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About the HORN Institute

The HORN International Institute for Strategic Studies is a non-profit, applied research, and policy think-do tank based in Nairobi, Kenya. Its mission is to contribute to informed, objective, definitive research and analytical inquiry that positively informs policies of governments, intergovernmental and non-governmental organizations and spaces. Its vision is a progressive Horn of Africa served by informed, evidence-based and problem-solving policy research and analysis.

Somalia v. Kenya Maritime Boundary Dispute: Preliminary Proceedings and Possible Legal Questions

By Edmond John Pamba

Abstract

This article examines the intricacies of the Somalia v. Kenya maritime boundary dispute in view of Kenya's preliminary legal defeat and possible legal questions in the matter, which is headed for the main hearing at the International Court of Justice (ICJ) – (hereinafter "the Court"). Kenya and Somalia (hereinafter "the parties") are contiguous coastal states with borders stretching into the Indian Ocean. In 2014, due to overlapping maritime claims and absence of a negotiated settlement over the same between the parties, Somalia sought judicial recourse at the Court. Kenya's preliminary objections to admissibility of Somalia's application and the Court's jurisdiction were thwarted, and the Court is seized of the dispute. The article analyses the preliminary proceedings and the legal questions that might arise from Kenya's historical claims around the principle of delimitation, and the interpretive value of the Anglo-Italian Treaty of 1924, the relevance of effectivités without prejudicing to the ongoing ICJ process. The opportunities for negotiated settlement at the moment are few, yet an advisory or decision by the Court, may not fit the interests of both parties. Thus, only withdrawal of the matter from the Court will provide the necessary opportunity for negotiations for a win-win outcome.



Kenya navy boats patrolling Kenya's territory in the Indian Ocean (Photo Credit: MoD UK)

Background of the Somalia v. Kenya maritime boundary dispute

Kenya and Somalia are contiguous coastal states in the Horn of Africa, along the Indian Ocean. For want of prior delimitation and delineation, Kenya, through the Presidential Proclamation of 1979, declared its sovereignty over a maritime zone in the Indian Ocean, along a parallel of latitude at its coastal border with Somalia. The proclamation was revised for greater accuracy in 2005, whereupon another presidential proclamation was issued. Somalia acknowledged both proclamations, according to Kenya, guaranteeing Kenya's (maritime) territorial integrity.

In 2009, Kenya entered into a Memorandum of Understanding (MOU) with Somalia to grant to each other no-objection in respect of submissions on the outer limits of the continental shelf beyond 200 nautical miles (nm) to the Commission on the Limits of the Continental Shelf (CLCS). The MOU expressed preference for alternative methods of resolution of disputes over delimitation of the outer limits of the continental shelf.

On April 14, 2009, Somalia, in accordance with Article 76 (9) of the United Nations Convention on the Law of the Seas (UNCLOS), submitted to the Secretary-General of the United Nations preliminary information indicative of the outer limits of the continental shelf beyond 200nm.

The Article provides that "[t]he coastal State shall deposit with the Secretary-General of the United Nations charts and relevant information, including geodetic data, permanently describing the outer limits of its continental shelf. The Secretary-General shall give due publicity thereto." Subsequently, on May 6, 2009, Kenya deposited with the CLCS its submissions with respect to the continental shelf beyond 200 nautical miles, in accordance with Article 76 (8) of the UNCLOS, which stipulates that

[i]nformation on the limits of the continental shelf beyond 200 nautical miles from the baselines from which the breadth of the territorial sea is measured shall be submitted by the coastal State to the Commission on the Limits of the Continental Shelf set up under Annex II on the basis of equitable geographical representation. The Commission shall make recommendations to coastal States on matters related to the establishment of the outer limits of their continental shelf. The limits of the shelf established by a coastal State on the basis of these recommendations shall be final and binding.

In June 2009, the MOU was submitted by Kenya to the Secretariat of the United Nations for registration and publication pursuant to Article 102 of the Charter of the United Nations, was published on June 11, 2009 in the United Nations Treaty Series.

However, Somalia expressed objection [and later withdrew] to Kenya's submissions, thereby breaching the purpose of the 2009 MOU [and the international law of treaties], captured in its title "...to Grant to Each Other No-Objection in Respect of Submissions on the Outer Limits of the Continental Shelf beyond 200 Nautical Miles to the Commission on the Limits of the Continental Shelf." Later, on August 28, 2014, Somalia instituted proceedings against Kenya before the Court, requesting the latter to determine, on the basis of international law, the complete course of the single maritime boundary dividing all the maritime areas appertaining to Somalia and to Kenya in the Indian Ocean, including the continental shelf beyond 200nm.

The preliminary proceedings

During the preliminary proceedings of the case instituted by Somalia, Kenya raised two preliminary objections, concerning the jurisdiction of the Court, and the admissibility of the application (ICJ, 2017).

In its first preliminary objection, Kenya argued that the Court lacked jurisdiction over the matter on grounds of reservations to its declaration accepting the compulsory jurisdiction of the Court, which excludes disputes in regard to which the parties have agreed "to have recourse to some other method or methods of settlement" (ICJ, 2017). This is because Kenya considered the MOU as constituting an agreement to have recourse to another method of settlement, satisfying Article 83 (1) of the UNCLOS, which provides that

"[t]he delimitation of the continental shelf between States with opposite or adjacent coasts shall be effected by agreement on the basis of international law, as referred to in Article 38 of the Statute of the International Court of Justice, in order to achieve an equitable solution"

The Court ventured to interpret the MOU's text and *travaux préparatoires*, to determine its validity to Kenya's reservation as regards Article 36 (2) of the Statute of ICJ. That is, whether the MOU constituted an agreement

to have recourse to some other method or methods of settlement, and the effect it could have on the Court's jurisdiction. However, the sixth paragraph of the MOU, reads

"[t]he delimitation of maritime boundaries in the areas under dispute, including the delimitation of the continental shelf beyond 200nm [...] shall be agreed between the two coastal States on the basis of international law after the Commission has concluded its examination of the separate submissions made by each of the two coastal States and made its recommendations..."

The Court found that the MOU did not constitute an agreement, since the language "delimitation [...] shall be agreed" neither implies nor constitute an agreement. Further, the Court found that the MOU did not prescribe an exact method of settlement. It [the Court] also found that the MOU restricted its intended delimitation to the continental shelf and not to other areas such as the territorial sea, the contiguous zone and the exclusive economic zone while Somalia had applied for delimitation of the whole maritime boundary.

However, the lack of methodological consensus in the MOU's text disqualified Kenya's first objection, rendering the MOU not an agreement and thereby not sufficient to stop any of the parties from seeking the Court's help in the delimitation of the maritime boundary. Article 83(2) of the UNCLOS [in absence of such agreement therefore], provides that "[i]f no agreement can be reached within a reasonable period of time, the States concerned shall resort to the procedures provided for in Part XV [of the UNCLOS]." Part XV [on settlement of disputes] Section 1 sets out the general provisions, while Section 2 sets out compulsory procedures entailing binding decisions.

Thus, there being no agreement on alternative settlement method, the maritime dispute between Kenya and Somalia, invited application of Part XV, Section 2, Article 282 of the UNCLOS, and subsequently established the Court's jurisdiction over the matter. Article 282 of the UNCLOS, stipulates that

In 2009, Kenya entered into a Memorandum of Understanding (MOU) with Somalia to grant to each other no-objection in respect of submissions on the outer limits of the Continental Shelf beyond 200 nautical miles to the Commission on the Limits of the Continental Shelf (CLCS)

[i]f the States Parties which are parties to a dispute concerning the interpretation or application of this Convention have agreed, through a general, regional or bilateral agreement or otherwise, that such dispute shall, at the request of any party to the dispute, be submitted to a procedure that entails a binding decision, that procedure shall apply in lieu of the procedures provided for in this Part, unless the parties to the dispute otherwise agree.

On the second objection regarding the inadmissibility of Somalia's application, Kenya argued that the Parties had agreed in the MOU to negotiate delimitation of the disputed boundary, and to do so only after completion of CLCS review of the Parties' submissions. The Court having previously found that the MOU did not contain such an agreement, rejected this aspect of Kenya's second preliminary objection. The other aspect of Kenya's second objection relates to Kenya arguing that Somalia had breached the treaty (MOU) by expressing objections to Kenya's submissions to CLCS earlier on, and thus, lacked the *locus standi* to file the application. However, the Court rejected this aspect of the second objection, and rendered Somalia's application admissible, for finding that

"[t]he fact that an applicant may have breached a treaty at issue in the case does not per se affect the admissibility of its application [...] Somalia is (sic) neither relying on the MOU as an instrument conferring jurisdiction on the Court nor as a source of substantive law governing the merits of this case."

Implications of Kenya's preliminary legal defeat

With the Court remaining seized of the matter, which will be proceeding to the main hearing, Kenya and Somalia have little chance for a negotiated settlement. This is because the Court's jurisdiction is now compulsory in

Kenya stakes its territorial claims in the dispute maritime zone, primarily as a 'natural', but largely as historical entitlement, based on the Anglo-Italian Treaty of 1924, and presidential proclamations of 1979 and 2005

nature, and thus the outcome of the legal process is so binding, that the parties may not have the option of renegotiating the dispute. The parties will only be left with no option but to implement the decision of the Court. Thus, only a mutually negotiated settlement guarantees win-win outcomes, but is overtaken by proceedings at the Court. Instead, the following scenarios can be expected [of the contentious case – otherwise advisory opinions are non-binding], as settlement for the maritime boundary delimitation and delineation dispute between Kenya and Somalia:

- a. **Win-Lose Outcome:** this arbitral outcome will grant the claims of either Somalia or Kenya in the disputed zone.
- b. **Lose-Lose Outcome:** this nature of outcome will cause territorial losses to both sides by altering the lines of claim, and drawing new lines for delineation and delimitation, These lines might fall short of the range claimed by either party.

Be it as it may, the Court will exercise objectivity and equitability, in consideration of *inter alia*, local political, economic, geographical, and historical realities surrounding the maritime zone at issue.

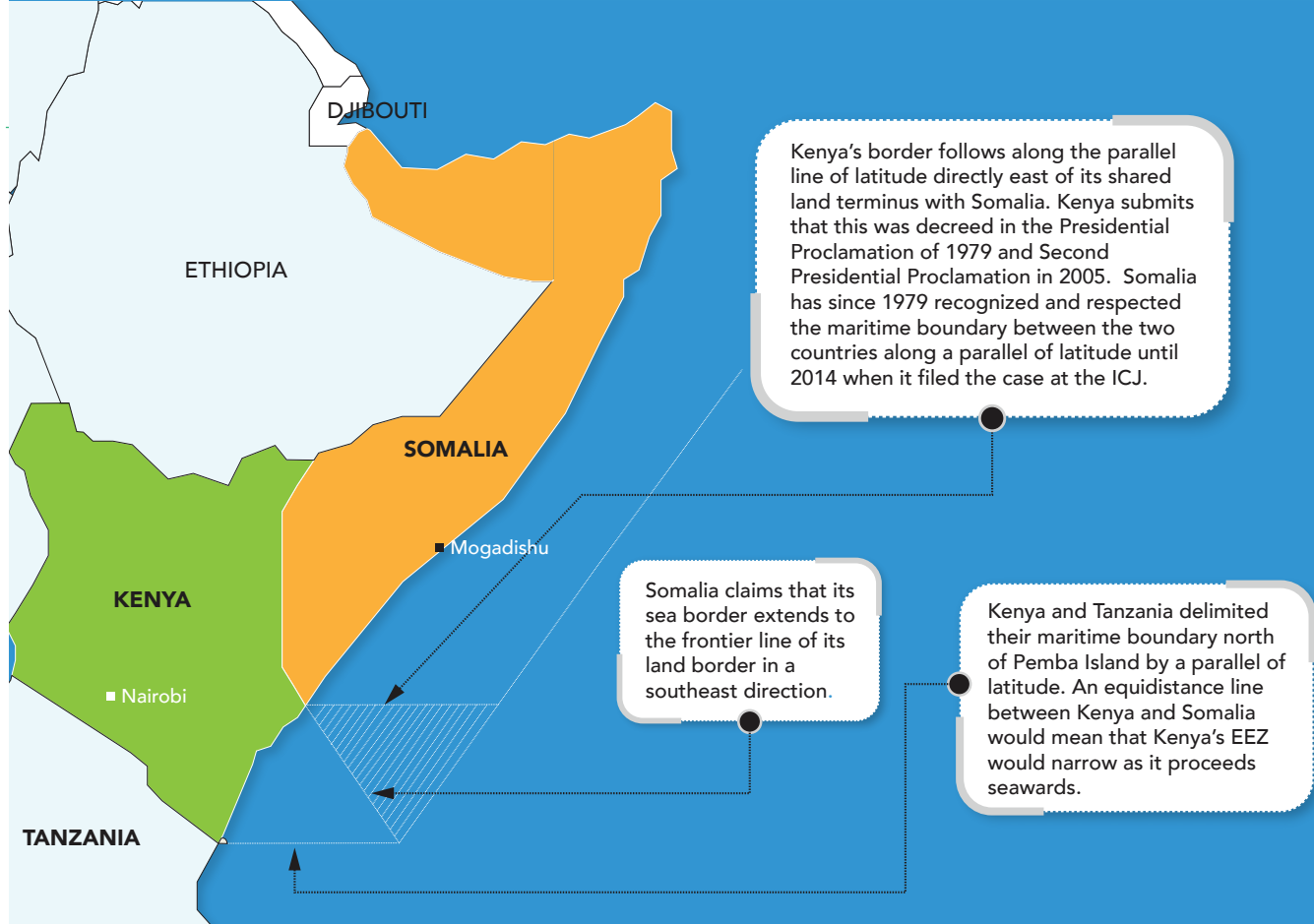
Possible Legal Questions

Having studied the assertions traded in the preliminary proceedings, and the positions thereof, the following legal questions are likely to arise:

Historical or Natural Maritime Claim

Kenya stakes its territorial claims in the dispute maritime zone, primarily as a 'natural', but largely as historical entitlement, based on the Anglo-Italian Treaty of 1924, and presidential proclamations of 1979 and 2005. However, in the delimitation of the continental shelf and exclusive economic zone – the 'relevant area or relevant coasts', follows the underlying principle that the title of a state to the continental shelf and to the Exclusive Economic Zone (EEZ) is based on [its] land dominating the sea through the projection of the coasts or the coastal fronts.

In case of adjacent coasts and overlapping maritime claims, delimitation becomes the only method of resolving territorial disputes by drawing a line of separation. In this sense, it is important that Kenya not only stakes its claim on historical pronouncements and entitlement, but also establishes that the territory it claims projects from its



A graphic showing Kenya and Somalia territorial claims. The hearing of the maritime dispute will start on September 9, 2019 (Photo Credit: HORN Institute)

natural coast as opposed to it 'projecting' from the two [historical] proclamations and the colonial treaty.

Thus, Kenya should establish and ground its case on the facts of natural projection of maritime territory under claim from its coast. If not Kenya risks presenting a case majorly built on historical entitlement other than natural entitlement, thus highly standing to lose any such pleadings before the Court and subsequently its [or a part of] territorial claims.

Anglo-Italian Treaty of 1924

Through the Ministry of Foreign Affairs and International Trade, Kenya reiterates its claim over the disputed maritime zone, in part basing it on the 1924 Anglo-Italian Treaty. The treaty, delimited boundaries between colonial possessions of England [Kenya] and Italy [Italian Somaliland]. These colonial boundaries, according to Kenya's Ministry of Foreign Affairs, stretched from a tri-point at the border with Ethiopia and Somalia in Mandera County to the Indian Ocean at Ishakani in Lamu County.

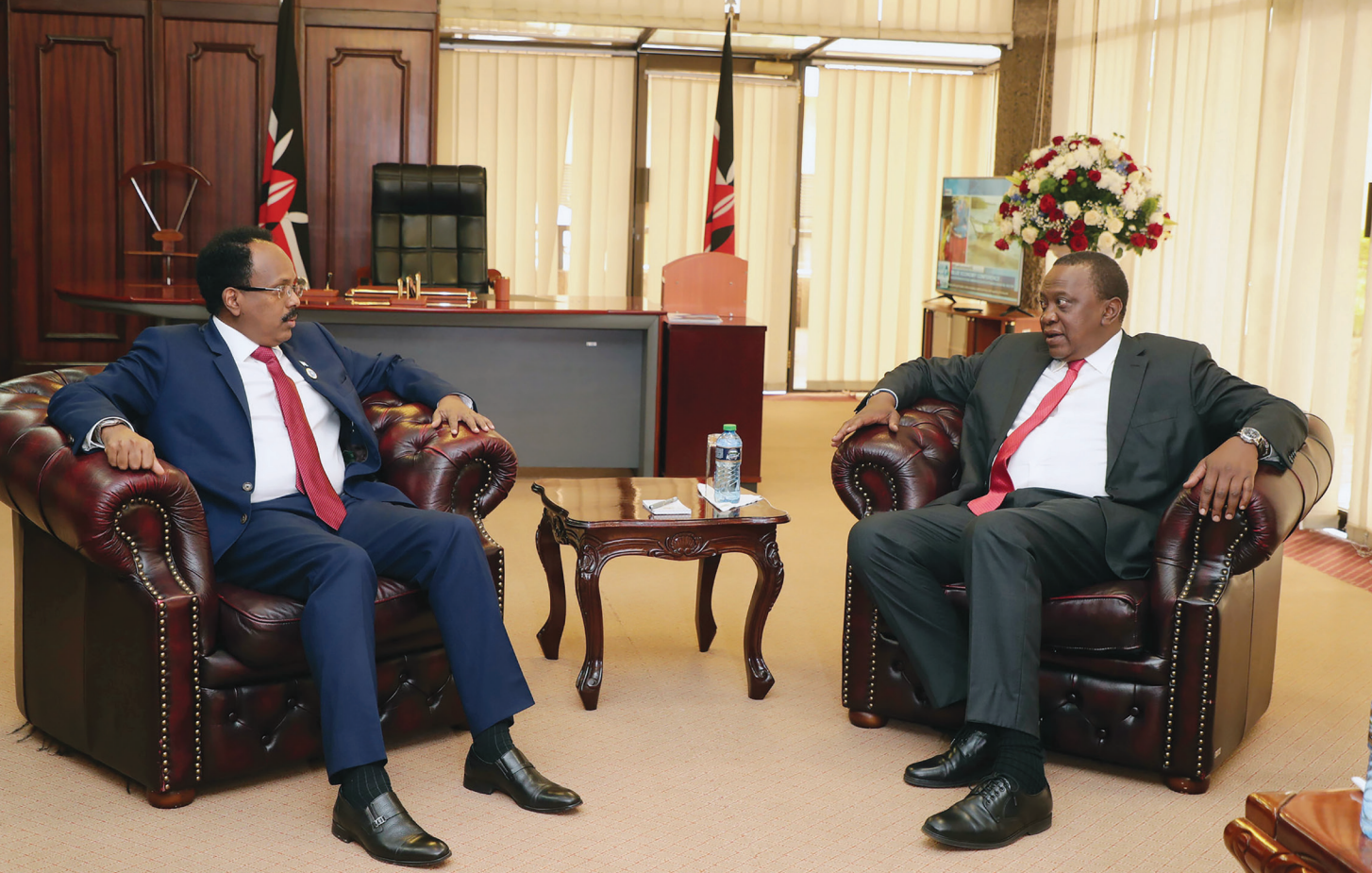
This boundary [between Somalia and Kenya] was to be maintained in principle at the independence of the two countries, in the spirit of *uti possidetis juris* as adopted by the 1964 Organization of African Unity (OAU) General Assembly Resolution 16 (1) for preservation of colonial boundaries. The resolution solemnly declared "...that all

member states pledge themselves to respect the borders existing on their achievement of national independence."

However, Somalia did not subscribe the OAU Resolution appertaining to *uti possidetis juris*, out of its revisionist reservations and territorial claims which were interpreted as expansionist by Kenya. The 1963-65 *Shifita War* 'settled' the claims by Kenya's military victory and the colonial boundaries have been maintained (GoK, 2019). Thus, Kenya's claim over the disputed territory in the Indian Ocean proceeds [in part] from the projection of Kenya's coast, as established by the 1924 Treaty, into the Ocean.

Questions before the Court as regards the 1924 Treaty, will be whether the Treaty, [as a matter of object and purpose] delimited maritime boundary between Kenya and Somalia or whether it has legal interpretive value in the delimitation of the disputed maritime zone case before the Court. Further, the text of paragraph five of the MOU between Kenya and Somalia, expresses there being no maritime boundary delimitation in the disputed zone as follows, "[t]he submissions made before the Commission and the recommendations approved by the Commission thereon [...] shall be without prejudice to the future delimitation of maritime boundaries in the area under dispute..." (UN, 2009).

It is noteworthy, that similar questions were raised in the 1985 *Guinea Bissau v. Guinea* maritime dispute before



President Uhuru Kenyatta (R) and his Somali counterpart, President Mohamed Abdullahi Farmajo (L) at a past meeting in Kenya (Photo Credit: Villa Somalia)

the International Arbitral Tribunal at The Hague. In the dispute, Guinea had argued that the 1886 Franco-Portuguese Convention established the maritime boundary between French (Guinea) and Portuguese (Guinea Bissau) colonial possessions in West Africa. The Tribunal considered the complete absence of the words 'waters', 'sea', 'maritime' or 'territorial sea' to be clear evidence that the Convention was essentially concerned with land possessions (UN, 2006).

Further, in the interpretation of the convention's text, the Tribunal found that the original draft of Article 1 of the convention provided that

"[t]he limits of the territorial waters will be formed, in the north, by a line extending from Cape Roxo three miles out to sea in a south-westerly direction; in the south, but a line which will follow the thalweg of the Cajet River. . . ."

However, the Court rejected the assertion that 'limits' meant 'boundaries or boundary'. In consequence of this interpretation, the Tribunal voided Guinea's claim that the convention established the maritime boundary between Guinea and Guinea Bissau (UN, 2006).

The second question regarding the 1886 convention, related to the legal interpretive effect of the protocols and documents annexed to the 1886 Convention.

The Tribunal analysed the specific wording of the 12 protocols to determine their proper interpretation. As in the examination of the Convention itself, the Tribunal found that the protocols were concerned with land [not maritime] possessions (UN, 2006).

However, the final draft of the material paragraph of Article 1 of the convention stipulated that "Shall belong to Portugal, all islands located between the Cape Roxo meridian, the coast and the southern limit represented by a line which will follow the thalweg of the Cajet River. . . ." Resultantly, the Tribunal found that protocols and documents annexed to the convention had legal interpretive value of Article 1 of the convention, and further that, altogether, the Convention did not determine the maritime boundary between the respective possessions of France and Portugal in West Africa (UN, 2006).

Thus, Kenya should be careful constructing its argument along the 1924 Anglo-Italian Treaty, since the document will be subjected to legal interpretation, almost similar to that of the 1886 Franco-Portuguese Convention. If the wording of the document does not refer to waters, sea, maritime or territorial sea, then it will be deemed as not delimiting maritime boundary between Kenya and Somalia but only confined to land boundaries. Consequently, Kenya's insinuation that the treaty applies to delimitation of maritime zones or legitimizes its maritime claims, is likely to be rejected by the Court.

Delimitation principles

From a cursory observation of the charts and maps submitted by Kenya to the CLCS, Kenya's claim is based on the straight line delimitation principle following a parallel of a latitude established by the 1979 presidential proclamation [revised in 2005]. On the other hand, Somalia's claim is based on the equidistance principle following a diagonal projection, which overlaps Kenya's claim, creating a triangle of disputed maritime territory of about 100,000 square kilometres.

The equidistant or median line is defined in Article 12 of the 1958 Geneva Convention on the Territorial Sea and the Contiguous Zone and Article 15 of the 1982 Convention as "[t]he line every point of which is equidistant from the coastlines from which the breadth of the territorial sea of each two States is measured". On the other hand, Kenya's maritime claim in the disputed maritime zone, especially with respect to the continental shelf [including its outer limits beyond 200 nautical miles], seems to be anchored on Article 76 (7) of the UNCLOS, which provides that [in absence of [states with] adjoining or opposite coasts]

[t]he coastal State shall delineate the outer limits of its continental shelf [not the entire course of the boundary], where that shelf extends beyond 200 nautical miles from the baselines from which the breadth of the territorial sea is measured, by straight lines not exceeding 60 nautical miles in length, connecting fixed points, defined by coordinates of latitude and longitude.

However, clause 10 of the substantive Article 76, introduces a caveat, stipulating that "[t]he provisions of this article are without prejudice to the question of delimitation of the continental shelf between States with opposite or adjacent coasts." The cure for a situation of [states with] adjoining or opposite coasts, comes with Article 83, clauses 1 and 2, which stipulate that

1. *The delimitation of the continental shelf between States with opposite or adjacent coasts shall be effected by agreement on the basis of international law, as referred to in Article 38 of the Statute of the*

International Court of Justice, in order to achieve an equitable solution.

2. *If no agreement can be reached within a reasonable period of time, the States concerned shall resort to the procedures provided for in Part XV.*

Accordingly, the straight line claim by Kenya over the maritime zone at issue, is a delicate argument at the Court, for primary failure by the parties, to observe Article 83 (1) of the UNCLOS, which speaks to their situation. However, before arbitral tribunal, each delimitation is based on the uniqueness of the case and the relevant area. Such factors for consideration include the geographical context of the relevant area, physical geography or configuration of the coasts, geomorphological and geological factors of the seabed and subsoil, economic factors, political and security factors, and environment and presence of third states (United Nations [UN], 2000).

Applicable methods for delimitation of maritime boundaries include equidistance as used by Spain and Italy (1974), meridians and parallels used by Kenya and Tanzania (1975-1976), perpendicular lines as used by Uruguay and Brazil (1972), and enclaving as used by Italy and Tunisia - 1971 (UN, 2000). Thus, neither of the parties in the *Somalia v Kenya* dispute is guaranteed of its proposed formula or principle of delimitation of their maritime boundary.

Relevance of Effectivités

In the dispute, Kenya claims its exercise of sovereignty over the disputed territory since 1979, as proceeding from the presidential proclamation of the same year. The proclamation lay Kenya's maritime boundary with Somalia, along a parallel of latitude, using the straight line delimitation principle. Since 1979, Kenya has been conducting activities and exercising rights pertaining to its 'entitlement' to the maritime territory at issue. On the other hand, Somalia passed the Law on Somali Territorial Sea and Ports in 1972, defining and 'delimiting' its maritime territory [limited to territorial sea]. Thus, the Court will find it important, if this suffices as a consequential question, to explore the interpretive value of Kenya's presidential

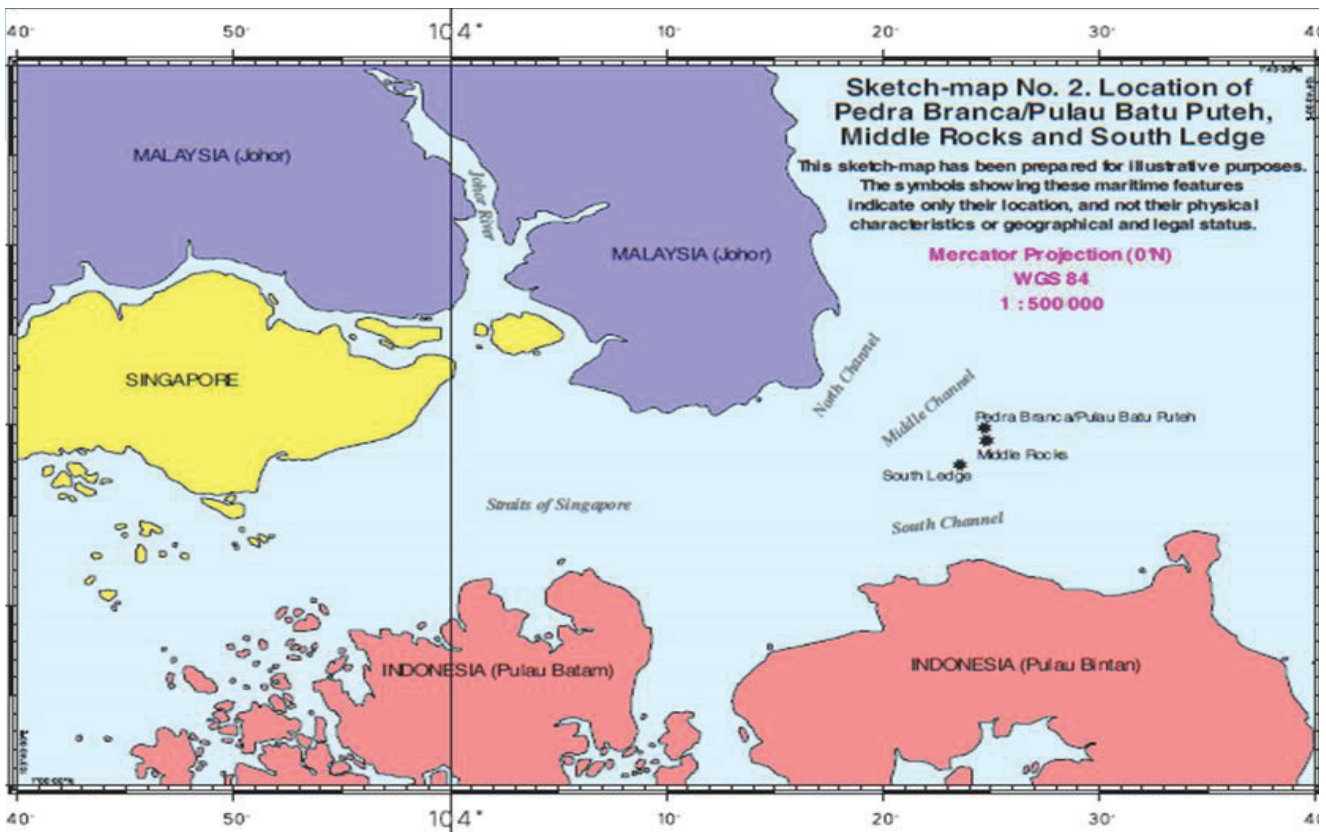
From a cursory observation of the charts and maps submitted by Kenya to the CLCS, Kenya's claim is based on the straight line delimitation principle following a parallel of a latitude established by the 1979 presidential proclamation [revised in 2005]

proclamation of 1979, and Articles 1-3 of Somalia's Law no. 37 of 1972 (Law on Somali Territorial Sea and Ports) in delimiting the maritime boundary between the two countries.

Nonetheless, the onus is on the two countries to demonstrate enough *effectivités* - state acts which manifest a display of authority on a given territory, and are used as an argument when claiming sovereignty. Gunal (2016) notes that two elements of *effectivités* have to be demonstrated, a specific act or title like a treaty of concession, interpreted as the intention and will to act as sovereign, and some actual exercise or display of such authority. He adds that if one party fails to object to the activities [of supposed sovereignty] of another party, it is

considered as [acquiescence] implied acceptance of their sovereignty. The Court will evaluate such submissions and consider [whether] the grounds [are] legally significant in determining the matter, as presented.

For instance, in the *Malaysia v. Singapore* maritime boundary dispute, the International Court of Justice (ICJ) rendered its verdict on May 23, 2008, concerning the three marine features of Pedra Branca or Pulau Batu Puteh, Middle Rocks, and South Ledge. Pedra Branca/Pulau Batu Puteh was awarded to Singapore and Middle Rocks to Malaysia, while sovereignty over South Ledge belongs to the State in the territorial waters of which it is located (Gunal, 2016).



Source: SidePlay

Having examined the geographical, historical and positional contexts, the Court delved into the legal status of the islands and the applicable law, before finally considering the conduct of the parties over the features in dispute, for the purpose of assessing and validating *effectivités* (Gunal, 2016).

In examination of both parties' submissions, the Court found that Singapore had constructed a rebroadcast station for military communication on Pedra Branca on 30 May 1977. The East India Company initiated

construction of the lighthouse (for the memory of James Horsburgh) in 1840s. Despite the Court not finding the lighthouse legally significant, further actions by Singapore over Pedra Branca, such as investigations and reports [by its predecessors] for the maritime hazards and shipwrecks around it and granting permission to visitors [including Malaysian visitors upon such formal request by the Government of Malaysia] for tidal surveys and investigations [through Port of Singapore Authority], were found by the Court as constituting *à titre de souverain*, thereby sustaining Singapore's claim over Pedra Branca

The Somalia v. Kenya maritime boundary delimitation case at the ICJ will define similar cases in the future, and needs a careful determination that will not prejudice established principles of maritime border delimitation between adjacent coastal states

(Gunal, 2016). Further, on June 12, 1953 the Colonial Secretary of Singapore wrote to the British Adviser to the Sultan of Johor asking about the status of Pedra Branca. The Acting State Secretary of Johor answered that “*the Johor Government did not claim ownership of Pedra Branca*”, stating no claim to sovereignty over the island by Johor, hence ‘the transfer of sovereignty’ by implication. In respect of sovereignty over Pedra Branca, the Court (persuaded by Singapore’s *effectivités*) determined that

especially with reference to the conduct of Singapore and its predecessors à titre de souverain, taken together with the conduct of Malaysia and its predecessors, including their failure to respond to the conduct of Singapore and its predecessors, that by 1980 sovereignty over Pedra Branca had passed to Singapore (ICJ, 2008, paras. 273-277).

Conclusion

The Somalia v. Kenya maritime boundary delimitation case at the ICJ will define similar cases in the future, and needs a careful determination that will not prejudice established principles of maritime border delimitation between adjacent coastal states. Further, the case has been increasing tensions between the two countries, thus, any unequitable outcome might undermine relations between the two countries in the long term. The Court should be equitable to the parties’ economic interests in the disputed area, serve justice to the merits of the case, and protect the territorial integrity of both parties. However, for an outcome which promotes enduring peace and cooperation between the two countries and ends the hostile territorial history between the two, Somalia and Kenya should explore the following options:

- **Withdrawal of the case:** Article 280 of the UNCLOS provides that “[n]othing in this Part [Part XV, Section 1 - General Provisions] impairs the right of any States Parties to agree at any time to settle a dispute between them concerning the interpretation or application of this Convention by any peaceful means of their own choice.”

Similarly, Article 299 (2) of the UNCLOS on the right of the parties to agree upon a procedure provides “[n]othing in this section [Part XV, Section 2 – Compulsory Procedures Entailing Binding Decisions] impairs the right of the parties to the dispute to agree to some other procedure for the settlement of such dispute or to reach an amicable settlement”, whereupon it allows for alternative settlement.

Thus, parties may halt proceedings and withdraw the matter from the Court, as in the case of Guinea Bissau and Senegal, which notified the Court in 1995, of their decision to discontinue proceedings and resorted to negotiations relating a matter not settled by the 1989 arbitral award.

- **Negotiated agreement:** Kenya and Somalia should enter an agreement which would be binding based on mutual trust and satisfaction through a negotiation, mutual compromise, and local understanding of common interests. This approach should be explored as the best option in keeping with UNCLOS provisions for an alternative settlement method on delimitation of maritime zones for adjacent coastal states. However, its feasibility relies on withdrawal of the matter from the Court.
- **Joint development zones:** The area in dispute, like any other maritime zone, bears natural resource endowments, upon which entitled coastal states have rights to exploit. In this case, the maritime triangle claimed by both Kenya and Somalia has proven oil deposits, a fact that catalyses strategic interests over the disputed zone.

However, in the spirit of good neighbourliness and in cognizance of shared history and heritage, Somalia and Kenya should explore the possibility of establishing joint development zones in the disputed zone. Joint development zones can be created by altering their claims to create a *maritime gray zone*, or by limiting their claim to the outer limits of the continental shelf.

References

- Government of Kenya [GoK]. (2019). *Kenya summons its ambassador to the Federal Republic of Somalia and instructs the ambassador of Somalia to Kenya to depart to Somalia for consultations*. Ministry of Foreign Affairs and International Trade. Retrieved from <http://www.mfa.go.ke/?p=2516>
- Gunal, F. (2016). A Case Study over the Concept of Effectivités to Decide Sovereignty over Disputed Islands: Malaysia/Singapor. Proceedings of International Academic Conferences 3305737, International Institute of Social and Economic Sciences.
- ICJ. (2008). *Judgement: Malaysia v. Singapore, Summary 2008/1* Retrieved from <https://www.icj-cij.org/files/case-related/130/14506.pdf>
- International Court of Justice. (1986). *Guinea/Guinea-Bissau: Dispute Concerning Delimitation of the Maritime Boundary*, I.L.M. Vol. XXV, No. 2
- International Court of Justice. (2017). *Maritime Delimitation in the Indian Ocean (Somalia v. Kenya)*. Summary of the Judgment, Par. 15-30.
- United Nations. (1945). *United Nations Charter and Statute of the International Court of Justice*. New York: United Nations
- United Nations. (1982). *United Nations Convention on the Laws of the Sea*. New York: United Nations
- United Nations. (2000). *Handbook on the delimitation of maritime boundaries*. New York: United Nations
- United Nations. (2006). *Reports of International Arbitral Awards. Delimitation of the maritime boundary between Guinea and Guinea-Bissau, Volume XIX*. New York: United Nations
- United Nations. (2009). *Memorandum of Understanding between the Government of the Republic of Kenya and the Transitional Federal Government of the Somali Republic to Grant to Each Other No-Objection in Respect of Submissions on the Outer Limits of the Continental Shelf beyond 200 Nautical Miles to the Commission on the Limits of the Continental Shelf*. New York: United Nations

Reviewing Kenya's Constitutional, Policy, and Legal Public Participation Architecture

By Joshua M. Kivuva, Ph.D.

Abstract

This article reviews constitutional, policy, and legal frameworks of public participation in Kenya, and highlights various practical experiences across several counties in Kenya in the post-2010 era of devolved governance and new constitution. Among other findings, both levels of governance (national and county) are making attempts to comply with prevailing public participation frameworks and are engaging the people on governance issues through public participation; there is increased awareness and willingness for public participation among citizens across the country; and the whole experience of public participation in terms of compliance with statutory obligations and the purpose of public participation are challenged by tokenism, limited civic education and lack of enforcement mechanisms and strict standardization (National Public Participation Policy notwithstanding). Thus, it is imperative for both state agents, civil society and citizens to embrace compliance with various constitutional, legal and policy requirements; geared towards empowering citizens in order to realize the political essence of public participation.

Introduction

Public participation is both an important principle of good governance and a right of every citizen. The principle of participation holds that those who are affected by a decision have a right to be involved in the decision-making process. The benefits of public participation to a democracy are indisputable and near universal. First, genuine participation strengthens democracy and promotes good governance. Second, participation increases leaders' accountability and transparency. Third, by increasing trust in government leadership and institutions, participation enhances legitimacy. Fourth, participation provides the people opportunities to review and evaluate laws, policies and development plans, improving their quality. Fifth, people are more willing to accept or take ownership of decisions that they were part of. Sixth, citizen feedback improves quality of services and service delivery. Being the very foundation for democracy, participation is an indispensable element of a people centred development. The negotiations that take place in the process of public participation enable the people resolve their differences and understand each other better.

Recognizing these benefits and the centrality of public participation to a people-centred governance, the Constitution of Kenya, 2010, not only affirmed their right to

be involved, but also created new spaces for interactions. More important, by declaring the people sovereign, the Constitution gave them the last word in their governance affairs. Participation is also one of the national values and principles of governance, in Article 10, that must bind those who apply or interpret the Constitution and other laws, and when they make or implement public policy.

The commitment to ensure effective public participation is also demonstrated by the post-2010 devolution related laws, policies, guidelines and case law. Kenya is also a signatory to international and regional conventions with important provisions on public participation. Almost all counties have laws or policies on public participation. Further, and, as evidenced by the people of Embu, Kiambu, Murang'a, Nairobi, Mombasa and others, Kenyans are demanding for more participation and have gone to court to enforce it.

Since 2010, public participation has become common in Kenya (IGRTC, 2017) and counties are engaging the people in many areas of public participation (Messnaoui, Omwole, Mrewa, & Silvosa, 2018), although in uncoordinated and unstandardized piecemeal manner. This notwithstanding, the nature and extent of public participation contemplated by the Constitution and

devolution laws has not been fully achieved by either level of government.

Public participation faces numerous challenges (Kivuva, 2015; Ronoh, Mulongo, & Kurgat, 2018) including: a) the absence of standards and coordination mechanisms; b) the failure of the national government to establish public participation guidelines; c) the reluctance by some counties to complete and operationalize participation laws and regulations; d) failure to set up relevant offices; e) failure to provide adequate funding and budget; and, f) government agents seeing citizen participation as a time-consuming inconvenience.

This article provides a review of Kenya's public participation architecture. It argues that the entire post-2010 public participation architecture, the Constitution and laws to effect devolution, has inherent weaknesses that will continue hindering efforts towards effective public participation. Neither the finalization and operationalized of the National Public Participation Policy (NPPP) nor the drafting of other laws and policies can cure the weaknesses. The establishment of public participation departments in the counties cannot either. This is because the drafters of the Constitution and other post-2010 policy and legal framework and those undertaking public participation did not (and still do not) fully comprehend the political nature of public participation and the centrality of power in the realization of effective participation.

This article argues that public participation is, first and foremost, political and that being powerless (and also because of the extreme power asymmetry between citizens and state agents), they (citizens) cannot influence power holders in any significant way. Public participation as envisaged by the Constitution (and devolution laws) cannot be achieved until citizen powerlessness and the existing power imbalances are addressed. I contend that, rather than recognizing the centrality of politics and power in public participation, the drafters of the Constitution, and the entire post-2010 policy and legislative architecture, sought to insulate participation from politics. As a result, they failed to address (and therefore, provide for): a) citizen powerlessness, and, b) existing power imbalances. It is this failure that explains the challenges being experienced with public participation.

Constitutional, Policy and Legal Infrastructure for Kenya's Public Participation

When Kenyans promulgated the Constitution of Kenya (CoK) in August 2010, they sought to change the way they were governed. They hoped that a new Constitution, which promised to transform state-society relations, would empower them to effectively engage in their governance. The central question had been how to move away from the highly centralized control oriented top-bottom system of governance to one where the people had the overall say. A second question, and a corollary to the first, was how to empower citizens to do that. The Constitution hoped to accomplish both in several important ways.

First, by making the people of Kenya sovereign. According to Art. 1 of the Constitution of Kenya, "(A)ll sovereign power belongs to the people of Kenya...", and demanding their involvement in every aspect of their governance. Chapter Eleven (Art. 174(c) of the Constitution gives the objects of devolution as "to give powers of self-governance to the people and the participation of the people in the exercise of the powers of the State and in making decisions affecting them."

Second, by declaring public participation an important national value to be incorporated in policy process, the Constitution (Art. 232(1)(d) elevated participation to the same status as patriotism, national unity, rule of law, and, democracy itself.

Third, by requiring county assemblies to conduct business in public, and to facilitate public participation in the legislative assembly and its committee (Art. 196).

Fourth, requiring cities and urban areas to "provide (opportunities and mechanisms) for participation by residents in (their) governance (Art. 184(1)(c)".

Fifth, by demanding people's involvement in budgeting and other financial management matters. Participation of the people is also one of the guiding principles of public finance (Art. 201). Public input is also required for budgetary and appropriation matters (Art. 221(5)).

The importance of public participation is further attested by the central position it has been accorded by key

When Kenyans promulgated the Constitution of Kenya (CoK) in August 2010, they sought to change the way they were governed



Locals in a Public Participation Forum in Turkana County. (Photo Credit: Lightbox Limited).

post-2010 legal and policy frameworks, most notably, the County Government Act (2012), County Public Participation Guidelines (CPPG), the draft National Public Participation Policy (NPPP), the Public Finance and Management Act (2014), Urban Areas and Cities Act (2011) and a host of other county based policy and laws. Section 87 of the CGA, for example, gives the principles of citizen participation as timely access to information and protection and promotion of the rights of minorities and marginalized groups and other affected persons (Republic of Kenya, 2011). The Act establishes modalities and platforms for citizen engagement and requires county governments to facilitate citizen participation (Section 91). Governors, for example, are to submit an annual report to the County Assembly on citizen participation and to establish communication mechanisms to facilitate access to information (Section 95). More importantly, the Act makes public participation in county planning, mandatory (Section 115).

The objects and purposes of the Urban Areas and Cities Act (UACA) are to “provide for the participation of the residents in the governance of urban areas and cities (Section 3).” UACA requires urban areas and cities to develop systems of governance that “encourage” participation by residents, providing proper conditions for participation. They are also to set aside a budget and to develop a strategy and an integrated (participation) plan (Section 11).

In 2016, the Ministry of Devolution and Planning together with the Council of Governors finalized and

operationalized County Public Participation Guidelines (CPPG). These Guidelines provide for opportunities, spaces and modalities for citizens participation (Republic of Kenya, 2016).

The draft NPPP’s objectives are to ensure standardized and coordinated public participation in the country. The policy seeks to establish and promote principles, standards and provide for mechanisms for minorities and marginalized groups and to ensure early and continuous participation of the people to ensure participation becomes a way of life (Kivuva, 2017, p. 5).

Other agencies and civil society organizations have provided resources to counties to ensure successful implementation of public participation requirements. The Kenya Law Reform Commission (KLRC) drafted a Model Law on Public Participation, as did the Constitution and Reform Education Consortium (CRECO) (2014). The World Bank, through the Kenya School of Government (KSG), has developed several devolution working papers on public participation. The Institute for Social Accountability (TISA) has also developed and implemented a model program on social accountability aimed at promoting public participation (TISA, 2015). This program supported counties to establish and institutionalize public participation frameworks. Unfortunately, the Constitution and the entire post-2010 policy and legal framework for public participation has serious weaknesses that make it hard to attain effective public participation in either level of government. These weaknesses are addressed in a later section.

Status of Public Participation in Kenya

As demonstrated above, the two levels of government have done well with regard to constitutional, policy and legal infrastructure for public participation. In accordance with the Fifth Schedule of the Constitution, for example, by 2017, of Kenya's 47 counties, at least 41 had a law or policy on public participation (IGRTC, 2017; Kivuva, 2017). The number of participation meetings in most counties have increased (Marine, 2016), and so have the level of citizen involvement (Messnaoui, Omwole, Mrewa, & Silvosa, 2018). The draft NPPP acknowledges that the two levels of government are also engaging the people in many areas of public participation (Kivuva, 2017).

Numerous publications and studies also show improved levels of citizen desire, awareness and engagement in their governance (Kivuva, 2017, p. 6; Messnaoui et al, 2018, Omwole, Mrewa, & Silvosa, 2018). According to a 2017 study on the status of public participation in national and county governments by the Intergovernmental Relations Technical Committee (IGRTC), counties have made tremendous efforts to comply with the constitutional requirement for public participation. Meetings have increased and the number of attendees

and contributors is also high (IGRTC, 2017; Ronoh, Mulongo, & Kurgat, 2018). Reports by the Commission for the Implementation of the Constitution (CIC) also show that both national and county governments were involving the people in different ways (in compliance with the Constitution) but the levels of involvement and people's awareness of their right to participate was low.

Despite the elaborate legal and policy framework, the infrastructure for an effective participation is far from complete. Efforts by both national and county governments to engage the public in their governance have not yielded the nature and extent of participation contemplated by the Constitution and devolution laws. A recent study on behalf of the Institute of Economic Affairs concluded that, despite the prevailing structures, citizen engagement remains "weak and perfunctory", and is increasingly becoming cosmetic and without substance. County governments use public participation as "a stamp of approval for projects and interventions already decided from above" (Messnaoui et al, 2018, Omwole, Mrewa, & Silvosa, 2018, p. 17). Public participation has become obligatory, peripheral and tokenistic (CRECO, 2014; TISA, 2015; IGRTC, 2017) and faces numerous challenges. The section below addresses some of these challenges.



Former President of Kenya, H.E. Mwai Kibaki during the promulgation of the new constitution (Photo Credit: Daily Nation)

The problem with the Constitution is that although it declared the people “sovereign”, it did not provide a clear roadmap on how ordinary citizens will acquire the requisite power to exercise their sovereignty or effectively engage powerful state agents at either level of government

Challenges to Participation

The 2017 study by the IGRTC, a consultation and coordination think tank for intergovernmental relations matters, identified over a dozen problems challenging Kenya's public participation. These can be grouped into four: absence of a national participation framework, cost (funding, manpower and budgetary) problems, political competition and civic education (IGRTC, 2017, p. 7).

The failure to complete the national participation framework has hindered the development of enforceable norms and standards, which would guard against manipulation and elite capture of the process. Such norms would provide for access to venues, information and civic education.

The high cost (financial, human, and time) of participation activities has been a big hindrance. There is not enough money and other resources budgeted for participation related activities. Few counties have departments for public participation and where they exist, are not sufficiently resourced. Citizens' demand for facilitation money to compensate for participation time has compounded it.

The absence of civic education has prevented locals from engaging effectively on civic issues making them susceptible to elite manipulation and capture. This, together with the lack of trust among, and diversity of, communities have had negative effects.

The fear of political competition has made law-makers allocate limited funds for participation activities and civic education. Politicians, particularly members of the county assemblies (MCAs) are afraid of their would-be competitors establishing local networks disguised as civic education.

Other studies have identified these and other challenges bedeviling citizen participation, including: 1) increased citizen apathy and lack of enthusiasm, leading many to expect payments to attend meetings; 2) inadequate access to critical information; 3) duty bearers not

embracing the principle of public participation; 4) inadequate civic education and a lack of awareness; 5) poor communication and communication gaps, resulting in slow, late, inaccurate or incomplete information,. This has enabled organizers to selectively facilitate their friends and citizens to demand payments to attend; and, 6) poor feedback mechanism, where, even when public involvement is high, peoples' inputs do not get incorporated into the document.

Draft NPPP as the Answer to Public Participation Challenges in Kenya

The draft NPPP, which was developed on the heels of the IGRTC study (and jointly with the IGRTC staff) sought to address these challenges. The draft policy, whose broad objective is to set standards and coordination mechanism for public participation for the two levels of Government, identified 12 challenges to public participation: 1) absence of standards 2) poor coordination mechanisms 3) unclear threshold issues 4) mistrust among providers 5) exclusion of important segments 6) misleading information 7) poor communication and communication gaps 8) citizen apathy 9) limited civic education and inadequate capacity 10) inadequate funding 11) poor M&E systems and questionable feedback mechanism and, 12) minimalism and “compliance only” attitude (Kivuva, 2017, p. 11-12).

To address these challenges, the State Law Office finalized drafting of the National Public Participation Policy “to provide the norms and standards for public participation.” The NPPP objectives are: i) to establish and promote principles and standards for effective public participation ii) to address statutory measures to ensure institutionalization of public participation iii) to provide for mechanisms for the public to fully engage iv) to encourage early and continuous public notification of major actions and decisions v) to provide objective criteria to measure the effectiveness and overall worth vi) to provide mechanism for special interest groups vii) to ensure integrity in public participation processes and, viii) to clarify roles and responsibilities of the government, non-state actors and the public.

The draft NPPP identifies nine target or priority areas for resolving public participation challenges, including: funding, civic education, capacity building, budgeting and planning. The draft NPPP stipulates that every effort will be made to ensure adequate resources, funding, continuous civic education and timely access to civic education, all of them identified as major challenges to Kenya's public participation. The NPPP, however, like the Constitution and the entire post-2010 legal and policy framework has serious weaknesses that make it hard to realize effective public participation. The next section addresses these weaknesses.

Weaknesses in Kenya's Public Participation Framework

Kenya's constitutional, policy and legal framework, and indeed, the entire post-2010 public participation architecture, however elaborate, has several weaknesses that have hindered, and will continue hindering, the attainment of effective citizen participation. Neither the finalization and operationalized of the National Public Participation Policy (NPPP) nor the drafting of other laws and policies can cure these weaknesses. The expected establishment of public participation departments in the counties cannot solve the problems either. This is because the drafters of the Constitution and other post-2010 policy and legal framework and those undertaking public participation did not (and still do not) fully comprehend the political nature of public participation and the centrality of power to the realization of effective participation. As a result, infrastructure they created for it, and the tools and instruments for its achievement, fell far short of the goal.

Downplaying the importance of politics showed that the framers of the Constitution and the post 2010 legal and policy framework did not fully understand the importance and role of power in public participation and therefore resulted to insulating public participation from the politics of the day. They did not address citizen powerlessness and power imbalances between them and state agents, mistakenly assuming that citizens only lacked opportunities and spaces.

Being political, however, public participation is about power and control, and therefore only the powerful are able to influence decision-making. Borrowing from Sherry Arnstein, public participation is "citizen power." It is the strategy by which the "have-nots" join in determining how decisions are made to ensure they (have-not citizens) share in the benefits of the affluent society

(Arnstein, 1969). The objectives of public participation therefore should ensure that citizens have decision-making power and control over all matters, decisions, actions and processes affecting their lives. Even if enough opportunities and spaces were created, the participation of powerless citizens would not amount to much.

Public Participation is Political

Public participation is political. It is about power, influence and control. As first year political science students are taught, politics is about "who gets what, when and how?" It is the "authoritative allocation of resources". As politics, public participation is about who gets what, when and how? It is about how the country's (and counties') resources are distributed (by and to whom?). Politics is also about power and control. Like everything political, public participation is therefore essentially about power, power struggles and power asymmetry. Those with power make decisions; those without power consume decisions made for them, mostly, without their consent or input. Thus, the drafters of the Constitution and other devolution laws should have made issues of citizen power (and citizen powerlessness), control and influence (and their lack of) central to the Constitution and devolution laws. Unfortunately this was not the case. Neither the Constitution nor the post-2010 policy and legal architecture addresses citizen powerlessness or existing power imbalances.

The problem with the Constitution is that although it declared the people "sovereign", it did not provide a clear roadmap on how ordinary citizens will acquire the requisite power to exercise their sovereignty or effectively engage powerful state agents at either level of government. Even when that roadmap exists, as is the case with access to information, officials are frustrating people's efforts (Messnaoui, Omwole, Mrewa, & Silvosa, 2018). By merely declaring the sovereignty of the people and demanding their involvement in the two levels of government, the Constitution mistakenly assumed that what the people lacked were opportunities and spaces for participation. The Constitution also assumed that by restructuring the government, from a centralized top-bottom system to a devolved one, it would transform state-society relations, empowering citizens and, therefore, facilitating their effective engagement with the state. As a result no concrete provisions were made to ensure or facilitate citizen empowerment or mechanisms to reduce the power imbalances between state agents and the people.



Members of the public at a past a public participation forum in Kenya. Despite the elaborate legal and policy framework, the infrastructure for an effective participation is far from complete (Photo Credit: Katiba Institute).

Similarly, despite the Constitution transforming the governance architecture and structures in the country from centralized to devolved ones, and even facilitating the new structure with financial independence, the transformation in state-society power relations that the Constitution envisaged has not taken place. The refurbishing of participatory institutions and spaces that were meant to accompany the promulgation of the Constitution has not taken place either. Thus, although new spaces for participation have been created and existing ones expanded, there has not been any meaningful shift in citizen powerlessness or in the power relations and imbalances between them and state (agencies) that can result in the intended public participation. The citizen powerlessness experienced in the pre-2010 period continues as do the power imbalances between state agents and the citizen. Thus, despite the promulgation of the Constitution, neither a fully supportive state has developed nor the empowerment of the people taken place.

More important, agents from both levels of government continue operating from a pre-2010 control mind-set, and still view their role as one of planning *for* rather than *with*, the people, explaining why they have adopted a “minimalism and compliance only” attitude (IGRTC, 2017), in which they undertake public participation as a matter of adhering with the law, but with no intensions of letting the people contribute towards their governance (Messnaoui, Omwole, Mrewa, & Silvosa, 2018). Many view

the Constitutional and other policy legal requirements as mere inconvenience and time consuming exercises (Kivuva, 2017). Thus, although people’s engagement with governance matters has increased, there are more meetings taking place with hundreds of people in attendance, public participation as anticipated by the Constitution has remained largely an elusive aspiration. What is currently taking place is a mechanical and tokenistic engagement (CRECO, 2014; IGRTC, 2017) which is induced by either anticipation for, or promises of, facilitation money. Large portions of citizens have also remained in apathy to the process.

The entire post-2010 constitutional, policy and legal framework has taken the same approach. Like the Constitution, the CGA, CPPG, draft NPPP, and the CRECO model, assume that what citizens need is awareness and opportunity. The CGA, for example, assumes that citizens have the power and incentive to engage the government and that the government (and its agents) will willingly give up their powers. Sections 114 and 115 assume the problem is lack of opportunity and therefore makes public participation in planning processes mandatory. The draft National Public Participation Policy (NPPP) makes similar assumptions. To the drafters of the NPPP, the problem is one of standardization and coordination, not of power relations and powerlessness. The NPPP too does not recognize the powerlessness of the people or the extreme power imbalance between the policy makers and consumers, which might hinder the participation of

Public participation is more than mere declarations. It is more than just providing opportunities. Public participation is much more than drafting “pro-participation” policies or legislation

the latter. This explains why the policy’s objectives (above) only address issues of opportunity, access and space, not of powerlessness or power imbalance (Kivuva, 2017).

Although the NPPP recognizes that most citizens are ill-equipped to engage in planning and budgeting processes and promises “empowerment of ordinary citizens through the construction of new relations between them and important institutions of governance” with the aim of “transforming participation from a technical-tokenistic device to a routine occurrence”, neither the policy’s objectives nor the rationale address citizen’s powerlessness or the power imbalances between them and policy decision makers. None of the policy’s priority areas addresses this either.

Even CSOs have taken a similar position and approach. In 2014, the Constitutional and Reform Education Consortium (CRECO) published the Model Policy Framework for Public Participation in County Government (CRECO, 2014), which they intended different counties to adopt in the formulation of county specific public participation policy. Despite the policy’s claims that it sought to “deepen the involvement of local communities in county governance,” like others, it assumed that what was required was increasing spaces, opportunities and avenues for participation—village forums, ward committees and other stakeholder consultation—and the adoption of different strategies. Even though CRECO’s policy claimed to advocate for “a form of participation that is genuinely empowering and not token consultation or manipulation.” It proposed to do this through creating new structures “at the ward level” and to populate “those structures” with people with the capacities to plan, implement and monitor their plans. The model assumed that “openness, transparency and accountability” on the part of the county governments would guarantee effective participation. It further assumed that “awareness

creation” and “sensitization” of county officials and the citizen on the importance of participation will address the problem of powerlessness and correct the power imbalances between officials and the people.

The problem with the IGRTC study recommendations is that it downplayed the role of citizen powerlessness and the power asymmetry between them and state agents. None of the study’s recommendations address the problem of citizen empowerment or the power inequalities between them and policy-decision makers and therefore, the study’s recommendations do not seek citizen empowerment. Like other studies, the IGRTC study concluded that citizens have the power and ability to engage government agents and change their behaviour. The IGRTC study recommendations assumes that citizens have the power and ability to participate and to effect changes in their governance, and that what they lack are spaces and opportunities.

Conclusions: Need to Redefine Public Participation

From the foregoing, it is imperative to redefine public participation to capture its political essence. The objectives and rationale of the constitutional provisions on participation, and of the entire post-2010 policy and legal framework, should also capture this political essence of public participation. The objectives must aim to: a) recognize people’s powerlessness and seek to empower them; b) reduce the power asymmetry between them and state agents; and c) must provide an anti-status quo legal and policy framework; one that grants the citizens power. This way participation will be a mechanism for redistributing power to the advantage of citizens.

It is also clear from the foregoing that not every form of citizen involvement qualifies to be public or citizen participation. Public participation is more than mere declarations. It is more than just providing opportunities. Public participation is much more than drafting “pro-participation” policies or legislation. Public participation must provide citizens with decision-making powers. As a political activity, public participation begins and ends with power, how that power is distributed (and to whom) and how it is exercised. It is about those who have power, those who exercise that power (and over whom) and how they exercise it. Borrowing from Sherry Arnstein, public participation is “citizen power” (Arnstein, 1969). The objectives of public participation should ensure that citizens have decision-making power and control over

all matters, decisions, actions and processes affecting their lives.

Without the power to induce important social reform and to change the status quo, ordinary citizens cannot make any meaningful contribution to their governance. The participation of a powerless people cannot accrue any benefits or bring about any changes to their condition. This explains why IGRTC study (IGRTC, 2017), the draft NPPP (Kivuva, 2017), CRECO (CRECO, 2014) and CPPG (Republic of Kenya, 2016) all classify Kenya's public

participation as "tokenistic," a practice all consider not the standard of participation contemplated by the Constitution and other devolution laws. Without power, citizen participation remains a public relations exercise, where the powerful are in full control of the entire decision process and have no obligation to incorporate any input. Citizen participation will be reduced to information sessions, where decision-makers go to the grassroots to explain to them what they are doing or to communicate decisions already made without consulting the people.

References

- Arnstein, S. R. (1969). A Ladder of Citizen Participation. *Journal of American Institute of Planners*, 35(4), 216-224.
- CRECO. (2014). *Model Policy Framework for Public Participation in County Governments*. Nairobi: CRECO.
- IGRTC. (2017). *The Status of Public Participation in National and County Governments*. Nairobi: IGRTC.
- Kivuva, J. (2015). *Devolved GovDevolved Governance Through a Human Rights Lens: A Comparative Analysis on Emerging Trends, Issues and Good Practices in the Implementation of Devolution in Kenya*. Nairobi: Kenya Human Rights Commission.
- Kivuva, J. (2017, November). *National Public Participation Policy (Draft)*. Nairobi: Unpublished.
- Marine, J. (2016). A Preliminary Comparative Study of Public Participation Acts in Kenya: A Case Study of Meru, Elgeyo Marakwt & Machakos Counties. *African Studies Association of Australasia and the Pacific (AFSAAP)*, (pp. 1-17). Deakin.
- Messnaoui, A. E., Omwole, D., Mrewa, L., & Silvosa, R. F. (2018). *A Political Economy Analysis of Devolution in Kenya*. Nairobi: Institute of Economic Affairs.
- Republic of Kenya. (2016). *County Public Participation Guidelines*. Nairobi: MoDP & Council of Governors.
- Ronoh, G., Mulongo, L., & Kurgat, A. (2018, January). Challenges of Integrating Public Participation in the Devolved System of Governance for Sustainable Development in Kenya. *International Journal of Economics, Commerce and Management*, VI(1), 476-491.
- TISA. (2015). *Jihusishe: Lessons in Participation in the County Budget*. Nairobi: TISA.

Mending Police-Youth Relations in Kenya through Dialogue: Lessons from Kwale, Mombasa, and Nairobi Counties

By Galgallo Abagaro and Martine Zeuthen

Abstract

This article explores the use of dialogue meetings in mending the relationship between youth and National Police Service (NPS) officers in Kenya in order to address the identified knowledge gap. The article seeks to identify lessons learned that are relevant to other organizations and policymakers, and makes pragmatic recommendations on the use of dialogues in bridging the gap between the youth and local police officers. It draws lessons from RUSI's study that comprised of 18 dialogue sessions conducted in selected localities in various counties. In total, 718 target youth and 69 police officers were engaged in six locations: Majengo, Eastleigh (Nairobi); Kisauni; Majengo; Likoni (Mombasa); and Ukunda in Kwale. Further, the article analyzes findings and outcomes from these dialogue meetings, mainly insights from the Monitoring and Evaluation (M&E) data gathered through baseline and endline surveys and as well as observations made by the authors who facilitated all the sessions.

Introduction

'Youth bulge' is a common phenomenon in developing countries (Lin, 2012). This phrase was first described by Fuller (1995) in *The Demographic backdrop to Ethnic Conflict: A Geographic Overview*. Accordingly, 'youth bulge' is a situation where the population share of the 15-24 year-olds and 0-14 year-olds exceeds 20 and 30 per cent of the total population respectively (Schomaker, 2013). This means that youth bulge is the situation where more than 50 per cent of the total population falls between the ages of 0-24 years (that is, sum of 30 per cent of ages between 15-24 and 20 per cent of ages 0-14). Moreover, the Constitution of Kenya (2010) expands the phrase 'youth' to include those of age up to 35 years. According to a survey by Aga Khan University on youth in Kenya in 2016, 80 per cent of the Kenya's population fall under the age of 35 years (Awiti & Scott, 2016), with a median age of 19 years (Figure 1 summarises some of the important findings in Kenya Youth Survey Report, 2016).

This bulging population can potentially bring forth a number of opportunities and challenges at the same time. For instance, being among the highest in the world, Kenya's population of youth presents the economy and labor market, *inter alia*, with the opportunity of energetic

manpower (*Business Daily*, 2017). John Yifu Lin, a Chinese economist equates these kind of opportunities to "demographic dividend". However, Lin also cautions that if not put to good use the same population can be a "demographic bomb" with potential to cause social and political instability (Lin, 2012). Furthermore, as indicated by Kenyan media reports, there is an increasing prevalence of crime in the general youth fraternity (*The Standard*, 2016, para. 1). In particular, the threat of youth radicalization and recruitment into Violent Extremism (VE) has become one of the most significant challenges to peace and development in Kenya, more so to child protection (Getachew, 2016).

So far, many Kenyan youth have reportedly been radicalized and recruited into Somalia-based al Shabab militia group (Botha, 2014). Moreover, various Arabic language dictionaries define the Arabic phrase '*al Shabab*' to mean 'youth'. More worrying is the trend of increased recruitment into Islamic State of Iraq and Syria (ISIS). Nonetheless, al Shabab continues to be the deadliest terror group in Africa (Felter et al., 2018; Raleigh et al., 2017) with operational capability to execute deadly attacks deep in and across Kenya while retaining

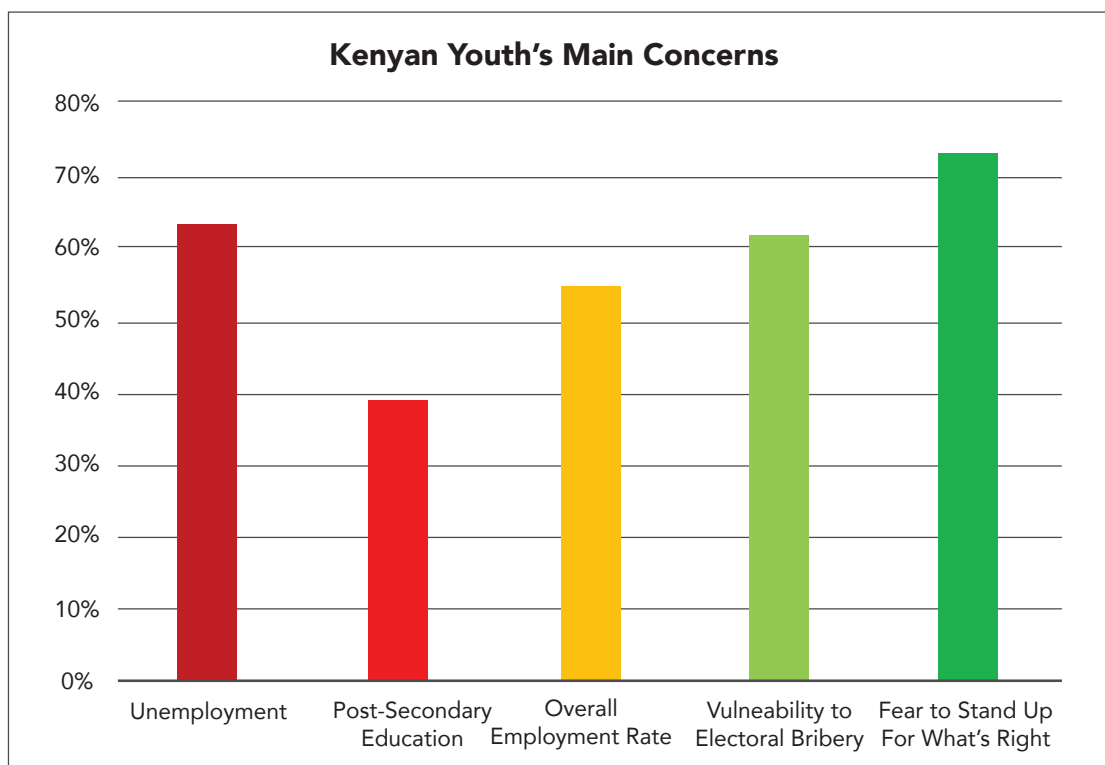


Figure 1: Youth's Main Concerns (Data Extracted from Kenya Youth Survey Report, 2016)

substantial control over Somalia (Sahgal & Zeuthen, 2018). In Kenya, the last deadly al Shabab attack was on Garissa University College on April 2, 2015, in which 148 Kenyans were killed, maiming over 80, while the most recent attack was on the DusitD2 Hotel located on 14 Riverside Drive on January 15, 2019, claiming 21 lives.

Review of literature on theories on youth engagement in violence shows multiple reasons for their involvement in violence. For instance, Spetch (2006) posits that individuals may join the same violent groups for diverse reasons. Nonetheless, some useful frameworks do exist, providing relatively strong conceptual understandings on why youth get involved in violence, including violent extremism and terrorism. In an attempt to explain engagement of youth in violence, Hilker and Fraser (2009) identified causal factors of multiple dimensions of youth exclusion. Accordingly, the duo grouped perspectives from these factors into: (a) greed or opportunity, (b) grievance (c) development explanations, and (d), the 'blocked transition to adulthood'. The perspectives of greed or opportunity explain the economic gains that motivate youth to join violent groups while youth grievance perspectives describe the relative deprivation and exclusion as a push factor for youth involvement in violence.

Additionally, a number of studies on radicalization (see USAID, 2011; UNDP, 2017) have since been carried out, attempting to explain why youth get radicalized and recruited into violent extremism. In Kenya, particularly, studies (Botha, 2014) have attempted to detail some of the root causes of radicalization in Kenya. Even though there exists no universally accepted single pathway to radicalization, various models including 'push' and 'pull' factors (USAID, 2011) and *Classification of Drivers of Radicalization* (Khalil & Zeuthen, 2014) among others have become prominent in their attempt to assist in understanding the problem of radicalization. Accordingly, one such factor identified is that of frustrations faced by youth in Kenya, for instance, from the economic conditions of unemployment which is believed to potentially serve as preconditions for their involvement, generally in crime and other socially deviant behaviors, and particularly, in radicalization and recruitment into Violence Extremism (VE) (UNDP, 2017).

Additionally, evidence suggests that due to a host of 'structural drivers' (Khalil & Zeuthen, 2014) among others, youth in Kenya have ended up joining extremist groups like al Shabab and ISIS. Interestingly, the above-mentioned localities (of Nairobi, North Eastern and Coastal regions of Kenya) have a high prevalence of youth radicalization and recruitment in Kenya. They are

also generally poor neighborhoods; suffer from high predominance of violence (criminal, gang, domestic and political); have significant levels of unemployment and a low proliferation of secular education institutions; histories of marginalisation, economic deprivation, ethnic conflicts and limited access to resources such as land, poor governance; and deteriorated relationship between the National Police Service (NPS) and the community particularly youth.

The importance of addressing perceived or real damaged or broken relationship between the police and youth continues to gain traction in Kenya (Shauri, 2018). Royal United Services Institute (RUSI), through street mentorship programme, has been conducting dialogues between the youth and police in various parts of Kenya including Nairobi and the Coastal counties. These dialogue activities generally aim to improve the relationships between the local police officers and the youth, hence indirectly addressing social tensions and community security. However, even though the apparent need to address the challenge of poor relationship between

the local NPS officers and youth has generally been noted, limited research committed to understanding the dynamics of such interactions, more so in Kenya, exists, at least in public knowledge (Shauri, 2018). In addition, no single study exploring the effectiveness of dialogues in mending relations between the police officers and the youth in Kenya exists (at least to the knowledge of the author).

This scarcity of information on dialogues between the police officers and the youth in Kenya is regrettable because it is such evidence that many organizations, government departments and programs working on improving the relationships between the police and youth in Kenya rely on. This article, therefore, intends to contribute to the body of knowledge on the significance of using dialogues between the youth and the police in Kenya. Drawing from the experience and lessons from the dialogues between the local NPS officers and youth in sections of Nairobi, Mombasa and Kwale Counties, the article presents an overview of the context and the approach to the dialogues. It further attempts to analyse



Kenyan youth demonstrate in the streets of Nairobi in 2017 (Photo Credit: Tyler Hicks)

the findings and outcomes of the series of dialogues conducted with a view to identifying lessons learnt relevant to other organisations and policy makers.

The Local Context, Intervention's Approach, and Methodology

According to Kenya's National Strategy to Counter Violent Extremism (NSCVE) (2016), radicalization and recruitment into violent extremism remains the most significant threat to security, peace, and stability in the country. Evidence (UNDP, 2017) show that these phenomena of radicalization, recruitment and violent extremism are generally not new particularly in Nairobi, North Eastern and Coastal regions of Kenya. Nonetheless, as cautioned by Hassan Ole Naado of Supreme Council of Kenyan Muslims (SUPKEM), new hotspots are believed to be rising up in various parts of Kenya. Accordingly, the claimed new spots which go beyond the traditionally regarded 'hot spots' borderline counties in North Eastern and Coastal Kenya include; those in Western, Nyanza, Rift valley and Central regions.

Further, the Kenya's National Police Service (NPS), which in part is the security actor mandated to protect the Kenyan citizenry from the above-mentioned threats of violent extremism, has been indicted by the youth for 'excessive use of force'. Established under Article 243 of the Constitution of Kenya (2010), the police force is charged with the responsibility to protect public safety and provision of the fundamental physical security necessary for wellbeing of youth. In order to achieve this desired greater level of affordable public and or community safety and security, a good relationship between the youth and the local police officers is generally regarded as a vital foundational step. However, existing literature highlights the problem of negative relationships between the police and the youth (Shauri, 2018). Accordingly, in their line of duties, particularly in combatting crime, the police officers meet with the youth on the streets. However, these encounters often end up with police officers clashing and conflicting with the youth. In many of these happenstances with the youth, the police have often been blamed for violating human rights (Amnesty International, 2013).

A deeper look at the local contexts in the above-mentioned three project counties of Nairobi, Kwale, and Mombasa reveals that youth involvement in crime and violence including youth radicalization is mainly concentrated in Majengo, Kisauni, Old Town, Bondeni,

and Likoni in Mombasa and Majengo and Eastleigh in Nairobi. For instance, as observed in the preceding section, many Kenyan youth generally from these counties have since travelled to Somalia to join al Shabab. Moreover, an unknown number of youth from these specific localities among other areas who travelled to Somalia to join al Shabab are believed to have returned. Some of these youth ('returnees') have been associated with violent incidents. For instance, police, intelligence and media reports have linked killings in Ukunda to al Shabab returnees. One particular media report (Chanji, 2018) indicates "a high possibility that the... [returnees from]...the terror group al Shabab who are...being hired in other crimes to make ends meet" (para. 8). While some youth have surrendered to the authorities, others have either been booked in disengagement programs or likely to have settled back in the community. Nonetheless, most returnees come back 'trained,' and at times, 'equipped' (UN Security Council 8116th Meeting, 2017).

Evidence shows a tensed relationship between these youth and the police officers characterised by systemic killings of young people by the police in socioeconomically disadvantaged and high crime areas like Mathare, Majengo, and Eastleigh in Nairobi (Stapele, 2016). Kenyan media reports also point out that the youth have often indicted the police for these alleged 'extrajudicial' actions (Ng'ulia, 2014) of killing them 'like rats' (Rajab, 2017), hence causing tension and reduced trust in the government and the legal justice system. Furthermore, it is assumed and believed that such 'extrajudicial killings' could contribute to aggrieved families and increased community members' resentment of the government. In addition, some of these grievances against the police by youth is believed to have led to the poor relationship between the police and youth with both sides holding an 'Us' v. 'them' attitude.

The above-mentioned factors, among others, are believed to have impacted identity, attitudes and beliefs

So far, many Kenyan youth have reportedly been radicalized and recruited into Somalia-based al Shabab militia group

Evidence shows a tensed relationship between these youth and the police officers characterised by systemic killings of young people by the police in socioeconomically disadvantaged and high crime areas like Mathare, Majengo, and Eastleigh in Nairobi

of the people living in these areas, in some cases leading to political violence several times in the past and recent history, for instance, in Kwale and Mombasa Counties. Nevertheless, no single pathway to radicalization or explanatory theory exists that could apply to all types of extremist groups or to all individuals (Allan, Glazzard, Jespersion, Winterbotham, & Reddy-Tumu, 2015).

Noting the eminence of the evident risk factors facing the youth in Kenya, and the apparent importance of addressing the perceived or real broken relationship between the police and youth, as shown in this and previous sections, RUSI (HoA) proposed and implemented Street Mentorship Campaign programme funded by Global Affairs, Canada. The program engaged in various activities which included mentoring of the youth and the community at large and dialogue sessions between youth and local police officers. One of the main objectives under the program that took 15 months since its inception in September 2017 to December 2018 was to address (indirectly) the social tensions and community security through improving relationships between the youth and the police office in the localities. The program, identified areas where the youth are found to be at high risk of engaging in deviant behaviors of crime, violence and extremism. Learning from RUSI's presence and experience in specific areas (particularly from the European Union funded STRIVE and Canadian Government funded Street Mentorship programme activities in the general area of terrorism prevention and reduction of radicalisation and recruitment in Kenya) the program narrowed down its focus to six specific localities of Ukunda (Kwale), Majengo, Likoni, and Kisauni (Mombasa) and Eastleigh and Majengo (Nairobi).

RUSI conducted a series of dialogues (a total of 18 sessions) between local youth and police in the mentioned locations. The dialogue session with the local police officers was initially requested by the youth participating in the RUSI's mentorship program in the various mentioned localities. The purpose of these dialogues was to offer young people a safe space to interact and share their views and issues with their local

police officers. As envisaged in the conceptualization of the program, the good interactions can potentially serve to improve communication and understanding between the police and the youth further fostering good relationships between them, hence, underpinning the logic of the program. Furthermore, as captured in the decades-old statement by Marais (1992), a good police-youth relationship would mean "vital step towards the achievement of greater levels of affordable... [public]...safety."

Each dialogue was preceded by an exclusive preparatory meeting between the facilitators and the participants, both the officers and the youth separately. The meetings were used to lay 'ground rules' for the dialogues. It is important to mention upfront that the approaches and designs used in the dialogue was developed based on consultations with the youth in order to represent their needs and concerns. This was further discussed with the police during preparatory meetings to make sure both sides were comfortable. The dialogue meetings were held in the community social halls and culminated with the third round of sessions at the local police stations, again on request by the youth. Initially, the youth had the fear to engage the police. The approach of using social halls was meant to conduct the dialogues in the set-up and location known to the youth where they, therefore, were more comfortable. This was slowly graduated to sessions in police stations to further help youth overcome their fear of police and police stations.

The main approach used included free discussions on issues raised by the youth and the police together with role play, scenario-based debates and simulation exercises. Furthermore, issues discussed were developed in consultation with the youth and entirely based on their interests and suggestions. Free discussions were chosen to allow both the police and youth air their major issues of concern. Role plays were used to allow empathetic understandings of different situations that would otherwise course grievance against each other. Scenario-based discussions were used to make the debates as real as possible.

The dialogue meetings initially targeted at least 45 youth and 4-6 officers per location. The same youth were to be involved in the three rounds of dialogue. For the officers, it was desired that the same officers would participate in all the sessions as well so that the possible changes in attitude may be observed and a greater sense of familiarity and trust with the youth could emerge. Unfortunately, due to the demanding nature of the police work, not all the officers participated in the three sessions held at their localities. However, at least, in all the locations, some of the officers participated in all the sessions, making it possible to observe and note changes in perceptions, attitude, and behavior and further establish relations and trust.

Moreover, at the beginning of the project, a logic model was developed to reflect the underlying theory of change. Drawing on the logic model, a Performance Measurement Framework (PMF) was designed to evaluate and monitor changes in outcomes and outputs. This Monitoring and Evaluation (M&E) strategy was designed to be able to capture changes in the perception and attitudes of the youth towards the Law Enforcement,

indicators were defined at the various levels (i.e. outputs and outcomes). These were followed up with a specific methodological approaches for data collection. For instance, Focus Group Discussions (FGDs) with the youth was adopted as the principle approach. Also, in each dialogue and pre- and post-dialogue meetings with the participants, observation and sessions notes were taken to complement the surveys.

Outcomes, Challenges, and Lessons Learnt

Despite the deep-rooted problem of distrust between youth and police, a large number of youth were mobilised to participate in the dialogues. A total of 718 target youth were involved in the three rounds of dialogues. Of this group, 526 were men and 192 were women. In addition, approximately 69 police officers were also engaged in the dialogues. This included, 47 male security officers and 22 female security officers (RUSI's Internal Final Street Mentorship Project Report, 2019). Figure 2 below represents the distribution of participants (both youth and officers by gender).



H.E. President Uhuru Kenyatta presides over the passing-out parade ceremony of recruits at Kenya Police College, Kiganjo (Photo Credit Kenya Police)

Distribution of Participants by Gender

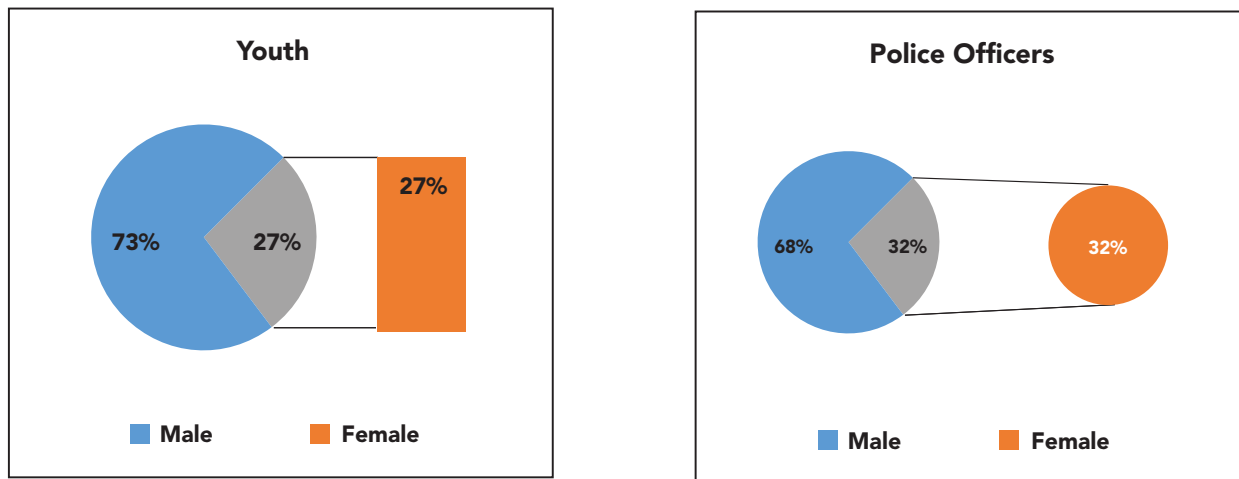


Figure 2: Distribution of Participants by Gender

The immediate outcome expected in the dialogue program was ‘improved perceptions towards Law Enforcement (LE), among the youth’. With regard to this immediate outcome on the youth’s outlook toward Law Enforcement, a significant improvement (37% - 63%

as shown in Figure 3 below) were noted between the Baseline and the Endline. These changes could, therefore, in part, be attributed to the dialogues between the youth and officers that were organized by the program.

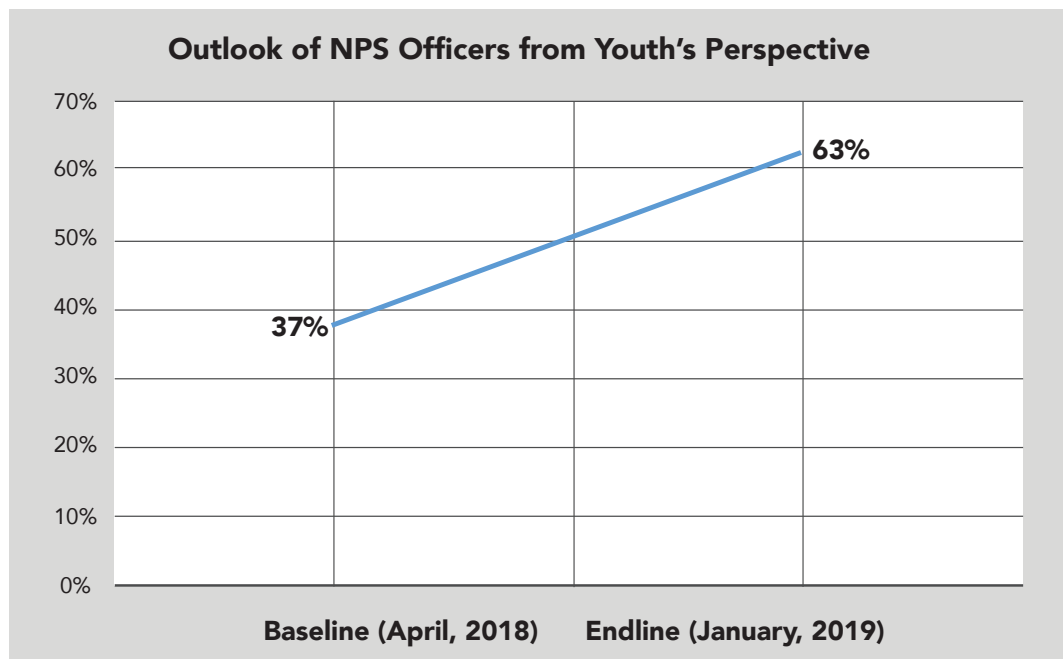


Figure 3: Outlook on NPS Officers from Youth's Perspectives between Baseline and Endline Surveys

Evidence also showed that the youth-police dialogue was identified as playing an important role in improving the relationship between the police and youth (RUSI's Internal Final Street Mentorship Project Report, 2019). One respondent from Nairobi recalls, “thanks to the program there is better understanding of the work done by the police...more such dialogues are required because the police continue to think of the youth as

criminals” (Respondent R7, Nairobi). However, while the youth seemed to stress that their perceptions of the police had improved, they did not think that there were commensurate improvements in the perceptions of the police and in the treatment of the youth. Such views were particularly noted in Nairobi and areas of Likoni and Kwale in Mombasa. In Likoni and Kwale, for instance, the youth noted that;

“There are no positives because the youth have changed but the police haven’t changed. They always see the youth as their enemies.” This is because, “anytime a ‘youth’ meets a police officer even when they are minding their own business they are suspected of a crime and are targeted by the police” (Respondent R7, Mombasa in (RUSI’s Internal Final Street Mentorship Project Report, 2019).

Youth and Police: The Quest for Change

The participating officers throughout the dialogue activities exhibited the need to work with the youth for positive change. However, a number of the youth initially expressed fear to engage the officers while some were doubtful that the engagement will change the ‘officers’ behavior’. Nevertheless, the majority of youth were enthusiastic to engage the officers to ask them questions mainly on their grievances against the officers.

The desire for change and to be part of that change was also seen from the willingness to participate in the dialogues on the part of officers and the relative change in attitude of the youth in terms of the will to engage with the officers. Although the officers were nominated by their station commanders, more or less without their consent, and free participation and enthusiasm in interacting with the youth throughout the program is assumed to exhibit their goodwill to work together with the youth in their daily work of preserving safety and security. Both the youth and the officers mentioned the need for change, improved communication between youth and officers and significant importance of the two working together to bring about change.

Voicing of Youth’s Concerns

Another important lesson that was learnt from the program was that of its usefulness in voicing of concerns, which led to empathy toward each other by both parties. Among the grievances mentioned by the youth were the arbitrary arrests, extortion and bribe, crime-centric perception of the youth by police, use of excessive force and extrajudicial killings of the youth by the police. The youth in majority of the locations expressed having little or no confidence in policing, little trust in them and the feeling of being unsafe in the hands of police officers. One such concern and experience among others was shared by a youth, who was one day, in his own confession, roughed up, and arrested. He had a job of looking after a youth-group managed public toilet in one of the dialogue locations where he was working as a cleaner and cash collector. On the material day, as he narrated:

Police in pursuit of some entirely different suspects arrived at my location. They demanded that I provide information on the whereabouts of the suspects they were pursuing. And when I was unable to do so, because I had not seen the suspects in question or know them, I was roughed up and immediately arrested. They further asked me for bribe to release me. For my freedom, I had to part with the day’s collection. Upon my release, knowing that my fellow youth group members would not believe my ordeal with the police, I had to borrow money in order to hand in the ‘day’s collection’ to the group’s treasurer. I did not want further problems, now with the group.

On hearing the narration of the affliction experienced by the boy at the hands of police officers, the officers got empathetic to what he underwent while in the custody of the law enforcers. To a greater extent, the officers accepted the possibility of existence of such issues as raised by the youth. However, the officers termed the concerns as ‘an act by rogue officers’ which cannot be generalised onto all officers. Nonetheless, the officers taught the youth the official redress mechanisms against such ‘rogue’ officers. Some of the ways mentioned by the officers include reporting the incident to the Officer Commanding Station (OCS) and Independent Policing Oversight Authority (IPOA). While the successful reporting to the OCS may attract use of internal mechanism to reprimand the officers, reporting to IPOA may lead to independent prosecution of such officers based on the reports and supporting evidence.

On the other hand, the police officers also had the chance to air some of their concerns. Mainly, as explained by an officer from a dialogue location in Nairobi, their concerns bordered on ‘violent and unruly nature of youth’. According to the police, the youth show little respect for the officers especially when they meet on the street while the officers are on their policing duties. An officer from a dialogue location in Mombasa mentioned that “sometimes, the non-compliance with lawful police orders and obstruction of a police officer from carrying out his duty by youth forces the officers to use force on them”. The extent of force used by the officer however, attracted a serious debate across the six localities as the youth participants disagreed on what ‘necessary force’ means or would look like.

According to the police, the force they use is necessitated by the situation. When dealing with a suspect who is calm and cooperative during arrest, the police would use minimum force. However, this changes with situations, for

instance, in dealing with violent and rowdy individuals, the police use force including chokehold and handcuffing. In case the suspect is armed and determined dangerous, the officers are accordingly allowed to use 'necessary force' including shooting to maim or kill the suspects. However, on the other hand, the youth felt that the force used by the police was "always unnecessary and never commensurate to the demands of the situation". Nonetheless, it was mutually agreed between the officers and youth that the issues raised by the youth exist and that officers and the institution of police needs to address them. Equally, the youth agreed on the need for them to respect the officers and allow them to discharge their duties. Nevertheless, the youth requested mutuality of the respect.

Dialogue Enhances Learning About and Understanding of Each Other

Another important lesson learnt from the dialogue activities is that both the youth and officers learnt a lot about each other. The dialogue sessions serves in building trust and understanding between them (Center for Court Innovation, 2015). When asked how the dialogue was useful to them, both the officers and the youth alluded to the fact the dialogue sessions gave them "rare opportunity to share and learn about each other" hence helping them to address various concerns and stereotypes. Furthermore, a police officer in concurrence with his colleagues from other stations notes:

I have learnt about the grievances youth have against us, how youth view us, how youth think of us and more importantly, why they tend to think the way they do. The series of dialogue meetings engaged in with the youth is an opportunity [for officers] to relate to the youth and their problems. The new knowledge acquired through the dialogue would help us [as police officers] see how best to

Some of the root factors mentioned are stereotypes, lack of communication, crime-centric view of the youth by the police, youth involvement in crime

work with the youth in solving community security concerns (Police Officer, Ukunda-Kwale).

Further, having understood how a police officer thinks, the youth affirmed the importance of the way they would address the police without necessarily disagreeing with them. Moreover, as stated by a youth from Eastleigh "through the dialogue I have come to learn as a youth and a member of the community living around, I have a role to play in contributing to community security and safe neighbourhoods in Eastleigh". The youth also noted that they learnt about the police, how policing works, the risks involved in policing and how frustrating some security situations can be to the officers. Having understood how a police officer thinks, the youth affirmed the importance of the way they would address the police without necessarily disagreeing with them. Accordingly, addressing the officers with respect would further serve to de-escalate their conflicts with the officers. As summarised by a youth from Kwale;

Having participated in all the three dialogue meetings with our local police officers, I have learnt police are just humans like us. They also have fears, experience stress, anger and aggression under certain circumstances. I initially thought the officers were only taught how to harass the citizens, as in their colleges. I have also learnt some of the root causes of issues affecting our relationship [as youth] with the officers. The new things I have learnt will help me in changing my attitudes generally towards the police, which has for long been negative and moving forward relate better with our local officers (Youth, Ukunda-Kwale).

Some of the root factors mentioned are stereotypes, lack of communication, crime-centric view of the youth by the police, youth involvement in crime etc. By listening to the experiences of the officers, the youth learnt about the challenges faced by the officers. As one officer mentioned in one of the sessions, "just like any other Kenyan, officers have families to take care of and bills to pay". However, unlike the youth or other Kenyans, police have to work in risky and stressful situations to earn their pay. Youth also learnt the frustrations and traumas that some officers have to live with. However, it was agreed that none of the bad experiences, of both the police and youth, should precipitate a conflict between them. Accordingly, both the police and youth must work together to achieve a common goal of safe neighbourhoods. Further, the dialogues concluded observing that the experiences of the police should not be a basis to mistreat the youth and



Kenya Police Team: Football has helped the police relate better with the members of the public (Photo Credit: Citizen Television Kenya).

the social challenges faced by the youth should not make them rowdy, unruly, provoking use of force by the police.

Dialogue Forums: the Youth and Police

During the preparatory meetings, it was noted that both the local police officers and the youth generally had little engagements with each other prior to the dialogues. The majority participants mainly the youth explain that they have had limited formal interactions with the police previously. However, the youth mentioned that they mostly met with the police on the streets and have always had problems with each other. Furthermore, unlike the police, the youth initially expressed scepticism on possible effectiveness of dialogue in resolving their conflict. Contrary to this initial observation, the youth expressed a relative change in attitude following the series of dialogues, further highlighting the significant potential of the dialogue in resolving conflicts and mending relationships.

Through the dialogues and engagements with the police, the youth learnt about the police, so did the officers about the youth. The new knowledge is believed to be a contributing factor to the observed relative change in attitude and perceptions held by youth. The dialogue to a great extent is believed to have served in clearing the negative stereotypes held by the youth about the police and the crime-centric perception of the youth

by the police. Furthermore, majority youth expressed to have benefitted from the program especially on the need to have an improved relationship with the officers. Nonetheless, a small fraction of the youth across the six locations were still worried even after engaging the police in dialogues, claiming that “the officers will ‘never’ change”.

Hard Mentality against the Police: Strong Perception and Stereotypes

Although the dialogues were generally creating a better understanding of each other, not all youth who participated in the program changed their perceptions and stereotypes about the police. A minority group in each of the six locations maintained a ‘hard mentality’ against the police. For instance, in the last pre-dialogue meetings, a youth from Mombasa stated: “the police will never change by talking to them. They will be good here but once they leave they will go back to their usual habit of harassing us and arresting the youth arbitrarily”. The attitude of the youth toward the police and on possibility of fruition of dialogue in mending relationships with the police were varied.

Nonetheless, the variation on the effectiveness of the dialogues in changing the way police act and react toward the youth is consistent with findings in other studies on the police-youth relations. Particularly,

Busy work schedules of the officers participating in the dialogues was found challenging. Furthermore, getting the same officer to engage in the 3 rounds of dialogue was never easy due to their demanding nature of duty

according to two studies conducted by University of Queensland and Queensland University of technology, both in 2014, respondents categorically fell in the three groups based on their responses; those who viewed the police positively before and after the dialogues, those who viewed the police negatively before the dialogue but changed their perception after the dialogue and those who perceived the police in bad light both before and after the dialogues. The officers also expressed general discomfort in this perception of police by the youth which generalises the negative aspects of policing on all the police.

Fear of Victimization

Youth often see trouble when they see a police officer. Furthermore, one of the main challenges that face efforts to mend relationship between the police and youth is the fear by the youth to get arrested by the police officer, for saying wrong things to the officer (Centre for Court Innovation, 2015). Majority of the youth who participated in the dialogue meetings initially expressed fear of victimization. They feared that the dialogue might not be as 'free' as it aimed to be. A youth participant from Kwale County contextualised this fear: "police officers remain police officers, whether in dialogue or on the street".

Moreover, the youth, during preparatory meetings requested that the police come in civilian clothing. However, not in all the dialogues was this request honored as some of the officers who participated in the dialogues were on duty at the time of the dialogue sessions and by their rules, regulations and standing orders required to be in uniform at the particular time. Some youth also expressed fear of condemnation by the peers for speaking to police. A youth from Mombasa explained that "some of my peers who have seen us interacting with the police office in the dialogues think that we are spies, snitches or informers for the police. This places them 'between a rock and a hard place'.

Bureaucracy: Tight Schedules, Top Orders, and Protocols

Busy work schedules of the officers participating in the dialogues was found challenging. Furthermore, getting the same officer to engage in the 3 rounds of dialogue was never easy due to their demanding nature of duty. At times the same officers expected to engage with the youth were on call to attend to crime, emergencies and other pressing security needs. Also, the bureaucracy, protocols and orders that the officers needed to observe affected the extent to which they engaged with the youth both on the street and in the dialogues. Furthermore, responding to genuine complaints against fellow officers who were not at the dialogue was not easy for the officers. Moreover, an officer from Nairobi states: "orders are orders, and must be followed". When asked by the youth whether they would commit an offense following orders from the superior, the officers responded that "unlawful orders should not be followed".

Conclusions and Recommendations

Findings from the dialogue program discussed in this article may not be strong enough to make substantive claim on the impact of the youth-police dialogue in building relationship between the two groups. The long term goal of building or mending such relations requires a sustained and concerted effort by the police officers and the local youth fraternity. Changing perceptions, attitude and behaviour of an individual requires time and effort. Even when these changes are observed, they cannot be solely attributable to the dialogues and open communications are some of the factors responsible for good relationship between the youth and police officers. Nonetheless, insights gained from the program, portends the usefulness of such interactions in addressing certain systemic issues of concern to the youth and the police as described in the article. From the insights gathered from the dialogue forums, a number of conclusions can be drawn:

- Youth-police relationships in Kenya are generally poor and need to be addressed as successful prevention of crime and protection of public safety requires cooperation between the youth and local police officers;
- Dialogue can contribute to solving long-standing conflicts between the youth and the officers. Through the forum, grievance can be aired, participants listen to each other leading to learning about each other and gaining empathic understanding of each other;
- Dialogues are not easy to conduct especially between groups that do not easily warm up to each other;
- The notion that police use unnecessary and or lethal force when handling youth can damage relationships between police and the local youth;
- Youth's hard mentality, stereotypes, and strong negative perceptions of the police do not help in maintaining good relations with the police;
- A perceived egregious act of misconduct by a single officer in one station not only damages police-community relationships locally, it can gain nationwide attention and reduce trust of the police generally;
- Dialogue meetings between police and youth provide platforms to air mutual concerns and thereby serve to ease the tensions;
- Consistent communication through dialogues between the youth and the police must therefore be emphasised and sustained in order to achieve more conducive police-youth relationships in Kenya.

Additionally, the insights gained from the article together with others serve to highlight the complex and challenging nature of addressing the broken trust and relationship between youth and police. Nonetheless, the relative positive shifts of mind for those who held negative thoughts about the police to positive ones after the Street Mentorship Programme's dialogue is an encouragement that dialogues to a greater extent can influence strengthening of relationships between the youth and police, thereby contributing to improved community security. This article further recommends that:

- NPS Officers initiate efforts to dialogue with the youth in the local areas of operation;
- Youth and the community embrace the officers' efforts to enhance community-led security;
- Community-based organisations continue to support dialogues between the police and youth in order to help bridge the gap between them, and;
- More research studies focusing on understanding dynamics of police–youth relationships in Kenya be conducted.

References

- Allan, H., Glazzard, A., Jespersen, S., Winterbotham, E., & Reddy-Tumu, S. (2015). *Drivers of violent extremism: hypotheses and literature review*. London: RUSI.
- Amnesty International. (2013). *Police Reform in Kenya: "A Drop in the Ocean"*. London: Amnesty International Publications .
- Awiti, A. O., & Scott, B. (2016). *The Kenya Youth Survey Report*. The Aga Khan University.
- Botha, A. (2014). Political socialization and terrorist radicalization among individuals who joined al-Shabaab in Kenya. *Studies in Conflict & Terrorism*, 37(11), 895-919.
- Business Daily. (2017, August 27). Kenya's youth percentage among the highest globally *Economy*. Retrieved from <https://www.businessdailyafrica.com/economy/Kenya-youth-percentage-among-the-highest-globally/3946234-4072946-jv2x2/index.html>
- Center for Court Innovation. (2015). *Guide for Improving Relationships and Public Safety through Engagement and Conversation. Police-Youth Dialogues Toolkit*. Washington, D.C.: Office of Community Oriented Policing Services.

- Chanji, T. (2018, April 4). Police launch probe in two killing of two people in Kwale County. Retrieved from <https://www.standardmedia.co.ke/article/2001275634/police-launch-probe-in-two-killing-of-two-people-in-kwale-county>
- European Union. (2017, March 15). *Conflict Prevention, Peace and Economic Opportunities for Youth in Lamu, Kenya*. Retrieved from https://eeas.europa.eu/delegations/kenya/22768/conflict-prevention-peace-and-economic-opportunities-youth-lamu-kenya_lt
- Getachew, A. (2016, March 1). *Radicalization of children and youth in Kenya: A new challenge to child protection*. Life and Peace Institute. Retrieved from <http://life-peace.org/hab/radicalization-of-children-and-youth-in-kenya-a-new-challenge-to-child-protection/>
- Khalil, J., & Zeuthen, M. (2014). A Case Study of Counter Violent Extremism (CVE) Programming: Lessons from OTI's Kenya Transition Initiative. *Stability: International Journal of Security and Development*, 3(1).
- Khalil, J., & Zeuthen, M. (2016). *Countering Violent Extremism and Risk Reduction: A Guide to Programme Design and Evaluation*. London: Royal United Services Institute for Defence and Security Studies.
- Lin, J. Y. (2012, May 1). *Development talk*. Retrieved from <https://blogs.worldbank.org/developmenttalk/youth-bulge-a-demographic-dividend-or-a-demographic-bomb-in-developing-countries>
- Marais, E. (1992). *The Police-Community Relationship. Managing Crime in the New South Africa: A practical and affordable approach* (pp. 133-136). Pretoria: HSRC Publishers.
- Ng'ulia. (2014, December 19). Police must first earn public trust before Kenya can be secure again. *Daily Nation*. Retrieved from <https://www.nation.co.ke/oped/opinion/Police-must-first-earn-public-trust-before-Kenya-can-be-secure-/440808-2563228-m9ojf6z/index.html>
- Rajab, R. (2017). Police Killing Us Like Rats, Cry Nairobi Slum Youth. *The Star*. Retrieved from <https://www.the-star.co.ke/news/2017-03-19-police-killing-us-like-rats-cry-nairobi-slum-youth/>
- Schomaker, R. (2013). Youth bulges, poor institutional quality and missing migration opportunities - triggers of and potential counter-measures for terrorism in MENA. *Topics in Middle Eastern and African Economies*, 15(1), 116-140.
- Shauri, H. S. (2018). Perception Of The Police And The Youth In Enhancing Community-Police Relation In Kilifi County, Coastal Kenya. *International Journal of Social Science and Technology*, 3(5), 69-88.
- Stapele, N. V. (2016). 'We are not Kenyans': extra-judicial killings, manhood and citizenship in Mathare, a Nairobi ghetto. *Conflict, Security & Development*, 16(4), 301-325.
- The Constitution of Kenya, 2010. (2019). Nairobi: National Council for Law Reporting.
- The Standard. (2016, March 17). Wave of crime among youth is worrying. *Standard Digital*. Retrieved from <https://www.standardmedia.co.ke/article/2000195150/wave-of-crime-among-youth-is-worrying>
- UNDP. (2017). *Journey to Extremism in Africa*. New York: United Nations Development Programme.
- USAID. (2009). *Guide to the Drivers of Violent Extremism*. Washington, D.C.: USAID.
- USAID. (2011). *The Development Response to Violent Extremism and Insurgency*. Washington, D.C.: USAID.

Civil Wars and Failed Peace Agreements in South Sudan: Yet Another Lost Generation to Build a Peaceful Society

By Fatuma Ahmed Ali, Ph.D.

Abstract

South Sudan, the newest African state, is entangled in a complex political and humanitarian emergencies since the civil war broke out in Juba in December 2013. This has seen massive destruction of property, thousands of deaths, torture, abduction, rapes, and displacement of millions of people. The economy is nearly collapsing, severely reducing the nation's output and raising inflation. However, this civil war, just like the previous one, has affected most profoundly, the children, youth and women of South Sudan, many of whom have known nothing but war. Not only are they victims, they have also lacked a voice in the peace process and nation building. The children and youth of South Sudan have been either the victims or perpetrators but their potential, capacity and role as peace builders has not yet been explored. Furthermore, the current peace process in South Sudan lacks the input of refugee children and youth. Their concerns and participation are paramount to the peace process since their plight represents the urgency of restoring positive peace in South Sudan. This article uses desktop research to examine how South Sudan is losing its present and future generation of peace builders because of the civil war. It analyses the challenges youth face in peace and nation building. It also provides some recommendations for incorporating children and youth in the current peace process.

Introduction

South Sudan, the youngest country in the world, was established on July 9, 2011. It rose from the ashes of the longest African civil war between the north and south of Sudan. The birth of this new country brought hope for peace, development and a bright future for its people, well-wishers, and the rest of the world, but the peace lasted for only two years. In December 2013, armed conflict broke out in its capital city Juba, after a political disagreement between the President Salva Kiir and the former Vice President Riek Machar. The President accused the Vice President of engineering a coup. The fighting spread beyond the capital to other areas in the country as civilians fled.

This conflict continues to devastate the 1.9 million internally displaced persons (IDPs) 200,000 of whom remain stranded in protection of civilian sites under the guard of United Nations (UN) peacekeepers and over 2.4 million refugees who have fled to the six neighboring countries of Uganda, Sudan, Kenya, Ethiopia, Democratic Republic of Congo (DRC) and the Central African Republic (CAR) (UNHCR, 2018a). Moreover, the situation of the

IDPs is compounded by a general state of lawlessness and severe food shortages.

Forceful displacement of South Sudanese across the borders has continued with refugees arriving in neighboring countries during the first half of 2018 alone (UNHCR, 2018a). This means that the South Sudanese civil war constitutes the most significant displacement crisis in Africa and the third largest globally after Syria

In December 2013, armed conflict broke out in its capital city Juba, after a political disagreement between the President Salva Kiir and the former Vice President Riek Machar



South Sudanese girls walk past United Nations peace keeping troops in a protection camp in Juba, South Sudan (Photo Credit: JM Lopez/EPA)

and Afghanistan. Moreover, for almost six years the South Sudanese conflict has created one of most complex and enormous humanitarian crises with regional and localized dynamics.

Other consequences of the conflict consist of loss of lives, insecurity, destruction of property and infrastructures (roads, schools, health centers, homes), food insecurity, malnutrition, abduction and use of child soldiers, sexual violence, diseases (cholera), widows, orphans, Post-traumatic Stress Disorder (PTSD), disabilities, economic and agricultural decline, increased poverty, underdevelopment, illiteracy, environmental degradation, forced separation from family members through disappearance or kidnapping/smuggling/trafficking and lack of hygiene and sanitation (UNHCR, 2018a; UNHCR, 2018b). These catastrophic consequences have exacerbated the human suffering of South Sudanese into a complex political and humanitarian crisis. However, what is alarming is the untold suffering and crimes perpetrated against the children and youth of South Sudan. Since the civil conflict broke out in 2013, children and youth have been the largest casualties.

Furthermore, their concerns and voices have been marginalized in the peace process.

According to the UNHCR (2018a), 63 per cent of the South Sudanese refugee population are children (under the age of 18) and more than a million children have sought protection as refugees in neighboring countries since December 2013. Over 65,000 South Sudanese children are registered as unaccompanied or separated (UNHCR, 2018a). Thus, the South Sudan refugee crisis is a children's emergency, yet their reality is invisible as they hardly ever make any headlines in the international media or receive the international attention any humanitarian situation deserves.

For the children and youth of South Sudan who are the actors and collateral victims of the civil war, they are pushed to choose between fighting, fleeing, and displacement. Consequently, they end up losing their homes, livelihood, childhood, dreams and communities or staying in their strife communities where they watch their lives being destroyed as their human dignity and rights are stolen away too.

This study outlines the impact of the civil war in South Sudan on children and youth and their obvious absence in the peace process. Therefore, this article uses qualitative and desktop research method to examine how South Sudan is losing its present and future generation of peace builders because of the civil war. It analyses the challenges youth face in peace and nation building. It also provides some recommendations for incorporating children and youth in the current peace process.

The Youth in South Sudan

According to Tumutegereize and Nhial (2018), there is no universally accepted definition for the term youth. Rather, it depends on the social institutions, culture and country. They further say that the 2008 South Sudan Housing and Population Census and CIA fact sheet considers youth to be in the age bracket of 15-35 years while the United Nations, defines youth as individuals between 15-24. They also claim that the law in South Sudan is silent on the legal definition of youth. However, other institutions and documents, as mentioned above, define youth as being between 15-35 years old. Besides, South Sudan is reported to have 70 per cent of its population under the age of 30 years (Mercy Corps, 2014).

Additionally, the youth are culturally defined as those who are physically fit and able to participate in organized violence such as cattle raids, engage in communal fights hence protecting their communities and properties from external threats (Tumutegereize & Nhial, 2018). Therefore, it can be argued that socially, the youth are constructed as the protectors or defenders of the society.

Tumutegereize and Nhial (2018) argue that historically South Sudanese youth played key roles in the liberation struggle. They also report that most of the high-ranking government officials of ruling party Sudan People's Liberation Movement (SPLM) joined the liberation struggle before completing their high school. This fact was echoed by the Minister of Education, Science and Technology of the Government of South Sudan, John Gai during his presentation on the role of youth in peace building, reconciliation and community cohesion where

he emphasized the importance of youth in the history of Southern Sudan's liberation, particularly in the articulation of a national revolutionary agenda, which was driven by educated groups within the Sudan People's Liberation Movement/Army (SPLM/A) (Chatham House, 2016). He further explained that in the 1960s and 1970s, it was the youth of Southern Sudan who pioneered revolutionary activities, mobilizing in urban and rural areas as students and then as active combatants (Chatham House, 2016).

Besides, the South Sudanese youth led the campaign for self-determination for South Sudan in 2011, and their effort contributed to 98 per cent of the population voting for separation thus contributing to the achievement of South Sudan's independence (Tumutegereize & Nhial, 2018). However, John Gai, the Minister of Education, Science and Technology noted:

“the role of the youth shifted after the 2005 Comprehensive Peace Agreement (CPA). Until then, the leadership of South Sudan and the marginalized areas of South Kordofan, Blue Nile and Darfur were in a Catch-22 situation. The liberation of South Sudan was achieved but the war continued in the marginalized areas, unresolved by the SPLM. When the independence of South Sudan came, issues of service delivery, youth and women's empowerment were never properly articulated” (Chatham House, 2016).

Moreover, in the dawn of South Sudan's independence, the youth were not properly demobilized, demilitarized and reintegrated into the political structure of the new state as many remained with their weapons and on the payroll of the SPLA. Therefore, this easily led to their recruitment and manipulation to fight in the different warring sides creating havoc in the newly independent state of South Sudan.

Since then, their participation in high-level peace talks has been insignificant, and those who went to Addis Ababa for the Agreement on Resolution of Conflicts in the Republic of South Sudan (ARCISS) peace talks were just handpicked to speak in the political tone of

According to the UNHCR (2018a), **63** per cent of the South Sudanese refugee population are children (under the age of 18) and more than a million children have sought protection as refugees in neighboring countries since December 2013

government rather than represent true youth interests (Tumutegyereize & Nhial, 2018). Also, there is no formal law as there is for women requiring the inclusion of youth in political and governance processes and roles (Tumutegyereize & Nhial, 2018). The bottom line is that urban, rural and refugee children and youth are poorly represented in the current peace agreement.

The Impact of South Sudan Civil War on Children and Youth

Just like the previous generation of children and youth in South Sudan known as the 'Lost Boys of Sudan', who were mainly orphans and traveled across southern Sudan during the civil war in the 1980s to seek safety and basic needs, the current generation of boys and girls are also facing the same fate. Hence, it can be argued that three decades later, the civil war in South Sudan is producing the second generation of lost boys and girls. Like the first generation, many children are orphans, unaccompanied or separated from their families because of the systematic attacks by the warring factions, others have been recruited into the different armed groups (UNHCR, 2018b).

However, unlike the first generation of the lost boys of Sudan who were predominately boys, this generation includes a large significant number of girls. Therefore, the second generation of lost boys and girls are also motivated to flee their homes like their predecessors due to the loss of their parents, the need to find water, food, education, medical assistance, security and protection from sexual and physical violence (UNHCR, 2018b). Moreover, their journey has been filled with human suffering where they have experienced starvation, dehydration, malnutrition, exhaustion, diseases (pneumonia, malaria, and anemia), attacks from different armed groups and wild animals (UNHCR, 2018b). Upon their arrival to the refugee and IDPs camps, this second generation of lost boys and

This binary social construction has subjected women to brutal acts of conflict-related sexual violence as their bodies become the battlefield and the weapon of war between the conflicting parties

girls suffer from the consequences of the conflict such as nightmares, anxiety, loneliness, pain, separation, loss, anger, restlessness and hopelessness.

The predicament of the second generation of lost boys and girls makes the South Sudanese crisis the world's fastest-growing refugee or IDPs crisis due to the influx of young people which has changed the dynamics of camps. This dynamic is occasioned by factors such as the gender, age and family structures of refugee children which exposes them to many risks. It has also been reported that many children came to the camps without their guardians or adult supervision, hence, overwhelming the complex humanitarian situation in existence already (UNHCR, 2018a).

Due to the devastating impact of the civil war in South Sudan, the youth and children risk becoming endangered species of that society. For instance, young men face immense pressure to participate in fighting and are valued by the society primarily for the role they play as the protectors and in the community defense, especially in times of crisis.

Besides, the situation for South Sudan's girls and young women is even worse due to their assigned constructed binary gender role of women/protected and men/protector. This binary social construction has subjected women to brutal acts of conflict-related sexual violence as their bodies become the battlefield and the weapon of war between the conflicting parties. Therefore, the feminization of the civil war in South Sudan by using the gender relations and roles is part of the strategy to humiliate or demoralize the enemy and win the war.

In addition to being subject to brutal acts of violence, girls and young women face other gender inequalities on account of socio-cultural norms and practices that make them more likely to experience food insecurity and lower levels of schooling. Adolescent girls especially are often forced to take care of their families in times of conflict, making it hard for them to access education. Indeed, access to education for girls is often hindered by discriminatory norms and practices that are only worsened in times of war.

Out-of-school girls are at a higher risk of early and forced marriages, unwanted pregnancies and sexual exploitation. Adolescents and youths are increasingly exposed to risky behavior such as using drugs or alcohol, involvement in delinquency such as small gangs. This can be due to lack of prospects and opportunity, but can also be a coping

is often the most lucrative means to do so. That is why child prostitution might rise in South Sudan, as well as the number of street children and child laborers. These two groups are highly vulnerable to labor and sexual exploitation. Therefore, if children and the youth are not provided with protection and care then they might also become vulnerable to sexual and labor exploitation even in the refugee camps.

In the context of IDPs, refugees or returnee girls of reproductive/menstrual age, they face menstrual hygiene risk since they may lack proper sanitation and hygiene kits (sanitary pads, underwear, soap and bucket for girls). The other risks that children and youth will face as they become adults is for revenge violence and loss of identity/belonging. For the new/second lost generation of girls from South Sudan, they are at risk of sexual violence and illiteracy. However, there are many other risks that make South Sudanese refugee children, boys and girls vulnerable such as limited freedom of movement, space to play, lack of access to portable water for drinking, adequate nutrition, food insecurity, unstable familial structures, early pregnancy, child birth, idleness,

boredomness, disappearances, environmental factors such as floods and famine, drug and substance abuse.

Youth in South Sudan

Despite the human suffering that children and youth in South Sudan have undergone as victims and perpetrators, their input in the peace and nation building process have not been considered yet. Also, it has been difficult for them to assert their contribution because there are a number of challenges that exist and are an impediment to their effective participation in the process.

One of the challenges that the youth and children face in participating in the process of peace and nation building in South Sudan is the fact that it is highly formal, elitist, political and hierarchical in nature. For instance, on September 12, 2018, the Transitional Government of National Unity (TGoNU), an array of armed and political opposition groups, and other stakeholders signed the Revitalized Agreement on the Resolution of the Conflict in South Sudan (R-ARCSS).

The International Crisis Group (2016) argues that since the start of the war in December 2013, regional mediation



Young women and children gather at camp Poktap in South Sudan for nutrition and food ratios (Photo Credit: AidforAfrica).

The youth lack a strong platform that can bring them together to articulate and express their concerns and to visualize the kind of society they want to construct.

efforts have been beset by challenges, but none more so than the inability of the parties to commit to the terms of a political settlement and permanent ceasefire. For this organization, the delays in the process and the piecemeal implementation of agreements can be attributed, at least in part, to the fact that negotiations have been taking place among a small number of elites in foreign capitals with little to no engagement of people in South Sudan and in refugee camps in neighboring countries. More so with the absolute absence of youth and children to genuinely represent their concerns, suffering and experience. This elitist process has made the South Sudanese people in general but also the youth to feel lack of a sense of ownership over the agreements that have been reached, therefore, the warring parties are able to violate them with little or no political cost (International Crisis Group, 2016).

Second, the peace and nation building process in South Sudan takes a top-bottom approach. of top-bottom approach. This approach to peace has automatically sidelined the owners of the peace process who are the children, youth and women because it only involves the political leaders, elite class and external actors. Therefore, the peace process will have to be fully embraced and owned not only by South Sudan's leaders but also by the South Sudanese people especially the children, youth and women who have witnessed the human suffering caused by the civil war.

Third, ethnic/tribal and political divisions further divide the youth and preventing them from associating and working with each other to help achieve peace. Their lack of livelihood opportunities pre-occupies them and forces them into illegal activities, including violent raiding and other criminal and immoral acts (Tumutegereize & Nhial, 2018). Furthermore, their lack of unity is preventing the development of collective youth groups.

Fourth, in South Sudan, young people find themselves excluded from decision making at all levels, and lack exposure to the experiences and training that would enable them to participate, even when permitted. Young women are doubly discriminated against, excluded from

political engagement and are expected to get married at or near puberty (Tumutegereize & Nhial, 2018).

Fifth, the absence of youth forums or organizations across ethnic and political divides is one of the factors that hinders youth involvement in peacebuilding and contributing to security in South Sudan (Tumutegereize & Nhial, 2018). The youth lack a strong platform that can bring them together to articulate and express their concerns and to visualize the kind of society they want to construct.

Sixth, there is a challenge of high literacy rate of the youth which was worse before the civil war broke out in 2013. The problem here is that this high illiteracy rate impedes the youth as the majority and game changer generation to participate in democratic exercises and good governance. This is so because this exercise is connected to critical thinking, knowledge and skills for them to be able demand for their rights and duties as spelled out in the law.

Seventh, a huge percentage of children and youth are either displaced, exiled, disabled, abducted, violated or being killed traumatizes and isolate them from the reality. The massive displacement of youth and children which disperses them out of their country makes them to be detached from finding a durable solution because they endeavor to survive in their new environment.

Conclusion

Even though the youth in South Sudan have participated as actors and victims in the conflict, their role as peace builders remains largely unrecognized and unacknowledged because they are not considered as part of the solution. Consequently, if South Sudanese children's emergency is not taken seriously and this generation is lost, it will be catastrophic to the country as it will not be able to rebuild after the conflict due to loss of its greatest resource (human resource): a generation of young people. Also, the loss of this second generation of boys and girls will be an indication of a missed opportunity of not involving the youth and children of South Sudan in the peace process. However, the following

In South Sudan, young people find themselves excluded from decision making at all levels, and lack exposure to the experiences and training that would enable them to participate, even when permitted

recommendations might assist the youth and children to reclaim their role as peace builders and deconstruct the idea of their helplessness, hopelessness and feeling of uselessness.

Recommendations

- Since the South Sudanese children and youth are the major casualty, they should be involved in the peace process. Therefore, in the spirit of the United Nations Security Council Resolution (UNSCR) 2419 (2018) which calls for youth participation in peace building and UNSCR 2250 on youth, peace and security adopted by the UN Security Council in 2015, which emphasizes the importance of youth as agents of change in the maintenance and promotion of peace and security.

The South Sudanese leaders should open space and encourage the youth to participate in the peace process. This is very critical for building positive peace in South Sudan because the resolution highlights Participation, Partnerships, Prevention, Protection and Disengagement and Re-integration as five pillars for action related to young people's contribution to peace processes and conflict resolution. This should be done by the South Sudanese conflicting parties, IGAD, NGOs, UNESCO involved and the donor states.

- Youth in South Sudan need new role models.
- There is a need to look for mechanisms for youth to participate and influence the peace process constructively.
- There is need to encourage effective and impactful youth engagement with politic and the development of a space where young people can discuss issues directly with the government.
- There is need for more sustained and comprehensive humanitarian assistance, protection and reintegration programs for South Sudanese refugee, IDPs and returnee children which is child centered, disability and gender sensitive.
- There is need to attract global attention to the human suffering of the South Sudanese refugee children and youth. This can be achieved with the help of the UN Goodwill Ambassadors to create awareness and the visibility.
- In the event of amnesty during the implementation of the peace process, child soldiers should be involved as beneficiaries. They should also access a proper and comprehensive Demobilization, Demilitarization and Reintegration (DDR) program to ease their transition to civilian life.
- There is need for youth support program or initiative that should be implemented by the South Sudanese government.
- There is need to engage idle youth population economically, politically and socially because they represent a huge risk factor for further violence.
- Issues of mental health might be anticipated, if many of the unaccompanied and separated children, orphans spend majority of their childhood and adolescence being raised in the camps then this will ultimately alter significantly their development and ability to integrate back to their country after the conflict ends.

There is need to attract global attention to the human suffering of the South Sudanese refugee children and youth. This can be achieved with the help of the UN Goodwill Ambassadors to create awareness and the visibility

References

- International Crisis Group (2016, May). *South Sudan: Conflict in the Equatorials*, Crisis Group Africa Report N°236, 25 May 2016, Brussel Retrieved from [236-south-sudan-s-south-conflict-in-the-equatorias.pdf](#).
- Manby, B. (2018). *Statelessness and Citizenship in the East African Community*. Nairobi, Kenya: UNHCR Regional Service Centre.
- Mercy Corps. (2014). *Youth at the Crossroads: Pursuing a Positive Path in South Sudan* Retrieved from <https://www.mercycorps.org/sites/default/files/South%20Sudan%2C%20Through%20Youth%27s%20Eyes%20-%20Youth%20Assessment%20%20%282014%29.pdf>.
- Tumutegereize, K., & Nhial, C., G. (2018). *Youth perspectives on peace and security: South Sudan Report by Conciliation Resources*. Retrieved from <https://www.c-r.org/resources/south-sudan-youth-perspectives-peace-and-security>.
- UNHCR (2018a). *SOUTH SUDAN REGIONAL REFUGEE RESPONSE PLAN*, January 2019 — December 2020." Nairobi, Kenya: UNHCR, Regional Refugee Coordination Office (RRC), Retrieved from <https://data2.unhcr.org/en/documents/downloads/67312>.
- UNHCR (2018). *Regional Framework for the Protection of the Refugees Children*. February 2018- December 2019, Nairobi, Kenya: UNHCR, Regional Refugee Coordination office (RRC), Retrieved from <https://www.unhcr.org/5c330cf34.pdf>.

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Editor's Note

Dear our esteemed readers,

We are excited to release our eighth bi-monthly issue of the HORN Bulletin 2019 (Vol. II, Iss. IV). We bring to you well-researched articles and analysis of topical issues and developments affecting the Horn of Africa. We welcome contributions from readers who wish to have their articles included in the HORN Bulletin. At HORN, we believe ideas are the currency of progress. Feel free to contact the Editor for more details at info@horninstitute.org.

Hassan Khannenje, Ph.D.
Editor-in-Chief, The HORN Bulletin

Upcoming Event

The Maritime Border Challenges and Implications on Security: An Experts Symposium

The unsettled, decades-long territorial dispute over the delimitation of a 100,000 square kilometres territory in the Indian Ocean, which both Kenya and Somalia claim, resurfaced in February 2019 resulting in a diplomatic fall out. Since then, the dispute has played out in the areas of immigration as well as trade. Although the dispute is primarily territorial, the potential presence of high-value (multibillion dollar) hydrocarbons transforms it into a functional dispute of critical national interest with potential adverse impact on security and economic wellbeing of Kenya and Somalia. This dispute is currently before the International Court of Justice (ICJ). The ICJ ruling is expected in September 2019.

The HORN Institute has been studying this dispute especially since the beginning of this year. To expand the understanding of the Kenya-Somalia case, and enhance knowledge of similar cases elsewhere in Africa and the World, the Institute will hold a symposium on July 25-26, 2019 in Nairobi.

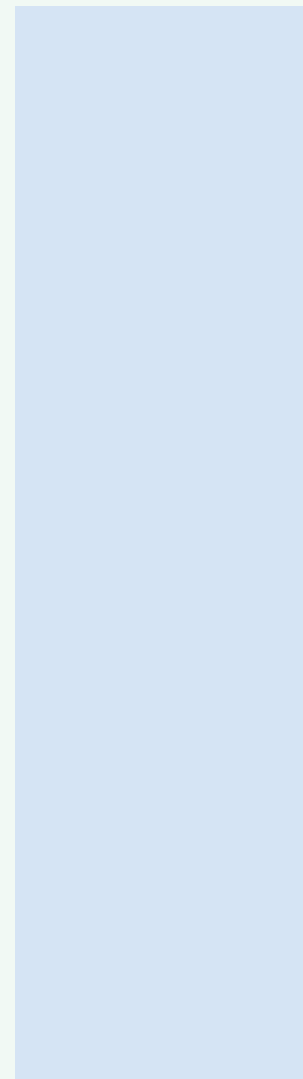
The *Maritime Border Challenges and Implications on Security: An Experts Symposium* is part of a series of fora by the HORN Institute. This symposium will bring together local and international maritime experts, lawyers, policy makers, and scholars to closely examine the Kenya-Somalia case, interrogate alternative dispute resolution mechanisms, and seek a practical way forward.

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