba ez-Zarga and the area to its north, while the Misseriya enjoyed established secondary rights of use in the same region. Further to the north, however, the two communities exercised equal secondary rights to use of the land on a seasonal basis.

Proposition 9: *The Abyei Area is defined as the territory of Kordofan encompassed by latitude 10°35' N in the north to longitude 29°32' E in the east, and the Upper Nile, Bahr el-Ghazal and Darfur provincial boundaries as they were at the time of independence in 1956. (SPLM/A presentation)*

Latitude 10°35' N represents the northern-most limit to the claim of dominant rights for the Ngok that the SPLM/A is willing to put forward.

The experts, having examined the evidence presented in the preceding propositions, are confident that the area south of latitude 10°10' N contains the territory in which the Ngok have dominant rights, based on permanent settlements and land use.

The area between latitudes 10°10' N and 10°35' N therefore represents the area of secondary rights shared between the Ngok and Misseriya.

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This area closely coincides with the band of Goz, which a number of sources identify as the border zone between the Ngok and Misseriya.

Based on the legal principle of the equitable division of shared secondary rights, therefore, the northern boundary should fall within the zone between latitudes 10°10' N and 10°35' N.

As neither the Ngok nor the SPLM/A have presented claims to the territory east of longitude 29°32'15" E, it is reasonable to take this line as the eastern boundary.

CONCLUSIONS

After careful consideration of each proposition put forward by the Misseriya, Ngok Dinka, GOS and SPLM/A, and a thorough examination of available evidence, the ABC experts have made the following determinations:

- In 1905 there was no clearly demarcated boundary of the area transferred from Bahr el-Ghazal to Kordofan.
- The GOS belief that the area of the nine Ngok Dinka chiefdoms placed under the authority of Kordofan in 1905 lay entirely south of the Bahr el-Arab is mistaken. It is based largely on a report by a British official who incorrectly concluded that he had reached the Bahr el-Arab when in fact he had only come to the Ragaba ez-Zarga/Ngol. For several years afterward maps, some of which were cited by the GOS in its presentation to the experts, manifested this error.
- The Ngok claim that their boundary with the Misseriya should run from Lake Keilak to Muglad has no foundation.
- The historical record and environmental factors refute the Misseriya contention that their territory extended well to the south of the Bahr el-Arab, an area to which they never made a formal claim during the Condominium period.
- Although the Misseriya have clear "secondary" (seasonal) grazing rights to specific locations north and south of Abyei Town, their allegation that they

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have "dominant" (permanent) rights to these places is not supported by documentary or material evidence.

- There is compelling evidence to support the Ngok claims to having dominant rights to areas along the Bahr el-Arab and Ragaba ez-Zarga and that these are long-standing claims that predated 1905.
- There is no substance to the Misseriya claim that because the Abyei Area was included in "Dar Messeria" District, it belongs to the Misseriya people. The Ngok and the Humr were put under the authority of the same governor solely for reasons of administrative expediency in 1905. After that action, the Ngok retained their identity and control over their local affairs and maintained a separate court system and hierarchy of chiefs.
- The administrative record of the Condominium period and testimony of persons familiar with the area attest to the continuity of Ngok Dinka settlements in, and use of, places north of the Bahr el-Arab between 1905 and 1965, as claimed by the Ngok and the SPLM/A.
- The experts considered the presentation by the SPLM/A that their dominant claim lies at latitude 10°35' N, but found the evidence in support of this to be inconclusive.
- The border zone between the Ngok and Misseriya falls in the middle of the Goz, roughly between latitudes 10°10' N and 10°35' N.

FINAL AND BINDING DECISION

Having duly considered, assessed, and weighed the evidence before them, the experts have come to the following decision:

- 1) The Ngok have a legitimate dominant claim to the territory from the Kordofan-Bahr el-Ghazal boundary north to latitude 10°10' N, stretching from the boundary with Darfur to the boundary with Upper Nile, as they were in 1956;
- 2) North of latitude 10°10' N, through the Goz up to and including Tebeldia (north of latitude 10°35' N) the Ngok and Misseriya share isolated occupation and use rights, dating from at least the

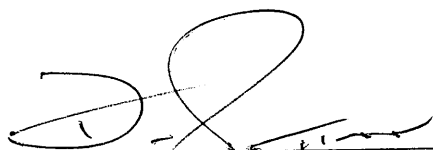
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Condominium period. This gave rise to the shared secondary rights for both the Ngok and Misseriya;

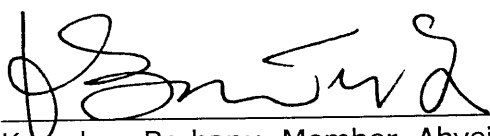
- 3) The two parties lay equal claim to the shared areas and accordingly it is reasonable and equitable to divide the Goz between them and locate the northern boundary in a straight line at approximately latitude $10^{\circ}22'30''$ N. The western boundary shall be the Kordofan-Darfur boundary as it was defined on 1 January 1956. The southern boundary shall be the Kordofan-Bahr el-Ghazal-Upper Nile boundary as it was defined on 1 January 1956. The eastern boundary shall extend the line of the Kordofan-Upper Nile boundary at approximately longitude $29^{\circ}32'15''$ E northwards until it meets latitude $10^{\circ}22'30''$ N;
- 4) The northern and eastern boundaries will be identified and demarcated by a survey team comprising three professional surveyors: one nominated by the National Government of the Sudan, one nominated by the Government of the Southern Sudan, and one international surveyor nominated by IGAD. The survey team will be assisted by one representative each from the Ngok and Misseriya, and two representatives of the Presidency. The Presidency shall send the nominations for this team to IGAD for final approval by the international experts;
- 5) The Ngok and Misseriya shall retain their established secondary rights to the use of land north and south of this boundary.

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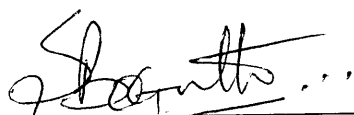
Signed by the international experts of the Abyei Boundaries Commission



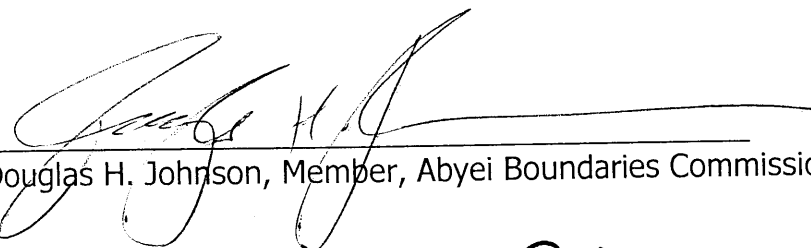
Donald Petterson, Chairman, Abyei Boundaries Commission



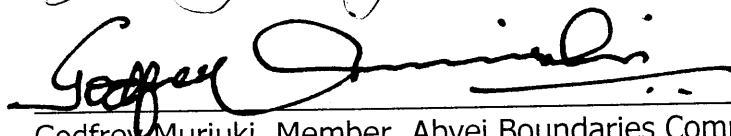
Kassahun Berhanu, Member, Abyei Boundaries Commission



Shadrack B.O. Gutto, Member, Abyei Boundaries Commission



Douglas H. Johnson, Member, Abyei Boundaries Commission



Godfrey Muriuki, Member, Abyei Boundaries Commission