

Submissions for APG Sudan – Barnabas Fund

Barnabas Fund supports a number of projects in Sudan, many of which are aimed at addressing problems coming out of the civil war. This situation will be adequately summarised by submissions from other NGO's. However, in monitoring the region, we have a specialism in analysing border management issues. As such our submission below, in order to be of most use to the Sudan APG focuses upon this specialism.

Questions surround the land demarcation between North and South Sudan. The prospect of secession like this is unprecedented. The scale of this potential secession has not been seen since the fall of the USSR. The development of transnational companies in the intervening decades is amply evidenced by the number of oil concessions which straddle the border. The current militarisation of the border region, its length and the number of unresolved flashpoints make the need for preparatory border management essential.

Let us look in turn at the starting from the Central African Republic border and moving east along the 2,000km long border;

1) Hofrat-al-Nahas and uranium

The CPA stipulates very clearly that the borders for the forthcoming election and referendum will be those that were in place on 1st January 1956.

In 1956 Hofrat-al-Nahas was in the Southern state of Ghazal. The border was formally moved in 1972 so that Hofrat-al-Nahas became part of Darfur instead. This followed the discovery of uranium in the surrounding countryside in 1961. The area has a history of gold, copper and iron ore production too.

Whilst the population is in the tens of thousands and the area of land in the region of 20,000 km², moving the border back to its 1956 line will be affected by several complicating factors.

- a) Reaching and maintaining a consensus on which 1956 map to use as a base map.
- b) How to deal with those who argue that the south has 'acquiesced' in the intervening 37 years by allowing the north to remain *in situ* and thereby have lost the claim of title to territory regardless of the provisions of the CPA or the Addis Ababa agreement.
- c) Addressing the concerns of those residents in the disputed area who feel aggrieved that those living in Abyei will enjoy the right to Self-Determination, but that they will not.
- d) Issues surrounding the transfer of commercial rights from GoNU to GoSS.
- e) Any security provisions the GoSS has made or indeed can make in defence of these resources and populations from the threat of a relocated LRA across the border.
- f) What concerns a newly adjacent border will pose for the Central African Republic.
- g) Will Common Access areas be required and if so where, when and under whose authority?

2) Salt Pans due South of Buram

These salt pans are of considerable benefit to the local population and another major resource that transgresses the hinterland of the Ghazal/Darfur border. This border remains insufficiently demarcated. Indeed the fact that in 1958 it was without any map of a detail better than 1: 250,000 only makes the archival delimitation that much harder. Issues of authenticity and accuracy with

maps of this scale can lead to considerable discrepancies when demarcation is being discussed. If this were the only unresolved resource issue along the demarcation line, it could probably be resolved without precipitating conflict. However, the fear is that it will either;

- a) Get overlooked
- b) Or be included in a package deal solution along with the other unresolved border issues.

These actions may bring a short term resolution to the overall border agreement with its focus upon Abyei, but in the medium term they will become an issue should the demarcation be contested by those insufficiently considered in the original decision. It is such border management issues that initially seem insignificant which can return to destabilise a wider agreement.

3) Abyei and its environs

The Permanent Court of Arbitration award on Abyei has been accepted by both GoNU and GoSS. This has yet to result in any demarcation on the ground. This award is the only divergence from the 1st January 1956 line which has been agreed by both sides and as such does not have the archival element to provide a foundation for demarcation. The Abyei demarcation will take relatively longer to demarcate, be more closely monitored and thereby more hotly contested. There are two other unhelpful elements that contribute to this award having a reputation as a flashpoint;

- a) The delimitation is along astronomical (or *Geodesic*) lines which have little respect for the geomorphology and demography on the ground. Any demarcation will thus start off with the local residents being given the impression that it is an imposition and therefore potentially unwelcome.
- b) The large tracts of land designated as common access, how will such an area be managed? What legal regime is its precedent: how similar is it to a maritime Economic Enterprise Zone for example?

Within these two possible flashpoints there are ancillary questions which seem to have gone largely unnoticed in the light of the Abyei award.

- a) i.) How will the need for security measures along some sections of the border demarcation tally with the migration requirement of the *Misseriya*? E.g. chain link fences?
ii.) Who will be responsible for policing the oil concessions that transgress the newly demarcated border: The JIU's? UNMIS? Security contractors like Blackwater *et al*? Foreign state armed personnel?
iii.) Take the time to read the dissenting opinion from Judge Awn Al-Khasawneh and then consider whether the speedy acceptance of the award from both sides may only be adhered to under a vote for unity in a 2011 referendum and not if secession is voted for.
iv.) What would happen if, before a demarcation had taken place, there were to be an announcement of another oil strike in the area that was originally awarded to the GoSS, prior to being reduced in the July PCA award?
- b) i.) One of the key reasons the *Misseriya* migrate each season through the Abyei area is to gain access to the Bahr-al-Arab River (also known as the Kiir). Under the PCA award, this river does not pass through the common access area. Indeed following the award only a

short riverine access remains possible within Kordofan state; down at Kol Aruth. This is largely an issue arising from secession, but will be a touchstone issue throughout any preceding discussions, especially as the *Misseriya* are unique in the specific mention they receive in the CPA.

ii.) Incrementalism is erosive to border regimes and having a common access area abutting an administrative boundary or worse an international boundary, leaves such a boundary open to question. Where there is uncertainty over where the border is and who uses which bit of land most, title to territory can become dangerously unclear. When transgressions occur frequently and extensively, however ordinary, official protests must be tabled so as to counter claims of 'acquiescence'. Such an approach may seem overly officious and not at all neighbourly, but legally is to be recommended.

4) Nuba Mountains and Self Determination

One subject that resonates through history as a destabilising force on border agreements is that of populations denied self determination when a border is in flux. To mention the Treaty of Yalta and the Balfour Declaration is to evoke a whole wealth of territorial disputes, some of which seem only to increase in intensity. With Abyei receiving the chance to be included in a referendum for potential secession in 2011, the people of the Nuba Mountains often voiced desire to do likewise seems a glaring anomaly. This same issue is relevant along sections of the Blue Nile State border. In both, the demarcation of the border is not the primary issue; it is the unrequited desire of a people group to be on the other side and take 'their' land with them that will cause management issues in the short and medium term.

5) Demarcation issues around Renk

Alongside the issues of government owned land alongside the White Nile in Renk, there are two practical demarcation issues.

- a) Firstly, the part of the river the border crosses could easily become a flashpoint when demarcation comes along, due to the difficulty of agreeing a demarcation where accretion and avulsion of the river course are a daily reality. If the river moved would the border move with it or stay the same? The *Chamizal Tract* court case would provide a solid precedent, but on an already contentious border such uncertainty is unwelcome to say the least.
- b) Secondly, the extensive fresh water marshes west of Kaka provide considerable logistical problems for effective demarcation alongside the elevated cost of demarcation in such difficult terrain.

6) General issues raised by Abyei award and the prospect of secession

The geography of South Sudan could potentially lead to it becoming a cul-de-sac state, with the surrounding countries having all their infrastructure facing their historic hinterlands. The CAR and Congo border is draped in dense jungle, Uganda has had its Northern provinces ravaged by conflict with the LRA, Kenya has its border shrouded in the Lokichoggio wetlands and Ethiopia is bounded by mountains. Each adjacent country has only one main road listed on most current maps with South Sudan. With the prospect of several live conflicts on its Northern border to contend with as well, a

landlocked South Sudan may very well find this exacerbated by the perpetual threat of a closed border.

Finally the issue of access to water and primarily the White Nile means that Egypt will have a keen interest in the secession. Their concerns surrounding the Jonglei canal and their desire to avoid having their voice for access to the White Nile diminished by the creation of a new state are an unwanted distraction. Add to this the interests of overseas investors who have leased thousands of hectares of arable land in South Sudan and you have another potent layer of discord surrounding the border demarcation.

The Abyei award has unfortunately given the impression that its resolution has been coterminous with an agreed North-South Boundary. This is not the case and this expectation gap is potentially more dangerous than any distance between disputed boundary lines.

Asa Humphreys, Policy Officer. 30.10.09