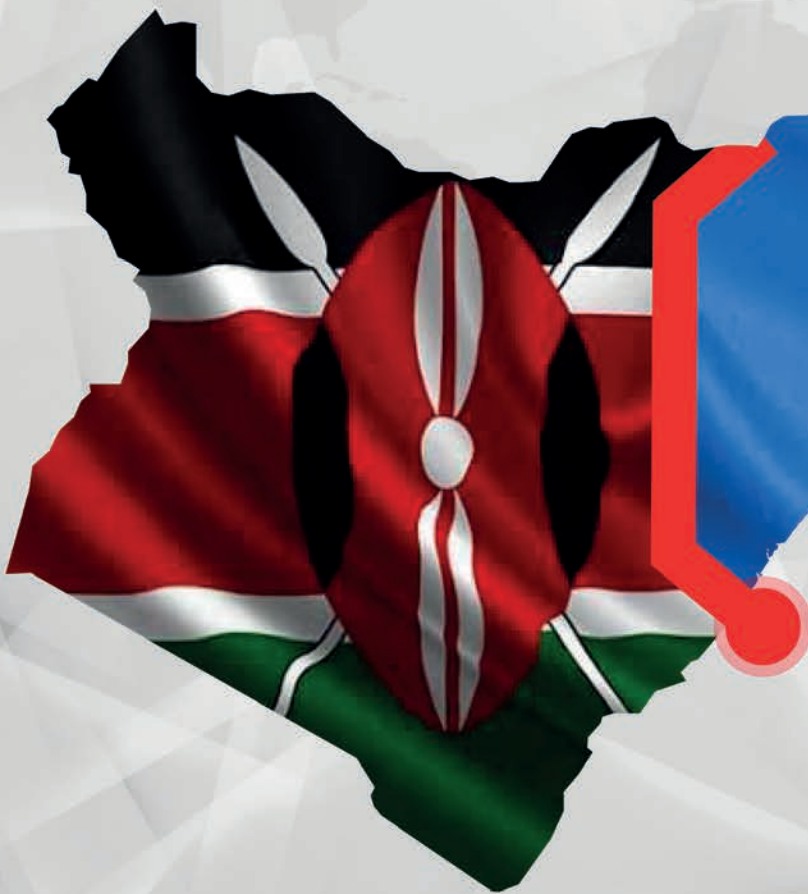


The Influential

A Bulletin of the Global Centre for Policy and Strategy

Inaugural Issue | January - March 2021

The Kenya-Somalia
maritime boundary dispute:
emerging dynamics



Impact of the ICJ Ruling
on Kenya's National
Security Interests



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ABOUT US

The Global Centre for Policy and Strategy (GLOCEPS) is a non-profit organization based in Nairobi, Kenya. GLOCEPS was founded in 2020 and has an overarching vision of being a leading global centre of excellence in action research, policy influence, and strategy formulation. The Centre is a pioneer institution of excellence that provides a strategic link between experience and inter-disciplinary research on one end and policy formulation and action on the other.

In pursuit of this vision, GLOCEPS achieves research excellence through partnerships with like-minded organizations, experts and practitioners. The Centre prides itself in its diversity of expertise that combines seasoned public policy experts and researchers with veteran practitioners and experienced academicians. In doing so, we remain open to new ideas and innovation.



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WELCOME NOTE

It gives us great pleasure as the Global Centre for Policy and Strategy (GLOCEPS) to welcome you to read our first edition of The Influential Bulletin. This inaugural publication contains papers written by our research team. The content is derived from the following research pillars of the Centre: Defence and Security; Diplomacy and Foreign Policy; Strategic Interests and Transnational Crimes; Public Policy, Ethics and Governance and; Development. In line with our vision, these papers define our interdisciplinary research orientation that is bound to influence policy actions and strategies.

This edition is organized around the ongoing Kenya-Somalia maritime dispute and its related impacts on national security, strategic interests, foreign policy, development, and governance. The papers offer several incisive recommendations for amicable resolution of the dispute.

We would like to acknowledge the Board of Directors and administrative team for their leadership, planning and support roles; research teams for their deep inquests into the phenomenon; and the editorial team for peer reviewing and finalizing the bulletin.

We welcome you to be part of our exploratory journey to inspire the globe insightfully.

Warm regards,

Brig (Rtd) C M Kang'ethe, EBS
EXECUTIVE DIRECTOR

EDITOR'S NOTE

We invite you to read our inaugural Issue of **The Influential Bulletin**. This January-March 2021 periodical contains papers centered on the Kenya-Somalia maritime dispute. Each paper examines varied implications of the dispute from security, diplomacy, development and governance lenses. The insights synthesized from the discussions advance key debates on the intersections between blue economy potentials and maritime governance in The Horn of Africa. In the end, succinct recommendations are offered on how to navigate the dispute including strengthening cordial relations between the two neighbors.

Enjoy the read. We look forward to receiving your feedback or comments on our **Inaugural Issue**. Feel free to reach us on email at **info@gloceps.org**.

Kind regards,

Dr K O Asembo, OGW, HSC
ASSOCIATE DIRECTOR

INTRODUCTION

This publication contains research discussions themed on the Kenya-Somalia maritime dispute. The five research papers advance scholarly and policy debates at the intersections between blue economy and maritime governance in the Horn of Africa. Each document examines varied dynamics that have a bearing on the maritime dispute. They contain practical recommendations for various publics including governments, regional organizations and inter-governmental bodies.

The first paper by Janet Kiguru examines internal dynamics affecting Kenya's diplomatic leverage in the dispute. The discussion concludes that before the determination of the International Court of Justice (ICJ) case, Kenya has the opportunity reorganize her internal mechanisms and craft a strategic diplomatic recourse.

The second paper by Michael Owuor explores the development factors influencing the maritime dispute. Among the factors are Somalia's population dynamics and vested interests of local and geopolitical actors.

The third paper by Stephen Nduvi offers insights on the role of Somalia's Constitution in resolving the dispute. This paper examines the strategic leads that the Somali constitution provides to both sides.

The fourth paper by Ida Gathoni examines the relationship between piracy and the resolution of the dispute. This discussion suggests mitigation options to counter piracy in the disputed maritime space.

The fifth paper by John Mwangi analyzes the implications of the ICJ ruling on the dispute while focusing on Kenya's national security and economic prosperity. This discussion recommends that addressing the existing policy gaps in maritime governance and engagement of the diplomatic muscle are crucial in ensuring that Kenya maintains her sovereignty and territorial integrity.

The debates advanced in these five papers rely on global insights from delimitation of maritime boundary issues as well as local and regional dynamics. They situate how national security, diplomacy, development, governance and strategic interests matter in regional prosperity.

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Map of Kenya - Somalia disputed maritime zone

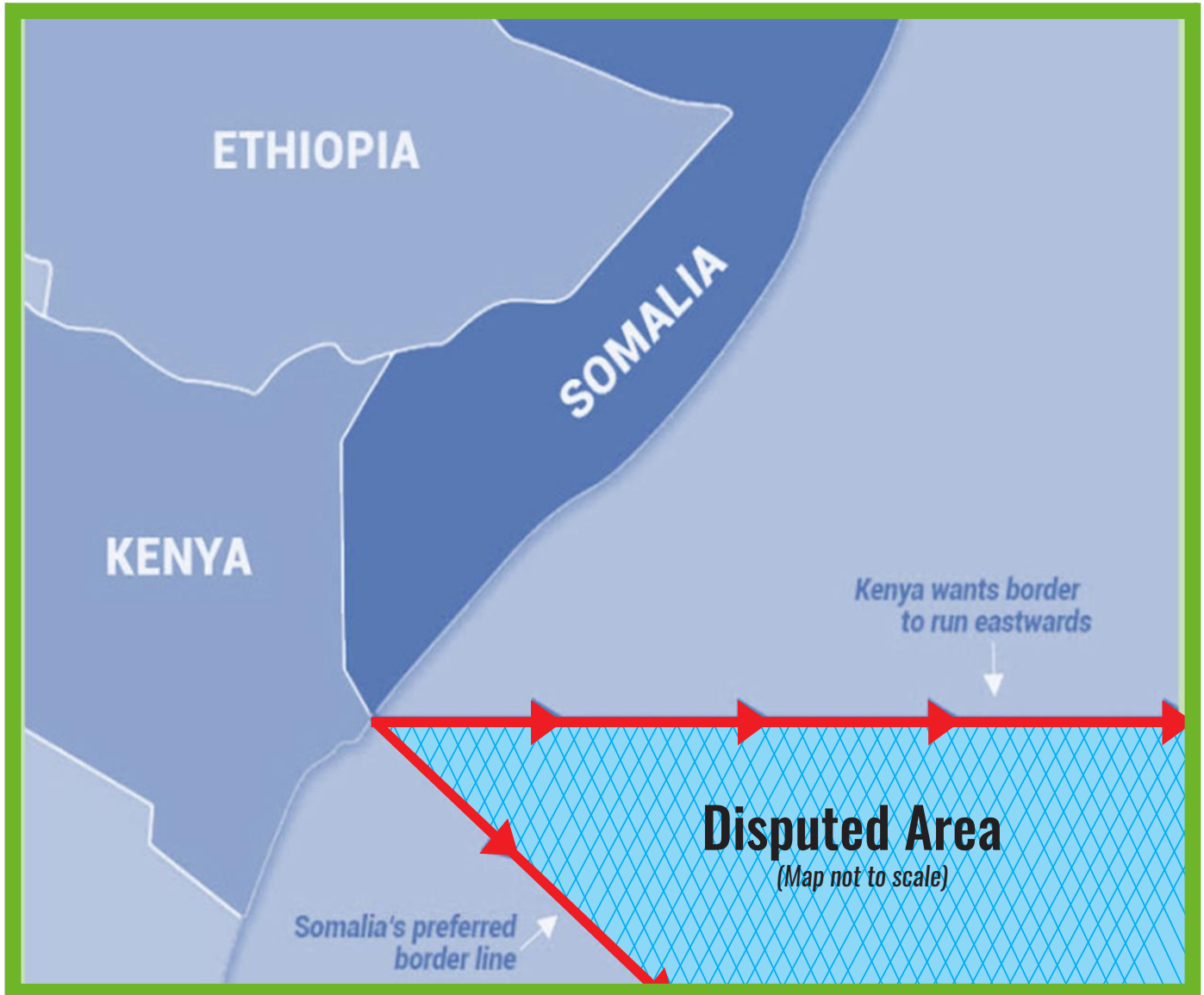


Photo credit: Allan Muchira



Internal Dynamics Affecting Kenya's Diplomatic Leverage in the Kenya–Somalia Maritime Boundary Dispute

Janet Kiguru

Executive Summary

This paper examines the influence of internal politics, divided loyalties, Al-Shabaab infiltrations and institutional inefficiencies on Kenya's approach to its maritime dispute with Somalia. These domestic and regional variables have profound effect on Kenya's diplomatic leverage on the issue. The key findings and recommendations are informed by expert opinions and secondary data on Kenya's foreign policy and diplomacy. The discussion concludes that with two months to the determination of the International Court of Justice (ICJ) case, Kenya has the opportunity to craft a strategic diplomatic recourse. Nevertheless, she should prioritize getting her house in order. Thereafter recommendations are offered on reconstitution of the negotiation task force; reorganization of institutions managing the dispute; winning the support of the people of northern Kenya and the coastal regions and; managing violent extremism.

Introduction

Contradictions within government institutions have largely affected Kenya's diplomatic capacity in resolving the Kenya-Somalia maritime dispute. These stem from pre-occupation with internal political issues such as the 2007/8 post-election violence; the 2005 and 2010 constitutional referendums; the International Criminal Court (ICC) cases; the 2013 and 2017 elections and the Building Bridges Initiative. Further incongruities revolve around divided loyalties, nepotism, corruption, and the impact of the post-election Government of National Unity (GNU) on the Ministry of Foreign Affairs (MFA) in 2008. These paradoxes are further deepened by Kenyan-Somali irredentism factor, cross-border tensions and the Al-Shabaab question.

Since 2005, Kenya has had a series of internal dynamics to deal with. These have disoriented and undermined her capacity to deal with global and regional issues that require proper and immediate attention. Some of these internal dynamics were remotely engineered by global powers such as the United Kingdom (Khadiagala, 2008; Mbaya, 2019; Murunga & Nasong'o, 2006; Nzau, 2016). Later on, the global powers used Somalia as a proxy to undermine Kenya at

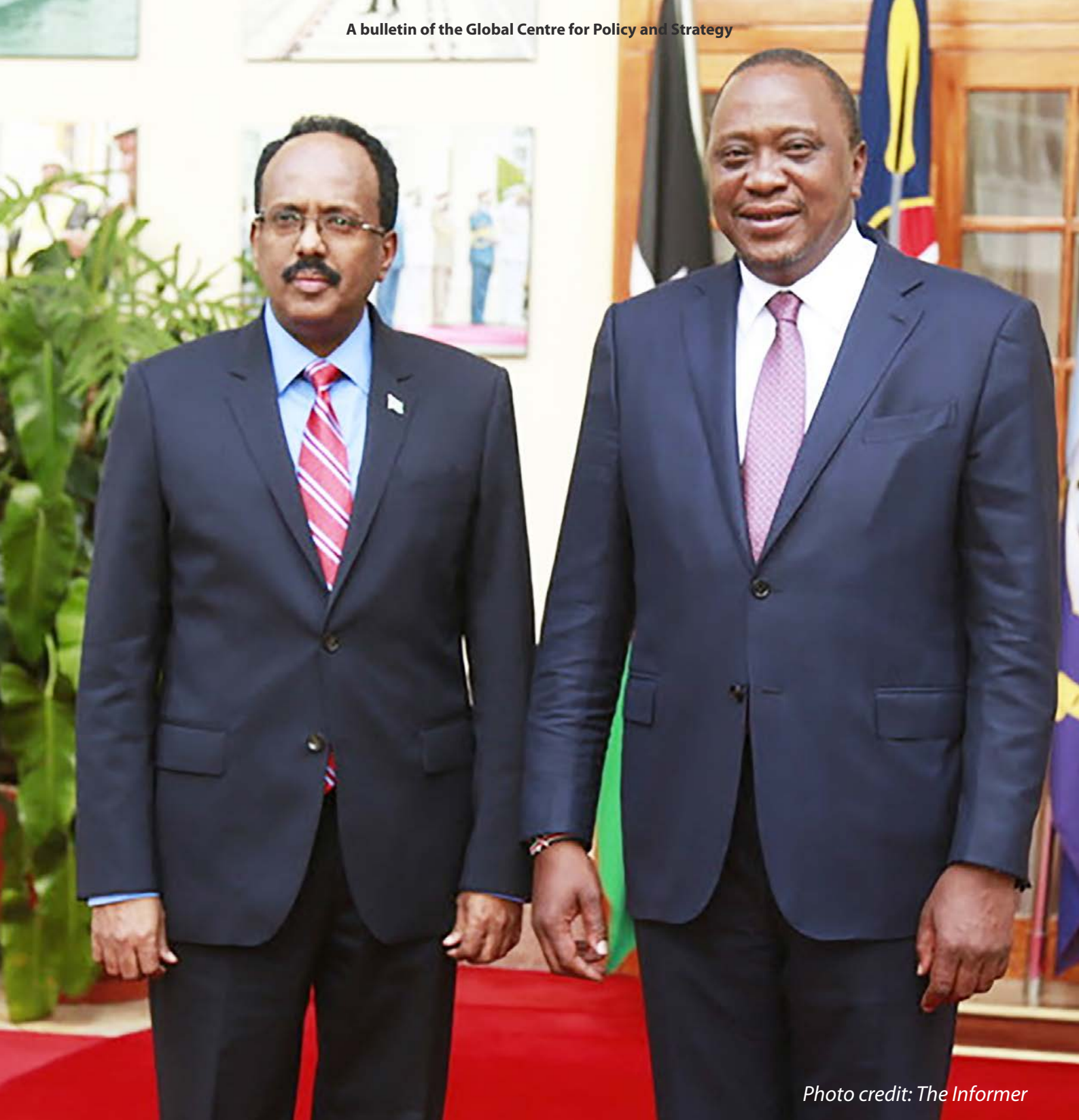


Photo credit: The Informer

a time Kenya was pre-occupied with cleaning her internal mess. At the baseline, Somalia's foreign policy continues to be driven by diaspora interests and geopolitical actors operating therein. As such, Somalia is more engrossed in foreign alliances for management of her foreign policy to the detriment of her own internal development. The ongoing dispute with Kenya is hinged on this framework.

This paper focuses on the internal issues and mechanisms from 2005 to 2020 that have affected Kenya's diplomatic capacity in dealing with the dispute. It further makes recommendations on how to cushion Kenya's foreign policy and diplomacy from these internal challenges as she pursues a diplomatic recourse on how to resolve the maritime boundary issue.

The Background

The Kenya-Somalia maritime dispute has exposed weaknesses in Kenya's governance structures and foreign policy. In 2009, Kenya and Somalia hurriedly signed a Memorandum of Understanding (MOU) that Somalia later on renounced. In 2014, following the discovery of huge deposits of hydrocarbons in the disputed maritime area, the then-Somalia Prime Minister Abdiweli Sheikh Ahmed had a discussion with Deputy President William Ruto in Nairobi (ICJ, 2016a). This was followed by a series of meetings between March 2014 and July 2014 in Mogadishu to discuss the maritime boundary issue (ICJ, 2015). Following these deliberations, Kenya's internal discordance played out at the international stage. It was characterized by miscommunication between Nairobi and Mogadishu; laxity by the Kenyan delegation to make follow-ups; internal sabotage; institutional inefficiencies and divided loyalties (ICJ,

2016b; Ogaye, 2019; Opala, 2019). Moreover, intensified counterterrorism efforts directed towards dealing with the Al-Shabaab threat hindered Kenya's ability to effectively pursue diplomatic solutions with Somalia on the matter.

Methodology

Qualitative data was gathered from foreign policy experts and practitioners using interview guides which provided in-depth discussion on the Kenya-Somalia maritime dispute. The primary data was complemented by secondary data from documented sources. The data was analyzed thematically.

Key Findings

The following themes emerged as the major issues that have hindered Kenya's handling of the Kenya-Somalia maritime dispute.



Photo credit: Cabinet office

Western Geopolitical Interference and Kenya's Pre-occupation with Internal Political Issues

After President Kibaki took over in 2002, Kenya's foreign policy began to challenge the West's dominance on every sphere of Kenya's national outlook. President Kibaki started facing East to find new trading, development and financial partners (Murunga & Nasong'o, 2006; Nzau, 2016). This led to a fallout with the United Kingdom which sponsored the opposition during the 2005 Orange/Banana Referendum. When that failed, the UK infiltrated the 2007 election process and championed the power sharing agreement between President Mwai Kibaki of the Party of National Unity (PNU) and Prime Minister Raila Odinga of the Orange Democratic Movement (ODM) (Khadiagala, 2008; Mbaya, 2019; Murunga & Nasong'o, 2006; Nzau, 2016). Shortly thereafter, the geopolitical actors attempted to use the International Criminal Court (ICC) cases to disqualify Uhuru Kenyatta from running for presidency in 2012/2013. The UK was obsessed with creating an Arab Spring-like situation in Kenya, which failed. The overall result of all these failures was lukewarm relations between Kenya and the UK (Nzau, 2016). Nevertheless, on 8th December 2020, Kenya signed an Economic Partnership agreement with Britain, a sign of improved relations (Mutambo & Kitimo, 2020).

The period between 2013 and 2016 saw President Uhuru Kenyatta and Deputy President William Ruto largely focus on the ICC cases and all efforts and resources of the MFA were channelled to lobbying African Union states against the ICC (HORN International Institute, 2019; Mbaya, 2019). As this went on, Britain became overly active in sponsoring officials in the newly created corrupt Somali Government of Hassan Sheikh Mohamoud to harass Kenya (Munene, 2019).

Thus, since 2005, Kenya has barely had a diplomatic pause to refocus on pertinent foreign policy issues such as the maritime dispute. Even the aftermath of the re-election of the President and his Deputy in 2017 has

been characterized by serious contestations that have led to the birth of the Building Bridges Initiative, which is now the main focus of the Jubilee Government. This preoccupation with resolving internal challenges has the potential of derailing the Government from the eminent regional fallout in the Horn of Africa as a result of the dispute.

The Impact of the Government of National Unity (GNU) on the MFA

The Government of National Unity from April 2008 to April 2013 weakened Kenya's foreign policy, diplomatic stature, and maneuvers by creating two centers of power (Amadi, 2009; Mbaya, 2019). While Kenya was delimiting her maritime boundaries with Somalia and Tanzania, there were some serious inherent contradictions within government institutions and among government officers (Amadi, 2009). The structure of the Grand-Coalition Government led to the political appointment of officers and ambassadors who were political diehards of either President Mwai Kibaki or Prime Minister Raila Odinga. Yet, the core of a country's effective diplomacy is the tenacity of her Ministry of Foreign Affairs (Mbaya, 2019).

During this time, the executive focused on the battle for consolidation of political power at the expense of Kenya's foreign policy (Amadi, 2009; Mbaya, 2019). The need to capitalize on the gains made from the 2009 MOU with Somalia over the maritime boundary was left to chance. It is evident that Kenya hurriedly made MOU's with both Somalia in April 2009 and Tanzania in June 2009 based on parallel latitude lines. The MOU with Somalia, which was signed by the then minister of Foreign Affairs, Moses Wetangula, came to haunt Kenya later at the ICJ because it did not explicitly lock out the ICJ from intervening in the matter (Chan, 2018; ICJ, 2015, 2016a, 2016b). Suffice to say that between 2008 and 2014, the Kenyan MFA lacked the requisite capacity to handle this maritime dispute effectively. The possibility of Kenya losing her continental shelf area is real if the ICJ rules in favor of Somalia.

Tensions within the Government of National Unity (GNU) led to increased infightings and sabotage among officers who were aligned to different camps. Key decisions on Kenya's foreign interests remained murky and difficult to conclude on (Amadi, 2009; Mbaya, 2019). Since then, the general disquiet at the MFA has hampered its efficiency. There is simmering internal discontent by career diplomats over increased appointments of political diplomats for key diplomatic missions (Mbaya, 2019; Ogaye, 2019). This has hampered diplomatic focus on key issues as the structure of succession at the MFA continues to cause confusion and infighting among senior directors and ambassadors at the headquarters (Mbaya, 2019; Ogaye, 2019). Within this environment, Kenya's prospects of leveraging the maritime dispute remains slim.

Institutional Inefficiencies

Kenya's foreign policy arena is a divided house. The infighting is so overt that even as Kenya prepares for diplomatic recourse, there are some government departments that are using a map that favors Somalia's maritime boundary claim. Moreover, lack of integration among government departments has led to institutional failures since some of the institutions are not anchored in law. Relevant committees only meet when issues have piled up thereby rendering Kenya's policy framework as inherently reactive. The lack of coherence in coordination is evident.

The by-products of institutional inefficiencies include nepotism and corruption. Some government officials appointed to key foreign policy institutions lack proper qualifications (Mbaya, 2019; Ogaye, 2019). There is no national philosophy that really guides them even when they should be defending Kenya's national interests. Furthermore, the inability to deal effectively with corruption since the 1980s has largely affected Kenya's foreign policy and defence operations and this has made it quite easy for hostile actors to infiltrate Government departments (Mbaya, 2019).

The selection of the diplomatic negotiation teams that spearheaded Kenya's diplomatic engagements remains of concern in the Kenya-Somalia maritime dispute. In particular, Kenya International Boundaries Office (KIBO) and MFA were singled out in discussions with experts. It is evident that KIBO is only as competent as who constitutes it (ICJ, 2016b; Opala, 2019). There are apprehensions that KIBO is dominated by lawyers, surveyors and geologists whose job description is demarcation and delimitation of boundaries, not negotiations. Consequently, Kenya's negotiation team has been populated by legal envoys and geoinformatics specialists whose positions are based on international law and geographies not the politics surrounding the dispute (ICJ, 2016b; Opala, 2019). This has created a loophole for the geopolitical actors with interest in the dispute to embolden Somalia's position to the disadvantage of Kenya.

Kenyan-Somali Factor and Irredentism

Since 1963, the Kenyan-Somali irredentism factor has been a constant threat on Kenya's sovereignty, political stability and foreign policy (Matthies, 1974; Mbaya, 2019). In fact, the maritime dispute can be seen as a gradual strategy by Somalia to unify and establish 'The Greater Somalia'. Irredentism exposes Kenya's vulnerability and interference from within and without (Buzan, 1983). This conflict is historical and generational. There are Kenyan-Somalis who still support the Somali irredentism cause due to what they perceive as historical injustices. These include: perceived alienation and marginalization of North Eastern region; the Shifta counter-insurgency strategy in the 1960s; collective punishment and policing of the Kenyan-Somalis; ethnic profiling in the 1980s and 90s to establish Kenyan lineage; the support of the patronage networks and clan supremacy of the Ogadens during the Moi era; counter-terrorism extra-judicial killings and; crackdown on refugees, among other issues (Lind et al., 2017). Consequently, the Kenyan-Somalis have lived with divided loyalty to Kenya and Somalia

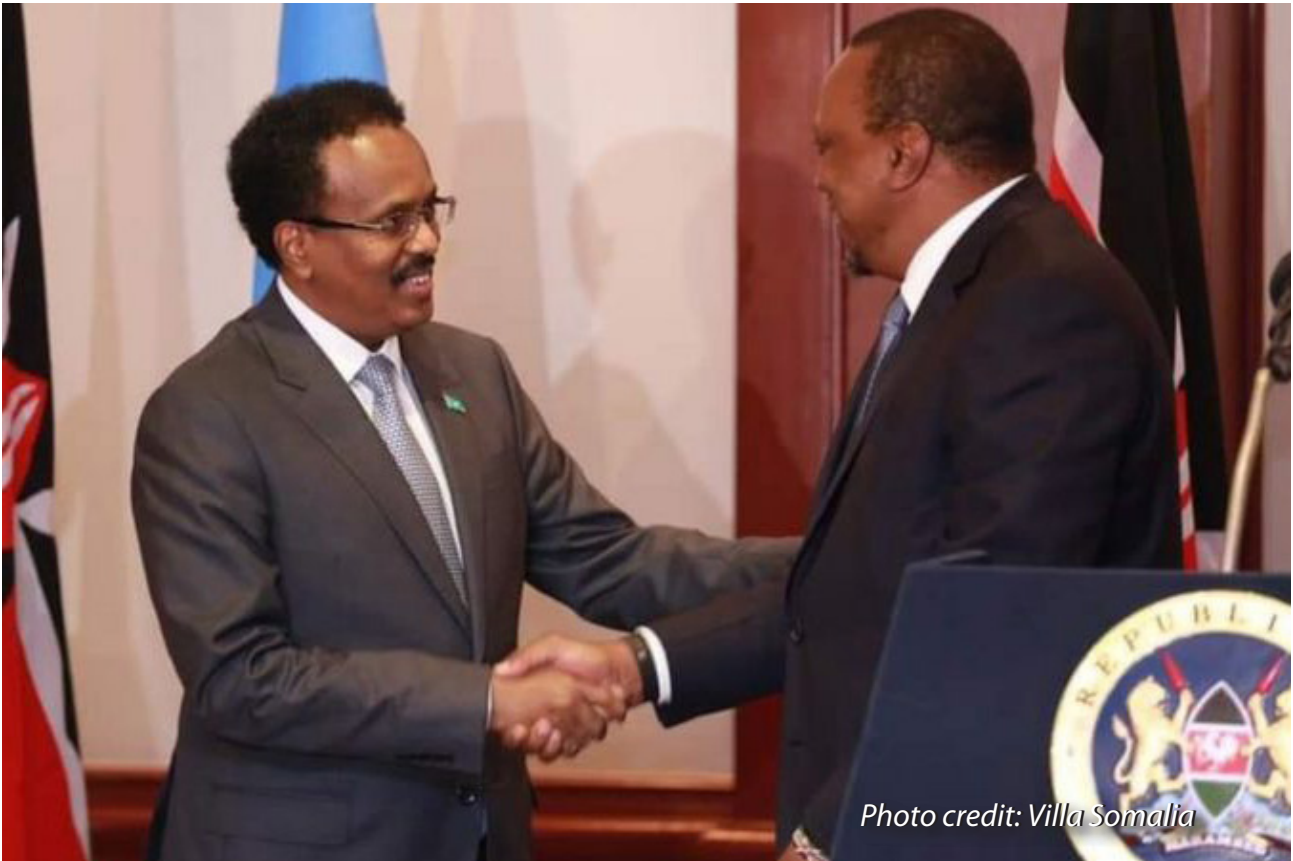


Photo credit: Villa Somalia

over the years. For instance, Fahad Ahmed, the current Director of National Intelligence and Security Agency (NISA), Somalia, is a Kenyan national, from Mandera. He commands vast business interests and influential networks in Kenya. Secretive trips to Mogadishu by Kenyan MPs to meet President Farmaajo have led to questions on the loyalty of elected officials from north eastern, Kenya. Moreover, the Federal Government of Somalia and the global Somalia community appear to be reading from the same script on the maritime dispute and this complicates Kenya's endeavors to rally the entire country to support her position.

Disquiet Among Coastal Communities

The continued disquiet among coastal communities over what they perceive as historical injustices and marginalization has implications on the maritime dispute. In Lamu, the indigenous Bajuni community are worried about losing their fishing grounds to the

dispute. Interestingly, to them, it is more of a Kenyan problem and Kenya deserves to lose. There exists a widespread feeling of alienation from Kenya's national consciousness among residents and local leaders opine that it is time Kenya learns a lesson because she has long ignored Lamu people. The divided loyalty emanates from the strong religious and trade ties, as well as ancestry, which Lamu people share with residents of Kismayu region in Somalia.

The coastal region has been a fertile ground for radicalization and recruitment into terrorism. If Somalia capitalizes on religion to gain favor with the people of North Eastern and Coastal regions, there is a high likelihood that they would support the Somalian cause to the benefit of Al-Shabaab. Within this context, the possibility of heightened terrorist activities in the regions remains credible. It is important to note that even the current mega development projects in Lamu County such as the LAPSSSET or the Lamu Coal Plant championed by the Kenyan Government have not resonated well with Lamu residents. The projects are perceived as more

beneficial to non-residents who have secured employment. The elected political leaders equally feel marginalized in national issues and positions and this has led to tensions between the indigenous and the non-indigenous people who were settled there in the 1970s. The disquiet among coastal communities coupled with the irredentism factor in north eastern Kenya jeopardizes Kenya's efforts towards strong diplomatic engagements with Somalia in the maritime dispute.

The Al-Shabaab Infiltration

The Al-Shabaab terror group conceptualizes the maritime dispute as a conflict between Christians and Muslims. The Mujahideens claim that Kenya, with the help of Western Christian states, first invaded their lands before claiming their oceans. The group is adamant that it will not accept an adverse decision by ICJ because this is an outright territory-grab by Kenya (AFP, 2019; ICJ, 2016b). In fact, the 2014 Kenya delegation failed to attend the third meeting in Mogadishu because of Al-Shabaab's inflammatory remarks on the maritime dispute. Kenya feared for the safety of her delegation and notified the Somalia Government.

The possibility of intensified Al-Shabaab terror activities on Kenyan soil could also derail Kenya's focus on negotiations and interfere with the outcome. In fact, Somalia conveniently filed the case at the ICJ when Kenya was facing a turbulent period due to attacks from Al-Shabaab on her citizens and on the Kenya

Defence Forces soldiers under AMISOM in Somalia (ICJ, 2016b).

The Al-Shabaab has equally infiltrated Government departments, both in Kenya and Somalia, and planted her agents, as part of her operational strategy. The agents are in key decision-making positions and include serving and former prominent Kenyan-Somali politicians from North Eastern Kenya as well as top lawyers who have served in Government agencies as senior state officials. They have maintained high-level contacts in both countries and are used to spy on Kenya for both the Somalia government and Al-Shabaab. They use the confidential information gathered to undermine planned Kenyan initiatives. Most are paid and retained for espionage purposes (WikiLeaks, 2009).

It is possible that key decision makers in Kenyan government could be sympathizers of hostile actors. Therefore, any continued infiltration of Al-Shabaab or NISA into the Kenyan government could potentially weaken Kenya's ability to handle the maritime dispute in her favor.

Conclusion

This paper concludes that the existing internal contradictions within the Kenya government machinery may cost her the final chance in diplomatic negotiations on the maritime dispute as the ICJ ruling looms. The need for Kenya to first get her foreign policy house in order, before further diplomatic engagements with Somalia, remains crucial.

RECOMMENDATIONS

The following recommendations are offered:

1. Kenya to institute and lead a specialized inter-disciplinary task force on the Kenya-Somalia maritime dispute and which should be insulated from internal political dynamics.
2. Kenya's security architecture to undertake the vetting of the negotiation team working on Kenya- Somalia maritime dispute to ensure a united front and preservation of Kenya's national interests.

3. Kenya should capitalize on the recently signed Economic Partnership Agreement to strengthen Kenya's bilateral relationship with the United Kingdom.
4. Kenya and Somalia should identify a neutral state where the new round of negotiations should be held. This neutral state should be one where the Al-Shabaab is not a threat to the negotiators.
5. Kenya to intensify surveillance on Al-Shabaab activities on its soil and sleeper cells which could derail Kenya's focus on negotiations and interfere with the outcome.
6. Kenya to develop and enforce appropriate recruitment policies to curb nepotism, corruption, lack of proper qualifications and experience within government departments tasked with discharging key foreign policy issues such as on international boundaries and diplomatic decisions. This should address the issues of competency in the MFA and KIBO.
7. Kenya to develop policies geared towards inclusion of people of Lamu and north eastern Kenya in national development projects in their areas, particularly the maritime industry and LAPSSET. This should be done through increased employment opportunities, consultations and dialogue.

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Development Factors Influencing the Kenya- Somalia Maritime Dispute

Michael Owuor

Executive Summary

The paper analyses the development factors that impact on the Kenya-Somalia maritime dispute. The primary discourse includes: the exploitation of Somalia's population dynamics for political expediency; vested interests of local and geopolitical actors; role of development partners; and the influence of diaspora Somalis. The key findings and recommendations are informed by expert opinions and secondary data on Somalia's political economy and development. The discussion concludes that while the economic interests of geopolitical actors and development partners appear to exert more influence in the dispute, the personal interests of local actors remain prominent. This paper recommends development of policy guidelines for engagement of Somalia on youth-centric development programs and, engaging geo-political actors and influential Somali clans, among others.

Introduction

The Kenya-Somalia maritime dispute is centered on the control of maritime resources deemed critical to development of both Kenya and Somalia. Both countries claim over 100,000 km² contested maritime area which covers the Exclusive Economic Zone (EEZ). The huge hydrocarbons and fish resources in the area have attracted geo-political actors whose interests and power contestation complicate amicable resolution of the dispute.

Background

The vast blue economy potential in the contested maritime area remains integral to development ambitions of both Kenya and Somalia. The Somalia's National Development Plan (SNDP) of 2020-2024 and the Petroleum Act of 2020 links the hydro-carbon resources to the achievement of the Sustainable Development Goals (SDGs). These include: tackling the indignity of widespread poverty and hunger; improving health and wellbeing; pursuit of decent work; economic growth and; education for her youthful population. The strategic interests projected in the development factors not only hamper Somalia's development, but also stick out as the major impediments to maritime dispute resolution.



Photo credit: UNDP Somalia

Methodology

Data for this paper was collected from key informants with knowledge and understanding on Somalia's political economy and development. The anecdotal evidence was supplemented with secondary literature. They shaped the key findings and recommendations.

Key Findings

The findings on key development factors is contextualized on the maritime dispute, Somalia's development priorities and achievement of the SDGs as documented in the SNDP of 2020-2024. The following issues are prominent.

■ ■ Exploitation of Somalia's ■ ■ Population Dynamics for Political Expediency

Somalia has a population of about 15 million people. The country remains underdeveloped with high levels of poverty, illiteracy and dependency on aid and diaspora remittances. Its population is relatively young with a median age of 16.7 years.

The population dynamics among local Somalis make them vulnerable to manipulation by politicians and the Al-Shabaab. President Mohammed Abdullahi Mohamed's aka "Farmaajo" re-election strategy is centered on nationalization of the maritime dispute through

targeted appeals to Somalia youth, while accusing Kenya of interfering with her maritime territory and internal affairs. This philosophy is shared with the Al-Shabaab that views Kenya as a foreign occupying force, annexing the maritime territory of “Muslim” lands (Pape & Karamba, 2019; World Bank 2019; Hiraal Institute, 2019). This spirit of Pan-Somaliaism propagated for political expediency, coupled with high poverty levels makes Somali youth vulnerable to manipulation. They continue to be targeted for recruitment into terror activities by Al-Shabaab and for militancy by the Somali government. The current situation has seen the youthful population being radicalized for a lingering protracted national conflict with Kenya over the maritime dispute. The situation is further compounded by the wanton corruption and clientelism which are rampant in government, business environment and the general Somalia society (MoPIED, 2020; World Bank 2019; Warah, 2019).

Vested Interests of Local Actors in the Dispute

Personal interests of political and business elites; Federal Member States (FMS) and clan leaders continue to influence Somalia's development agenda and orientation on the maritime dispute. These interests are often disguised as national interests.

Interests of Political Elites

Somalia's top political leadership has deep-seated interests, particularly in Somalia petroleum sector and maritime resources (Maluki, 2019; Warah, 2019). These personal interests fueled the hurried passage of the Petroleum Law of 2020 resulting into expedited filling of key positions in the Somalia Petroleum Authority with persons close to those in political leadership (Gundel, 2020; Roelf, 2020). Consequently, Jubaland and Puntland have rejected the law.

The political leadership is keen on retaining exclusive control of the petroleum sector as it keeps FMS at bay. (Haroldson, 2020;

Warah, 2019). For example, they control the oil exploration fees, which is largely unaccounted for. The money has been used to buy political patronage in the run up to 2021 presidential election and thus further their interests in the contested maritime territory. Detrimental to Somalia's development agenda is the fact that petroleum production agreement is being drafted to obligate Somalia government to pay the UK-based Soma Oil and Gas 90% of the country's anticipated oil revenue (Gridneff, 2015).

Interests of Clan Leadership

Clan leadership roles compliment and influence formal state institutions and selection of political elites. They are powerful informal gatekeepers who approve political competition and development agenda in Somalia (ITPCM, 2013; McCullough & Saed, 2017). These include the maritime dispute.

Clan leaderships are mostly influential in the relatively stable northern Somalia and less in fragmented southern Somalia. The most influential Somali leaders are drawn from the major clans of Isaq, Darod, Dir, Hawiye and Rahanweyn (Home Office, 2019; Metz, 1992; Menkhaus, 2018). Both President Farmaajo and former PM Hassan Khaire are from the politically dominant Hawiye clan. Moreover, the Federal Government's inability to administer large areas of Somalia strengthens clan leadership. This informs the government's reliance on the local clan militia. The militia control checkpoints and regions where they undertake illegal rent extraction and approve development projects (Hiraal Institute, 2019; McCullough & Saed, 2017).

The maritime dispute is therefore an opportunity for clan warlords to heighten recruitment of militias to further territorial control and extortion. This exacerbates poverty, inequalities and illiteracy for locals contrary to Somalia's pursuit of the SDGs. Nevertheless, clan elders remain largely respected in dispute resolution and customary justice, especially outside Mogadishu where state justice institutions reach is limited (McCullough & Saed, 2017).

■ Interests of the Federal Member States (FMS)

The interests of FMS are driven by the need for more clout to control, negotiate and approve exploration of hydrocarbon resources within their territories. This motivation for more revenue and control by FMS informs the rejection of the Petroleum Law of 2020 by Somaliland, Puntland and Jubaland (Bloomberg, 2020). Although the Somali constitution considers Somaliland as one of the FMS, she declared herself an independent country in 1991 upon the fall of Siad Barre regime. She has no regard to Mogadishu's legislations. Puntland also declared herself autonomous in 1998 but she remains politically connected to the Somali federal government. In 2015, Puntland independently awarded an exploration contract to ION Geophysical while Somaliland issued licenses to Genel Energy and RAK Gas. Moreover, Puntland's Petroleum and Mineral Agency (PPMA) warned the Mogadishu-licensed Spectrum and China's BGP that undertaking seismic surveys in the state's offshore territory was illegal and unconstitutional (Reed, 2020).

Jubaland, which borders the contested area, has never claimed ownership of the contested maritime territory. Their hydrocarbon interests are mainly inland. Her strategic position and ability to directly engage with geo-political actors on development issues, remains of great importance to Kenya. First, Jubaland acts as a buffer zone from Al-Shabaab. Secondly, contestation over the Petroleum Law inhibits Somalia's exploration plans in Jubaland's territory and in the contested maritime zone.

■ Vested Interests of Geo-Political Actors

Somalia's hydro-carbon sector remains attractive and is dominated by geopolitical actors and multi-national companies (MNCs). Soma Oil and Gas (UK), Spectrum Geo of US (acquired by TGS), Genel Energy (UK), Ras al Khaimah Gas (RAK gas of the UAE) and

Norway's TGS- (NOPEC Geophysical Company SG), dominate hydro-carbon seismic surveys in the region (TRTWorld, 2019; Khalfaoui & Yiallourides, 2019; Warah, 2019). The activities of these actors predate Somalia's independence. The US exploration activities started in 1952 through four American oil giants: Conoco, Amoco, Chevron and Phillips. They secured vast prospecting contracts prior to the coup on the pro-American president of Somalia, Siad Barre (Fineman, 1993).

The interests of United Kingdom were represented through the British Petroleum (BP) and Shell companies which preceded colonial times (Purcell, 2014). Since 2010, Britain has been involved in the secret rush for a stake in Somalia's petroleum sector, especially in Puntland. Her humanitarian aid and security assistance to Somalia is tied to the advancement of these interests. These include the interests of influential political and business elites (Townsend & Abdinasir, 2012). Soma Oil's chairman is the former leader of the UK Conservative Party, Lord Michael Howard, a close political ally of former UK Prime Minister David Cameron. The former Prime Minister is credited with organizing the 2012 London Somalia Conference which was aimed at strengthening relations with Mogadishu (Gundel, 2020; Africa Confidential, 2015). The London auction was financed by Spectrum Geo (Warah, 2019; Maluki, 2019). Other Multi-National Corporations (MNCs) that variedly operated in Somalia's petroleum sector included ExxonMobil (US), Texaco (now Chevron-US), and Statoil (Norway) (Padmore, 2014).

The preservation and extension of these interests informs the alignment of these actors and complicates the resolution of the dispute (Gundel, 2020; Maluki, 2019; World Oil, 2019). UK and Norway support Somalia while USA and France support Kenya. Norway's off-shore interests are via Statoil Company (now Equinor ASA) where it has a 67% stake (Equinor, 2021; Manson, 2013). Norway, through her former Ambassador on Special Mission, Mr. Hans Wilhelm Longva drafted the contested Kenya-Somalia Memorandum of Understanding

(MoU) on the maritime territory. Moreover, they leverage on influential Somali's with Norwegian citizenship to advance these interests.

The dominance of geopolitical actors in the petroleum industry and contribution to Somalia's debt and development explains the payment of modest exploration fees to Somalia's Ministry of Finance (Clanwilliam, 2015; UNSC, 2015). Between 2015 and 2017, Spectrum paid USD 1.35 million to the Ministry of Finance for seismic studies, while Shell-ExxonMobil made a retrospective rent of USD 1.7 million for five blocks awarded under Siad Barre's regime. These actors are believed to be instrumental in Somalia's litigation at the International Court of Justice (ICJ).

Somalia's development space provides a battleground for Middle East rivalry which pits Saudi Arabia and the United Arab Emirates (UAE) against Turkey and Qatar (Baird, 2015). The rivalry exposes Somalia to various punitive political and economic measures when it chooses one faction over another. Turkey is a key contributor to Somalia's infrastructural development, debt relief, military training and oil exploration. UAE's interests are related to seismic exploration, military, trading and infrastructural programs including road, sea and airport development. The infrastructural developments are geared towards facilitating Somalia's petroleum sector. Turkey's acceptance to explore Somalia's petroleum resources remains of particular interest to the maritime dispute. Qatar Petroleum has three offshore oil blocks off the Lamu Basin-off the disputed zone (Mwago, 2019).

Role of Development Partners

Somalia's classification as a least developed and heavily indebted country demonstrates her dependence on development partners. Development partners' role in Somalia's development is captured in the SNPD of 2020-2024. They support development projects spanning health, livelihood, budgetary and

financial reforms, agriculture, transport, and energy.

The major development partners in Somalia's stabilization and growth are the Africa Development Bank (AfDB), World Bank Group (WBG) and the International Monetary Fund (IMF), and European Union (EU). The combined development portfolio of WBG and IMF in Somalia stands at USD 1.66 billion, compared to AfDB's portfolio of USD 298 million (World Bank, 2020; The Exchange, 2020). The IMF and WBG approved Somalia's irrevocable reduction of external debt from USD 5.2 billion at end of 2018 to USD 557 million in about three years' time. Moreover, they have influenced the development of Somalia's Petroleum Act of 2020 which they leveraged on the debt relief program. They were instrumental in the development of petroleum revenue sharing agreement between federal government, FMS and local communities. They also proposed the oil block auctioning strategy before exploration licensing was implemented (Gundel, 2020).

The EU together with other EU member states account for over 35% of all humanitarian aid to Somalia. In 2018, the EU pledged a EUR 100 million of budgetary support to Somalia's government for a period of over two and a half years. In 2020, the EU provided EUR 51.2 million for humanitarian projects in Somalia (EC, 2020). Their support is integral in the stabilization of Somalia, training of Somalia police and payment of salaries of African Union Mission to Somalia (AMISOM) peacekeeping personnel and funding Somalia's election process. Like the WBG and IMF, they leveraged their support to secure compliance by Somalia's government. In December 2020, they suspended budgetary support due to the 2021 presidential election rigging attempts, poor treatment of journalists and human rights violation. Although the EU is not directly interested in Somalia's petroleum sector, its member states (France, Italy and Netherlands) are involved through various petroleum MNCs. Total (France) and Eni (Italy) have stakes in Kenya's offshore oil blocks in the Lamu basin, bordering the disputed zone (Mwago, 2019).

Diaspora Somalis

Diaspora Somalis are increasingly becoming influential in Somalia's development landscape, political and business leadership, and the maritime dispute. Most of the top political leaders such as the President and Prime minister have dual citizenship. This illustrates conflicting allegiances manifested in geo-political alignments on the maritime dispute.

With regards to leadership, about 80% of Somalia's government positions are occupied by Somalis that have diaspora experience. These include the President, Prime Minister, cabinet members and members of parliament. This strategic positioning allows them to influence Somalia's development agenda and orientation on the maritime dispute. Diaspora Somalis provide skills and knowledge around the ICJ case, though with support from foreign

actors. Initially, their lead advocate at the ICJ was Dr. Mona Al-Sharmani, a Somali national in the US.

Diaspora Somalis are sympathetic to their home country. Their vast financial and technical contribution allows them to exercise great power in Somalia's politics and development. They remit approximately \$1.4-2 billion dollars to friends and relatives in Somalia yearly (World Bank 2019). This amount exceeds development assistance and represents 25 to 70% of Somalia's economy. Their significance to development informed the establishment of the Office of Diaspora Assistance (ODA) in the Ministry of Foreign Affairs and International Cooperation (MoFA&IT). The office coordinates diaspora activities on development including the maritime dispute.

Kenya has the highest Somali global diaspora estimated at 490,000. This is followed by Ethiopia at 440,000 and Yemen at 250,000 (Dahir, 2016).



Photo credit: UNDP Somalia

A significant number are Somali refugees. Kenya therefore bears the heavy development burden of hosting Somali refugees.

While diaspora Somalis remain key actors in Somalia's development and the maritime dispute, they are prominent actors in Kenya's business and investment circles such as in Eastleigh, Nairobi (Carrier & Lochery, 2013; The Standard, 2018). Strangely, these political and business elites are at the forefront in antagonizing Kenya and her interests for a peaceful and stable neighbor in Somalia.

Conclusion

The analysis of development factors on the Kenya-Somalia maritime dispute point to the overwhelming influence of development

actors. Geopolitical actors are identified as the most influential. In general, the actors are majorly motivated by the need to protect and expand their interests in the petroleum sector, mostly to the detriment of local population and development. The selfish personal interests of local political actors, business elites, clan leadership and diaspora Somalis are packaged as national interests. This only complicates the search for amicable resolution of the maritime dispute. The 2021 presidential election may change dynamics in Jubaland including revival of the Al-Shabaab. These changes in the near future necessitates accelerated action by development players. Success in resolving the maritime dispute is therefore heavily dependent on identifying and managing the actors' interests for mutual progress.

RECOMMENDATIONS

The following recommendations are offered:

1. Kenya to develop policy guidelines for the engagement of Somalia and her youth on youth-centric development programs aimed at creating employment opportunities for youthful Somalis in line with Somalia's MGDS targets. This can be done in collaboration with development partners.
2. Kenya to engage with geo-political actors particularly United States, Britain and Norway on the dispute. Dealing with the vested interests of these geopolitical actors remain key to Kenya in the resolution of the dispute. This additional role in peacebuilding impacts on Somalia's development and can be exploited by Kenya to revive the stalled diplomacy.
3. Kenya to engage development partners such as World Bank and IMF for their influence on the dispute. These institutions can innately influence the dispute, with persuasions from the United States who have the largest voting rights in WBG and IMF. The US is a key partner in the war on terror in The Horn of Africa and also has interests in offshore oil exploration. This provides an avenue for Kenya to engage them on bringing back Somalia to the negotiation table.
4. Kenya to identify and engage influential Somali clans, business and religious leaders as well as politicians with interests in Kenya who can be persuaded to lobby Somalia back to the negotiation table.
5. Kenya to leverage on her position as an economic destination for the diaspora Somalia to persuade them on the dispute. Their proximity, investment and family interests provide Kenya with the opportunity to engage them.

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Role of Somalia's Constitution in Resolving the Kenya-Somalia Maritime Boundary Dispute

Stephen Nduvi

Executive Summary

This paper examines the strategic leads that the Somalia constitution provides to Kenya and Somalia on the delimitation of the ongoing maritime dispute. The leads include delimitation of the territory of the Somalia; simmering conflict over federalism; handling Somalia post-2021 elections fallouts and; simmering conflict over petroleum legislative processes. Key findings are drawn from expert opinions and comprehensive desktop review of documented sources. The paper concludes that implementation of the Somalia's provisional constitution faces a number of challenges which offer leverage for the Kenyan government in seeking alternative mechanisms for the resolution of the maritime dispute through institutional-level dialogues. Key recommendations include the need for Kenya to use the constitutional provisions to intensify engagements with United Nations to bring Somalia back to the negotiation table; Influence

African Union (AU) to pursue mediation between Mogadishu and the opposing Federal Member States and; put in place appropriate mechanisms for managing post-election fallouts in Somalia.

Introduction

The United Nations Convention on the Law of the Sea (UNCLOS) provides for bilateral and multilateral dispute resolution options available to states. Similarly, the provisional constitution of the Federal Government of Somalia (FGS) provides leverage for bilateral negotiations between Kenya and Somalia in the maritime dispute, while premised on UNCLOS. The constitution of Somalia has been key in her quest to establish efficient political institutions and introduce governance that is more responsive and accountable to its people (Kouroutakis, 2014). The constitutional making



Photo credit: Idale news

process has been one of the longest and most complicated since her independence from Britain in 1960. Unfortunately, political tensions and insecurity have characterized governance in the FGS thereby jeopardizing the stability of the long walk to constitutionalism.

Background

The Somali constitution comprises 15 chapters and 143 articles. In article 7 the constitution outlines the territory of the Federal Republic of Somalia (FRS). It also provides how to resolve international boundary disputes in a peaceful and cooperative manner, in accordance with international law.

The disputed maritime zone between Kenya and Somalia is a case of an overlapping

border. The dispute dates back in 2009 when a Memorandum of Understanding (MoU) was established seeking a negotiated settlement to the maritime claims as provided for in the UNCLOS. Kenya maintains that the maritime border should move easterly from land to Indian Ocean while Somalia insists that the border should move continuously south-easterly into the ocean. The zone has huge deposits of hydrocarbons and Tuna fish resources. Despite the available constitutional provisions for dispute resolution, Somalia has taken a unilateral non-diplomatic approach in the resolution of the row (Sabala, 2019).

Methodology

The paper used both primary and secondary data to draw inferences on the strategic leads

that the Somalia constitution can provide to Kenya and Somalia on the delimitation of the ongoing maritime dispute with Somalia. Primary data was collected through interviews with key experts. Secondary data was collected through a comprehensive desktop review of documented sources. The data was analyzed thematically as per the research questions.

Key Findings

The following discussion examines key issues emanating from an analysis of the constitution of Somalia in relation to the maritime dispute. They remain of strategic relevance to both Kenya and Somalia as far as their diplomatic approaches to the resolution of the maritime dispute are concerned.

Delimitation of the Territory of the Federal Republic of Somalia

Article 7(4) of the constitution outlines that boundaries of Somalia shall be as provided for in 1960. It states that territorial sovereignty shall extend to continental territory, islands, territorial waters, the subsoil, the airspace above and the coasts. Article 7(5) further states that the boundary of Somalia with Kenya is to the south west. The constitution is silent on the extent of the continental shelf in the Indian Ocean, particularly the boundary of her territorial waters with Kenya (PCS 2012). By principle, the constitution also acknowledges the delimitations provided for in the UNCLOS. Even though Somalia took a strictly legal approach at the International Court of Justice (ICJ) to settle the maritime dispute with Kenya, there is still an option for her to adopt more peaceful and cooperative approaches as provided for in the constitution and UNCLOS. This was not fully exploited even as she lodged the dispute with the ICJ. Returning Kenya and Somalia to the negotiation table based on Somalia laws and constitutional principles is thus an option for both countries to explore.

Simmering Conflict over Federalism

Chapter 5 of the Constitution devolves state powers to create two levels of government - the Federal Government and the Federal Member States (referred to as Member States). The constitution in Article 120 distinguishes their capacities and further guides the establishment of the member state institutions, including the legislative and the executive bodies. Similarly, to harmonize their functions, Article 121 gives the guiding principles to be adhered to by the constitutions of the Member States and federal government.

Article 50 provides for both levels of government to observe the principles of federalism in all their interactions between themselves and while exercising their legislative functions and other powers. These principles include: resolution of disputes through dialogue and reconciliation; fair distribution of resources; mutual cooperation and support to promote national unity. Unlike other forms of political decentralization, this combination of shared rule and regional self-rule is guaranteed and protected by the constitution in a federal system, and cannot be revoked by the central government, without constitutional amendments, which require the consent of the regional governments (UN Political Office for Somalia, 2012).

Federalism establishes two centers of power which should have concurrence in all governance matters. This is in the spirit of promoting national interests and national unity. Concurrence has not been the case since President Mohamed Abdullahi Mohammed "Farmaajo" has been pursuing a centralized governance approach and a nationalist agenda. The President has created a bandwagon of allied Member States that includes South West, Galmudug, and Hirshabelle. This move threatens the autonomy of the Member States. As a result, autonomous and semi-autonomous regions such as Jubaland, Puntland and Somaliland have been victimized by the Federal Government. They are hardly consulted on issues affecting

their territories which is contrary to Article 54 which advocates for consensus between the federal government and Member States.

The political leadership is keen on exercising predatory politics to consolidate and personalize power over the Member States. This has escalated conflicts between Mogadishu and some Member States (Kalmoy, 2021). The persistent struggle for power and authority between Mogadishu and the key Member States appears to be a key factor in the maritime dispute. President Farmaajo is focused on consolidating power by dividing Somalia into smaller states and rallying the people to defend their territory against Kenya, thereby winning a second term in office (Kalmoy, 2021). There exists an opportunity for mediation between the two levels of governance. Kenya has the prospect of pursuing conflict resolution mechanisms meant to bring Mogadishu and the disputing Member States to negotiations for the sake of stability in Somalia. This could help rekindle the stalled negotiations over the maritime dispute.

Simmering Conflict over Petroleum Legislative Process

In February 2020, President Farmaajo ratified the Somali Petroleum Law, 2020, paving the way for licensing of exploration blocks (The Somali Petroleum Law, 2020). The law was approved by Parliament in May 2019 but the Upper House did not pass it until January 2020. Delays in the legislation process of the petroleum law were as a result of the contents therein including the Production Sharing Agreement, Resource Sharing Agreement, and the establishment of the regulatory institutions, such as the Somali Petroleum Authority.

Using the controversial petroleum law, President Farmaajo has fully taken control of the Ministry of Petroleum by appointing close allies to key positions in the Somali Petroleum Authority whose tenure is four years. This implies the incumbent ruling faction is able to exert control on the hydrocarbon resources income streams

to fund their projects including the forthcoming and future elections campaigns even if they lose the February 8th presidential elections (Gundel, 2020). This questionable funding exposes Somalia to pressure by external actors. It explains the lopsided response by President Farmaajo in the Kenya-Somali relations.

The revenue-sharing agreement provides for revenues from any eventual oil production to be distributed throughout the country's federal states. Somalia will retain 55% of revenue from future offshore oil production and 30% from onshore output, with the Member States and the local communities receiving the remainder (The Somali Petroleum Law, 2020). The 2020 Somali Petroleum Law remains contentious since some of the Member States were not effectively represented in the negotiations. The enactment of the law breaches Article 44 which declares that the principles of federalism rather than centralism should be the key principle in governance of natural resources (Reitano & Shaw, 2013).

Further, the Petroleum law breaches Article 53(2) which states that 'where negotiations particularly affect Member State interests, the negotiating delegation of the Federal Government shall be supplemented by representatives of the Member States governments'. Member States such as Puntland, Somaliland and Jubaland have viciously contested the Petroleum Law based on these provisions. This presents an opportunity for Kenya to offer legal support on constitutionalism and reconcile Mogadishu and the opposing Member States on the controversial Petroleum Law. Within this platform, Kenya and Somalia may consider return to diplomacy on the maritime dispute.

Handling Somalia post-2021 elections Fallouts

Article 47 outlines the regulations concerning elections at the federal government level, political parties, and their registration. Similarly, the article states that the National Independent



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Electoral Commission shall be defined in special laws enacted by the House of the People of the Federal Parliament of Somalia. The regulations are paramount in promoting the independence and impartiality of the electoral body in Somalia against manipulation by interested parties or partners.

In November 2020, Somalia got a new Prime Minister Mohamed Hussein Roble, after his predecessor Hassan Ali Khaire was voted out of Parliament for failing to negotiate a one-person, one-vote system for the upcoming 2021 elections (Voice of America 2020). Previously, in December 2019, the House of the People had approved the election law on universal suffrage for presidential elections and slated them for February 2021 (Legacy Center for Peace and Transparency, 2019). The universal suffrage comes 50 years since 1969 when the government was overthrown in a bloodless military coup. However, political infighting between President Farmaajo and the country's regional leaders especially from Jubaland and Puntland are advocating for the indirect election model. They want the UN-backed universal suffrage model to be implemented after the

2021 elections (Somali Dialogue Platform and Somali Public Agenda, 2020).

Despite the consensus on the electoral model, political indifferences between the Federal Government and member states remain unresolved. Opposing groups such as Jubaland, Puntland and clan based organizations have contested electoral preparations and the impartiality of electoral commission which the federal government is likely to use to manipulate the electoral process (International Crisis Group, 2020). Similarly, the threat of COVID-19, Al-Shabaab, and the withdrawal of US troops from Somalia complicates the stability of Somalia in 2021 post-election period.

Since governance in Somalia is defined by clan affiliation as opposed to political ideologies, a win or a loss by President Farmaajo in the coming elections will have ramifications on the stability of Somalia (International Crisis Group, 2020). This is further complicated by the high stakes in the presidential elections since key opposition figures such as immediate former Prime Minister Khaire, and former finance minister Hussein Abdi Halane have positioned

themselves as candidates. A win for President Farmaajo will make him a hero to those groups that had confidence in the integrity of the electoral process. This may lead to an end or radical change in federalism while attracting condemnation from the dissenting voices who perceive the election's outcome as illegitimate. However, if President Farmaajo is re-elected, opposing groups may trigger a clan based post-election crisis. The Al-Shabaab and the Islamic State in Somalia will take advantage of any political instability to cause more disruption (International Crisis Group, 2020). Similarly, if Farmaajo loses power, federalism and clan-based political disputes will persist and any new leader has to deal with such divisions (Kalmoy, 2021).

Kenya, being a regional peace ambassador, has an opportunity to steer Somalia to a path

of political stability in the post-election period by reconciling the winners and losers of the presidential elections. Kenya can also assist in developing post-election dispute resolution mechanisms for Somalia.

Conclusion

This paper concludes that the implementation of 2012 provisional constitution of Somalia faces a series of hurdles. This offers an opportunity for Kenya to support the reconstruction and constitutional process in Somalia. Pursuing alternative mechanisms for the resolution of the internal constitutional disputes Mogadishu faces with Member States offers Kenya a better platform for advancing a diplomatic resolution of the maritime dispute.

RECOMMENDATIONS

The following recommendations are offered:

1. Kenya to intensify engagements with United Nations to return Somalia to the negotiation table on the maritime dispute under the guidance of Somalia Constitution and UNCLOS, 1982.
2. Kenya and Somalia to pursue African Union-led mediation processes between Mogadishu and the opposing Federal Member States for the sake of peace and prosperity in Somalia.
3. Kenya to pursue appropriate mechanisms for managing post-election fallouts in Somalia should elections go on as scheduled. This could help bring back negotiations on the maritime dispute.

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Implications of Piracy on the Kenya-Somalia Maritime Dispute

Ida Gathoni

Executive Summary

This paper examines the relationship between piracy and the resolution of the Kenya-Somalia maritime dispute. The Kenya-Somalia maritime border currently under dispute at the International Court of Justice (ICJ) remains key to Kenya's strategic interests. The bone of contention is in the variance of opinion where Somalia argues that Kenya-Somalia border runs based on the equidistance principle while Kenya claims that the border runs parallel to the latitude. Key findings are drawn from expert opinions and comprehensive desktop review of documented sources. Results indicate high likelihood of piracy escalating along the Horn of Africa and East Africa coastline as a result of the maritime dispute and state failure in Somalia. The potential loss of maritime territory to Somalia coupled with Somalia's inadequate security apparatus will directly impact on Kenya's national security. The situation

is further compounded by other existing transnational organized crimes in the disputed zone. This paper recommends effective occupation of Kenya's maritime territory as a safeguard from the maritime threats.

Introduction

The continued instability of Somalia Government, which has been at war for close to thirty years, has further deepened the vulnerability of the contested zone and its environs to piracy. Between 2007 and 2012, the Somali piracy crisis was at its peak with more than 237 attacks across the Gulf of Aden, the Arabian Sea and the Red Sea daily. Some of the key factors occasioning this phenomenon include: Somalia's strategic location as a trade route for 40% of the world's trade; its free and liberated economy with no central bank to regulate money flow; its influential warlords who offer protection to pirates; and the inability of the Capital Mogadishu to control the larger state of Somalia (Venkataraman, 2016; Mbugua & Said, 2017; Horn International Institute for



Photo credit: <https://cruisemappers.com>

Strategic Studies, 2019). The ensuing discussion examines the prominent factors associated with piracy on the disputed Kenya-Somalia Maritime Zone and provides ways that Kenya can mitigate incidences of increased piracy in the disputed maritime space.

Background

Kenya's strategic claim in the maritime dispute is over 100,000 square kilometers of water mass that is currently under dispute. The current disagreement follows an earlier secessionist conflict between Kenya and Somalia-backed insurgents of Somali descent in the North Eastern region of Kenya, which resulted into the Shifita Wars of 1963-1967. The expansionist motive remains key in both situations but with the earlier case capitalizing on irredentism while the latter on economic fortunes at sea (Kellerman, 2011; Mutisya, 2017; Mutambo & Achuka, 2019).

The contested maritime zone has over the years been associated with piracy particularly

after the fall of Siad Barre regime in Somalia in 1991. The local fishermen sought to protect their territorial waters from foreign vessels which were illegally fishing in tuna-rich waters thereby resulting into dwindling catch for the Somali fishermen. The resultant political vacuum further opened the door for environmental crimes such as toxic waste dumping. Consequently, vigilantes were formed to capture vessels involved in illegal fishing and dumping and holding them for ransom. As the motivation for profit grew among the vigilantes, they turned into pirates thereby occasioning a multimillion dollar criminal enterprise in the disputed zone and beyond (Elmi & Barise, 2006; Groot, 2010; Wabuke, 2019).

Methodology

This paper is based on qualitative data gathered from experts and practitioners on maritime issues in The Horn of Africa. The data was collected using interview guides which provided in-depth discussion on the Kenya-Somalia maritime dispute. The primary



Photo credit: Islam Times

data was complemented by secondary data from documented sources then analyzed thematically.

Key Findings

The following issues remain prominent in relation to the discourse on the relationship between piracy and the resolution of the Kenya-Somalia maritime dispute.

Arming of Shipping Lines

The entire Kenyan coastline has been designated as a High Risk Area by the International Ship-owners Association for them to be able to protect their assets from piracy risks. This dictates that ships must undertake other measures in order to ensure their safety and that of their cargo. These measures include authorisation to have armed security on board through an agreement negotiated between International Ship-owners Association and the International Maritime Organization.

This introduces the problem of insecurity at sea, bringing national security dynamics at play. Key among them being the interaction of the ships

with international laws. Ships coming into Kenya's waters with armed guards, are bound by Section 31 of The Fire Arms Act which requires the arms to be confiscated, recorded and put into storage upon entry into Kenya's waters, within a specified security zone and returned when exiting.

There are fears that the increased pillage of the arms within Kenya Government armouries at Kenya Ports Authority could lead to proliferation of small arms and light

weapons. This requires adequate measures to safeguard the weapons from the arms trafficking enterprise. As the stockpile increases, the possibility of the arms ending up in the hands of potential criminals within the region both at sea and on land looms large. The need for policy that speaks to a better long term plan on handling this stockpile is urgent.

Circumnavigation of the Disputed Zone

The shipping lines plying the Kenya-Somalia coastline continue to avoid the disputed zone as indicated in Figure 1. This is because it is largely unpoliced and hence prone to insecurity. Moreover, the international community has spread the message to shipping lines that there is no boundary between Kenya and Somalia. The situation has resulted into unstable communication between the Regional Maritime Rescue Coordination Centre and Somalia, thereby making it difficult to monitor distress frequencies, relay distress messages, acknowledge distress calls, assist in search and rescue mission coordination, and reduce reaction time. The possibility of pirates taking advantage of this gap in governance and attacking vessels plying the disputed area is real.

Moreover, pirates may exploit communication gaps to steer hijacked ships to unpoliced waters. There are charts being used by the international community which show that the line has already been delineated in a manner that places Kenyan waters in Somalia. This has increased the distance covered by the ships approaching Kenya from the north by 100 nautical miles while those approaching from the south cover only 12 nautical miles. This makes the distance to Kenyan waters from the north invariably longer in order to avoid the disputed area. It therefore takes more time for the ships to arrive in Kenya, increasing their expenditure and risk of piracy while at sea. These costs have a domino effect on the fuel costs and insurance premiums

which eventually affect the cost of transport. This results to the increase in capital inflow and expenditure associated with the shipping industry.

Moreover, fishing vessels licensed to fish in Kenyan waters completely avoid the disputed area for security reasons. This results in massive economic loss in terms of fishing prospects because of the charts in use. The circumnavigation of the disputed zone therefore remains profitable for piracy but hands heavy losses to fishing vessels. These losses are expected to continue since there is no effective utilization of the fishing grounds in the disputed zone.

Figure 1: Map of Circumnavigable Zone in Somalia-Kenya Maritime Zone

Circumnavigable Zone

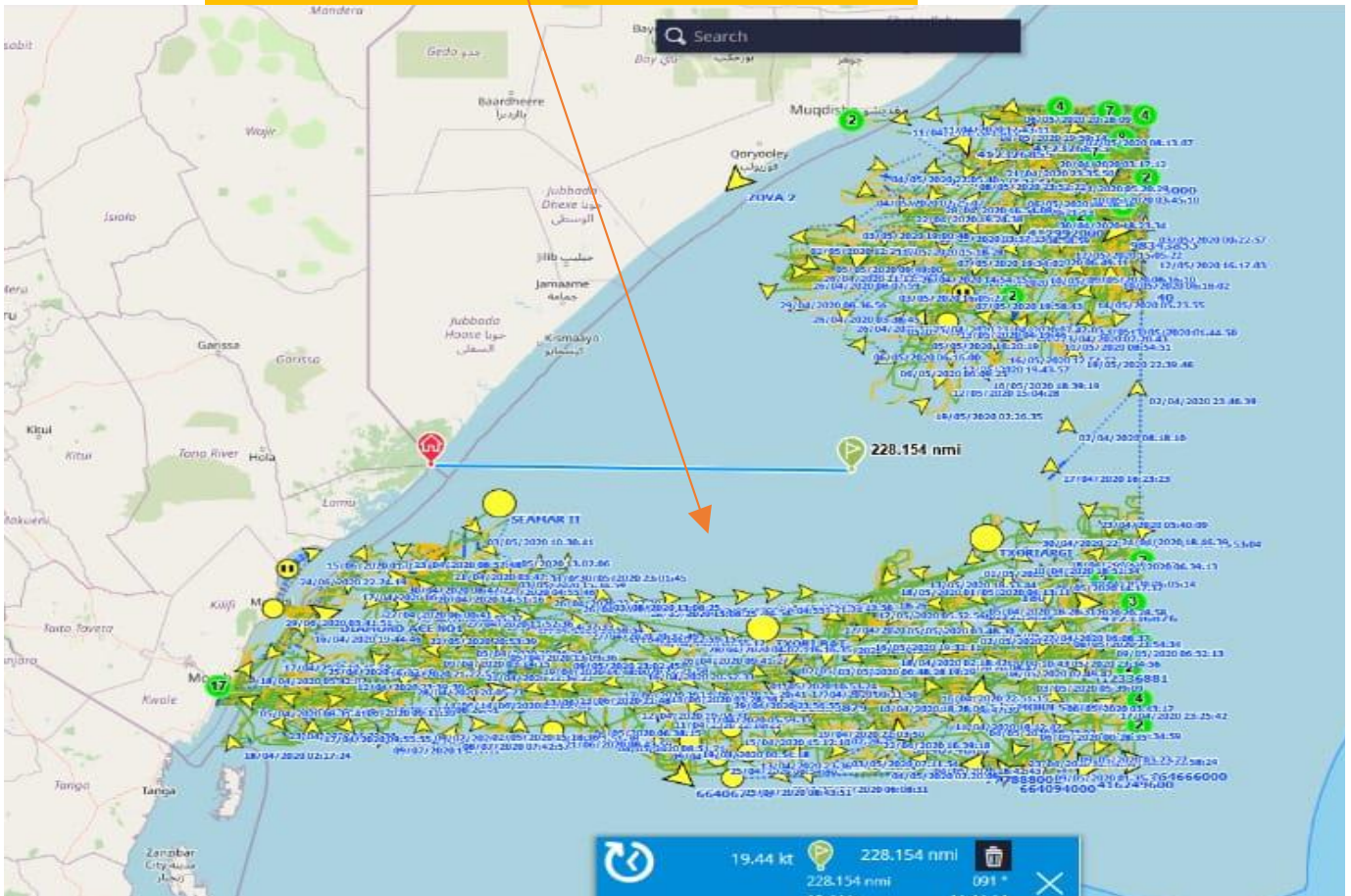


Photo credit: Government of Kenya

Conclusion

The possibility of piracy escalating if Kenya loses the dispute remains real. This will further jeopardize Kenya's national security as it will lead to continued arming of shipping lines and circumnavigation of the disputed zone due to

the inadequate capacity of Somalia to protect the high seas from criminal networks. There is a window of opportunity for the government of Kenya to escalate the issue of the impending threat of piracy to the African Union and United Nations Security Council in order to reach an amicable solution to the maritime dispute.

RECOMMENDATIONS

The following recommendations are offered:

1. Kenya and Somalia should strengthen their maritime governance capacities in order to safeguard the countries from maritime security threats.
2. Kenya should liaise with the international community to develop and circulate a common map of Kenya's international boundaries for adoption by the international shipping lines.
3. Kenya needs to lobby the international community to lift the High Risk Area advisory on its maritime area in order to reduce the necessity of armed guards on ships and effectively take control of stockpiling of weapons on land.

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The Kenya-Somalia Maritime Dispute: Impact of the ICJ Ruling on Kenya's National Security Interests

Dr. John Mwangi

Executive Summary

This paper analyzes how the March 2021 International Court of Justice (ICJ) ruling on Kenya-Somalia maritime dispute will impact on Kenya's sovereignty, territorial integrity and economic prosperity. These national security interests have implications on Kenya's defence strategy, maritime governance and internal security dynamics. The paper draws on expert interviews and desktop research. The key findings discussed include implications on sovereignty, maritime security and the Al-Shabaab. This paper recommends addressing the existing policy gaps in maritime governance; engaging the diplomatic muscle; intensifying Somalia stabilization process; reaching out to north eastern and coast regions and resolving the refugee crisis as crucial in maintaining sovereignty and territorial integrity.

Introduction

This paper analyzes how the March 2021 ICJ ruling on Kenya-Somalia maritime dispute will impact on Kenya's national security interests. It argues that Kenya's sovereignty, territorial integrity, and economic prosperity are tied to this dispute. The paper explores debates on sovereignty, maritime security, and the Al-Shabaab question. It suggests several recommendations to safeguard Kenya's national security interests. The paper observes the need for continuous Somali state stabilization interventions, addressing governance gaps in north eastern and coast regions, including solutions for the protracted refugee situation in the northern Kenya region.

Background

Kenya-Somalia maritime dispute is centered on a territorial claim on the Exclusive Economic Zone (EEZ) of over 100,000 square kilometers on the Indian Ocean region. Both countries claim sovereignty on this territory (McCabe, 2019). The dispute arose out of a failed negotiation process that commenced in 2009 within the 1982 United Nations Convention on the Law of the Sea (UNCLOS). Somalia



Photo credit: KDF

lodged the maritime delimitation case at the International Court of Justice (ICJ) in 2014. The bone of contention is the variance of opinion where Somalia argues that Kenya-Somalia border runs by the equidistance principle while Kenya claims the border runs parallel to the latitude. The possibility of Kenya getting no access to the high seas unless with permission from Somalia is real, since Kenya already delimited its sea boundary with Tanzania.

Beneath the dispute, is a huge blue economy potential characterized by extensive hydrocarbon deposits, fish and other marine resources (Rasowo et.al, 2020). These economic interests have drawn in geopolitical actors such as Norway, UK, Turkey, UAE, France,

USA and Qatar. These actors continue to utilize varied maps of the disputed zone depending on their interests.

Methodology

This paper draws on qualitative experts' interviews and review of secondary literature from books, journals, and grey literature. The data gathered was analyzed thematically.

Key Findings

The following findings are prominent in relation to the discourse on the implications of ICJ ruling on Kenya's national security interests.

Sovereignty and Territorial Integrity

The ICJ ruling on the maritime dispute is bound to have major implications on Kenya's sovereignty and territorial integrity. Kenya's Defence White Paper of 2017 outlines that the country's territory including its Exclusive Economic Zone (EEZ) on the Indian Ocean runs parallel to the Somalia maritime border (GOK, 2017). This is in congruence with presidential proclamations of 1979 and 2005 which declare Kenya's claim on the EEZ. However, Kenya has yet to effectively occupy and exploit the full potential of the EEZ. The Maritime Zone Act of 1989 and revised in 2012 reemphasizes Kenya's EEZ on the Indian Ocean.

The issue of territorial disintegrity to Kenya becomes critical in this debate because the principle of parallel of latitude has only been sparingly applied at the ICJ. The widely used equidistance principle would in turn impact on other maritime boundaries in the entire West Indian Ocean maritime region up to South Africa.

Another key sovereignty question is the issue of Kenya's perceived interference in Jubaland state in Somalia which was once part of Kenya's territory under the British East African Protectorate in 1895 (modern day Kenya). Jubaland, was however, handed over to the Italians in 1924 as a reward for its support to the British in World War 1. The Jubaland question is key because the disputed zone extends into her territory and therefore remains a strategic zone for both Kenya and Somalia. Kenya's support to Jubaland which is a buffer zone in the war against terrorism has been seen as a possible interference with Somalia's sovereignty (Mwangi, 2016). The Federal Government of Somalia (FGS) fears that Jubaland may lend strategic support to Kenya in return and this will complicate the FGS claim on the maritime zone. The deteriorating diplomatic relations between the two countries including the expulsion of the Kenyan diplomat from Somalia is a manifestation of this question.

Another prominent aspect of this discussion is the territorial irredentism aspirations of the Kenyan Somalis in north eastern region. Their desire to join the greater Somalia has characterized their relations with political regimes in Kenya since independence. The *Shifita War* of 1963-1967 is a constant reminder of this ambition (Mburu, 2005; Lochery, 2012). Kenyan Somalis are already in anticipatory mood for Kenyan loss at the ICJ. If Somalia's prayer is granted by the ICJ, there are fears that it could spark another irredentist war to fulfil the suspended ambition in north eastern region.

Kenya and Somalia's hardline positions on protecting every inch of their claimed territories could lead to a major conflict over the disputed zone with devastating sovereignty and territorial issues on both sides. Within this context, the territories bordering Kenya and Somalia are at stake. This conflict is likely to attract the greater Somalia population in the Horn of Africa.

The continued instability in Somalia manifested in the threat of terrorism, weak governance structures, and transnational organized crimes pose a great challenge to maritime security. The situation is further compounded by internal security dynamics in Kenya such as irredentism in north eastern region and perceived marginalization of the coastal communities. Lamu and Tana River counties remain prominent in this discourse due to their proximity to the Kenya-Somalia border.

Maritime Security

The ICJ ruling presents several maritime security threats which will complicate the management of terrorism principally from the Al-Shabaab, and transnational organized crimes on the sea. These crimes include piracy on the high seas, arms, narcotics and human trafficking. Terrorism and transnational organized crimes require regional and international cooperation of which Kenya remains a key player. This is complicated by Somalia's weak governance mechanisms that enable terrorism and Transnational Organized Crimes. Somalia has the largest coastline in



Photo credit: KDF

Africa stretching to about 3,000 kilometers and an ocean territory of about 120 kilometers from the coastline. This endowment is hampered by weak security cover with negative impacts on the maritime domain (Akpomera, 2020). Beyond Somalia, Africa's maritime domain is marked by ungoverned spaces that lack national security cover and policies to exploit the maritime resources. Collaborative security including in-country inter-agency cooperation are needed to fill the weak governance gaps in the maritime domain (Akpomera, 2020; Bateman, 2016).

Transnational organized crimes will impact on the Kenya's economic development plan that now includes blue economy resource exploitation. Maritime security contributes

to challenges related to marine pollution, illegal unreported unregulated fishing, marine research, and tourism (Kadagi et al. 2020).

This dispute puts oil and gas exploration and fishing in the disputed territory on hold since harnessing of these resources requires clear boundaries and maritime security (Kadagi et al, 2020). A related human security threat is the potential loss of livelihoods for the fishing communities that border the disputed territory such as Kiunga, Lamu County that is a key fishing ground (Kadagi et al. 2020).

There is also an incoherent maritime governance architecture to safeguard Kenya's maritime security. There is yet to be an effective maritime

governance strategy but plans are underway to develop one. Maritime governance is spread across various government departments and organizations such as the Kenya Coast Guard Service, Kenya Maritime Authority, State Department and Shipping within the Ministry of Transport, The Kenya Defence Forces and the Maritime Police Unit. These multiple overlapping agencies are hindering a coordinated response to maritime security threats especially where there is disconnect between civilians and armed forces personnel. Likewise, various government departments use conflicting maps and governance strategies. The result has been poor information flows and disjointed responses on maritime governance issues.

The AI-Shabaab

The AI-Shabaab will leverage on the ICJ ruling and the resultant nationalistic wave in Somalia to strengthen its recruitment and mobilization campaigns regionally and globally. AI-Shabaab's propaganda portrays Kenya as an intruder in "Islamic" Somalia. AI-Shabaab has previously applied the nationalist rhetoric rather than a religious perspective to mobilize against 'foreign occupation', and related limitations imposed on the national self-determination (Mueller, 2019; Papale, 2020). On this maritime dispute, the FGS and the AI-Shabaab have a common nationalistic position. These two actors could capitalize on the 'occupiers' narrative to launch maritime terrorism threats against Kenya, including offshore commercial activities.

In the scenario of a diplomatic dispute escalating between the two countries, national resentment will be directed at Kenyan troops serving with the African Union Mission to Somalia (AMISOM) forces in Somalia. This resentment narrative will be adopted for AI-Shabaab propaganda and recruitment. The ICJ ruling will put the Dadaab refugee complex question into focus given that it has previously been used for terrorism and arms smuggling. The AI-Shabaab are likely to recruit from the camp and this will present extended security threats in Kenya. In addition

to the security considerations posed by the AI-Shabaab, refugees exert a considerable financial burden (Mwangi, 2016).

'State absence' in ungoverned spaces in parts of the coast and northern Kenya region will be easily exploited by the AI-Shabaab and its affiliates in Kenya such as *Jaysh Ayman* and *Al-Hijra* which continue to recruit in Kenya including Kenya's prison system (Sahan Africa, 2018). The AI-Shabaab is rapidly evolving in governance structures by controlling territory and exercising taxation, and engaging in criminality (Levy & Yusuf, 2019). The group is already engaged in wildlife trophies trade principally with ivory and also in heroin trade (Petrich, 2019; Toole, 2020). Their significant presence in Kenya is aided in part by a large Somali population, corruption at the state level, including relative ease to traverse land and maritime borders with Somalia (Petrich 2019; Papale, 2020). These factors have enabled it to create illicit funding networks and recruitment in such places as Nairobi (more prominently in Eastleigh and Majengo), including Mombasa (Petrich, 2019). It is likely to exist in Somalia and expand its influence in The Horn of Africa for the long haul. This is on account of state weaknesses in Somalia, the reliance on external backers for state stabilization, AI-Shabaab long war strategy, and the fact that it taps into the cultural dimension of imposing strictly Shariah law on the population (Maruf & Joseph, 2018).

Conclusion

This paper concludes that a concerted action is needed for ongoing Somalia state stabilization process, addressing the existing policy gaps in maritime governance, and engagement of the diplomatic muscle are crucial in ensuring that Kenya maintains her sovereignty and territorial integrity. In addition, extending its bureaucratic reach in northern Kenya and the coastal regions through development and job creation to counter AI-Shabaab recruitment is crucial.

RECOMMENDATIONS

The following recommendations are offered:

1. Regional organizations and the international community should intensify the Somalia state stabilization processes. These would include areas of state building such as institutional strengthening of the security sector in Somalia as a strategic intervention to forestall possible security gaps that may be exploited by groups such as Al-Shabaab in the current dispute.
2. Kenya should re-engage its diplomatic potentials with Somalia through regional and the international community interventions to find an amicable settlement to the maritime dispute.
3. Kenya should engage diplomatically with Somalia on the Jubaland question as part of finding a solution to its protracted refugee situation.
4. Kenya needs to extend its bureaucratic reach in north eastern and the coast regions to remove incentives for local populations to defect to Al-Shabaab. This would include offering targeted development interventions.
5. Kenya should intensify regional and international cooperation on maritime governance.

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