



Kenya & Somalia Maritime Dispute

The Uplifting Africa Program

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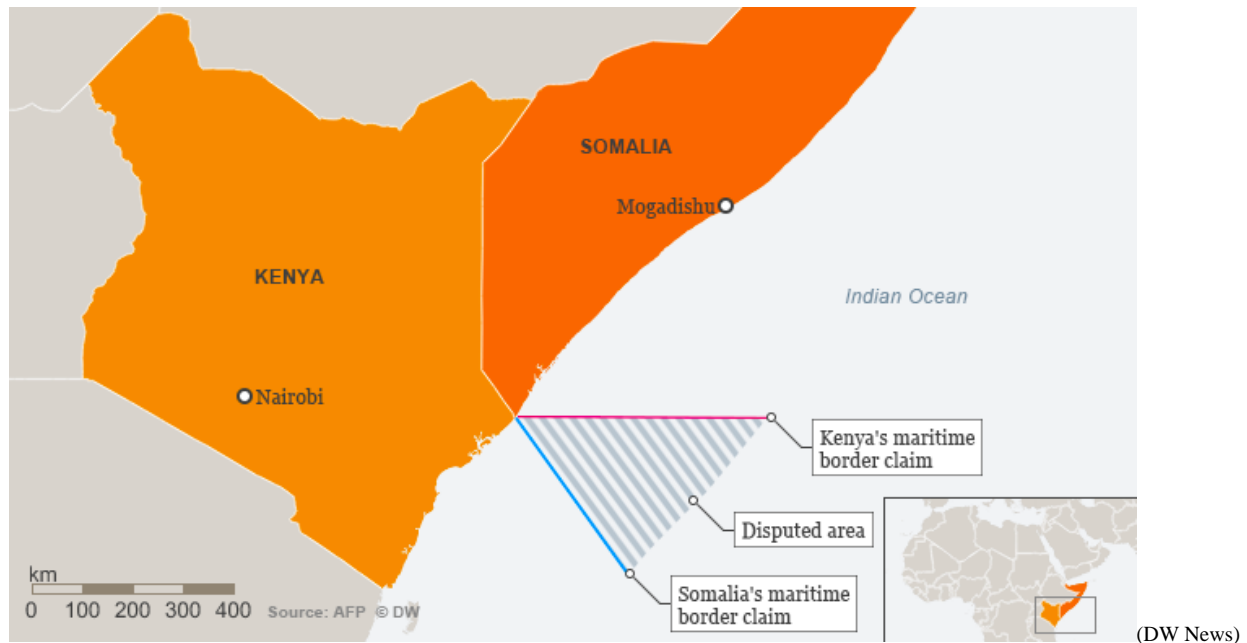


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Kenya and Somalia, two neighboring countries located on the border of South-East Africa, are both claiming authority over a valuable disputed area. This 100,000sq km of seafloor area in the Indian Ocean is prime for fishing, an industry that positively contributes to the GDP of both countries, and there is a rich supply of oil and gas here (Aljazeera Kenya boycotts ICJ). The World Bank's most recent data collection from 2019 states that 34.15% of Kenya's GDP comes from agriculture, forestry and fishing (World Bank Agriculture, forestry, fishing Kenya). Considering that Africa's first Sustainable Blue Economy conference was held in Nairobi in 2018, this percentage of fishing's contribution to Kenya's GDP is predicted to rise as President Kenyatta expressed how the fishing industry, "could easily contribute three times its present share of gross domestic product, create jobs and bring prosperity to millions of Kenyans," (Investing in a blue economy for Kenya's coastal communities). Progressively so, President Kenyatta agreed to a \$100 million Marine Fisheries and Socio-Economic Development Project (KEMFSED) partnership with the World Bank in 2019 to, "support the building of a sustainable marine fisheries sector and help diversify the income of rural coastal communities," (Investing in

a blue economy for Kenya's coastal communities). The 1991 power vacuum in Somalia following the overthrow of dictator Mohammed Siad Barre resulted in a current lack of accurate recent data on the contribution of the fishing industry to the country's GDP. However, various sources confirm the value of the fishing industry off the Somali coast such that, "Before the civil war, Somalia earned on average \$15 million from the export of fishery products. Currently, the East African nation has the potential to sustainably harvest up to 200,000 tons of fish each year, more than six times what is currently fished according to Food and Agriculture Organization," (Fairfishing: Turning Pirates into Fishermen). This is not to say that all the disputed land between Kenya and Somalis that is causing turmoil due to the potential it holds as a fishing location which leads to significant positive economic impacts for each country.

Upon better understanding of Kenya and Somalia history, the conceptualization of the deep-rooted nature of the present-day conflict will become clear. Somali refugees resulted from the 1991 civil war leading to an influx of Somalis seeking refuge and as of July 2020, the UN Refugee Agency confirmed 218,873 registered refugees and asylum seekers in the Dadaab refugee camp in Kenya (UNHCR Dadaab Refugee Complex). The camp has accepted refugees not just from Somalia but also South Sudan and Congo, leading to the Kenya government threatening to shut down the Dadaab refugee camp since 2016 which, "put heightened pressure on Somali refugees to sign up for cash-incentive "voluntary repatriation" by threatening to dump them back empty-handed in Somalia if they missed the deadline," (Human Rights Watch). Most recently, Kenya's government is allowing the UN until June 2022 to find a new place for the 430,000 refugees housed in the numerous refugee camps in Kenya to be relocated (DW News). In 2006, an Islamic terrorist group called Al-Shabaab rose to power in Somalia and is causing instability and violence in the country. As a result, "Kenyan troops entered Somalia to launch a military offensive against al-Shabaab, called Operation Linda Nchi (Protect the Country)," (Accord Kenya's military intervention in Somalia). In response to this, Somali based militant group has since launched multiple attacks on innocent civilians in Kenya, one of which is the attack at Westgate Mall in Nairobi in 2013 which caused at least 62 deaths, (BBC Westgate Attack). Given the vast history of Kenya and Somalia solely in the past three decades, one can better understand the deep sense of nationalism each country portrays and how this intensifies the situation regarding the disputed area of land in the Indian Ocean.



Somalia representatives at the ICJ Public hearing March 2021

Maritime Delimitation ICJ)

The basis of the dispute over the land deals directly with a disagreement over the shared border and how it extends into the Indian ocean. Given the past relations between Kenya and Somalia, it is clear that third-party involvement in the maritime boundary dispute is necessary to reach a consensus. This occurred when Somalia requested the International Court of Justice to rule on the case in 2014 (Aljazeera Kenya-Somalia maritime boundary dispute explained). However, it was not until 2019 that the public hearings were first scheduled but was postponed because Kenya requested time to gather a new legal team. By the time of the postponed hearing, Kenya requested another delay as they needed more time, and once again the hearings were delayed another year due to the pandemic. Finally, the ICJ refused to delay the hearing for the fourth time upon Kenya's request and the public hearing took place in the Hague on March 15, 2021 (The Maritime Executive).

Kenya refused to participate in this 2021 hearing, and the following is an excerpt from the press release that Somalia requested of the Court:

1. To reject Submissions 1 and 2 of Kenya's Rejoinder of 18 December 2018.
2. To determine the complete course of the maritime boundary between Somalia and Kenya in the Indian Ocean, including in the continental shelf beyond 200 M, on the basis of international law.

3. To determine the maritime boundary between Somalia and Kenya in the Indian Ocean on the basis of the following geographical coordinates (all points referenced are referred to WGS-84):

4. To adjudge and declare that Kenya, by its conduct in the disputed area, has violated its international obligations and is responsible under international law to make full reparation to Somalia, including inter alia by making available to Somalia all seismic, geologic, bathymetric and other technical data acquired in areas that are determined by the Court to be subject to the sovereignty and/or sovereign rights and jurisdiction of Somalia,” (Press Release ICJ 2021).

The 2018 rejoinder of Kenya that is being referenced in Somalia’s first point, is an argument that the maritime border is based on acquiescence, as, “Kenya’s case rests on Somalia’s prolonged absence of protest against Kenya’s maritime boundary claim,” (Press Release ICJ 2018).

Evident from Kenya’s absence at the ICJ hearing despite delaying it for years, it is valid to believe that tensions will continue to rise between Somalia and Kenya over the disputed land. It is expected that the ICJ will continue to play a role in the Somalia and Kenya situation, given the lack of a conclusion in the 2021 hearing press release.

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