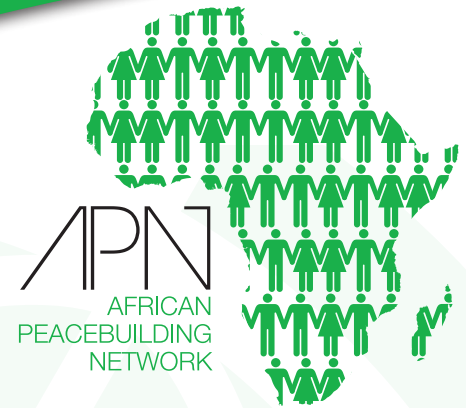




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# The Kenya-Somalia Maritime Border Dispute: An Unnecessary Diplomatic Row?

By Kizito Sabala

## RECOMMENDATIONS

- **Both countries should refrain** from any actions that could exacerbate the current crisis. They should restore diplomatic relations and cooperation activities.
- **IGAD**, a regional organization of which both countries are members, should step in and help mediate the conflict.
- **Both countries should request** the ICJ to expedite the hearing of the case and make a final ruling as quickly as possible.
- **Development partners** interested in investing or exploiting the resources in the disputed territory should wait for the final determination.
- **The two countries can explore** the option of a sharing and co-operation arrangement for developing the resources in this disputed oil-rich zone.

This briefing note examines the implications of the maritime border dispute between Kenya and Somalia following claims that Somalia has auctioned the oil and gas fields in the disputed territory, which are currently the subject of an International Court of Justice (ICJ) case at The Hague.

## THE KENYA-SOMALIA MARITIME DISPUTE: BACKGROUND AND STATUS

The dispute between Kenya and Somalia over the delimitation of the maritime boundary dates back to 1999. The contested area is a triangle in the Indian Ocean stretching for more than 100,000 square kilometers with four maritime gas and oil blocks located within it.<sup>1</sup> The dispute is over the oil and gas deposits within and below the seafloor whose boundary is in contention. Somalia insists that its 1960 border stretched diagonally south-eastwards while Kenya says the boundary should move eastwards.<sup>2</sup>

On May 25, 2016, Kenya unsuccessfully invited Somalia to enter into “provisional arrangements of a practical nature” pending the agreement on boundary demarcation. On February 2, 2017, the International Court of Justice (ICJ) ruled that it had jurisdiction to hear the application filed by Somalia on August 28, 2014. Consequently, Somalia submitted a reply and Kenya followed with a rejoinder between June 18 and December 18, 2018. The ICJ reserves the subsequent procedure for further decision which will be binding to both parties. Before the matter was referred to the court, Kenya claimed uncontested jurisdiction in the disputed area since its first proclamation of the EEZ in 1979.

<sup>1</sup> “Somalia Sues Kenya at Top UN Court Over Maritime Border,” *AFP*, August 28, 2014, <https://news.yahoo.com/somalia-sues-kenya-top-un-court-over-maritime-225946278.html>.

<sup>2</sup> Patrick Mbararu, “How to Solve Kenya-Somalia Maritime Border Row,” *The Standard* (Digital), September 28, 2016, <https://www.standardmedia.co.ke/article/2000217570/how-to-solve-kenya-somalia-maritime-border-row>

**Kizito Sabala** is currently a lecturer at the University of Nairobi, Kenya and a consultant on peace, security, and safety issues. He was previously the head and political officer of IGAD Liaison Offices in Nairobi and Juba. Prof. Sabala holds a PhD in International Studies. He was part of a 2016-2018 APN Collaborative Working Group and a member of an Expert Group on South Sudan.

## THE LONDON CLAIMS AND THE RESULTANT DIPLOMATIC SPAT

The border dispute between Kenya and Somalia escalated on February 6, 2019, following the unveiling of the final delineation of the oil exploration zone consisting of up to fifty oil blocks. Kenya alleges that Somalia had put the oil blocks up for auction in London—including those that Kenya claims are within its maritime territory. According to some sources, Somalia plans to auction blocks 230, 231, 232, and 233 by the end of the year for exploration beginning in 2020.

In response, Kenya recalled its ambassador to Somalia, Lukas Tumbo, and summoned his Somali counterpart in Kenya, Mohamoud Nur, demanding a withdrawal of the maps that were displayed in London and a stop to the auctioning of the blocks.<sup>3</sup> According to Kenya, these maps reinforce Somalia's claims to maritime zones and are consistent with the country's position currently before the ICJ. In a tense statement, Kenya's principal secretary for foreign affairs and international trade, Macharia Kamau, reportedly threatened that the country would do all it could, including perhaps going to war, to protect its territorial integrity.<sup>4</sup>

Kenya's reaction should be viewed within a broader context. The country hosted the peace process that led to the first semblance of a government installed in Baidoa, Somalia in 2007 after numerous unsuccessful attempts to resolve the Somali conflict.<sup>5</sup> In addition, it provided the special envoy, the late Ambassador Bethuel Kiplagat, who spearheaded the peace process, and to date, the Kenyan government has refused to bow to domestic pressure to pull its troops out of AMISOM. Kenya hosts more than 300,000 Somali refugees in Kakuma and Dadaab refugee camps, and a significant number of Somali citizens throughout the country. For years, Nairobi has served as the center for humanitarian coordination efforts for conflict-affected Somalia. Kenya perceives that Somalia's action is in bad taste and shows a lack of appreciation of their contribution to post-war reconstruction and peace-building in Somalia.

## IMPLICATIONS OF THE ROW BETWEEN KENYA AND SOMALIA

There are several options available to each country. Should Kenya decide to sever diplomatic relations, it will be difficult

for the over 3,500 Kenyan troops in Somalia to continue serving as part of AMISOM. This is because they may be a target of more terror attacks from al-Shabaab as a result of limited support from the current government in Mogadishu. Since the entry of the Kenya Defence Forces (KDF) into Somalia in 2010, al-Shabaab has increased its terror attacks in Kenya and against KDF in Somalia as a way to compel the country to withdraw. If Kenya decides to pull out its troops, then the mission will be weakened and the gains made could be reversed. The second option is to make the situation clear to interested international investors, such as Total and the Texas-based Anadarko, who have already been awarded exploration rights by Kenya and ask them to refrain until the court rules.<sup>6</sup> Somalia too has several but relatively limited options. The country can take proactive measures toward restoring Kenya's trust irrespective of the outcome of the ICJ ruling.

## RECOMMENDATIONS

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- IGAD, a regional organization of which both countries are members, should step in and help mediate the conflict.
- Both countries should request the ICJ to expedite the hearing of the case and make a final ruling as quickly as possible.
- Development partners interested in investing or exploiting the resources in the disputed territory should wait for the final determination.
- The two countries can explore the option of a sharing and co-operation arrangement for developing the resources in this disputed oil-rich zone. Such an arrangement can borrow from a similar case between Nigeria and São Tomé and Príncipe that culminated in a joint development zone that has enabled the two countries to share their oil and gas resources.<sup>7</sup>

<sup>3</sup> "Somali President, Uhuru Kenyatta to Meet in Kampala as Row Deepens over Sea Border," *Hagaag.com*, March 2, 2019, <https://hagaag.com/2019/03/02/somali-president-uhuru-kenyatta-to-meet-in-kampala-as-row-deepens-over-sea-border/>.

<sup>4</sup> Guleid Mohammed, "In Border Dispute with Somalia, Kenya's Top Diplomat Overreacted," *The Standard*, February 21, 2019.

<sup>5</sup> Kizito Sabala et al., "The Somali Peace Process from Arta to Eldoret to Mbagathi: Opportunities and Challenges," in *The Resolution of African Conflicts*, eds. Alfred Nhema and Paul Tiyambe (Oxford: James Currey, 2004), 118-134.

<sup>6</sup> "Uhuru's Jubilation over the Godane Killing is Ill-advised," *Jukwaa* (Kenya Forum Discussion), last accessed March 27, 2019, <http://jukwaa.proboards.com/thread/9184/uhurus-jubilation-godane-killing-advised>.

<sup>7</sup> Tanga Biang, "The Joint Development Zone between Nigeria and Sao Tome and Principe: A Case of Provisional Arrangement in the Gulf of Guinea International Law, State Practice and Prospects for Regional Integration," Division for Ocean Affairs and the Law of the Sea, Office of Legal Affairs, United Nations, retrieved on February 24, 2019, [http://www.un.org/depts/los/nippon/unnnf\\_programme\\_home/fellows\\_pages/fellows\\_papers/tanga\\_0910\\_cameroon.pdf](http://www.un.org/depts/los/nippon/unnnf_programme_home/fellows_pages/fellows_papers/tanga_0910_cameroon.pdf).