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HORN OF AFRICA BULLETIN

ANALYSES • CONTEXT • CONNECTIONS

Analyses

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News and Resources

Will the oil row in the Sudans lead to an oil war?

A good number of people across the world gave a sigh of relief on 09 July 2011 when South Sudan's independence was announced. Among other things, the primary reason for the relief can be traced to the perception that the split of the Sudan into two independent countries represented an inevitable end to what many felt was decades of an unbearable cohabitation of the people of the north and south geographical spaces of the same country.

Perhaps the most significant cause of the relief was an expectation that the July split marked a concrete end to decades of war and, all things being equal, the people of Sudan were not likely to see the return of the familiar ear-splitting sounds of AK-47 and planes dropping pounds of bombs, as was the case during the more than two decades of North-South conflict. It was, however, clear to many ardent followers of the recent history of Sudan that the handwriting about the emergence of a "*war of another kind*" was already decipherably etched on the wall as a result of the thorny nature of the outstanding issues to be addressed, the depth of ensuing post-divorce bitterness and suspicions, the overall bumpy road to stability for both countries, and the implications of all these issues on the relations between the two countries.

The only major source of hope for positive relations between the two countries revolved largely around the reality of interdependence that was capable of emerging around existing shared resources, particularly oil. Contrary to the latter expectation, however, recent developments in the relations between Juba and Khartoum around oil, border and economic issues have plummeted to a crisis point, which can at best be described as a "*war of another kind*" between the two countries short of open confrontation but which requires urgent international attention in order to prevent it from degenerating into a "*war of a known kind*."

Genesis of the crisis

The current crisis has come about as a result of the lack of agreement on a fee for the use of the oil infrastructure in Sudan. Before independence, Sudan produced an estimated 470 000 barrels of oil per day and was transported from the oil fields through about 1600 km of oil pipelines to Port Sudan where it was exported for

revenue accounting for up to 70 per cent of the country's sources of revenue. It also made the country sub-Saharan Africa's third-largest oil producer only after Nigeria and Angola. At the independence of the South in July 2011, however, 75 per cent of the oil remained with the newly independent Republic of South Sudan. This has left Sudan with only about 25 per cent of the average pre-split oil production and the existing oil infrastructure made up of the pipelines and the Port Sudan terminal.

By this coincidence of sharing of the oil resources between the two countries, the logic of international expectation was that the lack of pipelines and the indispensability of the same for exporting South Sudan's oil vis-a-vis the sharp reduction in the oil revenue accruing to Sudan would have forced the two countries to cooperate within a framework of mutual dependence.

However, the two partners have till date not succeeded in agreeing an amount for the use of the oil infrastructure. Instead, they have locked horns in a tense and fiery atmosphere reminiscent of the territorial dominance-seeking antics of typical African buffaloes. Whilst Sudan maintains a price of 32-36 US dollars per barrel; South Sudan has stuck to the position of paying less than a dollar per barrel. The resultant opposing interests and positions form one of the key bones of contention, which the African Union's (AU) High Panel Implementation Panel (AUHIP) chaired by former South African President Thabo Mbeki is attempting to unravel in the on-going Addis Ababa negotiations.

The logic of the competing interests

A closer scrutiny of the various positions presented by Juba and Khartoum in the Addis Ababa negotiations of the oil crisis reveals a number of interesting insights. First, Sudan's position appears to be informed by an in-depth knowledge and awareness of the budgetary implications of the July split, and their quest to exploit the ownership of the oil infrastructure as an alternative source of finance to prop their ailing economy. If Juba were to accept to pay a price of 32 US dollars per barrel, for example, Khartoum would be making about 11.2 million dollars a day and some 4.1 billion dollars per annum from its southern neighbour (assuming total revenue before deduction of cost of production at an average price of 100 dollars per barrel on the world oil market). Ultimately, this would amount to raising the portion of Sudan's share of the total oil production to about 49 per cent. Whilst this inference may not be palatable to the interests of South Sudan, its strategic implication from the perspective of Sudan's negotiations reflects the highly knowledgeable and tactical nature of the negotiating team representing Khartoum – one that should not be faulted because national representation in international relations is about the maximisation of national interests.

Related to the above is the fact that Khartoum's position is practically symptomatic of internal economic pressure and the quest for options to sustain their budget rather than a calculated attempt to sabotage South Sudan, as has been variously represented by Juba through several media platforms. Already, Khartoum's economy is to shrink by up to 4.5 per cent in 2012, according to the Economist. Moves by Khartoum to gain more from the negotiating table in this sense, is therefore, partly explainable within the context of economic motivation rather than wholly pointing everything to political intentions of intentionally suffocating Juba economically.

It can also be argued that Khartoum's knowledge of the fact of monopoly of ownership of the oil infrastructure, vis-a-vis the indispensability of its oil pipelines for Juba's export revenues, has informed its tough stance on the oil pricing. Without alternative routes for the export of Juba's oil, Khartoum enjoys a monopoly, which increases its leverage to dictate the terms of Juba's use of the infrastructure. The logic of such a stand cannot also be faulted mainly because the oil infrastructure in Sudan has become what the 75 per cent of the oil is to South

Sudan and makes a great deal of economic sense for Khartoum to want to trade it for what it is worth.

Juba's position, however, has been hinged largely on the logic of not paying a price that contravenes industry practice and not setting an international precedent, which might not be sustainable in the long-term. Apart from the logic of Juba's argument, the new country would end up halving its share of the oil revenue if it agrees to Khartoum's price range of 32-36 US per barrel.

Beyond the expressed positions, reading in-between the lines, it does appear that post-divorce rivalry and mutual suspicions over the possibility of destabilisation are the most deadly and damaging unspoken drawbacks to progress on the negotiating table. At the moment, the two parties' interests are worlds apart and require extraordinary tact and leverage for the AUHIP to get them to agree a price. The only encouraging fact is that both parties recognise the need for some form of payment to be made in the use of the infrastructure.

Juba's oil shutdown: who loses?

In the midst of the stalemate, both countries have resorted to unilateral decisions and trading of allegations. Khartoum is accused to have confiscated consignments of Juba's oil and also constructed adjoining pipelines to siphon oil from the known pipelines to the tune of about 815 million US dollars. Apart from accusing Khartoum of theft, Juba shutdown oil production whilst considering the construction of pipelines to ports in Kenya and Djibouti. The decision to shutdown production was taken by a meeting of the Council of Ministers of South Sudan chaired by President Salva Kiir. Strategically, the shutdown diminishes Khartoum's bargaining chip of monopoly and sends a strong signal its southern neighbour is not so desperate as to want to waste its resources in an international oil row. It is also a means of keeping the oil till a judicious means of exploiting is found. This communicates Juba's understanding that it is better to keep it for the future than waste it in an oil row. Even though Khartoum had indicated that depending on the eventual price to be agreed, the value of the confiscated oil was to be used to offset the cost of use of the oil infrastructure, the move by Juba indicates a doubt about the chances of that becoming a reality and a sense that Juba would have lost a crucial amount of revenue through the confiscation process.

Despite the strategic implications for Juba's national interests, the shutdown has worsened the search for an amicable solution and has dire implications on the economic standing of both countries. In the case of South Sudan, the crucial role oil plays in its economy cannot be over-emphasised. At the moment, the infant economy is heavily dependent on oil export. The shutting down of oil implies that either Juba has an alternative source of funding or is ready to damn the consequences of an economic shutdown. It does appear that Juba either has or has firm indications about alternative sources of income in the interim. For Khartoum, the cost is clear and may be as much as they have been making from the South's use of the infrastructure or the confiscated quantity. Whatever the options, it does appear that Juba's choice may be dire in the short to long term but may offer strategic long-term benefits. The reverse may be the case for Khartoum.

Juba also expelled the president of Petrodar, a Chino-Malaysian oil company, from South Sudan on the grounds of not cooperating in the decision to shut down oil production, continuing to receive instructions from the government in Khartoum, and for dishonesty evidenced by allegations that the process of shutting down oil-production in the country led to the discovery of an extra 40 000 barrels of oil per day than was the declared production.

Is the situation a wet rag for war?

In the midst of the crisis, the leaders of the two countries have remained extremely fiery thus raising fears of a possibility of resumption of hostility between the two

capitals. I argue that a number of issues make that a possibility. First, the principals have not been talking and consulting on the search for an amicable solution to the issue. Instead they have been trading allegations and fiery political rhetoric at each other across media platforms. This has the tendency of poisoning the atmosphere for successful negotiations and worsening existing bitterness in the post-divorce Sudan.

Secondly, the two leaders have each not ruled out the possibility of war. President Bashir admits that the tension has the possibility of leading to war. Khartoum would, however, not initiate any war, but if presented with it, they will have no option but to engage in it. He, however, warned that if such a situation were to happen, there would be very high attrition for both countries especially the South. Juba's response to the question of the possibility of oil has been swift. Vice President Riek Machar has responded to Khartoum by saying that the South will not go to war, not because they fear defeat, but because the context and logic of the situation demands that. President Salva Kiir has also reiterated the position of the government not to go to war with Khartoum. His assurance, nevertheless, does not give assurance that if attacked, it will not respond in self-defence.

The thinking of the two capitals offers a glimpse into their interpretation of the issues in respect to the possibility of a war. The overall sense is that even though both parties are not ready to initiate war, they would be ready to respond appropriately to any strike from their opponent. Such a scenario, if placed within the context of the worsening relations and existing security realities between the countries, vividly paints a portrait of the case of "a wet rag" only waiting for some spark to ignite. Against a backdrop of armed groups operating on each side and the challenges associated with disarmament, un-demarcated borders and the provocative military moves and cross-border bombings by Khartoum, the possibility of a spark is real and if nothing is done, the world should not be surprised to witness the resumption of a full-blown war between the two countries.

Options on the way forward

Despite the efforts of the AUHIP, very little progress has so far been made towards the resolution of the crisis. For a breakthrough, however, it is important that the AUHIP builds a strong leverage that is capable of forcing parties to respect the outcomes of deliberations. This can be achieved through the express support of the international community to the process and the elimination of regional positioning and geopolitics that undermine commitments to the terms of the Addis Ababa negotiations. Another way to break the deadlock is to bring in third parties whose national interests will be affected by the outcome of the negotiations.

China's influence comes in handy here. An estimated 5 per cent of Chinese oil supply comes from the South Sudan. Introducing the China card in the negotiations is capable of building the requisite leverage for pushing through a deal as soon as possible. Another important move is for the two partners to be educated on the fact of "mutually assured destabilisation" in the sense that if any of the two is destabilised, the chances of the other getting destabilised is real and assured. This will not only lead to the resolution of the oil crisis, but also provide a framework for both parties to cautiously manage emerging issues and mutually support each other in the search for stability after the split.

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Reflections on the crisis in the Sudan's Nuba Mountains of South Kordofan

The month of March 2012 has seen several salient events. There were protests outside the Sudanese embassy in Washington DC leading to the arrest of George Clooney along with his father and American Congressmen, publication of critical op-eds on both sides of the Atlantic by Alex de Waal in the *New York Times* and Nesrine Malik in the *Guardian*, which brought the spotlight on the crisis in the Nuba Mountains of South Kordofan, and signing of a framework agreement between Juba and Khartoum through mediation by the African Union High Level Implementation Panel (AUHIP) chaired by former South African President Thabo Mbeki. Nesrine Maliki describes Clooney's well-meaning campaign for the Nuba Mountain people as "rooted in a political culture that does not care for nuance"¹, whilst Alex de Waal calls it sheer "idealism"².

But who are the Nuba? The Nuba claim that they are the indigenous inhabitants of the Nuba Mountains, an area located in South Kordofan, the Sudan. In the 18th century, Nuba Mountains became home to the kingdom of Taqali that controlled the hills of the mountains until their defeat by Mahdi Muhammad Ahmad. After the Mahdi's defeat by the British, Taqali was restored as a client state. While geographically in northern Sudan, much of South Kordofan—and virtually the entire Nuba Mountains region in the center of South Kordofan—identifies with the South culturally, politically, and militarily. As such the Nuba are politically and economically marginalized and suffered persecution and oppression under the central government. Human rights abuses have persisted and the Nuba are increasingly under pressure to give up their traditional way of life, and lose access to their lands and other natural resources for immigrant Baggara and Jellaba ethnic groups who are supported by Khartoum.³

From 1987 to 2001 the Nuba Mountains were a war zone. In 2002, a ceasefire agreement was signed in Bürgenstock, Switzerland. Despite the conclusion of the 2002 cease-fire and the 2005 CPA, according to Francis Deng, the non-Arab peoples of the North "even saw themselves as worse off than the South, where decades of liberation struggle had gained some concessions from the Khartoum government."⁴ Commenting on the CPA, Deng writes, "The agreement also gives the people of Southern Kordofan and southern Blue Nile a significant measure of autonomy and the right to have their views sought on their system of governance through popular consultation, a form of internal self-determination."⁵ Nevertheless, the CPA failed to deliver even on its minimal promises.

The popular consultations were to be preceded by state elections. After several postponements, the gubernatorial elections in South Kordofan were finally held in May 2011 in an environment of mistrust between the two main political parties- the National Congress Party (NCP) and the SPLM, many anticipated that Abdel Aziz al Hila, a popular former commander of the SPLA would win the election. On 27 April, during an NCP election rally in South Kordofan President Al Bashir was quoted as warning of "going all out for war should SPLM win the elections." However, the National Elections Commission appointed by Omar al-Bashir officially announced that Ahmed Haroun won the elections in spite of protests by the SPLM/A that it was fraudulent.

What's worse, Haroun is wanted by the International Criminal Court (ICC) for atrocities he committed in Darfur. He is charged with 20 counts of crimes against humanity and 22 counts of war crimes. Instead al-Bashir promoted him from Chairman of the Humanitarian Affairs Commission (HAC) to Governor of South Kordofan. When results were announced that Haroun had won, SPLM refused to accept the results and announced its disengagement from the state government. This created a vacuum in the South Kordofan State Legislative Assembly that put in jeopardy the popular consultations. As of June 2011, South Kordofan governor Ahmed

Haroun had suspended the process of popular consultations and conflict between Sudan People's Armed Forces and Nuba fighters of the SPLM-N followed.

On 28 May 2011, soon after the occupation of Abyei by the SAF, the Government of Sudan issued an ultimatum to SPLA headquarters stating that by 1st of June 2011 all SPLA forces in South Kordofan and Blue Nile states must leave and head south beyond the 1956 border and started to forcefully disarm the SPLA elements of the Joint Integrated Units (JIUs). On 5 June 2011, fighting broke out between SPLM and SAF in Kadugli. Later in the night, fighting intensified as SAF bombarded areas where there were SPLA detachments in the Talodi locality. On 6 June, SAF commenced aerial bombardments and intensified ground assaults on civilian populated areas in Um Dorein and Talodi localities. Many civilians fled the towns taking up refuge in the Nuba Mountains.⁶

The fighting has expanded well into the Heglig region, an area which the SPLA has declared to have seized on 26 March 2012.⁷ According to news reports, Khartoum's accusation that Juba supports SPLA-N and Juba's allegation that Khartoum has launched offensive have now stifled the ongoing negotiations between Juba and Khartoum.⁸

What's more, with the government of Sudan facing a crippling financial crisis as a result of a 75 percent drop in oil revenues after partition in July 2011 and total loss of the share in the oil revenues subsequent to the South's recent decision to halt production recently, it would not be surprising if Khartoum resorts to scorched-earth and starving-out tactics to suppress the rebellions in the Nuba Mountains of South Kordofan.⁹ The prognosis would be that unless the international community puts pressure on Khartoum, things will get worse.

Therefore, what's to be done? The key to resolving the North-South conflict in a sustainable manner is to be found in realizing the limitations inherent in the CPA. As Julie Flint observes rightly, "it will be resolved only by a political agreement that acknowledges not only that the Nuba rebellion is a civil war in its own right, but that it is symptomatic of a deep malaise in Sudan which has not been resolved by the secession of South Sudan."¹⁰ One major limitation of the CPA was that it was not comprehensive enough to include the question of the Nuba. The CPA sidelined the question of the right of self-determination of the people of the Nuba Mountains. Instead the negotiating parties to the CPA came up with what is called "Popular Consultations" for the people of the Nuba Mountains, which is an ambiguous clause and divests them of any opportunity for determining their own fate.

Another limitation is that the ongoing bumpy negotiations dealing with the post-independence issues, namely (1) border demarcation, (2) the four freedoms, i.e., freedom of movement, residence, work, and property, and (3) oil transit fees, have security repercussions on the non-Arab peoples of the North, including the Nuba, do not seem to have recognized these implications inasmuch as they don't include South Kordofan into the security matrix.¹¹

Although what the CPA had intended to address was the past injustices and grievances by the Nubans, including years of exclusion, marginalization and discrimination, some of the provisions related to South Kordofan including the popular consultations remain unimplemented. It was these past grievances that had led the Nubans, who despite being Northerners, to ally with the Southerners in their fight against the North. The key, therefore, to the resolution of the Nuba Mountains crisis lies in political negotiations between the Government of Sudan and the Nubans and not through military action, at least in the short-run.

The international community should insist on getting humanitarian aid into South Kordofan before the looming humanitarian crisis turns into a full-fledged crisis with or without the consent of Khartoum as well as on striking an immediate cease-fire. In this regard, the international community should equally put pressure on SPLM-N to agree to the cease-fire that is indispensable to allow for the free movement of aid agencies in the region to distribute the much needed aid.¹²

Once that is done, there would be little or no difficulty letting the peace talks run their course. This would require Khartoum to lift the ban against the SPLM-N and begin an inclusive constitutional reform process, including recognizing their right to self-determination.

The Nuba rebels and their Southern backers, for their part, would have to repudiate the use of violence as a means to effect change. Moreover, the international community has to support the bumpy mediation efforts underway by the African Union High Level Implementation Panel (AUHIP) chaired by former South African President Thabo Mbeki between Juba and Khartoum over post-independence issues inasmuch as that helps build confidence between the two Sudans and in turn eases tensions between the Nubans and northerners.

Furthermore, the international community should engage the Government of Sudan and representatives of the Nuban people, including the SPLA-North in a dialogue with the view to address the grievances of the Nuban people, and the future legal status of SPLM-N as a political party in the North.

Finally, the UN Security Council should mandate the establishment of an inquiry commission, not excluding the Prosecutor of the International Criminal Court, to conduct a comprehensive investigation into the atrocities in South Kordofan and to identify the perpetrators with the view to bringing them to justice.

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No intervention!**The way forward in Somalia**

Somalia is ravaged by 21 years of war that involves clan militias, international intervention forces and militant Islamists. The Somali crisis is not only an internal affair, it concerns other states in the Horn of Africa and further abroad.

Tragically, the continuous warfare inside Somalia is also a result of a long series of wrong approaches to and interferences into Somalia by external powers.¹ Al-Shabaab is a militant Islamist group was in control of a large section of southern Somalia until mid-2010.² Recently it has been driven away from some of the regions that it controlled through military intervention by AMISOM (African Union Mission in Somalia), TFG (Transitional Federal Government), Kenyan and Ethiopian forces. But military defeat of Al-Shabaab will most probably not solve the problems of southern Somalia.

Al Shabaab is not a uniform movement. It is internally split between hardliners and pragmatics, and it involves many young people who have been lured into joining the group based on religious rhetoric as well as forcibly recruited ones and others who joined for the sake of getting a regular salary. There is also a core of more dedicated fighters, some of who are Somali, others are foreigners.ⁱⁱⁱ Even if Al-Shabaab collapses, some extremists might remain who could continue hit-and-run operations and bomb attacks in southern Somalia and beyond. In case any future government in Somalia will continue to be inimical to its own people – a situation that will continue to persist unless the governance system is improved – insurgency groups will find grounds for recruitment in the future.

Looking back at 21 years of external military and political interventions in war-torn southern Somalia, it becomes clear that:

- 1) The various and often incoherent or openly conflicting external Somalia policies of various actors – the UN, the USA, the EU, different European states, several of the neighboring states, Arab states, non-state actors – have prolonged the crisis in Somalia and have caused unimaginable human suffering among Somalis.⁴
- 2) All conferences for Somalia since 1991 including the most recent one in London in 2012 have not been representative in any regard. This even goes for the more Somali-owned conference held in Arta, Djibouti in 2000. The formula for clan-power-sharing (4.5) introduced at the Arta conference and prolonged at the conferences in Kenya and Djibouti 2002-2004 and 2009, respectively, is completely flawed. It is not supported by many Somalis who belong to the category of so called ‘minorities’, who nonetheless constitute a substantial part of the population in the south. They have been the ones who suffered most in southern Somalia after the state collapse.

Many of the leading perpetrators, mostly from the so called majority clans, are still in powerful positions in all southern Somali political movements (be it the TFG or Al Shabaab, or others political groups). There are hardly any chances for sustainable and real peace and state-building if ‘minorities’ are not equally included. Some of those who are accepted as leaders by the international community and their Somali followers would rather have to be considered serious criminals. They reportedly have been involved in massive corruption of external funds and humanitarian aid, looting the resources of the country, destruction of the environment and, some at least, war crimes and massive human rights violations. A culture of impunity has been cultivated in Somalia (by Somalis and the outside world) since 1991 which allows such individuals to continue to hold powerful positions.

- 3) The approach to rebuild a central-state in Somalia encourages fighting for power and resources. It also demands political unity at a time when most groups in southern Somalia cannot trust each other politically and militarily,

due to the internecine fighting during the past 21 years of civil war. The main aim why (southern) Somali politicians came together at international conferences over the past decades was to receive resources and bring themselves and their close associates into leadership positions.

Therefore, an alternative to the unproductive ‘mantra’ of external peace-building and state-building is to involve all internal political actors in the restoration process. This would necessitate appropriate representation of so-called minority groups and considering inclusion of Al-Shabaab, and adoption of a genuinely bottom-up negotiation process among all southern Somali groups. It is of course important that those leading these talks and negotiations are Somalis who have a real standing in their community.

The international community would have only one main role to play in this context – facilitation without destructive interferences. This means to provide minimal support where necessary but otherwise prevent external military or political interventions. Somalis should be enabled to start an inclusive bottom-up negotiation process. Resources provided by external actors to support the peace processes should be kept at a minimum and managed transparently and accountably to avoid contributing to further conflict.

The local communities and their relatives abroad must be those mainly responsible for the negotiations. For instance, members of the Somali diaspora as well as Somali businessmen inside the country should make contributions to foster local peace meetings.⁵ This would assure relative accountability and enhance the chances for substantial and sustainable conflict settlement, since those who sponsor the negotiations would then be close relatives and friends of those who are concerned about peace.

From this follows that the only way forward for Somalia is much less external political interference and no military intervention. The neighboring countries and those others who are most involved in complicating the political and military situation in Somalia must be kept at bay. Somalis must be left to sort out their political problems themselves. The main aim must be that a popular peace process approach is adopted within which the important grievances of each side can be discussed in each region of southern Somalia.

The peace agreement has to include issues of ceasefire, property restitution, amnesty and, if possible, some customary and religious provisions that prevent future fighting and aid in conflict mitigation.⁶ All of that must happen at a local inter-community level first, before it can be included at the regional and national level of the governance structure. Perhaps, this is the clearest lesson that can be learned from Somaliland, the most accomplished political entity in northwestern Somalia that before its unilateral secession was part of the Somali Republic. Peace has been rebuilt there in the 1990s in the absence of massive external interventions.⁷

The fact that people in the north were forced to rely on their own wisdom and resources made the peace in the region stable and sustainable. The current rebuilding underway in Mogadishu, aided by Turkish and other donors, brings about development before the war has been overcome. It is doubtful that this kind of development can last in the absence of real peace-negotiations that enable people to trust each other again.

A ‘hands-off’-approach for southern Somalia does not mean that the international community should not stay engaged to prevent humanitarian disaster and improve basic services, e.g. in the health sector. Many good works are done by dedicated organizations such as Medicines Sans Frontiers and others. But it would mean to leave Somalia alone politically for a while and make sure that Ethiopia, Eritrea, the USA and others also observe this rule.

Of course, one would have to accept that local processes unfolding then would take different directions and that possibly Islamists might gain more power again.

One has to be realistic and see that Islamism is a part of life in Somalia today.⁸ Many Islamists are highly educated and interested in peaceful cooperation. There is a real chance that this type of political and religious actors, who focus on social and political reforms *inside* Somalia, not on global jihad, would gain strength and prevail over those who support violence in the name of Islam. The latter is something that is not appealing to most ordinary Somalis.

The issue of piracy is secondary to peace in Somalia. One could continue trying to contain piracy off the shore of Somalia and in the high seas and fight pirates with the existing naval forces. Once a genuine peace-building process would start inside Somalia, the issue of piracy would most probably fade away. Most of the pirates would be called back by their families and if some of them could be given proper jobs, they might consider giving up the increasingly dangerous sea robbery. Amnesty for pirates, at least those willing to 'demobilize' would be a precondition.

The current idea that is favored by the UN, to increase the number of the AU-troops protecting the weak TFG by inscribing the Ethiopian and Kenyan intervention forces into AMISOM will add to the disaster the civilian population in southern Somalia. The Ethiopian troops reportedly commit massive human and humanitarian rights violations on a daily basis in southern Somalia.⁹ It is doubtful that this will change quickly by bringing them under AMISOM command. A number of Somali voices argue also that the Kenyan troops are not welcome in southern Somalia.

Both, Ethiopia and Kenya are states that share decades of conflict history with Somalia. There have been territorial conflicts between these three states right from the independence of Somalia in 1960 onward.¹⁰ Many Somalis believe that Ethiopia and Kenya actually are not only after Al-Shabaab but also after land and resources. They also believe that particularly Ethiopia wants to keep Somalis divided forever, so that no strong Islamic neighbor can emerge.¹¹

One final thought about the communiqué of the London conference 2012 and its attachments. What will happen if all those well-meaning but rather unrealistic proposals and conditions for a 'new beginning' agreed upon in London are simply not met in August 2012, when the time of the current TFG is over? What will happen if in August 2012 no constitutional or political basis for a change is in place in Somalia? Who is then going to install a new regime? Who makes sure that the number of parliamentarians (many of which try to spend as little time as possible inside Somalia) will be decreased? According to which mode?

One has to think about a political future starting from the bottom. This means to facilitate negotiations among Somalis inside the country, whoever they are and whatever group they belong to, as long as they can agree upon working for peace and (eventually) prosperity in Somalia. Such people will not need huge salaries and ask for per diems. They will be happy to meet under a tree or in a local town or village center and discuss the issues that concern them and the majority of the Somali population.

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Plurality of laws: The Northern Kenya experience

Pastoralist societies in Northern Kenya¹ experience frequent severe conflicts associated with resource competition, cattle rustling and wide availability of small arms. These conflicts are made worse by the growing insecurity, minimal development, historical marginalization and scarcity of natural resources. There are also instances of politically motivated violence especially in the wake of the new Constitution dispensation, specifically with regard to disputed county and administrative boundaries and competition for political positions at the county level.

The state apparatus has been, in most instances, weak and largely unable to prevent, respond or resolve these conflicts. Judicial institutions in particular lack capacity to try perpetrators and the presence of courts has little if any deterrent effect. The impact of the state, government and judiciary is thus still at a nascent stage in Northern Kenya, leaving informal or customary structures of conflict resolution to exist in a largely adulterated form in the regions of Northern Kenya.

Expectedly, the number of conflicts amongst communities in Northern Kenya increases drastically during periods of drought. Scarcity of natural resources causes tension between different communities which co-exist in the region. In addition, some practices that result in conflicts such as raiding and cattle rustling have a long history and have to some extent become an aspect of traditional pastoralist culture. However, such traditional practices have become increasingly destructive and less manageable.² The exact causes of conflict differ from area to area.

In addition, Northern Kenya is inhabited by various ethnic groups that adhere to different values and socio-political systems. Their patterns of natural resource usage may be at odds with one another. Given the considerable number of different ethnic groups in the area, such as the Somalis, Borana, Samburu, Turkana, Pokot, Markwet and others, differences in the usage patterns can lead to confrontations at water points or over pasture. In addition, significant confusion over land ownership exists. Different groups claim land as their customary pasture. There are no individual land titles in most of the Northern Kenya region and most land is held in trust for the benefit of the communities.³

Application of the formal law

Under the Constitution, the Judiciary is charged with the duty to arbitrate disputes between individuals and resolve conflicts among communities and between the state and citizens. To this end, the Constitution provides that the courts shall be guided by a number of principles including the use of alternative forms of dispute resolution like reconciliation, mediation, arbitration and traditional dispute resolution mechanism as long as these are not inconsistent with human rights and any written law in Kenya.⁴ This provision recognizes the importance of alternative dispute resolution in averting conflict and dispensing cases expeditiously.

Half-hearted measures have been made in the past to retain informal or customary law, and even then, under very stringent conditions. The courts have also been largely adversarial in nature where each party to the dispute is expected to present its case to the court with the presiding officer(s) acting as an arbiter who would then declare a 'winning' litigant. A judgement is delivered to be enforced in due course. Disobeying a court's judgement leads to punishment. The process is by its very nature highly formal and technical and therein lies its shortcomings.⁵ In addition, the time it takes to obtain a judgement may be too long for the conflicting parties. A period of a few weeks may encourage them to prepare for revenge actions, as the conflict remains unresolved in the eyes of the parties involved. Further, the local concepts that define what is 'just' and 'fair', how a conflict should be ended, how a perpetrator should be punished, and the authorities to solve a conflict differ paradigmatically from the official or formal law.

One of the underlying local paradigms is that the entire kin group as opposed to the individual perpetrator is responsible for a crime. Accordingly, a conflict resulting from a crime is resolved through payment of compensation, in which the 'lost' values of the victim's group are reinstalled.⁶ Only then is peace restored between the conflicting parties. In many cases, official laws and judgements are considered not to be 'logical' or 'fair' in the eyes of the victim and the perpetrator, and consequentially prove incapable of pacifying communities.

The impact of the Judiciary in Northern Kenya is thus marginal as it has proved inadequate in responding not only to the outbreak of violence but in addressing the underlying causes and facilitating peacebuilding and reconciliation of communities. The result has been seen in the growth of mistrust by the communities to these structures and their rejection of their application, which further escalates instability in the region. Kenya does not have a comprehensive and holistic legislation that focuses on conflict management. The impact of this gap is that some conflict management initiatives such as traditional justice and conflict management mechanisms have no legal framework and operate independent of each other in an uncoordinated manner. This can cause confusion and lead to the ineffective administration of justice and dampen peacebuilding efforts.

Informal justice and peacebuilding processes

In the face of this conceptual conflict and incompatibility of the local systems with official justice institutions, the local communities and civil society organizations resorted to innovative forms of peace initiatives that utilize local concepts and

involve local stakeholders to deal with prevalent conflicts through the establishment of peace committees and peace declarations. The committees have been established through bottom-up selection processes at the location, division, and district level, and they consist of a broad range of members, all with the purpose of contributing to the maintenance of peace in their respective areas. Though some of the committees consist of representatives from multiple ethnic groups, they have shown considerable success in preventing conflicts and safeguarding property.⁷

In instances where the conflicting parties are from different ethnic groups and adhere to different local systems, careful negotiations identify a common basis parties can agree on. General grounds for conflict management are then developed and this has resulted in the drafting of declarations and agreements⁸ whose principles are based on the cultures and customs of the communities concerned though some of these may contradict the official or formal law. Implementation of the declarations, while in some instances, contradicting official law, may create peace. On the other hand implementing the law may only serve to ensure that conflict continues.

State agencies have supported the establishment of these quasi formal peace committees at the district level and below as they have the ability to respond to conflicts and to mediate across district and ethnic boundaries. The different peace initiatives have eventually been harmonized under the umbrella of the National Steering Committee on Peacebuilding and Conflict Management (NSC), located in the Office of the President. The NSC has drafted a national peace policy framework for Kenya, based on the experience of various peace initiatives in the country.

The fact that peace committees have gained credence with the Office of the President and won support of various donor agencies is a groundbreaking phenomenon in bottom-up law-making. It is an effort to create institutions of justice that resonate with the people. The drafting of a national policy framework, however, will ultimately have to deal with the dilemma of applying official justice versus perpetuating peace. It may draw on the legitimacy of the value systems of local communities for the establishment of peace, but it can face challenges when those are at odds with the formal laws. Policy makers and practitioners may have to decide between the establishment of peace and the application of formal justice.

Applying legal pluralism in accessing justice and maintaining peace

Given these discrepancies, it is crucial to allow for a general process through which society and the judiciary or the official law can approach each other. Legal pluralism which presupposes the amicable coexistence of two different legal regimes provides a welcome alternative to such impasse as is evident in the Northern Kenya communities. Studies have shown that communities living within a congruent state regulate themselves notwithstanding the existence of formal law that is considered modern.⁹

By insisting on following formal law, the country may be at risk of destroying important and effective traditional systems of dispute resolution and restorative justice in the quest for modernity. On the other hand, even though in cases such as the northern Kenya experience, the effects of the formal system are hardly felt it is impossible to completely ignore the operation of the formal law. There is therefore need to introduce legal pluralism as a suitable balance. Questions nevertheless arise as to whether legal pluralism would enhance governance, security and economic development or whether it will create intertribal conflicts and legal complexities that can only further destabilize the people.

In spite of these concerns, it is evident that legal pluralism has taken root in dispute resolution amongst the pastoral communities in Northern Kenya. The adoption of foreign legal systems seems to have disenfranchised the rural, poor and less educated communities in the broader Kenyan society. Amongst the pastoralist communities in Northern Kenya, it is difficult to discuss a legal system that does

not include major contributions from customary or informal law. Notwithstanding the deficiencies of the formal law, it still impacts on the communities albeit marginally. The two systems thus co-exist side by side. The challenge is to create a legal system that embraces the cultural identity enshrined in the customary law while providing the stability required reducing ethnic tensions and foster investment, growth and development.

Customary law and culture through the peace committees in Northern Kenya have shown an amazing degree of cross-jurisdictional flexibility. As a trusted institution, the peace committees receive cases related to conflict over pasture, cattle rustling and even murder, which they attempt to solve with the help of the administrative heads in the area who include chiefs, district officers and commissioners. In many instances, they enlist the assistance of the administrative and regular police units especially when tracking stolen livestock. This is a classic example of legal pluralism at work. The peace committees largely apply customary law but nevertheless resort to the formal law usually to secure the enforcement of their decisions. In this way, both systems are involved in an intricate interplay that ensures an amicable resolution if the problem at hand.

Legal pluralism is not without problems. The operation of two legal regimes which may often be at variance with each other cannot fail to raise many problems. For legal pluralism to function in the multi-ethnic region of Northern Kenya there has to be a built-in flexibility that allows discussion and ways of reaching a compromise between different cultures. Presently the legal tenets that need to be applied in a pluralist regime are not clearly set out or written down.

In order to develop a pluralist system, there is need to begin documentation of all customary law and create a legal clearing house for community judicial decisions. This documentation would build up the jurisprudence within each community and create a structure for continued recording of judgments. Legal pluralism should not create power dynamics between the different communities but should stabilize the status quo that has governed community relationships for decades.

Furthermore, a process of harmonizing customary law and formal or official law needs to be developed. Harmonization needs to be a systematic process of evolution of customary law to abide by constitutional provisions, especially the Bill of Rights. Care should however be taken to ensure that in the process of harmonizing and in a sense modernizing the customary law, we do not lose sight of basic precepts within the law that had made it acceptable and palatable to the local communities. There is a risk that while harmonizing the customary law with the official law, it may cease to appeal to the very community that it is expected to serve and in so doing alienate the very people it should apply to.¹⁰

Conclusion

The declarations, practices and quasi-formal peace structures in Northern Kenya are an interesting example of bottom-up law making. They point to the need for legal regimes to respond more adequately to local values and social realities. The need for more responsiveness from the justice sector became obvious in light of the January 2008 post-election violence in Kenya, when the political parties concerned did not rely on the judiciary to address their grievances over the electoral results. The people at the grassroots did not turn to the formal legal system; instead, they resorted to violence as a means of expressing their dissatisfaction. Those events were a wake-up call for Kenya's justice sector to become more responsive to society's needs.

In the long run, justice sector institutions and laws must begin to reflect peoples' actual perceptions and everyday realities. The official justice sector may need to

better tailor its interactions with communities to provide judgments that truly do foster peace in communities, and that people believe to be 'fair'. There is also need for concerted institutional support for customary dispute resolution mechanisms and recognition rather than eroding their authority.

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NEWS

Kenya

Election violence prevention strategies

A number of initiatives have started in Kenya to mitigate election violence. The Uwiano Platform for Peace launched its Strategic Leadership and Peace Agenda for 2012/2013 and Beyond on 2nd April, 2012. The platform comprises of the National Steering Committee on Peace Building and Conflict Management (NSC), National Cohesion and Integration Commission (NCIC), PeaceNet Kenya, United Nations Development Programme (UNDP) and the Independent Electoral and Boundaries Commission (IEBC).

The Platform was formed in the run up to the Constitutional Referendum in 2010 with the aim of forestalling conflicts during that period. Through maximizing the strategic advantages of each partner in the field of peace, the platform managed to contribute immensely to the peaceful referendum process.

Through initiatives such as media engagement, conflict early warning and early response, disbursement of emergency response funds, monitoring of hate speech and consultative forums, the platform diffused tension in several parts of the country such as in the Rift Valley, Coast among other areas where the population seemed polarized as the Country moved towards the Referendum on Kenya's Constitution.

With the success the platform had then, it is imperative that it builds on them and together with other partners ensure a peaceful election process. Uwiano envisages that this is achievable and through strategies such as enhancing the strategic partnerships and coordination, improved information sharing, use of the National Conflict Early Warning and Early Response, (short code 108 and) the social media, media engagement, monitoring of hate speech, peace/consultative forums and disbursement of emergency response funds.

Other initiatives include "Kenya Kwanza" by the National Cohesion and Integration Commission (NCIC). In view of its mandate the campaign that will run for one year seeks to galvanize public attitude and action to inculcate national values and identity. The multi-media campaign seeks to support the aspirations of a new Kenya as outlined in the New Constitution; cohesive, inclusive and peaceful. The values of the campaign are: Non-discrimination on grounds of ethnicity, race and religion, integrity, inclusivity and tolerance.

The specific objectives of the campaign are to: Promote responsible citizenship by placing service before self; foster a national unity and identity by recognizing and respecting diversity and deliver peaceful elections. The campaign hopes to bring together a strong coalition of individual, governmental and non-governmental institutions from across the country.

Source: National Steering Committee on Conflict Prevention and Conflict Management & National Cohesion and Integration Commission.

Faith leader runner-up for global Coexist Prize

Dr. Mustafa Y. Ali, the Secretary General of the African Council of Religious Leaders — Religions for Peace has been honoured as runner-up for the global Coexist Prize. Among six finalists selected worldwide by the Coexist Foundation for the global award, Dr. Ali was the only finalist from Africa to be selected out of a list of two hundred peacemakers and conflict transformation practitioners from around the world. He was chosen as one of two runners-up from a distinguished group of six finalists. The awards ceremony took place in New York, US on 20 March 2012.

Source: Africa Council of Religious Leaders, Nairobi - Kenya

Somalia

London Conference, military interventions and end of the Transitional Government

As military interventions by neighbouring states continue in Somalia, World leaders assembled in London in February 2012, to discuss Somalia's crisis. Kenya and Ethiopia have since August and engaged in fighting in al-Shaabab controlled areas in efforts to weaken the insurgency group. Before the conference, the United Nation Security Council passed Resolution 2036 which authorized the increase of African Union Mission for Somalia (AMISOM) by about 5000 peace keepers.

The Security Council also expanded the UN logistical support package for AMISOM as well as the mission through to end of October 2012. "Resolution 2036 emphasises that coordinated action in Somalia in the region is critical for the peace, security, and Stability in Somalia".

As the military interventions continue inside Somalia, insecurity is rife in Kenya with sporadic explosions in main cities. It is hoped that when the of the current

Transitional Government term ends in August, it will herald a permanent central governance structure that will foster sustainable peace and spur Somalia into social, economic and political prosperity.

Key stakeholders who represent the transitional institutions as well as regional administrations met in Garowe in March 2012 and agreed on a roadmap to end the transition. The UN Secretary General affirmed that to usher in a new political dispensation, Somalia needs a new Constitution, an inclusive Parliament and elections for the President, Speaker of Parliament and Members of Parliament.

Sources: The Chairperson's Month, African Union & Somali Signatories of Process Ending the Transition Communiqué

South Sudan

Request for help from Kenya

South Sudan has called on Kenyan leaders to help avert conflict between themselves and Sudan. Although the president of South Sudan vowed never to engage militarily, there is concern that the strained relations between the two states could lead to “full scale war”. Accusations from South Sudan allege that Sudan has been conducting aerial and ground bombings of villages and oil fields in South Sudan territory. The strikes were carried out as the two principles preparing to sign an agreement key critical issues; nationality and borders. After the hostilities, the President of Sudan was not able to proceed with the meeting. There have been accusations and counter accusations between the government of South Sudan and Sudan over alliances formation with between political groups across the two borders over control contested regions. The tension is already causing influx of refugees in Kenya in the past three weeks following outbreak of violence in South Kordofan/Nuba Mountains. Kenya is expected to intervene since it led the peace process and is according to SPLM the custodian of the peace agreement.

Source: Daily Nation, April 3 & 4, 2012

RESOURCES

Measuring Peace in the Media

Comparative study of media and Arab Spring

The second edition of the report “Measuring Peace in the Media” was launched at the World Economic Forum in Davos. For the second year, the Institute for Economics and Peace and Media Tenor have analyzed global TV networks coverage of peace and violence issues using a fact-based approach which compares various measures from the Global Peace Index against Media Tenor’s database of global media.

The report explores the media coverage, or lack of coverage, of peace and conflict with a special emphasis on news themes that may help to create stable, peaceful societies. This edition of the report includes a case study of the Arab Spring and compares a timeline of major events to reporting on violence in Egypt, Tunisia and Libya.

Over 160,000 news items from 31 news and current affairs programs that air on 4 continents were analysed. Each of the news networks covered on average 70 countries. The TV program with the broadest coverage was the BBC World Service which covered 119 countries.

Read more about Measuring Peace in the Media and download the full report at <http://www.visionofhumanity.org/info-center/measuring-peace-in-the-media-2011/>

New book:**Religious leaders as peacebuilders or partisans?**

Throughout human history, religion has occupied a pivotal role, serving as a pedestal on which society's moral values are hinged. Religious leaders over time have had the privilege position of guiding society through different forms of crises.

In addition to spiritual duties, religious leaders have in certain circumstances spearheaded political reforms to achieve justice and peace in society. In doing so they have acquired the role of custodians, opinion leaders, community advocates and a voice of the voiceless. They are strategically placed to avert violence and engage in peacebuilding initiatives. With the current trends in human social development, for them to effectively serve in this role they need to subscribe to impartiality and integrity, values universally appreciated in all religious orders.

Based on a historical evaluation of religious leaders involvement in political process in Kenya, the book *Religious Presence in Kenyan Politics, Culture and Civil Society: Peacebuilders or Partisans?* by Shamsia Wanjiru Ramadhan, illuminate on the expected conduct and practice of religious leaders within a multi-ethnic, religious and political context. It is specifically highlighting strategic moments when key decisions were taken and their ramifications during trying moments in history of Kenya.

The book is published by Lambert Academic Publishing.

<https://www.lap-publishing.com/catalog/search>

What Peace and Whose?**International Alert explores the two Sudan**

This paper explores some profound questions about peace and peacebuilding in South Sudan and Sudan, as a contribution to the debate about how to build a more comprehensive and more stable peace within and between the two Sudans.

Using International Alert's peacebuilding framework, the paper explores the strengths and weaknesses of peace in South Sudan and Sudan in the past and the present. It argues that despite the Comprehensive Peace Agreement in 2005 and the peaceful secession of South Sudan in 2011, underlying factors of conflict have remained unaddressed within both countries. Indeed, peacebuilders and peacebuilding efforts in and between the two countries too frequently get trapped into dealing with only the problems and crises of today - not the longer-term underlying causes - and thus fail to develop and work towards a clear vision of a peaceful future. Peacebuilding is necessarily long-term in nature. But each new, temporary crisis makes it hard to focus on the future, or to overcome the underlying factors which prevent sustainably peaceful solutions being found.

The paper explores in very broad terms the prospects for future peace and peacebuilding within and between Sudan and South Sudan. It suggests new ways in which peace and peacebuilding might be approached, in particular a peace visioning process, and an approach to dialogue, oriented towards bringing about change. Based on in South Sudan and Sudan over the past two years, and our experience in other peacebuilding contexts, the paper makes three broad recommendations to those in South Sudan and Sudan who are concerned to build a more comprehensive and more stable peace, and to those in the international community who are concerned to support their efforts.

The full paper can be accessed from

<http://www.international-alert.org/resources/publications/what-peace-and-whose>

Governing South Sudan - research on citizens' expectations

Following the secession of South Sudan the concern of governance within such a multi ethnic country arose. In this regard, a research was conducted in November 2011 by National Democratic Institute with the view of collecting the citizens'

perceptions and expectations of the government. The citizens shared their views on what approach and model of government would ably manage to deal with ethnic tension and at the same time institute public confidence in the government.

The conclusions were drawn from 44 focus group discussions conducted across all the 10 states in South Sudan. A total of 545 South Sudanese citizens participated in the study which assessed public mood, inclusive government, tribalism, managing development expectations, permanent constitution, and other broader areas such as the border issues.

To access the full report

<http://www.ndi.org/files/Focus-group-governing-South-Sudan.pdf>

The New Routes journal

Focus on free and fair election

Free and fair elections are in many aspects seen as the basis for democracy. However, not least in politically unstable or post-conflict situations, tensions between contending parties may lead to outbursts of violence. Therefore, maybe “nonviolent” should be added to the often used phrase “free and fair elections”?

Examples of efforts to mitigate election-related violence are found in several of the articles in the latest issue of New Routes, the quarterly journal from the Life & Peace Institute. Paul van Tongeren and Jacob Brand-Jacobsen present the setting up of Infrastructures for Peace, which have prevented and limited outbreaks of electoral violence in Kenya and a number of other vulnerable environments.

Other articles in this issue illustrate the necessity and possibility to improve and safeguard the integrity of the electoral process. The system of one-party dominant democracies is discussed, and a word of warning is raised against putting too much hope in elections per se. It takes more to achieve good governance, justice and rule of law.

Download this issue of New Routes here

<http://www.life-peace.org/resources/publications/new-routes/>

US report on Horn of Africa

Web of Conflict and Pathways to Peace

This paper suggests that viewing the Horn through a conflict resolution and peacebuilding lens would focus policymakers’ attention on an alternative agenda focused on issues of good governance, the rule of law, human security, and supporting local state-society complexes that work for their people. Developing new, comprehensive and integrated approaches to building peace and resolving conflict should therefore be the strategic priority for external actors concerned about the current trajectory of the region’s states and its peoples.

The paper is explicitly intended to stimulate renewed debate about what a Horn of Africa policy focused on peacebuilding and conflict resolution might look like and what political and bureaucratic barriers the U.S. government would need to overcome to formulate and implement such an approach.

Its central purpose is to illuminate the complex political terrain in which policies to build peace and resolve conflict will have to take place and to make tentative suggestions as to what priorities should guide an alternative comprehensive and integrated approach to the Horn. It achieves this objective by analyzing the major patterns, cross-cutting issues, and interrelationships evident in the Horn’s recent armed conflicts.

To access the full report, follow the link <http://www.wilsoncenter.org/sites/default/files/Horn%20of%20Africa%20Conflict%20Mapping%20Doc-%20FINAL.pdf>



The Kenya National Dialogue and Reconciliation

New assessment report focus on progress

The Kenya National Dialogue and Reconciliation (KNDR) agreements signed between the Government/Party of National Unity (PNU) and the Orange Democratic Movement (ODM) under the chairmanship of Mr Kofi Annan of the African Union's Panel of Eminent Personalities underlined the need to deal with long-term issues and solutions that may have contributed to the post-2007 election violence. The Panel and the parties to the KNDR identified constitutional review and institutional reforms; poverty, inequalities in distribution of resources and perceptions of historical injustices and exclusion on the part of the society as having played a part in causing the crisis. Agenda Item 4 of the mediation process identified a number of issues to be addressed and reviewed every two to three years.

This report reviews progress in addressing these long standing issues: constitutional review and institutional reforms; land reforms; poverty and inequality, and regional imbalances in development; youth unemployment; national cohesion and unity; and, transparency, accountability and impunity. The KNDR mediation noted that Agenda Item 4 reforms are an important prerequisite for sustainable peace, security and stability. This review, therefore, focuses on progress in each item of Agenda 4 because each is central to securing peace and stability.

This and other reports can found at www.dialoguekenya.org

Horn of Africa Bulletin, Volume 24, No. 2, April-May 2012

Editorial information

The media review Horn of Africa Bulletin (HAB) was published by the Life & Peace Institute between 1989 and 2006. The re-formatting of HAB as an e-bulletin 2007 was done in close collaboration with the Nairobi-based All Africa Conference of Churches (AACC) and the Fellowship of Christian Councils and Churches in the Great Lakes and the Horn of Africa (FECCLAHA).

The electronic base of HAB is LPI and the editor is Shamsia Ramadhan, shamsia.ramadhan@life-peace.org.

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For a link to HAB and more information see www.life-peace.org

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