



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

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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

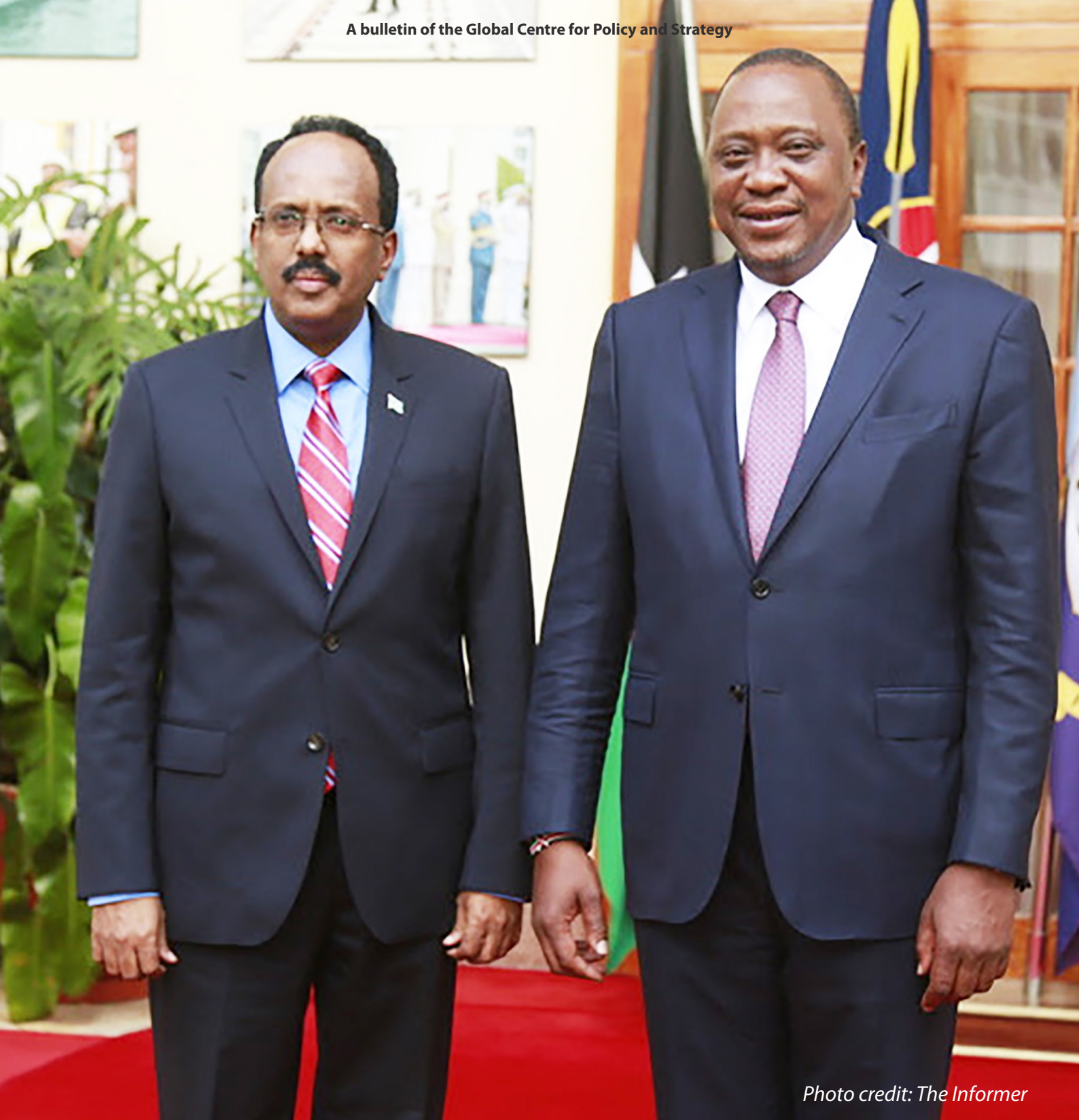


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a time Kenya was pre-occupied with cleaning her internal mess. At the baseline, Somalia's foreign policy continues to be driven by diaspora interests and geopolitical actors operating therein. As such, Somalia is more engrossed in foreign alliances 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

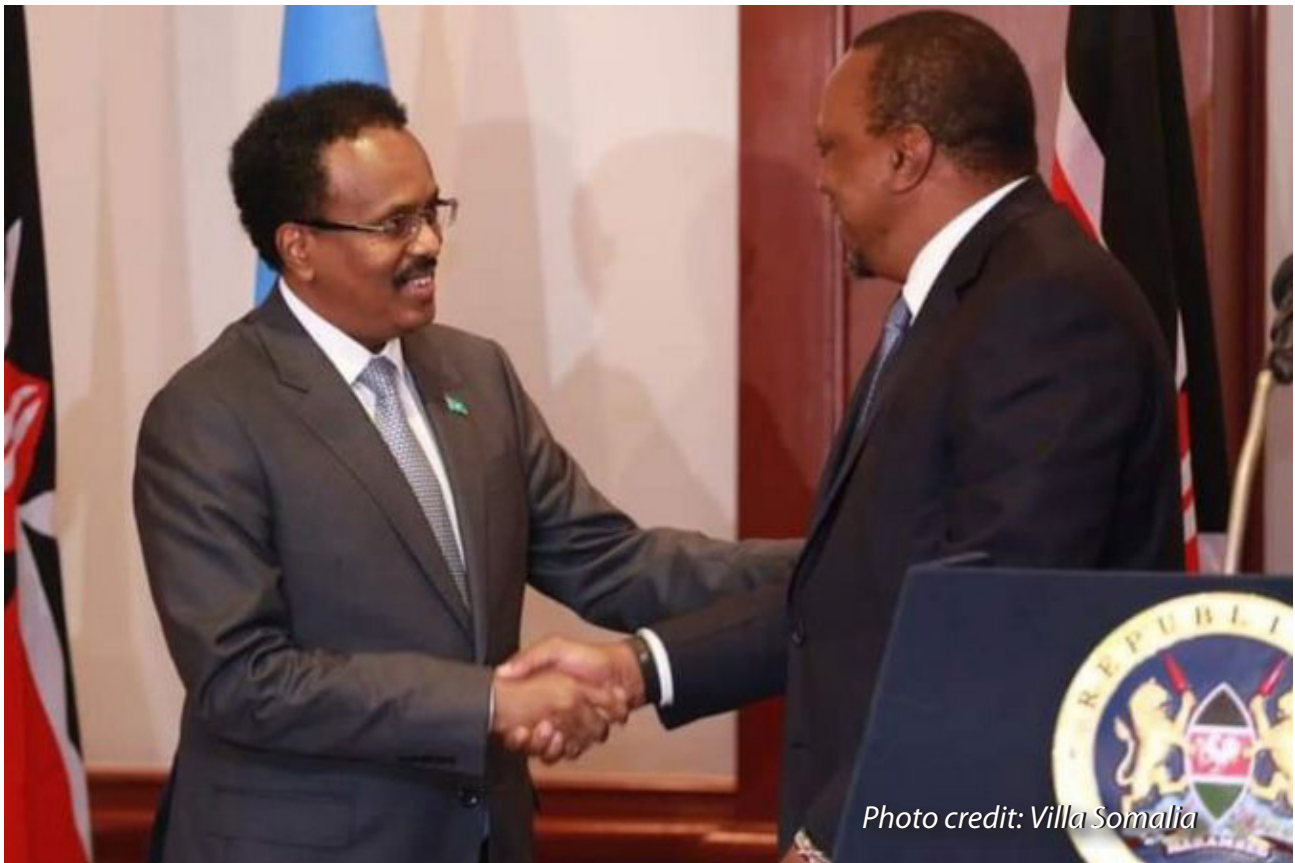


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over the years. For instance, Fahad Ahmed, the current Director of National Intelligence and Security Agency (NISA), Somalia, is a Kenyan national, from Mandera. He commands vast business interests and influential networks in Kenya. Secretive trips 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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