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The ICC intervention in Kenya

A challenge of delivering justice and peace

The International Criminal Court (ICC), on 15th December 2010, named six individuals¹ who are suspected to have had a major responsibility in the planning and execution of crimes against humanity in the Kenyan post election violence in 2007/2008. In making the announcement, the ICC Prosecutor Louis Moreno Ocampo was emphatic that: "These were not just crimes against innocent Kenyans... They were crimes against humanity as a whole. By breaking the cycle of impunity for massive crimes, victims and their families can have justice. And Kenyans can pave the way to peaceful elections in 2012."²

Prior to this announcement President Mwai Kibaki of Kenya had also announced on 13th December 2010 that the government will establish a local tribunal and launch its own investigation, further raising questions on the panic response for an initiative that should taken place much earlier.

Previous debates have focused on whether Kenya should have a local tribunal or opt for the ICC; whether the country should go for the punishment of crimes against humanity or peace and reconciliation. With regard to the latter, the two are not necessarily mutually exclusive, and any clear separation poses a false polarization. The challenge for the implementation of the demands of both justice and peace lies in the sequencing and the delicate process of achieving the maximum good. Similarly, local tribunals do not necessarily exclude ICC proceedings. The standard procedure has been that the local tribunals adopt a hybrid system, and are composed of both local and international judges, and apply both international and domestic laws. Such tribunals would normally have primacy over local courts.

In this article, I argue that the external ICC intervention to Kenyan conflict cannot have a long term impact if it is not coupled with the government commitment to end impunity at the level of violence, corruption and patronized politics. In my analysis I propose the institution of *social-political harmonization mechanisms* of justice and peace between the ICC and government.

The background of the ICC intervention

The ICC is a recent organ that was founded in 2002 after the signing of the Rome Statute in July 1998. Kenya ratified the Statute on 15th March 2005, and it entered into force on 1st June 2005. The founding of the ICC was built on the previous *ad hoc* tribunals established by the UN Security Council resolutions in the 1990s, namely, The International Criminal Tribunal for the Former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR). Other *ad hoc* tribunals have been formed or are in the process of being formed in Sierra Leone, Liberia, Cambodia, Afghanistan and East Timor. Coupled with the ICC is the *Responsibility to Protect* (R2P) doctrine, which was adopted by the UN in 2005. The R2P asserts that nations have the responsibility to protect their citizens and prosecute those responsible for mass crimes within their borders, failure to which the international community would intervene.

The dispute over 2007 presidential election results led to sporadic ethnic and political violence, causing deaths of 1,133 people. The situation generated a two month political crisis that the country has never known since independence. Hitherto considered to be a peaceful nation in an unstable region, Kenya's post election violence exposed the historical injustices, ethnicized politics and politicized ethnicity, economic disparities and patronized institutions of governance. The peace talks between the disputants of the elections represented by Mwai Kibaki, the president and leader of Party of National Unity (PNU), and the opposition leader Raila Odinga's Orange Democratic Movement (ODM) led to a power sharing agreement.

Beside the long term institutional reforms, the agreement recommended the setting up of a commission of inquiry, officially referred to as The Commission of Inquiry on Post Election Violence (CIPEV), led by Judge Philip Waki. In October 2008 the Commission released its findings, after three months of investigation, and recommended the creation of a special tribunal that would "seek accountability against persons bearing the greatest responsibility for crimes, particularly crimes against humanity, relating to the 2007 General Elections in Kenya."³

The findings show that both sides of the political divide instigated the violence through the funding and incitement of their supporters. Judge Waki delivered an envelope with ten names of politicians and business people suspected to have had high responsibility in facilitating the post election violence. Kenya was given the option of setting up a local tribunal or the envelope would be delivered to ICC. On July 9th Kofi Annan the Chairman of the AU Panel of Eminent African Personalities, delivered the sealed envelope and supporting materials to the Prosecutor of the International Criminal Court (ICC), Luis Moreno Ocampo, who subsequently named the suspects on 15 December 2010.

ICC vs. local justice mechanisms

While opinions have been divided on whether to opt for a local tribunal or the ICC, the Kenyan cabinet compromised for an option to use the Kenyan courts. However, a motion in Parliament in support of this position was defeated and the ICC option carried the day. It is important to note that the trials at the International Criminal Court (ICC) at The Hague do not necessarily preclude the formation of a local tribunal. They can both run concurrently, even though it would be more effective to have a local tribunal where victims can engage their perpetrators, and the nation can reflect on a national healing process. In his press conference on 15th December 2010, Ocampo, the ICC Prosecutor, clarified that part of the reason ICC moved to initiate investigations on the post election violence was that there were no court proceedings taking place in Kenya.

International mechanisms of justice: What can they deliver?

The principle question that we should pose here is: *What mechanisms should be put in place to end impunity and ensure a more sustainable peace in Kenya?* In other words, the choice for social-political change does not lie in the external structures

of international law but on the political will and channels of dialogue for change. This would imply seeking ways of punishing the offenders, restoring the victims and reconciling the nation. This process could vary from retributive legal processes, restorative reconciliation and reparation, to a combination of both through hybrid mechanisms. Besides, addressing other forms of impunity such as corruption, insecurity and patronized politics are fundamental to the stability of the country. Institutional reforms in the executive, judiciary and legislative sectors are crucial to addressing these impunities.

According to Article 17 of the ICC's Rome Statute, a state should only resort to ICC if it does not have the capacity to try the cases. However, the ICC Prosecutor is afforded *proprio motu* (Latin for, "on his own impulse") power, which authorizes him to initiate an investigation without the recommendation of the state. The major concern is whether the international law, which has no enforcement mechanisms, would be effective in addressing the post election crimes in Kenya. A lot will depend on the cooperation and commitment of the government of the day.

The previous *ad hoc* tribunals had two major characteristics: they took place in the post-conflict settings, and were executed by new government regimes. This meant that the investigations were carried out on individuals who enjoyed neither military nor political protection. As such, the impression so far has been that the international law in criminal justice has been executed as a *victor's peace*, much to the expense of the losers.

However, with regard to the ICC, four out of the first five cases are in African countries. In fact, all the 22 individuals wanted for crimes against humanity are from Africa: Uganda (4), Darfur (6), DR Congo (5), Central Africa Republic (1) and Kenya (6). Out of these, 16 individuals have been indicted in the first four countries.⁴ This has raised questions on whether the ICC has been battling for relevance by focusing on Africa as a soft target. There are other investigations under way in Colombia, Afghanistan and Georgia.

The most controversial of all the ICC warrants of arrest has been the one against President Omar El Bashir of Sudan who is being charged for "five counts of crimes against humanity... two counts of war crimes (and)...three counts of genocide"⁵ committed in Darfur. This is the first time that a sitting head of state has been interdicted for crimes against humanity. The African Union has protested against this warrant arguing that it sets a wrong precedence against sitting heads of state, and imposes the western cosmopolitan and legalistic conceptualizations of governance on sovereign nations in Africa. Besides, given the coming referendum in Sudan in January 2011, creating a favourable climate of dialogue and understanding is crucial for the stability of the country.

Articles 27 and 28 of Rome Statute deny immunity to any individuals, and hold those in positions of power to be responsible for crimes committed under their watch, by commission or omission. However, given that ICC has no power to arrest and thus relies on the good will of the signatory members, implementing such an article on the Kenyan suspects, some of whom are still in government and hold political power, could turn out to be an enormous task.

What is the way forward?

The question of whether justice should be pursued at all cost bears a heavy moral responsibility on the leaders of the nation and international community. The challenge for ICC and international law mechanisms is to institute a fair legal process that takes into account the rights of the accused and the reparation demands of the victims. The focus and attention has tended to be on the prosecution of crimes at the expense of the victims of the crimes. The passionate drive against impunity ought to be met with the same measure of justice for the victims of the crimes. Commitment to institutional reforms and implementation of the new constitution as well as ending corruption, insecurity and patronized politics are crucially important. The forming

of the local tribunals will be faced with the challenge of instituting an international criminal law regime based on diverse procedures and personnel from different countries. The process for justice has to seek to achieve peace, and similarly, a peace process has to take into account correction of injustices.

Elias Omondi Opongo, SJ, is currently a PhD research student at University of Bradford, U.K. and the former director of Jesuit Hakimani Centre, Nairobi. He can be reached at eliasomondi@gmail.com

- 1 The six named are: Deputy Prime Minister and Finance minister Uhuru Kenyatta, suspended education minister William Ruto, Industrialization minister Henry Kosgey, radio executive Joshua Arap Sang, secretary to the cabinet Francis Kirimi Muthaura and former police chief Mohammed Hussein Ali.
- 2 INTERNATIONAL CRIMINAL COURT (15 Dec. 2010) Kenya's post election violence: ICC Prosecutor presents cases against six individuals for crimes against humanity <http://www.icc-cpi.int/NR/exeres/BA2041D8-3F30-4531-8850-431B5B2F4416.htm> (Accessed 15th Dec. 2010). ICC-OTP-20101215-PR615
- 3 MAC DAID, C. (2009) Kenya's Post-Election Violence and the International Criminal Court <http://www.internationallawbureau.com/blog/?p=398> (Accessed 10 Dec. 2010).
- 4 ICC, "Situation and Cases" <http://www.icc-cpi.int/Menus/ICC/Situations+and+Cases/Cases/> (cited 16 Dec 2010)
- 5 ICC, "Case: The Prosecutor v. Omar Hassan Ahmad Al Bashir" <http://www.icc-cpi.int/menus/icc/situations%20and%20cases/situations/situation%20icc%200205/related%20cases/icc02050109/icc02050109?lan=en-GB> (cited 17 December 2010).

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3. ICC, "Situation and Cases": <http://www.icc-cpi.int/Menus/ICC/Situations+and+Cases/Cases/> (cited 16 Dec 2010)
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The South Sudan referendum Domestic & regional security implications

Background

The Comprehensive Peace Agreement (CPA), signed on 9 January 2005, ended 22 years of brutal war, waged from 1955 to 1972, and again from 1983 until 2005, between the northern National Congress Party (NCP) and the southern Sudanese People's Liberation Movement (SPLM). The CPA, which is based upon the Declaration of Principles (DOP) sponsored by IGAD and its partners, recognized Sudan's racial, ethnic, religious and cultural diversity, right to self-determination, political and social equality, secularism, and fair sharing of wealth.

The CPA provided for a six-year interim period, during which, democratic elections must be conducted, an interim national unity government- with a power-shar-

ing scheme that allocated 52, 28, 14, and 6 percent to the NCP, SPLM, opposition parties in the north, and opposition parties in the south respectively-, a referendum in the newly established autonomous South Sudan administration, alongside equal sharing of oil revenues between North and South, must be made.

Most importantly, the CPA required the referendum in which only the people from the South will participate to decide whether to secede or remain united with the North to take place at the end of the six-year interim period.

Evaluation of the CPA's implementation

Significant agreements of the CPA include demarcation of the North/South border, establishment of the commissions for the upcoming South Sudan and Abyei referenda, due to be held in January, the demobilization of the NCP's proxy militias in South Sudan, and popular consultations in Blue Nile and South Kordofan. Although the final year of the six-year interim period the CPA authorized is just about to end, little significant progress has been made in implementing several of its critical components. Notably the demobilization of the NCP's proxy militias in South Sudan, the demarcation of the North/South border, especially in and around the oil rich adjacent areas, the transparent disbursement of oil revenues, and establishment of the referendum commission-- are still outstanding.

Even with respect to elements of the CPA that have already been implemented, the outcomes have largely remained to be debatable. Cases in point are the census and the April 2010 national elections.¹ The Government of South Sudan (GoSS), South Kordofan, and the Justice and Equality Movement (JEM) have rejected the census, claiming it has been manipulated to over-represent NCP constituencies, while the SPLM alleges the April national elections to have been rigged.

That said, it was encouraging to have witnessed that, by the end of December 2009, the Sudanese parliament adopted a major legislation that sets the stage for the referendum on the independence of Southern Sudan which provides that an independent Southern Sudan will be recognized if it is approved by 51% of voters at the 2011 referendum, if there is a 60% turn out of voters. Taking cognizance of the impact the civil war had on the population that was forced to relocate to neighboring countries, the new legislation incorporated "a contested provision", demanded by Southern politicians, which requires Diaspora southerners to cast their ballots in the referendum.

The provision stipulates that Southern Sudanese living outside the south, and born before January 1, 1956, the date of Sudan's independence, must vote in the south. But those living outside of the south and born after that date, would be able to vote in their place of residence, whether in the north, south or abroad.² Currently, three million southerners have just undergone registration to vote in January on whether they want to remain part of the Sudan or secede.³

Post CPA peace strategies, systems and mechanisms

Although southerners are expected to vote in the referendum on independence, come January 2011, no one seems certain about what will happen before, during, or after the referendum. Analyses that the South will overwhelmingly vote for secession abound, nonetheless.⁴ Whatever the final outcome would be, the leaderships in North and South should keep their attentions and capacity focused on ensuring respect to their avowed commitment to accept the outcome of the impending referendum, rather than on speculations about the probable result of the impending referendum. What is more, both of the parties to the CPA need to prepare themselves in advance for peaceful resolution of post-referendum disputes as long as such disputes fall outside of the purview of the CPA.

In this connection, the international community has to see to it that both the NCP and SPLM live upto their promises in respecting the popular will as expressed by votes in a free and fair referendum as well as that the latter realize the need to settle post-referendum disputes in a peaceful manner. Since the mandate of the CPA will

come to an end with the referendum, AU in cooperation with the guarantors of the CPA and the rest of the international community should start talks with both parties on post-referendum arrangements.

Looking back, the hitherto reluctance and slothfulness of the NCP in implementing terms of the CPA in full is disconcerting. The greatest fear is for the NCP to undermine free and fair referendum, which represents the last and most important component of the CPA. To counter this fear, the AU and its relevant organs such as the AU Peace and Security Council, the AU Peace and Security Unit, and the AU High-Level Implementation Panel in cooperation with IGAD and the rest of the international community are called upon to ensure the holding of a free and fair referendum and acceptance of the result by both parties.

More particularly, all of the CPA guarantors are called upon to devise a uniform Sudan policy and strategy geared towards addressing the twin chief challenges facing the Sudan at the moment: the resolution of disputes relating to outstanding CPA provisions and preliminary discussion on post-referendum arrangements. The AU, IGAD, and EAC in cooperation with the US and EU must be out front in putting pressure on the NCP to execute the referendum freely, fairly, and fully.

Domestic security implications

The holding of a free, fair and credible referendum, and whatever the outcome, whether secession or otherwise, is not a sufficient condition for a lasting peace in Sudan. If durable peace is to prevail in post-referendum Sudan, even when the outcome is secession, diplomatic efforts aiming at settling issues that are likely to give rise to disputes after the referendum should be made in advance. In this regard, the international community should strive to engage both parties to the CPA in dialogue on such sensitive post-referendum issues. The North-South borders, being one of the contentious issues, led initially to the establishment of the North-South Technical Ad Hoc Border Committee, albeit it was unable to reach agreement in its final report to the Government of National Unity (GoNU) presidency on the 2,100-kilometer long border due to procedural and substantive disagreements between the NCP and SPLM over five particular sections of the border.

However, following NCP-SPLM discussions in mid-February 2010, the two parties agreed to immediately begin demarcating the agreed-upon sections of the border and requested that the committee submit a report to the presidency within two months detailing the five disputed sections of the border. UNMIS has been denied access to several contested areas along the border—notably the Heglig–Kharasana oil fields that lie outside of the Abyei region. Hence, it is clear that these places will become flash spots for renewed conflict.⁵ Sudanese presidential adviser Ghazi Salah Al-Deen Al-Attarani recently said that failure by the parties to address post-referendum issues such as North-South border demarcation before the referendum occurs will be a “recipe for war.”⁶

With regard to the oil issue, although South Sudan accounts for roughly 85 percent of Sudan’s oil, it relies on a pipeline, port, and refinery located in the North for its export. This aspect of the existing North-South relations emphasizes more of their existential interdependence than independence and in fact calls for greater cooperation than would normally be expected after dissolution. So if the South could not export the oil or process it on its own for lack of the necessary infrastructure, and the North could not benefit from the oil revenues, it means both countries should cooperate. On the other hand, the oil provides an incentive to maintain at least a degree of cooperation. With nearly the entire oil infrastructure to be found on the northern side, and most of the active oil fields located on the southern side of the contested North-South border, the parties are condemned to work together if they want to maximize their benefits.

Moreover, since millions of northerners and southerners live, work and do business together, the fate of these Diasporas is shrouded in uncertainty about how

tolerant either of the governments will be after the referendum. Those who inhabit the borderlands have also been sharing pasture and water resources for centuries. Therefore, putting in place legal regimes that allow free movement of persons, capitals, and animals across the North-South borders and residence will definitely reduce the likelihood of violence. This, coupled with the abovementioned point about the North-South interdependence in the actual enjoyment of the fruits of the oil fields located in the South, provides the international community with points of entry to initiate negotiations regarding post-referendum arrangements and to exercise leverage. Even if the South exits peacefully and fares well thereafter, it is uncertain whether peace will prevail in the North, as tension between the centre and periphery would continue to pose threat to the North's peace and security. After all, continued instability in Darfur, Southern Kordofan, Abeyie, and Eastern Sudan would remain to be causes for concern. Should the NCP abrogate, delay, or manipulate the referendum, SPLA would not hesitate to make a unilateral declaration of independence, even if that would mean a return to a full-scale war between North and South.⁷

Regional security implications

Since the Sudan serves as a bridge between the Horn and Central Africa, two of the most volatile regions in the continent, conflicts within the Sudan will have far-reaching security consequences to peoples of the two regions. This is compounded by the fact that these regions constitute interlinked regional security complexes.⁸ In addition to the regional interlinkage, the Sudan is bordered by nine individual countries: Egypt to the north; Eritrea and Ethiopia to the east; Kenya, Uganda, and the Democratic Republic of the Congo to the south; and the Central African Republic, Chad, and Libya to the west. Each border state has strategic interests at stake and would be directly affected by a return to conflict between North and South Sudan.

Thus, its neighbors have to be vigilant enough of the impending referendum at all its stages, namely before, during, and after voting, as it is by far the worst security threatening process ever to take place in the Horn region and most likely to affect two regions at once sooner or later. They should be prepared in advance of this eventuality and get started assessing carefully its security implications to their respective national security, on balance, without undermining regional peace and security as it unfolds in due course, inasmuch as the outcome of the referendum would not only have grave domestic security implications, but would also destabilize the two regional security complexes interlinked by the Sudan.

Furthermore, it would also bring about a shift in the balance of power in the region and reshape the regional security and economic complexes. As a result, the AU should take the lead in crafting a coherent Sudan policy and strategy to be followed by the major regional organizations including IGAD and EAC as well as neighboring states at all stages, before, during and after the voting.

Ethiopia seems to be aware of the fact that renewed conflict in Sudan is likely to draw in most of the state and non-state actors in the region, including the golden opportunity it offers to such regional spoilers as Eritrea, Libya, Egypt, and Al Shabab as well as local rebels such as the ONLF and OLF to destabilize Ethiopia, Al Shabab and LRA to destabilize Uganda, and all of them to destabilize, by default or design, the whole region. As far as Eritrea is concerned, its security strategy is expected to depend chiefly on its perceived Ethiopian security strategy towards the Sudan. However, it is unclear if the same holds true of the rest of Sudan's neighbors.

Though regional stability figures prominently in its security agenda, Ethiopia is likely be concerned with the developments in South Sudan as long as any post-referendum violence could spill over to Gambella— a historically marginalized and volatile region in Ethiopia that has strong cultural and ethnic ties with South Sudan. Moreover, Ethiopia shares a more than 1,000km border with South Sudan that is straddled by their Anyuak and Nuer peoples.⁹

A very recent development that will factor in an assessment of the regional security implications of the upcoming referendum is the signing of an agreement on the use of the waters of the Nile by Ethiopia, Tanzania, Uganda, Rwanda, and Kenya to which Egypt has objected in the strongest possible terms. In this connection, the role that Egypt will play is pretty hard to miss, given its long-standing national security interest in the Nile. Egypt will continue advocating and supporting the existence of a unified Islamic Sudan so that the latter will continue advancing Egypt's interest in the Nile. Therefore, Egypt's unmistakably consistent position against the South's secession has to be seen against its aversion to the emergence of a new riparian state in the Nile basin that will insist on renegotiating existing treaties to its detriment.

Conclusion

In conclusion, secession, according to many seasoned observers, would be the inevitable outcome of the upcoming referendum in South Sudan.¹⁰ Whatever the final outcome might be, the referendum will have grave implications that will extend well beyond the Sudanese borders unless handled properly. As North-South armed confrontation looms large, at a time when the former faces risk of balkanization and the latter faces escalating inter-tribal violence, Sudan's neighbors should be on the alert. An exodus of refugees and IDPs, cross-border arms movements of, terrorism, proxy wars, and spill-over of instability, are but a few of the legitimate national and regional security challenges facing Sudan's neighbors.

The international community should also be concerned with developments in Sudan and ensure the holding of a free and fair referendum and acceptance of the final outcome by both parties. The AU along with the rest of the international community has to initiate negotiations on issues concerning post-referendum arrangements, as well as in building the capacity of the GoSS state apparatus, in general, and the security sector, in particular.

Alemayehu Fentaw (LLB, MA *summa cum laude*), is an academic lawyer and public policy analyst based in Addis Ababa, Ethiopia. He can be reached at alemayehu@ethgi.org.

- 1 Maggie Fick, Election Lessons for South Sudan's Referendum <http://www.enoughproject.org/blogs/maggie-fick>
- 2 Is'haq Modibbo Kawu, Sudan braces up for south's independence referendum , 01 January 2010 http://www.news.dailytrust.com/index.php?option=com_content&view=article&id=12026:sudan-braces-up-for-souths-independence-referendum&catid=21:international&Itemid=130
- 3 Sudan Tribune, SPLM openly supports South Sudan independence, December 11, 2010
- 4 Stephanie Hanson, Sudan's Fractured Internal Politics, Backgrounder, Council on Foreign Relations April 12, 2010
- 5 Ibid, supra at note 1
- 6 Quoted in Maggie Fick, Ibid, supra note 1
- 7 A senior SPLM/Khartoum politician told the author that the only guarantee that a free and fair referendum will take place is SPLA's military capability to enforce the will of its people.
- 8 Barry Buzan defines a 'regional security complex' as "a group of states whose primary security concerns link together sufficiently closely that their national securities cannot realistically be considered apart from one another." Barry Buzan, *People, States and Fear: An Agenda for International Security Studies in the Post-Cold War Era*, 2nd ed. Boulder, Colo: Lynne Rienner, 1991, p. 190.
- 9 Crisis Group, supra, n. v, at 13
- 10 Supra, n. 4

Anxieties and hopes in the Sudan

Barring grave eventualities, the people of Southern Sudan will decide at a referendum whether they want to remain part of the unified Republic of the Sudan or separate from Northern Sudan to create a new republic in the South. Despite earlier fears

that political intrigues - especially by the northern National Congress Party (NCP) - could scuttle the process, it seems that the two main parties to the Comprehensive Peace Agreement (CPA), i.e. the NCP and the Southern Sudanese People Liberation Movement (SPLM) have agreed that the plebiscite scheduled for January 9, 2011 will not be postponed. However, it remains uncertain whether the twin referendum in Abyei will take place alongside the referendum in the entire Southern Sudan as intended. The north-south border demarcation, the question of voter eligibility and public security are the major hindrances to a smooth referendum in Abyei¹. Sadly, major international actors in the process seem to be oblivious of the centrality of the Abyei question in the Sudan conflict. Until the Abyei matter is brought to rest, sustainable peace will remain elusive in the Sudan, even if the referendum were to run peacefully with a definite verdict.

Phases of the peace pact and the border question

The three most important phases of the implementation of the CPA, signed in January 2005 in Kenya, were the census (2007), the general elections (2009) and the referendum (2011). Both the census and the elections resulted in tensions and strained relations between the parties. The census was delayed by almost a year and the results were disputed by the South. The SPLM withdrew its candidate in the contest for the national presidency, one Mr. Yassir Arman. But he got 22% of the votes despite his withdrawal. Prior to this withdrawal, SPLM had accused NCP of instigating conflicts in Southern territories to compromise the peace that was needed for successful polling. Interestingly, opposition parties in Northern Sudan criticized the electoral process (and the results) much more fiercely than the SPLM. There was even speculation that the withdrawal of the SPLM candidate was an act in adherence to a 'pact' between the SPLM and NCP to grant president Omar Al-Bashir a smooth ride back to power in exchange for his commitment to a timely referendum in the South.

Al-Bashir won the national presidency by 68% of the votes while SPLM's Salva Kiir Mayardit led the party to maintain a tight grip of the semi-autonomous Government of Southern Sudan (GoSS) by a 93% approval. As if to stay faithful to the 'pact', president Bashir reiterated his support for a timely referendum in the South in a speech following the announcement of the election results. Successive interactions between the two sides point to the non-existence of a pact in the first place, or a betrayal by NCP, in case any pact was reached over the elections and the referendum. According to the CPA, the demarcation of the North-South border was to be concluded in six months after the signing of the peace deal. But the issue remains unresolved to date. Border management (and not demarcation) is a major item in the negotiations towards the post-referendum period commenced by the two parties recently. Ultimately, the final solution may be more political than technical.

Road to referendum

The northern NCP tried to advance the argument that the referendum ought to await the finalization of the North-South border. This could only be an important precedence to the referendum if the voting eligibility was to be tied to geographical borders. But the Southern Sudan Referendum Act, 2009 stipulates an eligibility criteria based on ethnic identities for Southern communities².

International observers from the European Union (EU) and the Carter Centre concluded that the April 2010 general elections in the Sudan did not meet international standards. However, former US president Jimmy Carter - a key agent of western nations in the exercise - clarified that the 'international community' will recognize the winners. This statement points to the overriding concern in the Sudan - the question of stability. Certain factors are emerging as *conditio sine qua non*s for peace and stability in Sudan. One of these is the continued stay in power by the NCP at the national level. Critics of the International Criminal Court (ICC) have argued the

court's decision to indict President Bashir over crimes against humanity in Darfur was reckless and potentially dangerous. Political impunity and human rights violation must not go unpunished anywhere in the world, but the political context of legal action ought to be clearly understood. In some instances, certain political risks have to be mitigated before the launch of legal action³. In the case of Sudan, ICC action could have been more appropriately launched after the referendum in the South.

The other critical factor for continued peace and stability in Sudan, it seems, is the holding of the 2011 referendum on the scheduled date and the upholding of its results. A return to war is not desirable to either of the parties. However, it must not be forgotten that for the south, the referendum equates independence. As witnessed in former colonies across the world, the struggle for independence entailed both negotiations and armed struggle where the negotiations failed. War is therefore a last resort, especially to the southern Sudanese.

The referendum results

In two sessions of a recent seminar series on the Sudan organized by the Heinrich Boell Foundation in Nairobi, CPA mediator Retired General Lazarus Sumbeiywo made the point that the people of Southern Sudan opted to separate from the north in 2005 when the CPA was signed⁴. He argued that it is the southern elite who have remained interested in the experiment of the interim period. The 'one country two systems' model written into the CPA was a result of the failure by the two parties to agree on the total separation of religion from state⁵. To many, this settlement was the clearest indication that the eventual separation of the South was inevitable. But there was also the idea of a 'New Sudan', largely associated with the late Col. John Garang.

The vision of the 'New Sudan' was that the interim period would be used to 'make unity attractive' to the South, through development activities to improve living conditions of the southerners and the guarantee of the rights of southern Sudanese to exercise all political freedoms in a free and just society. The southern elites would also enjoy relative autonomy in the control of the affairs of the south and play significant roles in the governance of the unified republic. This would lead to the development of a strong political and economic elite in the south; something that couldn't occur under the domination of the south by the north.

Six years of the interim period seem to have been squandered and the unity of the Sudan is not attractive to the southerners and a majority of the southern elite, especially the ruling SPLM⁶. Hence, cessation of the south is the most probable result of the referendum. Rather than peace, stability and prosperity, the interim period has been characterized by acrimonious relations between SPLM and NCP and accusations of lack of commitment to the implementation of the CPA, especially directed at the NCP by the SPLM.

Thus far, it is evident that both parties to the CPA appreciate the fact that they will need each other even after the separation of the South, which is the most likely result of the referendum. A new republic in the South will retain most of Sudan's oilfields and the bulk of the Nile basin, making it a very well endowed neighbour of Northern Sudan. In the early days, poor infrastructure will be a major constraint to growth and development in the south, despite the resource endowments. The developed infrastructure in the North will be much needed by the south for international trade. The north-south border will be the longest border in Africa and its successful policing will require very close co-operation between the two countries. At the same time, southern Sudanese living, working and studying in the north will not be expected to terminate their pursuits and return to the south immediately after the referendum. The same applies to northern Sudanese living in the south.

The survival of the two new countries will greatly depend on the nature of the relationship between them. In the worst case scenario, both will be pre-occupied with activities in aggression and defence which will shift their focus from meaning-

ful development. The challenge for the Sudanese and external actors is to ensure that the social, economic and political forces that will emerge from the split of the Sudan after the referendum are properly harnessed and directed towards peaceful co-existence between the two new neighbouring states. So much will have to be done towards the building of a prosperous society, particularly in the South.

George Omondi is a Research Fellow at the African Research and Resource Forum (ARRF), Nairobi, Kenya. He can be reached at g.omondi@alumni.ids.ac.uk / george@arrforum.org

- 1 See for example, RVI (2010) Report, *Postponement of Abyei Referendum is undesirable but may be Unavoidable*
- 2 Articles 25 and 27 of the Southern Sudan Referendum Act 2009
- 3 One may argue this was the case in the ICC process in Kenya where a lot of 'political ground work' preceded the naming of the six top suspects by the ICC on December 15, 2010.
- 4 I attended the sessions on 27th October 2010 at the Norfolk Hotel and on 3rd December, 2010 at the Intercontinental Hotel, Nairobi.
- 5 Yoh, J. (2007). *Reflections on the Challenges and Opportunities for the Transformation of the Post-Conflict Southern Sudan*. ARRF, Nairobi
- 6 At the 5th International conference on Federalism held on 13-16 December 2010 in Addis Ababa, Ethiopia, H.E. Dr. Luka Biong, Minister for Cabinet Affairs in the Sudan Government of National Unity and a key SPLM leader indicated that southern Sudanese will most likely vote for separation from the north. I was in the audience.

NEWS AND RESOURCES

GENERAL

New research project

Contending Modernities: Catholic, Muslim, Secular

The Kroc Institute for International Peace Studies at the University of Notre Dame (Indiana, USA) has launched a new multi-year, interdisciplinary research, public, education, and peacebuilding initiative called "Contending Modernities: Catholic, Muslim, Secular." Directed by Professor Scott Appleby, the project recognizes that the world's problems in the 21st century — from mass violence and economic injustice to government corruption, environmental degradation, and human rights abuses — will not be solved by secular organizations acting independently of religious communities.

Contending Modernities seeks to develop a rich and nuanced understanding of how religious and secular institutions and individuals interact, for good and ill. Designed to unfold in stages over several years, Contending Modernities will bring together scholars, educators, and practitioners to pursue pure research that will be applied as participants share findings with religious officials, political and business leaders, nongovernmental and governmental organizations, and the media. The project will begin with a focus on the interaction among the world's two largest religious communities (Catholics and Muslims) as well as secular people and institutions, and eventually will expand to include all major religions.

The project's research agenda will inform discussion of sensitive but crucial contemporary issues such as: the proper role of religiously inspired political parties and social movements; debates about gender and the rights of women and children; the conflict between claims to exclusive truth and respect for religious pluralism; bioethical issues ranging from birth control to abortion to genetic engineering; and the tension between religious principles of social justice and the seemingly value-neutral dynamics of a global market economy.

You can follow the progress of the project and participate in the ongoing conversation by reading and commenting on the Contending Modernities blog at <http://blogs.nd.edu/contendingmodernities/>.

Measuring peace in media

The Institute for Economics and Peace and Media Tenor have released “*Measuring Peace in the Media*”, the first study that takes a fact-based approach into understanding the accuracy of international television networks’ coverage of peace, violence and conflict.

The results show broad inconsistencies across geographies and networks, with US broadcasters much more focused on violence and conflict than their European and Middle Eastern counterparts. Al Jazeera was found to be the network providing the most balanced coverage on Afghanistan. BBC World led the way when it came to breadth of coverage. It regularly reported on 67 countries across six continents which is nearly twice as many countries as the average level of coverage.

The study analysed 37 TV news and current affairs programmes from 23 networks in 15 countries and then cross-referenced this with the Global Peace Index which measures the levels of peace and violence in 149 countries. BBC 2 Newsnight and ZDF Heute Journal were found to be the programmes whose editorial policies aligned their coverage most closely with the rankings of the GPI.

Source: www.visionofhumanity.org

Genocide archive Rwanda opens website

Alongside with the physical collection at Kigali genocide memorial in Rwanda, a website has been established to provide information of the 1994 Genocide. The information includes both audiovisual testimonies and electronic descriptions and explanations related to the genocide. The videos include testimonies of Genocide survivors, rescuers those who protected Tutsi from killers, perpetrators confession, elders who talk about the root cause of genocide, Gacaca Justice System court proceedings, and remembrance ceremonies. Digitized photos, publications, archival documents, and audio recordings relevant to the Genocide against Tutsis are also available on this site.

To find and view videos and other materials within this archive:

http://www.genocidearchiverwanda.org.rw/index.php/Welcome_to_Genocide_Archive_Rwanda

SOMALIA-KENYA

Report on status of Somali refugees in Kenya

Amnesty International has released a report highlighting the plight of Somali refugees and asylum seekers in Kenya. The report *From Life without Peace to Peace without Life* describes how thousands fleeing violence in Somalia are unable to find refuge, protection and lasting solutions in Kenya due to closure of the border between the two countries almost four years ago amid security concerns.

The report gives an account how the closure of the border impacts on the refugees implicating Kenya security forces who deny the displaced entry into the country amidst insecurity in their region, allegations of corruption engagement in form of bribery to guarantee their safety, intimidation through arbitrary arrests at border cross points, in the refugee camps and in urban areas. This occurs amidst appalling conditions in the refugee camps which have exceeded the stipulated capacity threefold a situation that has overwhelmed humanitarian and relief service. The process of allocating land for expansion to accommodate the growing demand is not forthcoming. In addition to the structural causes of violence the refugees expressed security threats emanating from militant groups from South Central Somalia.

According to the refugees, the camps are now recruitment ground for militias and allege that Kenya security forces have in the past engaged in similar activities i.e. recruitment of refugees for military training in 2009. For more information, the report can be accessed on the Amnesty website.

Source: Amnesty International.

KENYA

Evaluation of Agenda 4 implementation

Early December 2010, the Kofi Annan Foundation and the Africa Union Panel of Eminent Personalities (PEAP) converged to evaluate the two years progress of the Kenya National Dialogue and Reconciliation process. The two day meeting in December 2 – 3, 2010 consultations between the stakeholders centred on the milestones and setback in achieving the issues agreed upon for implementation. Notably is the promulgation of a new constitution that paves way for radical reforms; however the challenge is ensuring realization which largely depends on political goodwill to fully implement issues agreed in the Agenda 4 related to the enforcement of a new constitution. The government pledged to provide resources required in the realization as well as providing an enabling environment that will facilitate the change process. For more information see <http://kofiannanfoundation.org/>.

SUDAN

Churches call for post referendum Peace in Sudan

FECCLAHA members from Democratic republic of Congo (DRC) Ethiopia, Eritrea, Kenya, Rwanda, Sudan, Tanzania and Uganda have added their voice to a peaceful referendum in Sudan. The Members meeting in Nairobi from November 30 – December 3 2010 are hopeful about Sudan upcoming referendum and acknowledges the involvement of church in the in ensuring a peaceful, free and fair process and outcome.

The members also applauded African Union High Level Implementation Panel on Sudan (AUHIP) for pursuing consultations on CPA issues that have not been dealt with as we post referendum measures. They called on the parties to commit to ensuring peace prevails in post referendum Sudan by accepting the outcome of the referendum. The group is however; concerned about the ongoing statements and activities particularly from the north and activities that may undermine the independence of southerners (individuals and civil society) to participate in this landmark activity.

In their statement “Let My People Decide” they affirm to stand in solidarity with the church and the people of Sudan during this historical moment in prayers and action for a peaceful future of the people of Southern Sudan and Abyei.

Source: Fellowship of Christian Councils and Churches in the Great Lakes and the Horn of Africa

RESOURCES

Updated teaching resources, “The Building Blocks of Peace”

The Institute of Economics and Peace has updated its series of downloadable teaching materials, the Building Blocks of Peace that offer a fresh perspective on the issues surrounding global peace. A new module on peace and economics has been added along with updated 2010 Global Peace Index data.

Available as separate modules or a combined curriculum, these comprehensive teaching aids will guide students to understand global peace and discover their

own solutions to violence and conflict. Unlike traditional peace education materials, these modules go beyond conflict resolution to explore the broader meaning of global peace and its impact on our daily lives.

By working through each module and the extensive supporting information provided, students will learn how to define peace for themselves and gain an understanding of the key factors that encourage peaceful society.

Source: <http://www.economicsandpeace.org/>.

Distance training on peace, humanitarian relief and security

The Peace Operations Training Institute has been dedicated to providing globally accessible and affordable distance-learning courses on peace support, humanitarian relief, and security operations to all interested people since 1995. The Institute is the most experienced provider of distance training in peacekeeping and has alumni working in the interest of peace all over the world. Institute alumni serve the cause of peace in many capacities such as; peacekeepers in the field at AU, EU, and UN Missions, UN staff members and volunteers, professors and trainers teaching the next generation, diplomats, civilian officials and humanitarian aid workers. Thousands of students from over 170 nations have gained insight into the UN System and expanded their knowledge about peace support with the Peace Operations Training Institute.

The Institute's courses allow for the study of peacekeeping topics from anywhere in the world at any time. Students may register for classes at their convenience, course texts are downloadable and study of material is self-paced. The curriculum is appropriate for pre-deployment training to a peacekeeping mission, increasing individual effectiveness in the field, complementing classroom courses, and learning more about the UN system.

Programmes offered by the Peace Operations Training Institute have been repeatedly welcomed by the United Nations Special Committee on Peacekeeping Operations (C-34). The excerpt below comes from the Committee's official recommendations for 2010, UN document A/64/19, paragraph 199:

The Special Committee welcomes the free and multilingual delivery of expert-developed e-learning on peacekeeping provided by the Peace Operations Training Institute, and encourages Member States to support the creation of additional courses and translations. The Special Committee further welcomes the Institute's E-Learning for African Peacekeepers and E-Learning for Peacekeepers from Latin America and the Caribbean, made possible through voluntary contributions. The Special Committee also welcomes the integrated distance learning programmes provided directly to the peacekeeping missions by the Institute. The Special Committee urges the Department of Peacekeeping Operations and the Institute to actively work together to promote existing e-learning programmes, and highlights the importance of ensuring the use and development of these materials, and their dissemination to all mission personnel.

The Peace Operations Training Institute provides training in accordance with UN standards; however, it is a separate entity from the United Nations. For more information please visit the Web site <http://www.peaceoperations.org>.

Global Peace Index 2010

The findings of the 2010 Global Peace index reveal that the higher the propensity of a country towards peace the higher the economic performance, better living standards, observance of human rights and growth in and some level of equality that guarantees sustainable livelihood and social progress. Peaceful societies create the enabling environment that allows individuals to engage productively socially, economically and politically leading to progress in the society. Nonetheless, societies wellbeing is undermined by economic malpractices and environmental degradation combined with inappropriate social conduct. The report states that these negativities present in society are an opportunity for change and reforms as they make it easy re-examine

and redefine relations, social behaviour and reform institutions that limit societies progression towards human rights, sustainable livelihood. The report examines two themes; 1) the relationship between peace and economic wealth 2) brings a fact-based approach to establishing the conditions and causes of peace while analysing trends in the peacefulness over the last four years. The full report can be accessed on the Vision of Humanity website.

Source: http://www.visionofhumanity.org/wp-content/uploads/2010/06/2010_Discussion-Paper2.pdf

International guide to designing sport programmes for girls

The believe that involvement of the girl child is fundamental in solving poverty and addressing injustice in society, sporting for girls has been identified as a medium of empowerment. In celebration of the 16 Days of Activism for the Elimination of Violence against Women, Women Win released the International Guide to Designing Sport Programmes for Girls. The guide developed as a collaborative project, built by and for the global sport and women development movements includes useful information on how to address gender-based violence, reproduction, sexuality, health and body image. It also provided tools for recruiting female coaches and provides safe spaces for girls to play. The guide is accessible and is translated in 50 languages with wiki-style collaborative authoring and a pdf generator. It is also live and can be accessed on the Women win website.

Source: *Women Win* - <http://womenwin.org/>

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Editorial information

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

For subscription matters contact: Tore Samuelsson, tore.samuelsson@life-peace.org

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

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Editorial principles

The Horn of Africa Bulletin (HAB) is an international newsletter, compiling analyses, news and resources primarily in the Horn of Africa region. The material published in HAB represents a variety of sources and does not necessarily represent the views of the Life & Peace Institute (LPI) or the cooperating partners, the All Africa Conference of Churches (AACC) and the Fellowship of Christian Councils and Churches in the Great Lakes and the Horn of Africa (FECCLAHA). Writers and sources are normally referred to, although in exceptional cases, the editors of the HAB may choose not to reveal the real identity of a writer or publish the source.

