

**CONFLICT AND BORDER CONTROL: THE CASE OF LIBOI  
CONTROL POINT,**

**1973 – 2007. II**

**BY**

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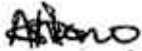
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**DECLARATION**

This is my original work and has not been presented for the award of a degree in any other University.



SHEILA LIKHWECHI ASHIONO

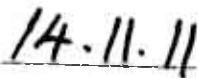


DATE

This project has been submitted for examination with our approval as the university supervisors.



PROF. GODFREY MURIUKI



DATE



DR. HERBERT MISIGO AMATSIMBI



DATE

***DEDICATION***

I dedicate this work to my family; Michael, Brian and Sharon and to my parents.

## ACKNOWLEDGEMENTS

This study involved the efforts of many individuals. I am, therefore, indebted to everyone who has in one way or the other contributed to the realization of this study. I am particularly grateful to my supervisors, Prof. Muriuki and Dr. Amatsimbi. Your constant intellectual guidance, inspiration and support were invaluable.

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To my children, Brian and Sharon may the loneliness you endured be a humbling experience upon which you approach life. To my husband, Wanjala thanks you for your understanding. To my sister Celestine thank you for taking care of my family.

God bless you all.

## ABSTRACT

The focus of this study was to assess the impact of conflict on border control in Kenya. The study focused on the Kenya/Somalia border, using Liboi border point as a case study. The BCP was established in 1973 when the state of Somalia was peaceful. The scenario in Somalia, however, changed in the late 1980s due to the emergent civil war which was caused by inadequacies of political leadership. As the civil war became protracted so were the consequences. Liboi as a BCP is considered to have been affected by the protracted civil war due to the influx of refugees and the presence of militia groups at the neighbour town of Dobley. As an immigration officer, I was intrigued to study the consequences of this war on the mandate of the BCP.

The study which was carried out the Liboi BCP derived most of its material from oral interviews. Interviews were held with twenty respondents who were knowledgeable about the topic of study. The interviews were collaborated by secondary material which was obtained from books, scholarly journals, reports and electronic sources from various libraries.

Two theoretical frameworks, namely the constructivist and the realist theory provided the perspective of viewing the state actions at the BCP. The constructivist theory provided the framework for analysing the definition of state interests while the realist theory provided the basis upon which such interests are protected.

The study unearthed various findings which confirmed the hypothesis that, the Somalia conflict impacts adversely on the BCP operations. The study posits that the conflict in Somalia impacts on the operations at Liboi BCP. It argues that the conflict led to the refugee crisis and cross-border crimes that impacted on the operations of the BCP. The crimes are committed in the name of business ventures. The majority of those engaged in the crimes are known to the local residents and some of the BCP officers. Indeed, the benefits of the crimes are accrued by many either directly or indirectly. Hence, little effort is made to combat the crime networks. Moreover, the conflict led to an increase in insecurity in the area. The occasional incursions of the Al Shabaab impacted on the psychological stability of the officers and hence, impacted on their execution of duties. Finally, the study showed that the Somalia crisis led to international pressure on the Kenyan state to counter the threat of terrorism.

## **LIST OF ABBREVIATIONS**

BCP	Border Control Point
NFD	Northern Frontier District
NEP	North Eastern Province
NPPPP	Northern Province Peoples Progressive Party
NFDLF	Northern Frontier District Liberation Front
USA	United States of America
TFG	Transitional Federal Government
ICU	Islamic Courts Union
OAU	Organization of African Unity
JKML	Jomo Kenyatta Memorial Library
KNA	Kenya National Archives
IOM	International Organization for Migration
UNHCR	United Nations High Commission for Refugees
USAID	United States Agency for International Development
UN	United Nations
IGAD	Inter Governmental Agency for Development.
IBEAC	Imperial British East Africa Company
ALMO	African Livestock Marketing Organization
SYL	Somalia Youth League
NPPNU	Northern Province Peoples National Union
NFDLM	Northern Frontier District Liberation Movement
KEBS	Kenya Bureau of Standards
ATPU	Anti- Terrorism Police Unit
GSU	General Service Unit
NSIS	National Security Intelligence Services
RSD	Refugee Status Determination

SSDF	Somalia Salvation Democratic Front
SNM	Somalia National Movement
SPM	Somalia Patriotic Movement
USC	United Somalia Congress
UNOSOM	United Nations Mission in Somalia
UNTAUF	Unified Task Force
ARPCF	Alliance for the Restoration of Peace and Counter-Terrorism
ATA	Anti-Terrorism Programme
CJTF-HOA	Combined Joint Task Force-Horn of Africa
SALW	Small Arms and Light Weapons



## OPERATIONAL TERMS

Border	Line dividing two countries. <sup>1</sup>
Border Control Point	Government establishment at the national boundaries designed to regulate movement of people and goods in an out of their territories. <sup>2</sup>
Terrorism	The threat or use of violence, often against the civilian population, to achieve political or social ends, to intimidate opponents, or to publicize grievances. <sup>3</sup>
Porous border	Allowing easy passage in and out of unfenced and largely unpoliced border. <sup>4</sup>
State of emergency	A governmental declaration that may suspend certain normal functions and alert citizens to alter their normal behaviour or a rationale for suspending civil liberties. <sup>5</sup>
Self determination	The freedom of the people of a given territory to determine their own political status and how they will be governed without undue influence from any other country. <sup>6</sup>
Irredentism	A national policy advocating the acquisition of some region in another country by reason of common linguistic, cultural, historical, ethnic, or racial ties. <sup>7</sup>
Trafficking in persons	The recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. <sup>8</sup>
Smuggling	The procurement, in order to obtain, directly or indirectly, a financial or other material benefit, of the illegal entry of a person into a state of which the person is not a national or a permanent resident. <sup>9</sup>

<sup>1</sup>Oxford Advanced Learners Dictionary.

<sup>2</sup>Immigration Border Operations Manual.

<sup>3</sup>United Nations.

<sup>4</sup>Oxford Advanced Learners Dictionary.

<sup>5</sup>*Ibid*

<sup>6</sup>*Ibid*

<sup>7</sup>*Ibid*

<sup>8</sup>The UN Convention against Organized Crime, 2000.Art. 3(a).

<sup>9</sup>UN Protocol against the Smuggling of Migrants by Land, Sea and Air, Art. 3(a).

An irregular migrant

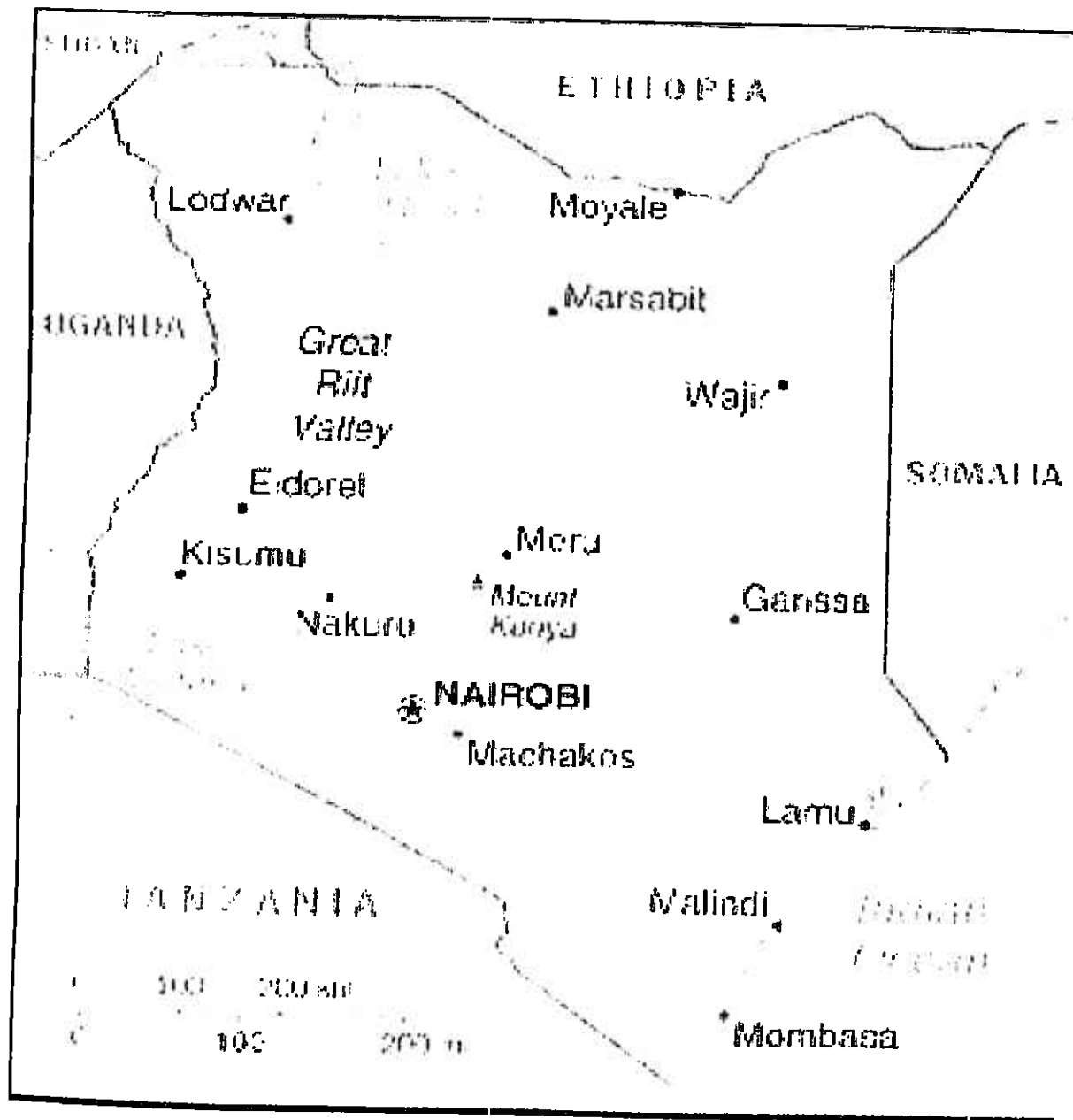
Someone who, owing to illegal entry or the expiry of his or her visa, lacks legal status in a transit or host country. The term applies to migrants who infringe a country's admission rules and any other person not authorized to remain in the host country.

Irregular migration

Movement that takes place outside the regulatory norms of the sending, transit and receiving countries. Irregular migration is illegal entry, stay or work in a country, meaning that the migrant does not have the necessary authorization or documents required under immigration regulations to enter, reside in or work in a given country.

# Map of Kenya

SOURCE: KENYA NATIONAL BUREAU OF STATISTICS





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## CHAPTER ONE

### Background to the Study

#### 1.0 Introduction

Of Africa's many colonial legacies, the most striking and enduring one is the geo-political set up that defines the political jurisdictions of the continent's current states. This is evidenced by the Organization of African Unity's (hereafter, OAU) Charter of 1963 in which African political leaders expressed no interest in redrawing international boundaries. Article III, paragraph 3 of the OAU Charter bestowed legality and legitimacy of the existing inter-state boundaries and called upon member states 'to respect the sovereignty and territorial integrity of each state'.<sup>10</sup> The legality of the existing boundaries was further reaffirmed by the fourth article of the African Union (hereafter, AU) treaty, of July 2000. The African leaders, therefore, have expressed support to the existing boundaries as mandated by the charter.

The key mandate of post-independent governments across Africa, therefore, has been to maintain territorial boundaries as drawn up by colonial rulers. In order to preserve territorial integrity and national security, post-colonial African countries have established Border Control Points (hereafter, BCPs). BCPs are multi-sectoral establishments located on international boundaries, to enforce law and order within given geo-political set-ups, to regulate the movement of people and goods in and out of a particular country, and also to safeguard the territorial integrity and national security of the state. Although the mandate of the BCPs is defined within the national laws, however, there are also international treaties that regulate their enforcement of policies. For instance, the Refugee Convention of 1951 obliges states to provide refuge to those seeking asylum. The convention challenges states to strike a balance between the control of migration and the granting of asylum.<sup>11</sup> BCPs, therefore, are the first and the last points of entry or exit into or out of any given country. Owing to their mandates, BCPs are located at strategic points on the boundary.<sup>12</sup> Kenya is among the countries that have established BCPs at strategic locations on her international boundaries.

<sup>10</sup>Barron, B., 'African Boundary Conflict: An Empirical Study' in *African Studies Review*, Vol. 22, No. 3, Dec., 1979, African Studies Association, Boulder, West View Press. <http://www.jstor.org/stable/523892> Accessed: 04/07/2009 08.15.

<sup>11</sup>*Ibid*

<sup>12</sup>Martin, M. *The State of Africa*, London, The Free Press, 2005, pp.25-7.

The international boundaries of Kenya border five states; namely, Uganda to the west, Tanzania to the south, Somalia to the east, Ethiopia and Sudan to the north. The south east is covered by the Indian Ocean. The government of Kenya has established BCPs on these boundaries and on strategic entry points such as the international airports and Kenya's coast line, in order to regulate the movement of people and goods in and out of the country.<sup>13</sup> The enforcement of laws and regulations at the BCPs is carried out by various government agencies that include the Immigration Department, the Customs Department, the Kenya Police, Administration Police, National Security Intelligence Service, General Service Unit and the Kenya Army.<sup>14</sup> One of these BCPs in Kenya is located at Liboi, which is the focus of this study.

## 1.1 Historical Background

Besides defining the physical space available for the provision of national security, international borders place limits on the exercise of state authority over territory. Borders also affect the interaction between neighbouring states by either constraining or expanding international relations. However, the international relations are influenced by the degree of mutual acceptance for the existing borders. In cases where the borders are disputed, the international relations are strained due to the conflicts that arise. The perpetrators of the conflicts call for the adjustment of boundaries, hence, interfering with the territorial integrity of the affected state. Consequently, international borders impact on the governance policies of all states in the world.<sup>15</sup>

During the scramble and partition of Africa, the British, French and the Italians drew boundaries to establish their respective spheres of influence in Eastern Africa. This territorial delimitation meant that the Somali population in Eastern Africa became subjects of different colonial powers. In particular the Somali population living along Kenya/Somalia border became subjects of the British and Italian colonial rulers.

<sup>13</sup> Martin, M. *The State of Africa*, op. cit, p.32.

<sup>14</sup> Makokha, Joseph., *The Politics of Secession and Irredentism: The Case of Somali of North Eastern Province*, M A Thesis, University of Nairobi, 1979, p.45.

<sup>15</sup> Thomas, D. et al, 'The Nature of Borders and International Conflict: Revisiting Hypotheses on Territory', in *International studies Quarterly*, Boulder, West View Press, 2005.



In the entire colonial period, the Somali people protested against this division but both the British and Italian colonial rulers adopted policies that not only limited the movement of Somalis across the border but also their economic livelihoods. On its part the British colonial government introduced grazing control in order to monitor the movement of the nomadic pastoralists across the border. There was also the introduction of Livestock Marketing Board, which was to control trade in livestock across the border. Administratively, the British colonial government created Northern Frontier District (hereafter, NFD). The demarcation of the NFD boundary led to the emergence of the Kenyan Somalis. Throughout the entire colonial period, the British colonial government enacted policies which suppressed the interaction of the Kenyan Somalis with those in Somalia.

The effects of the boundary on the identity of Somalis led to protests from those in Somalia. Consequently, upon gaining independence in 1960, the Somalia government perceived the boundary as a challenge to its nation-building. The goal of nationhood led to a border dispute after Kenya attained her independence in 1963. The challenge was mainly posed by Somalis of NFD who through their irredentist ideology wanted to secede from Kenya and join the state of Somalia. As a result of the secessionist demands, there emerged a militia group known as the *shifia* which waged the war of secession against the independent Kenyan government.

The Kenyan government adopted various measures in response to the secessionist demands. Among them was the definition of a two kilometre strip of land from the border as a "prohibited zone".<sup>16</sup> The aim of this strip was to help security officers to spot strangers on the Kenyan soil before they could intermingle with the locals. The area was patrolled by security officers and anybody found within the territory was interrogated and if found to be from the Somali Republic he/she was deported. Furthermore, the Kenyan government adopted measures to reinforce the territorial integrity and the state sovereignty. This includes the establishment of Liboi BCP in 1973 to control the migration of Somalis into Kenya, to control the flow of goods across the border and to protect the security of the state.<sup>17</sup> However, since the 1990s the situation in Somalia has remarkably changed. For instance, in 1991 Somalia was plagued by civil wars that have continued to date.

<sup>16</sup>Barton B. 'African Boundary Conflict: An Empirical Study', op. cit.

<sup>17</sup>Bath, F., *Ethnic Groups and Boundaries: the Social Organization of Culture Difference*, Boston, Little, Brown and Co, 1969.

The civil wars led to the collapse of the central government as well as state institutions. The civil wars had great impact on the operations of the Liboi BCP. This study thus, set out to examine the function of the Liboi BCP in relation to the situation in Somalia.

## **1.2 Statement of Research Problem**

Liboi BCP was established when the state of Somalia was peaceful. A few years later, the state of Somalia plunged into civil war that is still witnessed to date. As the conflict scenario emerged in Somalia, the mandate of the BCP was not expanded to respond to the transformation of the set up. As the Somalia conflict protracted, there were several militia groups who emerged. One of the most notable militia groups is the Al Shabaab, a group that has been associated with terrorism by the western states. The presence of the 'terrorists' in Somalia town of Doble and Kismayu has engulfed Liboi in the global war on terror. As the war on terror continues, one is interested in investigating its impact on the BCP operations.

Liboi BCP is mandated to control the migration of Somalis into Kenya irrespective of the porous border. Since the beginning of the Somalia crisis, hundreds of thousands of refugees have crossed the border to Kenya. Although the migration of the refugees is protected by the Refugee Convention of 1951, most Somali refugees would wish to illegally settle in Kenya, hence, they opt for the illegal entry routes. The illegal migrants would wish to exploit various economic opportunities in Kenya rather than be confined to refugee camps. The economic interests of the refugees thus, impacts on the ability of the BCP officials to control migration. The porous border probably impedes the achievement of the mandate of the BCP. This scenario presents a need to study the challenges of controlling migration along a porous border when the neighbouring state is at war.

Liboi BCP serves as a symbol of government authority on the periphery. However, its the most afflicted by insecurity due to the spill over effects from Somalia. Although the government has responded to this challenge by increasing the security forces at the BCP to include the General Service Unit and the Kenya Army, the security situation remains precarious. This leads to the question of how to deal with insecurity at the periphery.

### **1.3 Objectives**

1. To examine the establishment and mandate of Liboi BCP.
2. To assess the impact of the dynamics of the Somalia crisis on the operations of Liboi BCP.
3. To investigate the impact of international terrorism on the operations of Liboi BCP.

### **1.4 Justification of the Study**

From the questions that arise out of the research problem and the literature as discussed below it is clear that research on this theme of conflict and border control is limited. The existing researches have focused on the need to control migrations of people between states especially from the developing to the developed world. The studies have inadequately explored the impact of conflict on border control. It is, therefore, justified to study the impact of the conflict in Somalia on the operations at Liboi BCP.

Furthermore, no in-depth study has been done that explores the impact that the combined factors of fight against terrorism, refugee crisis and porous border neighbouring a state at war has on border control operations. The study, therefore, adds to the existing knowledge on cross-border issues, especially with regard to the Somali conflict's impact on administrative measures at BCPs in Kenya, particularly at Liboi. It has also enriched intellectual knowledge on the dilemmas facing governments while implementing international treaties.

### **1.5 Scope and Limitation**

The study covers the period from 1973 to 2007. The BCP was established in 1973 to control the entry and exit of Somalis into Kenya. Its location was considered strategic due to the fact that Liboi was a central area on the major highway between Mogadishu, Kismayu and Garissa.

In 1973, there was massive migration of Somalis into Kenya due to drought in their country. Over time, the state of affairs in Somalia particularly the political activities have been transformed. The leadership of Siad Barre was challenged by the clan movements which were formed in 1988 to struggle for power. The most critical clan movements were formed by the Isaaq, Hawiye and Marjerteen.<sup>18</sup>

The resultant conflict culminated in the overthrow of the Barre government in 1991. Subsequently, the collapsed regime precipitated a corresponding failure of all government institutions. Consequently, problems as well as opportunities emerged out of the scenario. For instance, the collapse of marketing boards in Somalia led to the emergence of entrepreneurs who exploited trading opportunities that involved importation of commercial goods to Somalia. The main market for the goods is Kenya. The collapse of administrative institutions, thus, presented the BCP with problems of effectively controlling the entry and exit of Somalis.

In the year 2007, the government of Kenya declared its border with Somalia to be 'closed', thus, shutting out the refugees. The government cited concerns for the national security, but the decision drew criticism from the international community. This resulted in a refugee crisis at the BCP. As the refugees waited in limbo for admission, there emerged of crimes, such as human trafficking.

The study was limited by the following factors. First was the shortage of research funds. To counter this, I sourced for funds from the British Institute in Eastern Africa. The second limitation that I faced was language barrier. To curb this, I employed the services of research assistants from the area of study who helped in translation during interviews with the local respondents. The third limitation was the security problems in the area of study. The local respondents were reluctant to provide information especially concerning the Al Shabaab and the human traffickers. Such information was obtained during story telling in the evening and not in interview sessions.

<sup>18</sup> See Chapter Four.

## 1.6 Literature Review

There has been an increase in the awareness on border control issues since 2001. This was due to the fear of the vulnerability of states as witnessed in the attacks on the USA on September 11<sup>th</sup> 2001, (hereafter, 9/11). The attacks led to changes in the world security, hence, transforming the approach by states to border control. The USA adopted more stringent measures for migrants wishing to access her territory. The USA called upon her allies especially in Africa to tighten border control in order to enhance state security. However, there is still a dearth in the literature on issues of border control especially with respect to the changes in the world security. Therefore, the review of literature borrows from studies related to border control and events that shape BCP operations.

According to Jack Riley, the USA developed the most sophisticated surveillance technology for border control especially after the 9/11 attacks. The strategies employed include the construction of perimeter walls to effectively guard its borders from illegal migrations. Riley argues that despite these measures, border control is still a challenge to the USA government especially on its border with Mexico.<sup>19</sup> The challenges experienced by the USA in her efforts to exercise border control indicate that the surveillance technologies also become obsolete with time. Moreover, the illegal migrants develop strategies to evade the technologies in place hence accessing the USA territory. The challenges also indicate that individual interests are the motivating factors for illegal migration irrespective of the obstacles. Riley's study provides a background to the research by exploring the challenges of border control. It would be interesting to investigate the challenges experienced at Liboi BCP as well as the individual interests driving illegal migration.

According to Joseph Makokha, in the absence of demarcation and more importantly administration, boundaries remain a mute symbol of legal title on maps and documents, possessing no relevance to the life of the zone it bisects. Makokha argues that the barrier-effect of boundaries, from which stem their disruptive consequences, depends on the degree to which controls are exercised at the line of division. He acknowledges that because of the time-gap between the formal delimitation of the jurisdiction limits and the taking effect of political administration, most of the inherited boundaries of Africa have been operationally non-existent, at least for the major portion of their history.

<sup>19</sup>Riley, Jack, 'Border Control', Website: [www.rand.org](http://www.rand.org). Accessed on 14/05/2010.

Therefore, from the perspective of an ordinary African citizen, territorial boundaries have little meaning because they have to be crossed either for commercial reasons or family visits.<sup>20</sup>

Makokha's study is important to the research as it recognizes the need for government administration at the borders, as well as the perceptions of the border residents towards it. This study recognizes the challenges facing governments in establishing political administrative centres at the frontier areas. Thus, the question is: when the government designs policies in the capital city of Nairobi and cartographers come up with maps that indicate boundaries of Kenya, do the local residents understand the implications of the maps? And in such contexts, what are the effects of establishing BCPs where the people do not respect boundaries? Moreover, does the disrespect for boundaries affect the performance of the BCP?

According to Ravi Kapil, political boundaries occur in a natural environment in which sharp lines of division are absent. As a result, all governments in Africa seek to defend their territories by increasing the rule of law at border lines. Kapil argues that governments adopt border controls as part of the administrative machinery to the outer limits of the political unit. The borders controls are symbols of government authority and define state sovereignty. They are used to regulate entry and exit of persons and their belongings in and out of states. Thus, they serve an important function in inter-state relations.<sup>21</sup> From this perspective, Kapil acknowledges the importance of border controls in general. Borrowing from Kapil's perspective, therefore, one would ask; what is the mandate of the Liboi BCP? To what extent is the BCP a symbol of government authority? How do the international relations affect the mandate of the BCP?

Similarly, Ricardo observes that many African states have consistently reaffirmed their adherence to the pre-independence boundaries, in spite of national borders being a disruption to the lifestyle of many communities at the frontiers. He pointed out that the African states' acceptance of the 'artificial boundaries' and the subsequent creation of BCP is largely based on the fear of a domino effect.

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<sup>20</sup>Makokha, Joseph., *The Politics of Secession and Irredentism*. op. cit, p.45.

<sup>21</sup>Kapil, R., 'On the Conflict Potential of Inherited boundaries in Africa,' in *World Politics Journal*, Vol. 18, No. 4, London, Hurst, 1966.

Acknowledging that the fear emanated from the border disputes that had been experienced by some states in Africa, Ricardo used the border dispute between Kenya and Somalia to illustrate his point. He noted that since the end of the *shifita* war, allowing uncontrolled movement of Somalis would perhaps pose a threat to the security of the Kenyan state.<sup>22</sup> Therefore, Ricardo's study provides a background to the understanding of the regulation of movements along the Kenya/Somalia border. This background is important in assessing whether Liboi BCP has achieved its mandate of controlling the movement of people in and out of the Kenyan territory, thereby succeeding in enhancing national security.

From Ken Menkhaus' perspective, the task of managing borders becomes difficult where there are long stretches of borderlines. Menkhaus observes that in such cases, even when border control officers seek to channel cross-border movements through designated entry points, many individuals cross at unregulated areas. He posits that in cases of conflict the personal interest of individuals brings to question the ability of many states to maintain strict border controls.<sup>23</sup> Although the author did not provide details of how individuals fleeing conflict cross the border at illegal entry points, he provided an insight into the research by acknowledging that conflicts promote the use of unregulated entry points by those fleeing for safety.<sup>24</sup> Menkhaus's work, thus, prompts one to seek to know how the officers at Liboi BCP manage to channel those fleeing the Somalia crisis through the designated entry point. What challenges do the officers face in the course of this duty? Moreover, how do the officers respond to the continued pressure of illegal migration of Somalis into Kenya?

In her discussion of border communities, Karen Jacobsen observes that Muslims have positive traditions concerning the offering of asylum to those fleeing from political persecution.<sup>25</sup> Jacobsen argues that many border communities share ethnic and kinship ties. At Liboi, the Somali kinship ties increase the likelihood that refugees would be welcomed and assisted.

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<sup>22</sup>Ricardo, L., *Borders, Nationalism and the African State*, Colorado, Lynne Rienner Publishers, 2005.

<sup>23</sup>Ken. Menkhaus., 'Kenya/Somalia Border Conflict Analysis', Paper for Development Alternatives Inc. United States Agency for International Development, Bethesda, University Press of America, 2005.

<sup>24</sup>*Ibid*

<sup>25</sup>Jacobsen, K. 'Factors Influencing the Policy Responses of Host Governments to Mass Refugee Influxes', *International Migration Review*, Vol. 30, No. 3, New York, James Currey, 1996. <http://www.jstor.org/stable/2547631> Accessed: 04/07/2009 10:22.

Jacobsen's study provides a background to the scenario at the Kenya/Somalia border, where Somalis are found on both sides. It would be interesting to investigate how the urge by the local residents to provide refuge to those fleeing the conflict in Somalia impacts on the mandate of Liboi BCP.

Arguing from a global standpoint, Lewis asserts that the control and monitoring of the movement of people across borders requires an integrated effort at the international, regional and national levels. He argues that sovereignty bestowed states with both authority and responsibility to control the movement of goods and people into, out of and across their territories. He argues that the international relations require that neighbouring states establish BCPs and implement controls in a joint and cooperative spirit.<sup>26</sup> If so, what is the position of BCPs like Liboi where there is no cooperation from Somalia?

In his case study, Gamaledin Maknun acknowledges that BCPs along the Kenya/Somalia borderline are not adequate given the border's expansive nature and the intensity of cross-border activities, like trade and inter-marriages.<sup>27</sup> Maknun acknowledges that the Kenya/Somalia border is not only very porous but also prone to cross-border crimes, such as human trafficking, smuggling of goods, proliferation of small arms and light weapons and 'terrorist' attacks. Borrowing from Maknun's study, it would be worth to explore the impact of the cross-border crimes on the attainment of the BCP mandate.

Peter Andreas asserts that as territorially demarcated institutions, states have always imposed entry barriers and have reserved the right to keep out perceived 'undesirable migrants'.<sup>28</sup> Andreas argues that all states monopolize the right to determine who and what is granted legitimate territorial access through the checks at the BCP.<sup>29</sup>

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<sup>26</sup>Lewis, I. M., *A Modern History of the Somalia*, Oxford, James Currey, 2002, p.7.

<sup>27</sup>Maknun, G., 'Pastrolism: Existing Limitations, Possibilities for the Future' in Doornbos et al, (eds), *Beyond Conflict in the Horn, Prospects for Peace and Recovery and Development in Ethiopia, Somalia and Sudan*, London, James Currey, 1992, pp.23-5.

<sup>28</sup>Peter, Andreas., 'Redrawing the Line: Borders and Security in the Twenty-First Century', *Journal of International Security*, Vol. 28, No. 2, New Haven, The MIT Press, 2003. <http://www.jstor.org/stable/4137469>  
Accessed: 19/09/2009 07:59.

<sup>29</sup>*Ibid.*, p.243.



Thus, with the refugee influx, it would be interesting to investigate how the government accomplishes its rights to determine who accesses her territory. What are the challenges of deciding who should access territory in a refugee crisis scenario?

Andreas also argues that the 9/11 terrorist attacks in the USA brought unprecedented attention to 'home land security'. The homeland security concept has been part of security discourse and has inflated anxieties about border control. Since September 2001, governments and ordinary people have paid much more attention to terrorism than ever before. He posits that this precipitated the declaration of the Global War on Terror (hereafter, GWO'T) by western states like the USA, Britain, Italy, France and Germany.<sup>30</sup> On her part, the USA in her efforts to counter terrorism influenced allies, such as Kenya, to impose stringent entry measures at the BCPs. Indeed, Kenya adopted stringent measures for screening refugees.<sup>31</sup> This led to delays in the admission of refugees at Liboi BCP. As a result of the delays, most of the refugees used illegal entry routes leading to the increase in illegal migrants in Kenya. Therefore, Andreas' study serves as a pointer to the link between the conflict in Somalia and the internationalization of the fight against terrorism. It thus, prompts the question; what is the impact of international terrorism on operations at the Liboi BCP.

In a detailed analysis of terrorism, Karen Tumlin shows that the phenomenon heightened the international awareness of and fears about porous borders.<sup>32</sup> According to Tumlin, in the post-9/11 period, there has been a tendency to associate Islam with terrorism. She argues that this association led to the transformation of relations between Muslim and non-Muslim states. Tumlin further acknowledges that the Kenya/Somalia border area is predominantly inhabited by Somalis who are Muslims by religion and are affected by the 'terrorist labelling'.<sup>33</sup> Therefore, how does Kenya's role in the GWO'T impact on the operations at Liboi BCP?

<sup>30</sup> Andreas, P., 'Redrawing the Line: Borders and Security in the Twenty-First Century', op, cit, p.245.

<sup>31</sup> *Ibid.* p.246.

<sup>32</sup> Tumlin, K., 'California Law Review', Vol. 92, No. 4, California, California Law Review, 2004. <http://www.jstor.org/stable/3481320> Accessed: 04/07/2009 10:23.

<sup>33</sup> *Ibid.* p.120.

## 1.7 Theoretical Framework

The research was based on two theories: the constructivism and the realist theory. The two theories complement each other in explaining state actions in international relations. The proponents of the constructivist theory such as Alexander Wendt, Giambattista Vico and Peter Katzenstein argues that the social world is constructed by humans while the natural world is made by God and the historical world is made by man. He further posits that history is not some kind of unfolding or evolving process that is independent of human ideas. Thus, men and women make their own history and construct states. According to Wendt, the constructed states define their identity and interests based on interactions with other states. The state's identity and interest in the interaction process is based on security. Hence, state actions are guided by international forces and norms which in turn shape national policies.<sup>34</sup>

Constructivist scholars further contend that through interaction, states conceptualize one another in such a way that they are adversaries or allies. The conceptualization in turn shapes state actions in international relations. Therefore, the theory is significant to the study because it points to the major concepts in the study. The theory explains how state identities and interests are constructed and how state interests determine the interaction between states. Indeed, the national interests of Kenya and Somalia have since independence determined the relations between the two states. The theory has been successfully used by Joshua Goldstein to explain why the USA is concerned when North Korea builds nuclear weapons but not when Britain does.<sup>35</sup> The constructivist scholars point out the shared history, shared alliances and shared norms that tell Americans and the British that they are not a threat to one another although they are very powerful militarily. The theory will be used to gauge the extent to which state actions, such as the establishment of BCPs, depend on state interests.

Constructivists, however, overly downplay the fact that states have difficulties in defining their interests. The construction of state interests is based on interactions with other states. Thus, constructivists fail to capture the fact that it's not easy for states to ascertain the interests and motives of others through interaction.

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<sup>34</sup>Wendt, Alexander., 'Social Theory of International Politics', in *International Relations*, Routledge, Cambridge, 1999, pp 93-5.

<sup>35</sup>Joshua, Goldstein., *International Relations*, New York, Pearson, p.94.

Constructivists tend to assume that interactions between states are always sincere and that states genuinely attempt to express and understand each other. The critics to the constructivist theory, who are mainly realist theorists, argue that the theory is based on deductive determinism. Realists argue that national interest is a concept that is too broad and general to be explained in terms of state actions. Furthermore, the theory does not provide the basis upon which state actions, regarding the protection of national interests, are altered. Consequently, the constructivist theory is strengthened by the realist theory.

The realist theorists argue that the driving forces for international relations are power and national interests. Power is the military capability supported by economic resources. National interest is the self-regarding desire by states for power, security and wealth. One of the proponents of the realist theory, Hans Morgenthau, argues that the security of the state is the primary motivation for the actions of a government. He further argues that the international politics is governed by objective, universal laws based on national interests defined in terms of power. If a state lies unguarded such that the neighbours can take advantage of it by military or other means, then the unguarded state will find itself attacked.<sup>66</sup> Therefore, any action that affects the security of the state motivates a reaction from the government. The theory has been used by Hans to oppose the Vietnam War of the Cold War years, arguing that the communist Vietnam could not harm the USA national interests.

### **1.8 Hypotheses**

1. Liboi BCP was established with the mandate to control Somali immigration into Kenya.
2. The dynamics of the Somalia crisis adversely impacts on the operations of Liboi BCP.
3. The global war on terror has negatively impacted on the operations at the BCP.

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<sup>66</sup>Joshua, Goldstein., International Relations, New York, Pearson, p.95.

## 1.9 Methodology

The study used both secondary and primary data. Secondary sources included books and articles from scholarly journals. I utilized relevant books and journals found in the University of Nairobi's, Jomo Kenyatta Memorial Library (JKML), The United Nations High Commission for Refugees (UNHCR) library in Westlands, Nation Media library housed in Nation House, Nairobi, The Standard Media library housed in I&M building in Nairobi and the Immigration Department library located at Nyayo House. The gaps that were found in the books and journals were filled by use of primary sources.

The primary sources utilized were archival materials and oral interviews. Archival materials from the Kenya National Archives (hereafter, KNA) that were used in this study included district annual reports, handing over reports and letters. The archival material was critical in providing a historical perspective on the location of the BCP.

In addition to the archival material, I went to the field to collect data. To facilitate the fieldwork, I acquired a research permit from the Ministry of Higher Education Science and Technology. The permit helped to ease the suspicion among the local people. I interviewed twenty people including BCP officers from each agency and local residents. I used open-ended questionnaires that had guiding questions leaving the interviewee with adequate room to give detailed information regarding the research.

Sampling of respondents was through purposive and snowballing method. The purposive method was aimed at selecting people with the desired features.<sup>17</sup> The first respondents were purposively selected from the Immigration Department due to the fact that they were familiar to the researcher. The immigration officers assisted in the selection of three research assistants. The research assistants interviewed the local residents while the researcher mainly handled the officers. The snowballing method was used to sample the rest of the respondents. The oral interviews involved an officer from each agency represented at the BCP and local residents. Some of the officers (two) who served at the BCP in the 1990s and had been transferred were also interviewed.

<sup>17</sup>Mugenda, O., and Mugenda A. *Research Methods*. Nairobi, Acts Press, 1999, p.51.

The interviews with the local people were mainly carried out by the three research assistants due to the problem of language barrier. The respondents have been coded in the report as informant 1 to informant 20 due to the sensitivity of the information. The data collected was qualitatively analysed. This method provided ways of examining, comparing and interpreting themes on which conclusions were drawn.

## CHAPTER TWO

### The Setting: Colonial Period, 1895-1963

#### 2.0 Introduction

The boundary that defines the territorial limits between Kenya and Somalia was a colonial creation. Before the advent of colonialism the area was a vast land that had been utilized by the nomadic pastoralists during their routine migrations. The Juba Valley was significant to the migrations due to the availability of water and grass during droughts. Thus, the demarcation of the boundary by the colonialists placed limits on the migration patterns, thus, impacting negatively on the survival strategies of the nomadic pastoralists. The colonial powers imposed restrictions through the creation of administrative units. This chapter discusses the historical background to one of the administrative units known as the Northern Frontier District, (hereafter, NFD). In particular, the chapter discusses the history of the NFD through the following sub-topics; the ethnography, geography, the scramble for Eastern Africa and the colonial period.

#### 2.1 Ethnography

Ethnography refers to the study of the ethnic composition in a place. The people living in the NFD occupy a region that is arid and semi-arid. The region receives an average rainfall of 250 mm per annum. It is a hot area with temperatures ranging from 20°C to 38°C.<sup>38</sup> Due to the arid and semi-arid conditions, the area is occupied by nomadic pastoralists.<sup>39</sup>

The pastoralists of the NFD comprise various ethnic groups among them the Galla, the Pokomo, the Boran, the Gabra, the Rendille, the Samburu, the Somali, the Burji and the Sakuye. The predominant ethnic group are the Somalis whose origin is traced to Arabia. The Somali community migrated from Arabia to the Horn of Africa in the tenth century.<sup>40</sup> In the Horn of Africa, the Somali ancestors mainly settled at an angle formed by the Red Sea, in a state known as Somalia.

<sup>38</sup>Maknun, G., 'Pastoralism: Existing Limitations, Possibilities for the Future', op, cit, p.26.

<sup>39</sup>Tarah, M. *From Ethnic Response to Clan Identity: A Study of State Penetration among the Somali Nomadic Pastoral Society of Northeast Kenya*. Uppsala, Uppsala University Press. 1993,p.45.

<sup>40</sup>Lurton, R., 'Somalia Resistance to Colonial Rule and the Development of Somali Political Activity in Kenya', in *Journal of African History*, Cambridge, Cambridge University Press, 1972.

The state of Somalia borders Djibouti to the northwest, Kenya on its southwest, the Gulf of Aden with Yemen on its north, the Indian Ocean at its east and Ethiopia to the west.<sup>41</sup> The Somali community is comprised of six major clans namely: the Darod, the Rahawayen, the Digil, the Hawiye, the Dir and the Isaaq. These clans comprised of the following clan trees. The Darod clan comprised the following clans: the Marehan, the Ogaden, the Aulihan, the Anlak, the Duballante, the Marjerteen, the Bahger, the Makabul, the Abdalla, the Mohamed Zubeir and the Abdwak. The Hawiye sub-clans are the Habir Gedir, the Abgal, the Hawaadle, the Degodia and the Murursade. The Dir sub-clans include the Gadabuursi, the Issa and the Biyamale. The Isaaq sub-clans comprise the Habir Awal, the Habir Yonis, the Habir Jaalo and the Eidegalla. The Rahawayen are divided into two main sub-clans: the Digil and the Mirifle. The Mirifle sub-clans are the Sagaal and the Siyeed. The Digil sub-clans are the Toddobodi, the Dighil, the Geledi, the Tunni, the Judo, the Garre and the Dabarre.<sup>42</sup>

The descendants of Sheikh Ismail Jabarti, the ancestor of the Darod clan, were the first to migrate to Somalia. Two centuries later they were followed by Sheikh Isaaq, the ancestor of the Isaaq clan, who were then followed by the Dir clan.<sup>43</sup> The successive waves of the Somali migration involved the Rahawayen, Digil and Hawiye. Due to internal conflicts and population pressure, the Isaaq, Darod and Dir began southward migration leading them to the territory that is currently known as Kenya.

They pressed upon the Galla who were occupying the area south of Juba River.<sup>44</sup> The Rahawayen also exerted pressure on the Darod and forced them to move further southwards. However, the Rahawayen and the Darod encountered stiff resistance from the Galla. The Galla were pushed to the interior till they faced resistance from the Kamba and Maasai. As a result of the migration pressure, the Galla entered into an alliance with the Darod which lasted till 1865, when a severe small pox epidemic swept them.<sup>45</sup>

<sup>41</sup> Lewis, I. M., *A Modern History of the Somalia*, op. cit, p.13.

<sup>42</sup> Oral Interview, Informant 2, 12/07/2010.

<sup>43</sup> *Ibid* p.8.

<sup>44</sup> Hret, C., *The Invention of Somalia*, Lawrenceville, Red Sea Press, 1995, pp.1-5.

<sup>45</sup> Lewis, I. M., 'Historical Aspects of Genealogies in Northern Somalia Social Structure', *Journal of African History*, Vol 3, No. 1, Cambridge, Cambridge University Press, 1962, pp.35-48.

The Darod attacked and inflicted heavy losses on the remaining Galla people and eventually assimilated them. Similarly, the Darod assimilated the Borana out of their territory and reached the Tana River.<sup>46</sup> The migration of the Somali communities southwards to the Tana River continued until the advent of colonialism. The colonialists halted the further emigration of the Somali community beyond the Tana River.

The colonial interventions in the Horn of Africa resulted in the formation of five distinct geographical units inhabited by Somalis: the French territory of Somalia, the present day Djibouti, the British Somaliland in the northwest, the Ogaden, which was colonized by Ethiopia, the Italian Somaliland in the south and the British Protectorate, which fell under the NFD of north eastern Kenya.<sup>47</sup>

## 2.2 The Scramble and Partition of Eastern Africa

The scramble and partitioning of Africa emanated from the Berlin Conference of 1884. The conference laid down the rules for the European partition of the African continent. The five years following the Berlin conference saw the European powers make bilateral treaties with each other to define their spheres of influence. The colonization of Africa was motivated by various factors. Among them were the economic factors, such as the search for raw materials and cheap labour for the industries in Europe. As a result, the boundaries were drawn by the Europeans for their own administrative interests and purposes. In Eastern Africa the main European powers were Britain, France, Germany and Italy.<sup>48</sup>

Britain was among the first European powers to express interest in Eastern Africa. Though the scramble for Africa began in 1884, British interest in Eastern Africa dates back to 1819. In this period, the presence of the British at the East African Coast was mainly for the security of the Imam Seyyid Said against his enemies especially the Arabs. Seyyid Said controlled the East African as well as the Somalia coast.

<sup>46</sup> Furlon, R., 'Somalia Resistance to Colonial Rule and the Development', op. cit, p.48.

<sup>47</sup> Lewis, I. M., *The Modern History of Somaliland: From Nation to State*. London, Weidenfeld and Nicolson, 1965 pp 3-4

<sup>48</sup> *Ibid* p 344.



The two coastlines were of strategic value to the British due to the sea route to Asia. Consequently, the British established a consulate in Zanzibar under Sir John Kirk in 1840.<sup>49</sup> By the 1850s, there was a steady inflow of British explorers, missionaries and traders into East Africa. British activities at the East African Coast were transformed in 1869. In this year, the Suez Canal was opened subsequently elevating the strategic position of East Africa in World trade. This drew other European powers to East Africa especially France and Germany. Consequently, Britain acquired the Gulf of Aden for economic and social needs. The British established a garrison at Aden in order to protect the Sea route to India. The British forces at the garrison at Aden were dependent upon the Somalia as a source of meat.<sup>50</sup> However, the opening of the Suez Canal in 1869 presented a challenge to the British operations at Aden. The opening of the Suez Canal in Egypt revived Turkey's ancient claims to the Red Sea coast. As a result, the Egyptian government led by Mohammad Jamal Bey raised their flag on the Somalia coast of Bulhar and Berbera. The British protested the Egyptian occupation of the Somalia territory in order to safeguard the Aden garrison's meat supply. The British authorities at Aden and the Bombay government demanded for the free functioning of the Somalia coast especially the ports of Berbera and Zeila.<sup>51</sup>

The interest by European powers at the Red Sea coast also attracted Italy. France and Italy had more definite and direct imperial ambitions at the Red Sea coast. Indeed, France established a consular at the Aden and subsequently acquired the Danakil port of Obock. The port was significant as a base for her overseas communications with Madagascar and China.<sup>52</sup> Similarly, Italy consolidated her influence at the port of Assab.<sup>53</sup> Italy also established a consulate at Zanzibar. By 1889, the Italian consul at Zanzibar, Vincenzo Filonardi, had signed a treaty with the Marjeteen Sultan and the Sultan of Zanzibar that ceded the ports of Benadir, Brava, Merca, Mogadishu and Warsheikh to Italy for twenty five years at an annual rent of one hundred and sixty thousand rupees.<sup>54</sup>

<sup>49</sup>Al-Safi, Mahasin., *The Somalis in the East Africa Protectorate and Kenya Colony, 1895-1963*, PhD. Thesis. Edinburgh University, 1972, pp.12-15.

<sup>50</sup>*Ibid* p.345.

<sup>51</sup>Lewis, M., *A Modern History of Somalia: Nation and State in the Horn of Africa*, Boulder, West View Press, 1988, pp 8-10.

<sup>52</sup>Lewis, I. M., *The Modern History of Somaliland: from Nation to State*, op, cit,p.45.

<sup>53</sup>*Ibid* p.44.

<sup>54</sup>*Ibid* p.44

In response to the Italian treaty with the Sultans, the European powers began to acquire spheres of influence. Britain established her sphere of influence on the Somalia territory to the south of the Juba River. The area was known as British Somaliland. The territory was administered by the Imperial British East Africa Company (hereafter IBEAC). However, the IBEAC surrendered its charter in 1895 leading to the proclamation of colonial rule in the area that was referred to as Jubaland.<sup>55</sup> France on the other hand, was interested in the strategic port of Obock at the southern end of the Red Sea as an en-route to Madagascar. This area became the French Somaliland, the modern state of Djibouti. Italy was the last European power to define her sphere of influence. Italy acquired the ports of Mogadishu and Brava from the Sultan of Majerteen and Zanzibar. The territory was known as the Italian Somaliland.<sup>56</sup>

In East Africa, the key colonial powers were Britain and Germany. The two European powers defined their spheres of influence by signing treaties with the Sultan of Zanzibar. In 1890, Britain defined 'Kenya' as her 'sphere of influence'. The territory was first administered IBEAC on behalf of the British government. The company found it difficult and expensive to administer this territory due to the fact that the costs of administration were high in relation to the subsidy provided by the British government. The IBEAC stopped administering 'Kenya' in 1895 leading to direct control by the British government. Subsequently, the British government declared 'Kenya' a British East Africa Protectorate. The British commissioner in the protectorate delimited its north eastern frontier with Italy along the middle of the Juba River to the Blue Nile.<sup>57</sup>

### 2.3 The Colonial Period

In 1902, the British government posted the first commissioner to East Africa, Sir Charles Eliot. His responsibility was to ensure the effective administration of the British spheres of influence in East Africa. One of the main areas of focus was Jubaland, later known as the NFD.

<sup>55</sup>Lewis, I. M., *The Modern History of Somaliland: from Nation to State*, op, cit, p.51.

<sup>56</sup>Imet, C., 'The Invention of Somalia', op cit, p.23.

<sup>57</sup>Al-Safi, Mahasin. *The Somalis in the East Africa Protectorate and Kenya Colony 1895-1963*, op, cit, p.23.

This was due to several reasons. Among them was the need to curb the increasing Somalia migration beyond the Tana River. In order to effectively administer the NFD, the British Commissioner established Somali reserves.<sup>58</sup>

The colonial administration faced a lot of resistance from the Somalis especially the Darod sub-clans, who were the majority and the most adventurous. Britain's administrative policies in Eastern Africa were affected by the First World War. In the war, Britain urged Italy to join the Allied powers. Britain signed a treaty known as the Treaty of London in 1915 with Italy. The treaty promised that the Queen would reward Italy with the Jubaland territory if she cooperated with Britain in the war. Indeed, at the end of the war, Lord Milner transferred 33,000 square miles of Jubaland to Italy in 1924.<sup>59</sup> After the alteration of the boundary, the area was referred to as the NFD. The Commissioner sought to control the migration of the Somalis into the NFD by use of the police force known as the King African Rifles (hereafter, KAF). In order to combat Somali migration, the KAF patrolled the boundary.<sup>60</sup> However, the patrols were challenged by the nomadic lifestyle of the residents of the Jubaland.

The pastoralists migrated to the Juba valley in times of severe drought and upon return, the KAF were unable to differentiate the migrants from the locals. This was due to the similarities in language, physical appearance and culture between the NFD residents and the Somalis.<sup>61</sup> Consequently, the colonial government introduced stringent administrative laws. For instance, in 1926, the NFD was declared a 'Closed District'. This law aimed at limiting movements within the district in order to monitor their migrations. More stringent measures were adopted in 1934. In this year, the NFD was defined as a 'Special Area' through the Special District Ordinance of 1934. The ordinance mandated the government to issue permits to those wishing to visit the NFD, while restricting movement from the district. More restrictive measures were adopted in the period after the Second World War.

<sup>58</sup> Al Salī, Mahasin, *The Somalis in the East Africa Protectorate and Kenya Colony 1895-1963*, op, cit, p.27.

<sup>59</sup> Makokha, Joseph., *The Politics of Secession and Irredentism*, op, cit, pp.60-4.

<sup>60</sup> Menkhias, Ken., 'Kenya/Somalia Border Conflict Analysis', op, cit, p.67.

<sup>61</sup> Lewis, I. M. *The Problem of Northern Frontier District*, London, West View Press, 1960, p.52.

The colonial government enforced 'grazing control schemes' and introduced the African Livestock Marketing Organization (hereafter, ALMO). ALMO's function was to control the trade in livestock. This was to control the inflow of livestock traders from Somalia into the NFD. The Somalis resisted the organization for infringing on their freedom of movement and trade.<sup>62</sup>

These measures led to the resentment of the Somalis in the NFD towards the colonial government. The growth of the resentment coincided with the rise of political radicalism in the state of Somalia. Political radicalism in Somalia commenced with the formation of a political party known as the Somali Youth League (hereafter, SYL) in 1947. The political party was formed in response to the nationalist political stirrings that emerged in Africa at the end of the Second World War. The party's objective was to fight for independence in Somalia.

The political activities of the party spilled over to the NFD due to the arbitrary nature of the border and the shared resentment. Consequently, the SYL opened branches in the NFD. The objective of the party in the NFD was to encourage resistance to colonial rule. Subsequently, the party leaders such as Ali Aden opposed the government grazing control schemes. The leader also encouraged affiliation to Somalia and disregard for colonial boundaries. As a result of the growing incitement towards the colonial government, the SYL was proscribed by the colonial government from 1948 to 1960.<sup>63</sup>

The SYL, however, continued its political radicalism in Somalia. Indeed, the political activities of the SYL in Somalia led to the attainment of independence in July 1960. After independence, the Italian Somaliland and the British Somaliland united to form the Republic of Somalia with Osman Abdulla as the President. Shortly after the establishment of government in Somalia, the president pledged his support for the political activity in the NFD. The Somalia government called upon the NFD Somalis to wage irredentist campaign for the unification with Somalia. This was a campaign aimed at uniting all the Somali occupied territories into a 'Greater Somalia'. The sentiments were symbolised in the five stars on the national flag adopted by the new Republic. The stars represent the states occupied by the Somalis included was Kenya.

<sup>62</sup> Makokha, Joseph. *The Politics of Secession and Irredentism*, op, cit, p.70.

<sup>63</sup> Hussein, Mohmoud. *Seeking Citizenship on the Border: Kenyan Somalis, the Uncertainty of Belonging and Public Sphere Interactions*. Dakar, Codesria, 2008.

The 'Greater Somalia' movement led the Mogadishu government to influence the political activities in the NFD.<sup>64</sup> For instance, the Mogadishu government supported the formation of the pro-secessionist political parties such as the Northern Frontier Democratic Party (hereafter, NFDP) and the Northern Province Peoples Progressive Party (hereafter, NPPPP) in 1960.

The NPPPP established branches in the various administrative centres at Isiolo, Wajir, Garissa, Moyale and Mandera. The main goal of the NPPPP was secession from the Kenya colony before the granting of independence to an African government. The NPPPP leaders advocated for the unification of the NFD with the 'Greater Somalia'. The party leaders such as Ali Aden and Abdi Rashid Khalif argued that it would be utter folly to 'oblige the people of the NFD to submit to the form of government which would be 'foreign'.<sup>65</sup>

The NFD factor remained critical to the Somalia Republic. Indeed, in November 1960, the Somalia Republic's national assembly passed a motion favouring its unification with NFD. As a result, the Mogadishu government began a publicity campaign in support of the unification of the NFD with the 'Greater Somalia'. The Mogadishu government supported the pro-secessionist parties in the NFD with military equipment, finances and radio propaganda.<sup>66</sup>

The Mogadishu government also supported the participation of the NFD Somalis in the constitutional discussions in London. Indeed, the Somalia government sent a delegation of NFD Somalis to the Lancaster House conference of 1961 in London. The Somali delegation headed by Ali Rashid Khalif campaigned for the secession of the NFD on the principle of self-determination. They based their case on the cultural and religious affinity that was kindred to Somalia. The delegates proposed that the NFD should be granted autonomy as a territory wholly independent of Kenya.<sup>67</sup> However, the Kenyan delegates drawn from the two main political parties, Kenya African National Union (hereafter, KANU) and Kenya African Democratic Union (hereafter, KADU), opposed the secession of any of Kenya's territory.

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<sup>64</sup> Turton, R., 'Somalia Resistance to Colonial Rule and the Development of Somali Political Activity in Kenya', op. cit, p.23.

<sup>65</sup> Markakis, John., *Ethnicity and Conflict in the Horn of Africa*, Athens, Ohio University Press, 1994, pp.67-9.

<sup>66</sup> Makokha, Joseph., *The Politics of Secession and Irredentism*, op. cit, p.87.

<sup>67</sup> Drysdale, John., *The Somalia Dispute*, London, Pall Mall Press, 1964.

The delegates, who included James Gichuru, Tom Mboya and Joseph Murumbi, argued that they reserved the right to raise the question of the return of Jubaland to Kenya if the Somalia government continued to press for secession.<sup>68</sup> Nevertheless, the discussions on the NFD issue reached a deadlock. The Somali delegation contended that the responsibility for the future of the NFD rested 'entirely and exclusively' with Britain.<sup>69</sup>

After the conference, the British government opted for the establishment of an Independent Commission that would draw a verdict on the NFD issue. The commission was to visit the NFD and ascertain the people's opinion regarding self-determination. The commission began its work in October 1962. The results of the commission findings indicated that an overwhelming majority of the residents had a strong desire to join the Somalia state.<sup>70</sup>

After the Independent Commission presented its findings, Duncan Sandys, the Colonial Secretary, announced in Nairobi in March 1963, that the pre-dominantly Somali-inhabited area of the NFD should not secede but become Kenya's seventh region.<sup>71</sup> This decision was contrary to the expectations of the Somalia government as well as the majority of the NFD residents. Consequently, the Somalia Republic severed her diplomatic relations with Britain. In response, the British dismantled their BBC Arabic-Relay station at Berbera, the most powerful medium-wave transmitter in the world. The actions led to the loss of aid worth £1.3 million to Somalia.<sup>72</sup>

After the British ruling, those pursuing the NFD issue took different courses of action. On one hand, President Osman Abdulla brought up the matter at the Addis Ababa Conference for the Heads of State in May 1963.

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<sup>68</sup>Eggs, E., 'A Report on the Northern Frontier District in Relation to the Grant of Independence to Kenya', October, 1962, p.8.

<sup>69</sup>KNA/PC/NFD/1/4/8, Annual Report, 1962.

<sup>70</sup>Zartman, William., *Ripe for Resolution: Conflict and Intervention in Africa*, Oxford University Press, New York, 1989.

<sup>71</sup>Saadia, Touval., *Somalia Nationalism: International Politics and the Drive for Unity in the Horn of Africa*, Cambridge, Harvard University Press, 1963. p.67.

<sup>72</sup>*Ibid.* p.73

The president said that:

The OAU should deal with the settlement of territorial and other disputes between African states. The Somalia frontier question was unique because no other nation in Africa found itself divided by different borders like Somalia. The people of the Republic of Somalia could not be expected to remain indifferent to the appeal of its brethren.<sup>73</sup>

On the other hand, the NFD Somalis engaged in riots against the colonial administration. They held a conference of pro-secessionist chiefs, elders and political leaders at Wajir to consider the next step.<sup>74</sup> Consequently, the president of NPPPP, Alex Kolkole, was placed under restriction by the colonial government decree.

In response to the growing violence, the British government organized for a conference in Rome in August 1963. The conference aimed at achieving a diplomatic solution to the NFD issue. The conference did not yield any meaningful results as the parties failed to agree on pertinent matters. This was followed by increased campaign for secession by the Mogadishu government through the radio.<sup>75</sup> Radio Mogadishu began conducting unceasing often bitter campaigns against the 'enemies' of the Somali people in particular the British. The propaganda was broadcast on an afternoon programme called 'Needs of the Somalis'.<sup>76</sup>

## 2.4 Conclusion

The geo-political boundaries defining the present African states were colonial creations. The colonialists divided the continent with little regard for the cultural diversity and similarity. Although the boundaries served the colonial interests, their divisive nature has been a source of discontent among various ethnic groups. The dissatisfaction with the anomalous geographical frameworks has challenged the legitimacy of the post-colonial states in Africa, in general, and Kenya, in particular. As a result, the Kenyan leaders have had to bear the repercussions of the arbitrary boundaries.

<sup>73</sup> Makokha, Joseph., *The Politics of Secession and Irredentism*, op, cit, p.89.

<sup>74</sup> KNA/ PC/ NFD/ 1/6, 'History of Somalia Status and its Legal Aspects', 1962.

<sup>75</sup> Adar, Korwa., 'Kenyan Foreign Policy Behaviour Towards Somalia', in Ochieng, W.R., (ed) *A Modern History of Kenya, 1895-1980*, Nairobi, Evans Brothers, 1989.

<sup>76</sup> Saadia, Touval., *Somalia Nationalism*, op, cit. p.44

Thus, the next chapter will be a discussion of the post-colonial state and the coping mechanisms to the colonial legacies particularly the establishment of BCPs like Liboi.



## CHAPTER THREE

### The Post-colonial Period and the Establishment of the BCP, 1963-1990.

#### 3.0 Introduction

Kenya was a British colony from 1895 to 1963. The colonial period had wide ranging legacies on the post-colonial state. One of the legacies that have endured the test of time is the colonial boundaries. The colonial boundary between Kenya and Somalia has been considered arbitrary as it divides the community into two states. Thus, the boundary was a source of dispute during the colonial period. Attempts by the colonial government to address the dispute increasingly widened the secessionist demands which culminated in the *shifita* war in 1963 to 1967. The independent government in Kenya thus, faced the challenge of nation-building amidst calls for secession of the NFD. The government sought to defend its territorial integrity through several measures, among them the renaming of the NFD as the North Eastern Province (hereafter, NEP).

This chapter will discuss the *shifita* war and its implications. The chapter proves the constructivist theorists right by arguing that the implications of the *shifita* war were conceptualized as a threat to the national interests of the Kenyan state, hence, the establishment of Liboi BCP.

#### 3.1 The Shifita War and Its Implications

The *shifita* war in the NEP erupted a few days after Kenya's independence. The war was instigated by secessionist demands from the Somalis who wished to join the 'Greater Somalia'. The pro-secessionists advocated for self-determination of the NEP. However, President Jomo Kenyatta refused to relinquish even an inch of Kenya's territory to her neighbouring state.<sup>77</sup> Instead, Kenya resolved the dispute by reference to the OAU charter, article III, paragraph 3. The article mandated all member states to respect the boundaries as demarcated by the colonialists. The OAU adopted this resolution due to the domino effect that adjustment of colonial boundaries would draw.<sup>78</sup>

<sup>77</sup> Adar, Korwa., 'Kenyan Foreign Policy Behaviour Towards Somalia'. op, cit.p.56.

<sup>78</sup> Barth, F., *Ethnic Groups and Boundaries: the Social Organization of Culture Difference*. Boston, Little, Brown and Co, 1969.

This incident proves that the borders of modern Africa were the creation of colonial powers who partitioned Africa among themselves with little regard for, or knowledge of, the socio-cultural characteristics of the continent.<sup>79</sup> Since the colonial boundaries were further used with few exceptions as the bases for the devolution of sovereignty in Africa, the current leaders of the continent had to deal with the effects of this boundary situation. The boundaries, thus, formed the basis for territorial disputes among African states.<sup>80</sup> Though the boundaries remain incongruent with the ethnic landscape, conflicts over territories have been reduced by the requirement of the OAU Charter that all states must respect the territorial integrity and sovereignty of member states.

The Somalia government, however, disregarded the OAU Charter and continued to call for secession of the NEP. As a result, the pro-secessionists of the NEP took to the semi-arid hushes of the area and began to attack the security officers. The attacks which began as an armed struggle to self-determine the political fate of the NEP culminated into the *shifto* war. The word *shifto* owes its origin in the colonial era when it referred to Abyssinians who occasionally raided the NFD. The word was later used to describe the Somali raiders crossing from Somalia to Kenya to raid and loot.<sup>81</sup>

The NEP, thus, witnessed conflict between the Kenya Army and the Somalia-backed Northern Frontier District Liberation Movement (hereafter, NFDLM) insurgents. The Somalis felt that the goal of the Pan-Africanism and the 'Greater Somalia' movement was based on the principle of self-determination.<sup>82</sup> In their view, the continuation of the 'artificially drawn' boundaries was a form of neo-colonialism. They maintained that one of the main instruments in Africa's fight for independence was the principle of self-determination. However, African states had abandoned it once independence was achieved.<sup>83</sup>

<sup>79</sup> Castagno, A., 'The Somali-Kenyan Controversy: Implications for the Future', *The Journal of Modern African Studies*, Vol. 2, No. 2, Cambridge, Cambridge University Press, 1964. <http://www.jstor.org/stable/158817> Accessed: 19/09/2009 08:38.

<sup>80</sup> Barron, B., 'African Boundary Conflict: An Empirical Study', *African Studies Review*, Vol. 22, No. 3, pp.1-14, African Studies Association, <http://www.jstor.org/stable/523892> Accessed: 04/07/2009 08:15.

<sup>81</sup> Makokha, Joseph., *The Politics of Secession and Irredentism*; op, cit, p.87.

<sup>82</sup> David, I., and Said, Samatar., *Somalia: Nation in Search of a State*, Boulder, West View Press, 1986, pp.23-5.

<sup>83</sup> Saadia, Fouval., *Somali Nationalism*. op, cit, p.56.

The President remained firm against secessionist motives. This position increased the violence and attacks on the Kenya Army in the NEP. Consequently, President Kenyatta declared a state of emergency over the NEP.<sup>84</sup> Addressing parliament, Kenyatta, stated;

Our action in declaring a state of emergency was intended to handle the source of the trouble by providing the security forces with the powers they need to deprive the *shifias* of the element of surprise attack. The government's action was purely defensive and has taken emergency powers under the extreme provocation of violence.<sup>85</sup>

Despite the escalating tensions, the two states did not declare open war instead the Kenyan government adopted a policy of good neighbourliness. The government of Kenya also adopted measures that could enhance national security by reducing *shifita* activities. President Kenyatta declared a period of amnesty for all *shifias* who surrendered between 6<sup>th</sup> November, 1964 and 11<sup>th</sup> January, 1965. He also announced that stern measures would be taken against those *shifias* who did not surrender during the allotted time.<sup>86</sup> On its part, the Mogadishu government considered the incidences in the NEP not as *shifita* activity, but fighting for freedom and, therefore, protested the treatment of Somali people by the Kenyan government and its security forces. The Mogadishu government supported the *shifias* through military aid and radio propaganda.

The dispute intensified drawing the intervention of African states, such as Tanzania. Indeed, as tensions increased between Somalia and Kenya, peace talks were initiated in December 1965 by President Nyerere of Tanzania. The talks broke down on the 14<sup>th</sup> December 1965. Thereafter, heavy fighting resumed between the *shifias* and the Kenya Army. The situation was worsened by propaganda spewing forth from Radio Mogadishu.<sup>87</sup> In retaliation to the increased Somalia propaganda campaign, the Kenyan government adopted a 'closed border policy' in June, 1966.

<sup>84</sup>Whittaker, Hannah., 'Pursuing Pastoralists: the Stigma of the *Shifita* during the *Shifita War* in Kenya, 1963-68, Unpublished. <http://www.arts.monash.edu.au/publications/eras/>. Accessed, 25/06/2010, p.8.

<sup>85</sup>*Ibid* p12.

<sup>86</sup>*Ibid* p. 32

<sup>87</sup>*Ibid* p.34.

This policy banned direct and indirect transportation of goods consigned from Somalia into the state. Furthermore, Kenya withdrew landing and over flight privileges to Somalia airlines.<sup>88</sup>

In July 1966, President Kenyatta said that his government would 'once and for all' take measures to eliminate the *shifita* menace. Subsequently, new security measures were added to those already in effect; a twenty three mile strip of land along the Kenyan/Somalia border was declared a 'prohibited zone' for all human habitation. Similarly, all persons in the north eastern region were required to register with the administrative and security forces. Upon registration, they were issued with a pink registration card as proof of citizenship.<sup>89</sup> Moreover, Somalis were required to live in specified villages for close supervision by security forces. Two months later, Kenya announced even stricter security regulations for north eastern region. A death penalty was made mandatory for anyone found guilty of carrying arms or explosives without authority. A mandatory life sentence was imposed on anyone harbouring or consorting with people considered dangerous to Kenya's security. By the end of 1966, the *shifita* raids had assumed the character of guerrilla warfare against the Kenyan security forces, the Kenya Army and the General Service Unit (GSU).<sup>90</sup>

The conflict led to peace talks in 1967. The talks were mediated by President Kenneth Kaunda of Zambia. The talks led to a peace Accord that was signed between Somalia Prime Minister, Mohammed Iqbal and President Kenyatta. The Accord known as the Arusha Accord was witnessed by President Julius Nyerere of Tanzania. The Arusha Accord of 1967 called for cessation of hostilities between the two states. After the agreement, Somalis in the Kenyan territory 'accepted' the Kenyan status, leading to a 'cordial' relationship and ease of tension between the Kenyan government and the Somalis of NEP.<sup>91</sup> Additionally, the government of Kenya allowed thousands of Somalis to establish businesses in Garissa, thereby creating an environment conducive to better understanding among the people of the two states.<sup>92</sup> However, the Mogadishu government that signed the Arusha Accord was overthrown by a military coup in October 1969. Subsequently, a military government regime led by Mohammed Barre ascended to power.

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<sup>88</sup> John, Drysdale., *The Somali Dispute*, op, cit, p.70.

<sup>89</sup> *Ibid* p.76.

<sup>90</sup> *Ibid* p.78

<sup>91</sup> Mohmoud, H., *Seeking Citizenship on the Border: Kenyan Somalis, the Uncertainty of Belonging and Public Sphere Interactions*, Dakar, Codesria, 2008.

<sup>92</sup> Mohamed, O., *Somalia: Between Devils and Deep Sea*, op, cit, p.21.

Barre abrogated the Arusha Accord by financing the *shifita* activities. In response, the Kenya government strictly enforced a villagization programme, which required that all Somalis in the NEP should reside in villages that were recognized by the government. The measure aimed at effective administration of the nomadic pastoralists. Hence, upon realization that he would not achieve the 'Greater Somalia' goal, Barre pledged to honour the Arusha Accord. He stopped funding the *shifita* activities thus, leading to decline in violence.<sup>93</sup>

This declaration implied that Mogadishu was not to support the irredentist Somalis in NEP, who were looking upon it as the main supporter of their rights to self-determination. Hence, the *shifita* activities by the Somali population in NEP declined. After the cessation of *shifita* hostilities, the government implemented more security measures which aimed at combating the *shifita* criminal activity in the peripheral areas. The government engulfed the periphery into administrative system by establishing Liboi BCP in 1973.

### 3.2 The Establishment of the BCP

The Liboi BCP was established in 1973. This was shortly after the cessation of hostilities relating to the *shifita* war. The year 1973 witnessed an increase in the number of migrants from Somalia to Kenya. The increased migration was caused by the 1973/75 drought in Somalia. The drought was so severe that it led to the death of livestock and starvation among the Somalis.<sup>94</sup> The Somalis also witnessed clan disputes caused by a resettlement programme that was initiated by the government in late 1973. The resettlement led to disputes between the Darod pastoralists and the Isaaq agriculturalists over the scarce resources. By early 1974, the conflicts forced the Darod pastoralists begin to migrate in search of better economic conditions. Hence, a majority of them moved to Kenya's NEP.<sup>95</sup>

The establishment of the BCP was central to the state sovereignty and territorial integrity. The BCP presents a unit in which the state exercise political jurisdiction as well as applies and enforces policies and laws. The BCP is located on the main highway that connects Kenya and Somalia.

<sup>93</sup>Lewis, I. M., *A Modern History of Somalia: Nation and State in the Horn of Africa*, Boulder, West View Press, 1988, p.45.

<sup>94</sup>KNA/DC/GDA/7/3, Annual Report, 1974.

<sup>95</sup>KNA/LIB/IMM/9/6, Annual Report, 1976.

The offices are, however, located approximately sixteen kilometres from the boundary due to the policy that a two kilometre strip of land was a 'prohibited zone' during the *shifita* war.

At its inception, the BCP was occupied by security forces from the Kenya Army and the Police. The two forces were charged with the mandate of ensuring that no migrants from Somalia crossed over to Kenya.<sup>96</sup>

The officers who were charged with the mandate of controlling Somali immigration at Liboi were not able to combat it due to the following reasons. First was the lifestyle of the NEP residents. The migration was aided by the fact that during times of drought, the nomadic pastoralists from the NEP moved to the Juba Valley in search of water and pastures for their livestock. However, the return migrations were extremely challenging for the officers. The residents were accompanied by their kinsmen from the Juba Valley who were not easily identifiable given that the Somalis are similar in all aspects of life.<sup>97</sup>

The migrants moved in groups with their herds. It was not easy for the officers to intercept the groups to ascertain whether they were residents or illegal migrants. In fact even when suspected to be aliens, they could not communicate due to the problem of language barrier. The residents at Liboi mainly speak Somali language due to lack of exposure to other language. This was also attributed to the colonial policies that defined the area as a 'closed district.' Moreover, the Somalis lived in temporary shelters, called 'manyattas', on communally owned land.<sup>98</sup> Thus, it was easy for illegal migrants to settle among the residents without being noticed by the security officers. The Somalis did not recognize the boundaries hence, they freely traversed the environment while grazing their herds, visiting relatives and also in search of water and pasture. Furthermore, the porous border allowed easy creation of illegal entry routes.<sup>99</sup>

<sup>96</sup>Kenya Immigration Border Operations Manual; Guidelines on Policies and Procedures for Immigration Officers, Government Printing Press, Nairobi, 2006.p.10.

<sup>97</sup>Oral Interview, Informant 4, 12/07/2010.

<sup>98</sup>*Ibid.*

<sup>99</sup>KNA/GDA/9/7, Annual Report. 1977.

Additionally, the Somalia government was not involved in the control of the movement of its people across the border. The leaders of the Somalia state maintained that the border was an 'artificial' creation and as they have no clan boundaries, they could not discriminate between Kenyan and Juba Somalis.<sup>100</sup>

In 1973, the Kenyan government in an effort to re-define its sovereignty, power and authority on this border gazetted the Liboi BCP. The BCP was mostly intended to serve as a regulatory measure to immigration from Somalia to Kenya. As earlier indicated, Liboi is an area characterised by close kindred relations, cross-border trade and intermarriages among the Somalis.<sup>101</sup> Since the establishment of Liboi BCP, however, there is a palpable transformation in lifestyle for the community. In June 1977, for example, relations between Kenya and Somalia worsened as Somalia troops made incursions into Kenya during the Ogaden war.<sup>102</sup> This prompted the president to take stern measures such as increasing the numbers of security forces at the BCP.

### 3.3 The Mandate of the BCP

Kenya as a sovereign state has lawful control over its territory. The government has established BCPs in order to control the people and goods that access its territory. Pursuant to this effort the mandate of Liboi BCP include the control of the immigration of Somalis into Kenya, control of the import of goods from Somalia, the maintenance of the state sovereignty and territorial integrity and the protection of the national security. These mandates have been bestowed upon different institutions of the state.

The mandate to control the immigration of Somalis into Kenya is the main function of the Immigration Department. The department is responsible for the control of entry and exit of persons in and out of Kenya at the BCP. The immigration officers are empowered by the Immigration Act to deny entry to persons considered a threat to the security of the state.<sup>103</sup>

The department plays a central role in the screening of incoming refugees as well as migrants. However, since the 'closure' of the border in 2007, the department receives the migrants and

<sup>100</sup> KNA/LIB/IMM/9/6, Annual Report, 1977.

<sup>101</sup> Cassanelli, L., 'Victims and Vulnerable Groups in Southern Somalia', *Immigration and Refugee Board, Ottawa, Canada*, 1995.

<sup>102</sup> The war fought between Ethiopia and Somalia over the Ogaden region in 1977/78.

<sup>103</sup> Oral Interview, Informant 1, 12/07/2010.

refers them to the UNHCR for refugee status determination.<sup>104</sup> The department works in conjunction with four security arms of the state. The department liaises with the security arms of the state in order to patrol the porous border. These include the regular police, administration police, the Kenya Army and the General Service Unit (hereafter, GSU). The two police departments are vested with the responsibility of patrolling the border to enhance security.

In addition, the police also assist in the maintenance of law and order, protection of life and property, prevention of crimes and interdiction of illegal migrants or goods across the border. The primary role of the Kenya army is to secure territorial borders against external aggression, to aid civil authority in the maintenance of law and order and to receive and escort foreign military personnel within the country. The GSU is a reinforcement of security services.

The mandate to control the importation of goods from Somalia is carried out by the Customs Department. The department clears and levies taxes on the imports. However, at the beginning of the Somalia crisis there was an increase in the volume of trade through the BCP. This was attributed to the 'freedom of trade' in Somalia after the collapse of the marketing boards. The emergent entrepreneurs imported goods to Somalia through the ports of Mogadishu and Kismayu. The principal market for the goods is Kenya. Hence, the customs officers at the BCP access the goods and charge customs duty. However, the 'closure' of the border affected these functions. The 'closure' led to the smuggling of goods into Kenya leading to the evasion of payment of customs duty as well as the entry of dangerous goods such as small arms and light weapons. The customs department is not able to control the type of commodities that are brought into Kenya. There are various individuals who currently use illegal means to smuggle goods into Kenya.<sup>105</sup>

<sup>104</sup> Oral Interview, Informant 5, 12/07/2010.

<sup>105</sup> Oral Interview, Informant 3, 12/07/2010



The standards for the imports are verified by the Kenya Bureau of Standards (hereafter, KEBS). The KEBS ensures that all the goods imported for sale and use in the country meet the specified standards. They are charged with the mandate of ensuring that Kenya does not become a dumping ground for sub-standard goods, thus protecting the society against harmful imports.<sup>106</sup> However, since 2007, the KEBS has not been able to check any goods due to the illegal entry routes that are used by traders. As a result, goods of poor quality are sold in Kenya.

### **3.4 Conclusion**

The post-colonial state experienced challenges of state formation since independence. The leaders dealt with the effects of the colonial legacies through policy formulation. The policies sought to protect the territorial integrity and sovereignty of the state. One of the policies implemented was the establishment of Liboi BCP. The mandate of the BCP was defined according to the events of the time. Therefore, some of the emerging trends through time were not envisioned in the mandate. For instance, the collapse of the Somalia government and the subsequent protracted civil war was not anticipated. The next chapter will thus be a discussion on the Somalia crisis. The chapter examines how the events in Somalia impact on the mandate and operations of the BCP.

<sup>106</sup>Oral Interview. Informant 6. 13/07/2010.

## CHAPTER FOUR

### **The Somalia Crisis and the Role of the BCP, 1991-2007.**

#### **4.0 Introduction**

The colonial occupation of Somalia by two European powers divided the state into two regions; the north and the south. The north was known as the British Somaliland Protectorate while the south was the Italian Trust Territory. At independence in 1960, the two regions united to form the Somalia Republic. The formation of the government for the new state was based on the north/south divide. The leadership based on region affiliation became the source of rivalry. This was reflected in the 1969 elections in which political parties were organized on clan lines. The election of Ali Shermarke as the president led to resistance among the northerners. The clan rivalry led to the assassination of Shermarke. Consequently, General Mohammed Siad Barre took power in October 1969. To consolidate his power, Barre employed the divide and rule measures. He outlawed clan allegiance while at the same time favouring his clan and that of his relatives. This aggravated clan rivalry between the north and the south.

#### **4.1 Background to the Somalia Crisis**

Since independence, the Somalia state practised an elected parliamentary system of government made up of three branches; the legislative, the executive and judiciary. The democracy practised in the formative years of independence, along with the cultural and economic cohesion of the Somalia society, presented it as a 'model of democracy in Africa.'<sup>107</sup> However, Somalia's democracy faltered and mutated into a predatory state controlled by a corrupt political elite who abused power for personal gain.

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<sup>107</sup>Ahmed, Yussuf, 'Rebuilding Somalia and possibilities for Puntland,' WSP Somalia Program, p.7.

The chaotic proliferation of clan-based political parties towards the end of 1960s heralded a general disintegration of political institutions of government in the Somalia state. The political disintegration, the rampant corruption and the embezzlement of public funds not only impeded social and economic progress and squandered foreign aid resources, but also led to public disillusionment with the civilian leadership, paving way for a military take-over.<sup>108</sup>

In a bid to salvage the state from the civilian misrule, the security forces of the state seized power in a bloodless coup in October 1969. Consequently, the military regime under the leadership of Mohammed Siade Barre suspended the constitution, banned political parties and dissolved the parliament, the executive and the judiciary. Barre declared war on ignorance, hunger and ethnicity. The military regime established a centrally managed national economy. Subsequently, economic products were marketed solely by a government agency known as the Agricultural Development Corporation (hereafter, ADC). The ADC regulated the retail prices of all products. Barre also established the Supreme Revolutionary Council (hereafter, SRC) as an administrative machinery in charge of law and policy functions. The SRC comprised of twenty four high-ranking military and police officials. The new government consolidated its power through the President's Political Office (hereafter, PPO).<sup>109</sup>

The regime relied heavily on the support of the Soviet Union. Indeed, with the support of the Soviet Union, Barre created a well equipped army and police force. The function of the two institutions was to enhance the political survival. Nevertheless, the militarization of administration became a source of outcry from the citizens. To divert the public attention from the militarized public administration, Barre started a pan-Somalia campaign aiming at uniting Somalis into one territory.<sup>110</sup> Consequently, he instigated a military campaign against its neighbour, Ethiopia, in 1977. The resultant fight was referred to as the Ogaden war, which was fought from 1977 to 1978.

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<sup>108</sup> Ahmed, Yussuf., *Rebuilding Somalia and possibilities for Puntland*, op, cit, p.9.

<sup>109</sup> *Ibid*, p.10.

<sup>110</sup> *Ibid*, p.12.

The war was fought over the Ogaden region that is pre-dominantly occupied by Somalis. In the war, Barre aimed at conquering the region as part of his 'Greater Somalia' agenda. Barre took advantage of the political turbulence in Ethiopia to attack. Nonetheless, he was defeated.<sup>111</sup>

As a result of the war, there was a massive influx of Ogaden refugees into Somalia. The resettlement of the refugees had a profound effect on the clan politics in Somalia. It intensified clan tensions. For instance, in response to the arbitrary resettlement of the refugees, the Marjerteen army officers organized a *coup* against Barre. The *coup* was crushed by the government army officers forcing the organizers to flee to Ethiopia. In exile, they launched the Somalia Salvation Democratic Front (hereafter, SSDF). The SSDF organized guerrilla attacks on the government from Ethiopia.<sup>112</sup>

More resentment to Barre government was manifested in the formation of the Somalia National Movement (hereafter, SNM) by the Isaaq clan. The members of SNM engaged the government in fights. The repression from the government compelled them to flee to Ethiopia. In Ethiopia, the SNM received military aid from Yemen to attack Barre. To counter the attacks, the government utilized soldiers from the Ogaden clan. The soldiers burned villages in Somalia, thus forcing people to flee to neighbouring states, including Ethiopia, Kenya and Djibouti. Furthermore, the Isaaq members in the armed forces were detained to prevent their kin from joining the SNM.<sup>113</sup>

The rising clan resistance to the government prompted Barre to sign an accord with Ethiopia's President Mengistu in 1988. In the accord, the two presidents pledged to cease supporting each other's opponents. However, the accord did not prevent the formation of clan movements. The Ogaden clan formed the Somalia Patriotic Movement (hereafter, SPM). The SPM claimed compensation for their participation in the war with the Isaaq. The failure to reward them led to fights with the government. On the other hand, the Hawiye clan formed the United Somalia Congress (hereafter, USC), which engaged the Marehan in conflict.<sup>114</sup>

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<sup>111</sup>Said, Samatar., *Somalia: A Nation in Turmoil*, London, Minority Rights Group, 1991, p.79.

<sup>112</sup>*Ibid.* p.125.

<sup>113</sup>Lewis, I. M., *A Modern History of the Somalia*, op. cit, p.98.

<sup>114</sup>*Ibid.* p.123.

In response to the growing clan resistance, Barre used excessive force to suppress the opponents. But the army was not able to mount adequate force against the clan movements. This was due to a number of factors.

Key among them was that the army comprised of clans affiliated to Barre (the Dulbahante, the Marehan and the Ogaden). The soldiers from the other clans had been mistreated by Barre, hence too demoralised to defend him.<sup>115</sup> As a result of the deteriorating political power of the government, the clan movements converged in Mogadishu and engaged the government forces in warfare.<sup>116</sup>

#### 4.2 The Somalia Crisis

Somalia has been a zone of intermittent armed conflict since 1988. Siad Barre's government was overthrown and expelled from Mogadishu by forces of the USC led by General Mohammed Farah Aideed. Having driven Barre out of Mogadishu, the USC split into two. One branch was led by Mohamed Farah Aideed. Aideed was a former army officer from the Habir Gadir sub-clan. The other branch was headed by Ali Mahdi from the Abgal sub-clan. Ali was a prominent businessman who had financed the congress in the war. Ali and Aideed failed to agree on how to share power. However, supported by his clan of Abgal, Ali seized power and set up a 'government'.<sup>117</sup> The action was undertaken while Aideed was still pursuing Barre outside Mogadishu. This split the city into two armed camps, the north and the south. The camps were polarized along sub-clan lines, the Abgal and Habir Gadir. The polarization engulfed the capital into protracted civil war. The ferocious fighting extended outside Mogadishu spreading devastation and starvation throughout Somalia. Mogadishu was, thus, the centre of waves of destruction and terror as the weapons used by Barre's allies during the Ogaden war fell into the hands of militia groups.<sup>118</sup>

The intensity of warfare in Somalia varied in 1991-92. In the early 1990s, fighting was mainly inter-clan in nature, pitting large clans against one another. Initially, the warfare was between the Darod and Hawiye clans.

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<sup>115</sup>Said, Samatar., *Somalia: A Nation in Turmoil*, op, cit, p.78.

<sup>116</sup>*Ibid* p82

<sup>117</sup>Lewis, I. M., *A Modern History of the Somalia*, op, cit, p.264.

<sup>118</sup>Mohamed, Osman., *Somalia: a Nation Driven to Despair*, London, Haan Publishing, 1996, pp.1-4

The warring parties often battled out in Mogadishu. By late 1991, tension in the south culminated in clashes in and around Kismayu, pitting the Ogaden clan militias led by Omar Jess against the clans allied to SPM. The period after 1992 witnessed the devolution of warfare to sub-clan lineages. Consequently, clans now fight among themselves especially the Hawiye and the Rahawayen.<sup>119</sup>

The devolution of warfare to lower lineages implied that conflicts have become localized within sub-clans. Among the consequences of the Somalia conflict was increase in criminality. The criminal activities were also witnessed at the Kenyan border. Concerns about trans-national criminals exploiting the lack of law enforcement capacity have been raised as a global security issue in the aftermath of 11<sup>th</sup> September 2001. Ironically, the criminal acts are committed by the top political and business leaders whom the international community convenes for peace conferences. The criminal activities include introduction of counterfeit currency, piracy, car-jacking, kidnapping and smuggling of small arms and light weapons as well as goods. Moreover, rampant looting especially by warring factions became a means of survival. The militia groups looted food aid delivered to Somali civilians in order to sustain the war economy. There was also widespread displacement and starvation among the civilian populations, a majority of whom sought refuge in neighbouring states of Kenya, Ethiopia and Djibouti.<sup>120</sup>

#### 4.3 International Intervention in the Crisis

The violent downfall of Barre's regime, contrary to the expectations, did not bring about an end to the social upheaval in Somalia. The sudden and total collapse of the centralized institutions of government precipitated the fragmentation of the state into regions controlled by clan-based warring factions. The factions competed for the control of the fallen government. The devastating consequences of the war prompted international intervention. As a result, in July 1991 President Hassan Gouled Aptidon of Djibouti convened a National Reconciliation Conference.

<sup>119</sup>Simons, A., *Networks of Dissolution: Somalia Undone*, Oxford, West View Press, 1995, pp.45-7.

<sup>120</sup>Lewis, I. M., *A Modern History of the Somali*, op cit, pp.264-5.

The aim of the conference was the attainment of a political solution to the conflict.<sup>121</sup> The delegates were from the Ali faction and the Aideed branches but the SNM was not represented. The conference resolved to create an interim government, in which government offices would be shared equally. Nevertheless, the composition of the cabinet aggravated the political split within the USC leading to continued fighting.<sup>122</sup>

The escalating crisis led to the intervention of the UN. The UN Security Council adopted Resolution 733(1992). The resolution imposed an arms embargo on Somalia. This was an effort to control the armament of militias in Somalia. Nevertheless, illegal arms were obtained from Ethiopia, Eritrea and Sudan.<sup>123</sup> The Security Council also adopted Resolution 746 (1992) which provided for the establishment of a security force of fifty UN troops in Somalia.

In 1992, a USA-led multinational task force, operating under the auspices of the UN, launched an operation to save the hundreds of thousands of lives threatened by the combined impact of drought and war. The force was known as the United Nations Operation in Somalia (hereafter, UNOSOM). UNOSOM mission was to provide humanitarian relief to the civilian populations and to help restore order in Somalia. UNOSOM employed heavy-handed military tactics to restore stability but it failed. The UN organized a series of peace conferences to complement the military operation with a political solution.<sup>124</sup>

After two months of the operations, UNOSOM expanded its mandate. Its new role included assisting Somalis in promoting national reconciliation, rebuilding the central government and reviving the economy. However, the mandate of UNOSOM of rebuilding the government threatened the interests of some faction leaders, such as Aideed. He perceived UNOSOM's programme as a move to disenfranchise his congress.<sup>125</sup> Hence, his faction became hostile to the UNOSOM troops.

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<sup>121</sup>Mohamed, Osman., *Somalia: a Nation Driven to Despair*, op, cit, p.167.

<sup>122</sup>*Ibid*, pp.257-9.

<sup>123</sup>Brons, Maria., 'The United Nations Intervention in Somalia', in Adam Hussein and Richard Ford, (eds), *Mending the Rips in the Sky*, Lawrenceville, The Red sea Press, 1997, pp.579-82.

<sup>124</sup>Ken, Menkhaus., 'International Peace Building and the Dynamics of Local and National Peace Building in Somalia', in Walter Clarke and Jeffrey Herbst (eds.), *Learning from Somalia: The Lessons of Armed Humanitarian Intervention*, Boulder, West View Press, pp.42-6.

<sup>125</sup>Brons, Maria., 'The United Nations Intervention in Somalia', op, cit, p90.

The militias allied to the faction shot at UNOSOM forces controlling the airport, shelled ships carrying relief food as they docked at the port of Mogadishu, looted food aid convoys and detained some UNOSOM staff members.<sup>126</sup> Consequently, the environment in Somalia became hostile to the mandate and operations of UNOSOM troops. In response, the UN Security Council adopted Resolution 794(1992), in which the USA was called upon to help create a secure environment for the delivery of humanitarian aid in Somalia.<sup>127</sup>

The USA President, George Bush, initiated the 'Operation Restore Hope' programme by sending a multinational force to Somalia. The force which was referred to as the Unified Task Force (hereafter, UNITAF), was dispatched to Somalia in December 1992.<sup>128</sup> UNITAF's mission was to protect food shipments in Somalia. Initially, Aideed and Ali welcomed the UNITAF intervention. Later, in February 1993, Aideed protested the perceived support of the USA and UN to the interim government of Ali. As a result, his militias became hostile to the UNITAF forces prompting the withdrawal of UNITAF in May 1993.<sup>129</sup>

The UN Security Council adopted resolution 814 (1993) that established UNOSOM II to replace UNITAF. UNOSOM II was designated to operate in Somalia from May 1993 to March 1994. Its mandate was to restore peace and stability in Somalia and to provide assistance to the Somalia people in rebuilding their economic, political and social life.<sup>130</sup> Indeed, UNOSOM initiated a peace process that led to the signing of the Addis Ababa Agreement in May 1993. In the Accord, the parties agreed to disarmament and cessation of hostilities. Nonetheless, the agreement was never implemented. By the end of March 1994, the signatories to the Addis Ababa agreements had held several meetings in Addis Ababa, Cairo and Nairobi and signed a new agreement. The agreement included the renunciation of violence and commitment to peaceful reconstruction.

<sup>126</sup> Waldron, S., and Hasci, N. A., 'Somalia Refugees in the Horn of Africa, State of the Art Literature Review'. *Refugee Studies Programme*, Oxford, Taylor and Francis, 1995, pp.234-6.

<sup>127</sup> Lyons, Terrence, and Ahmed, Samatar., 'Somalia: State Collapse, Multilateral Interventions and Strategies for Political Reconstruction', Washington DC, Brookings Occasional Papers, 1995.

<sup>128</sup> Hirsch, John, and Oakley, Robert., *Somalia and Operation Restore Hope: Reflections on Peacemaking and Peacekeeping*, US Institute of Peace, Washington DC, 199, .pp.34-6.

<sup>129</sup> *Ibid.* p.56.

<sup>130</sup> Drysdale, John., *Whatever Happened to Somalia: A Tale of Tragic Blunders*. London, Iaan Associates, 1994, p.78.



The participants bound themselves to establish rules and procedures for a national reconciliation conference of 15<sup>th</sup> May 1994.<sup>131</sup> As a result of the process, the two leaders signed a Declaration on National Reconciliation. In the declaration, the two leaders agreed to the cessation of hostilities.<sup>132</sup> The accord was never implemented due to the continued competition for the control of the state.

The environment remained hostile to UNOSOM II troops leading to the deployment of the United States Rangers to Mogadishu. The duty of the Rangers was to provide a secure environment for the UNOSOM II troops.

The Rangers launched an operation in south Mogadishu aimed at capturing the key aides of Aideed who were suspected of complicity in the attacks on UNOSOM I personnel.<sup>133</sup> During the operation, two USA Black Hawk helicopters were shot down by Aideed faction. As a result, eighteen USA soldiers lost their lives and seventy five were wounded.<sup>134</sup> Following these events, the USA President William Clinton announced the intention of the USA to withdraw its forces from Somalia. Indeed, by late March 1994 all USA forces had been withdrawn from Somalia.<sup>135</sup>

The withdrawal of the USA forces from Somalia left the security situation precarious. The Security Council extended the mandate of UNOSOM II from March 1994 to March 1995. In the extended period, UNOSOM's mandate was revised from peace enforcement to peace keeping. The mandate required that UNOSOM II assist the Somalia parties in implementing disarmament; protect major ports, airports and essential infrastructure; provide humanitarian relief to all in need; assist in the re-organization of the Somalia police and judicial system and help repatriate and resettle refugees and displaced people.<sup>136</sup>

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<sup>131</sup>Makinda, Samuel., *Seeking Peace From Chaos: Humanitarian Intervention in Somalia*, Boulder, Lyner Rienner, 1993, p.29.

<sup>132</sup>Iaitin, David., and Said, Samatar., *Somalia: A Nation in Search of a State*, op cit, pp.31-3..

<sup>133</sup>Abdullahi, Mohamed., 'Fiasco in Somalia; US/UN Intervention', Occasional Paper, Africa Institute of South Africa, 1995.

<sup>134</sup>Clarke, W. and Herbst, J., *Learning from Somalia: The Lessons of Armed Humanitarian Intervention*, Boulder, West View Press, 1997, p.78

<sup>135</sup>*Ibid.* p79.

<sup>136</sup>Brons, Maria., 'The United Nations Intervention in Somalia', op, cit, p.24.

These optimistic developments did not occur. No progress in political reconstruction took place, hence, future uncertainties encouraged the upsurge of violence. As the UNOSOM II period expired in March 1995, the faction leaders adopted different political measures.<sup>137</sup>

On one hand, Ali introduced the Islamic Courts Union (hereafter, ICU) in northern Mogadishu as a strategy to maintain control in the capital. The ICU developed a Joint Peace Committee to oversee the administration of business in the city and the control of the airport and seaport. The ICU expanded to administer the south of Mogadishu.<sup>138</sup> On the other hand, Aideed declared himself the president after the withdrawal of UNOSOM II. Aideed's presidency was protested by members of his faction, the ICU and Ali's faction. This led to the escalation of violence among the factions. Before the crisis was resolved, Aideed died of a gun wound on 4<sup>th</sup> August, 1996.<sup>139</sup> After his death, the presidency was taken up by his son, Hussein Mohamed Farah Aideed. The disagreements over the presidency led to a peace meeting in Ethiopia at Sodere in November 1996. Several discussions were held till January 1997 when an agreement was reached. The delegates agreed on a 41-member National Salvation Council (hereafter, NSC) with a rotating chairmanship.

The NSC was charged with the responsibility of forming a transitional government. However, the Sodere agreement failed due to disagreements on the implementation of the formation of the transitional government.<sup>140</sup> In mid-1997 a peace conference scheduled in Sanna, Yemen, failed to take off. Later in the year, a peace conference was held in Cairo, Egypt. The talks concluded with the signing of the Cairo Declaration. The declaration provided for the establishment of a Transitional National Charter (hereafter, TNC) of 13-member council of a president, a prime minister and a national assembly. Nevertheless, the declaration collapsed due to the lack of institutions capable of implementing the TNC.<sup>141</sup>

<sup>137</sup> Africa Watch Report, 'Somalia: A Government at War with its own People', Africa Watch Committee, USA, 1990, pp.6-8

<sup>138</sup> Lewis, I. M., *A Modern History of Somalia: Nation and State*, Oxford, James Currey, 2002, pp.267-9.

<sup>139</sup> *Ibid.* p.269.

<sup>140</sup> Farah, A., and Lewis, I. M., 'Somalia: the Roots of Reconciliation, Peace-making endeavours of Contemporary Lineage Leaders', London, Action Aid, 1993, pp.200-4

<sup>141</sup> Mary, Fox., *Political Culture in Somalia: Tracing Paths to Peace and Conflict*, Uppsala, Uppsala University, 2000, p.67.

#### 4.4 The Transitional National Government (TNG), 2000-2003

There has been no central governing authority in Somalia since January 1991. Efforts to establish a central state have been numerous and unsuccessful. The most promising attempt to a central government was in 2000. In this year, the Inter-Governmental Authority on Development (hereafter, IGAD) sponsored a Somalia National Peace Conference (hereafter, SNPC). The Somalia leaders gathered in Arta, Djibouti for a series of talks from 20<sup>th</sup> April to 5<sup>th</sup> May 2000. The Arta conference culminated in the Arta Declaration which provided for the formation of a central government referred to as the Transitional National Government (hereafter, TNG). The TNG had a 245-member parliament with a three-year mandate.<sup>142</sup>

The delegates elected Abdiqasim Salad Hassan as the Somalia interim President. Unfortunately, the TNG failed to become either operational or relevant. Furthermore, the TNG was opposed by Ethiopia for its friendly relations to the Arab world. As a result, Ethiopia with the aid of Abdullahi Yusuf ensured that by the end of the three-year mandate the TNG had failed to establish its authority. Further opposition to the TNG emanated from a movement formed by dissatisfied warlords known as the Somalia Reconciliation and Restoration Council (hereafter, SRRC).<sup>143</sup> The SRRC warlords engaged in fighting with the TNG. In an effort to reconcile the SRRC and the TNG, the Inter-governmental Authority for Development (hereafter, IGAD) convened a reconciliation conference. This was referred to as the Somalia National Peace and Reconciliation Conference (hereafter, SNPRC) held at Eldoret, Kenya in October 2002.<sup>144</sup> At the conference, the delegates concluded with the signing of the Eldoret Declaration. The declaration endorsed a cease-fire and guaranteed the security of humanitarian and development personnel in Somalia. A follow up conference was held in February 2003 at Mbagathi in Kenya.<sup>145</sup>

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<sup>142</sup>Mohamed, Sahnoun., 'Prevention in Conflict Resolution; the Case of Somalia', in Adam Hussein and Richard Ford, (eds), *Mending the Rips in the Sky*, Lawrenceville, The Red sea Press, 1997, pp.303-6.

<sup>143</sup>*Ibid* p.309.

<sup>144</sup>Terrence, Lyons, and Ahmed, Samatar., *Somalia: State Collapse, Multilateral Intervention, and Strategies for Political Reconstruction*. Washington DC, Brookings Institution, 1995, p.46.

<sup>145</sup>*Ibid* p.67.

The Mbagathi peace process concluded with the establishment of a power-sharing deal among the Somalia political leaders through the formation of the transitional federal government.<sup>146</sup>

#### **4.5 The Transitional Federal Government (TFG), 2003-2006**

The Mbagathi process led to the establishment of a Transitional Federal Government (hereafter, TFG) in August 2004. The TFG comprised of 275-member transitional parliament. Sitting in Nairobi, the delegates elected Abdullahi Yusuf as the interim President and Mohamed Ghedi as the Prime Minister.<sup>147</sup> However, by March 2005, two rival camps emerged within the TFG. One camp was led by President Yusuf and Prime Minister Ghedi, known as the 'Nairobi Group'. The other camp comprised of parliamentarians and cabinet members known as the 'Mogadishu Group'.<sup>148</sup> The 'Mogadishu Group' was represented by the Speaker of the Parliament, Sheikh Sharif Hassan Aden.

After nearly nine months of operation in Nairobi, the TFG relocated to Mogadishu in June, 2005. Subsequently, the TFG president, Abdullahi Yussuf, appealed to the AU to provide a twenty thousand force for supporting the peace mission in Somalia. The proposal was opposed by the ICU. The idea also escalated the split between the 'Nairobi' and 'Mogadishu' group. Thus, unable to secure an agreement in order to settle in the capital, the TFG first settled in Jowhar and later moved to Baidoa.<sup>149</sup> The TFG was unable to establish authority in the country. At this stage, Ethiopia became a key player in the tangle of Somalia politics and a key backer of Yusuf's faction of the TFG. Eritrea also became active in Somalia politics, principally as an ally to the 'Mogadishu group'. Eritrea channelled assistance to the anti-Ethiopia militants, such as Hassan Dahir, who later gained prominence as leader of the Islamic Courts Union, (hereafter, ICU).

<sup>146</sup>Menkhaus, Ken., 'State Collapse in Somalia: Second Thoughts'. *Review of African Political Economy*, Vol. 30, No. 97, Oxford, Taylor & Francis, 2003. pp405-8. <http://www.jstor.org/stable/4006984> Accessed: 20/07/2010 04:24.

<sup>147</sup>*Ibid*, p.410.

<sup>148</sup>*Ibid* p.415.

<sup>149</sup>Healey, Sally., *Lost Opportunities in the Horn of Africa. How Conflicts Connect and Peace Agreements Unravel* London, Royal Institute of International Affairs, 2008, pp.21-3.

Similarly, the USA established links with the warlords with whom they hoped to make headway against a 'terrorist threat' believed to exist in Mogadishu. All this was to change with the rise to power of the Union of Islamic Courts.<sup>150</sup>

#### 4.6 The Islamic Courts Union (ICU), 2006-2007

The ICU was introduced by Ali Mahdi as a power consolidation strategy in the early 1990s. The courts provided law and order within the confines of clan zones. In 2005, the various courts united to form the ICU with Sheikh Sharif as the Chairman and Sheikh Hassan Aweys as secretary general. The ICU expanded its administration over major parts of Mogadishu. The ICU was dominated by the Hawiye clan. The clan expressed its concern for being alienated from the TFG. Thus, they resisted the relocation of the TFG to Mogadishu, a call in which they were joined by the 'Mogadishu Group'.<sup>151</sup>

The influence of the courts encroached upon the authority of some warlords in Mogadishu. Hence, in 2006, the warlords who were supported by the USA formed the Restoration of Peace and Counter-Terrorism (hereafter, ARPCT). The ARPCT was involved in conflicts over the seaport of El-Maan. Their defeat led to the disintegration of the group.

The ICU administration led to an improvement of the security in the city. However, Ethiopia was wary of the new developments that promised to take Somalia politics to a new direction, one which would diminish her influence. Thus, it stepped in to strengthen the TFG forces.<sup>152</sup>

The leaders of the ICU took differing opinions with regard to external support. Sheikh Dheere advocated friendly relations with the USA while Aweys was determined to eliminate the USA from Somalia affairs. The ideological differences caused division in the ICU such that Sheikh Ali Dheere headed the moderate group known as Hizbul Islamiya. Its objective was to restore security and unity to the state. The radical group known as Al Shabaab was led by Sheikh Hassan Dahir Aweys. It advocated for the elimination of foreign influence in Somalia.<sup>153</sup>

<sup>150</sup>Woodward, Peter., *The Horn of Africa: Politics and International Relations*, London, Tauris Publishers, 1996, pp. 74-9.

<sup>151</sup>Fitzgibbon, Louis., *The Betrayal of the Somalis*. London, Rex Collings, 1982, p.27.

<sup>152</sup>Healey, Sally., *Lost Opportunities in the Horn of Africa*; op, cit, p.25.

<sup>153</sup>Mohamed, Sahnoun., *Somalia: The Missed Opportunities*, Washington DC, US Institute of Peace, 1994.p.120.

Despite the internal differences, the ICU became the most powerful military and political group in Somalia, a force that the TFG could neither ignore nor isolate. Since the ICU had established control over most of Somalia especially Mogadishu, the TFG faced difficulty in administering the state. Consequently, the struggle over the control of Mogadishu ensued between the ICU and the TFG.<sup>154</sup>

The control of the state by ICU was resisted by a group of warlords the ARPCT. The ARPCT opposed the widespread use of *sharia* law. Therefore, the ARPCT engaged in fighting with the ICU to limit its expansion. The ARPCT was, however, defeated by ICU.<sup>155</sup> After the victory, the ICU engaged in peace talks with the TFG in Sudan in June 2006. At the first round of talks, the parties agreed to refrain from hostilities, to recognize one another and to meet again on 15<sup>th</sup> July, 2006.<sup>156</sup> The second round of peace talks resulted in the Treaty of Khartoum signed on 5<sup>th</sup> September, 2006, in which it was agreed that the ICU and the TFG would merge.<sup>157</sup> Consequently, the ICU insisted on the withdrawal of the Ethiopian troops from the country. Nevertheless, Ethiopian forces did not withdraw and the agreement fell apart.<sup>158</sup>

In response to the growing external support to the TFG, the ICU adopted more repressive measures. For instance, they banned the sale of *ghat* and cigarettes as well as the watching of western television programmes.<sup>159</sup> The repressive measures of the ICU led the UN Security Council to adopt Resolution 1724. The resolution stressed the arms embargo on Somalia and called upon all UN member states to avoid exacerbating the conflict by shipping arms into the region. In addition, the UN enacted resolution 1725 authorizing IGAD and AU member states to establish a protection mission for the TFG. The mission was referred to as the African Union Mission to Somalia (hereafter, AMISOM).<sup>160</sup>

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<sup>154</sup> Mohamed, Sahnoun., *Somalia: The Missed Opportunities*, Washington DC, US Institute of Peace, 1994, p.56

<sup>155</sup> *Ibid.* p.89.

<sup>156</sup> John, Drysdale., *Whatever Happened to Somalia: A Tale of Tragic Blunders*. London, Haan Associates, 1994, p67.

<sup>157</sup> *Ibid.* pp.163-9.

<sup>158</sup> Anna, Simmons., *Networks of Dissolution: Somalia Undone*, Boulder, West View Press, 1995, p.50.

<sup>159</sup> Africa Watch Report, 'Somalia: A Government at War with its own People', Africa Watch Committee, USA, 1990, p.9.

<sup>160</sup> Anna, Simmons., *Networks of Dissolution: Somalia Undone*, op, cit, p.94.

The war between the ICU and TFG raged on despite the UN interventions. Intense fighting raged on till Ethiopian troops joined the TFG forces. The combined force led to the defeat of the ICU and its subsequent retreat to southern Somalia. The defeat aggravated the division of the ICU, with the Al Shabaab taking a leading role in the launch of counter-attacks.<sup>161</sup> The Al Shabaab retreated to the town of Doble where they launched counter-attacks to the TFG. As a result, the AU deployed AMISOM forces to Mogadishu to protect the TFG. However, in response to the arrival of the AMISOM forces, members of the Al Shabaab and Hizbul Islamiya intensified attacks on the TFG especially in the capital.<sup>162</sup> Thus, the installation of the TFG provoked an insurgency and severe deterioration in security instead of bringing peace. The population of Somalia endured conditions of civil war that was marked by widespread destruction of property and massive displacement. To date, the radical Al Shabaab is spearheading the resistance to what is known as 'external occupation'.

#### **4.7 The Somalia Crisis and the Role of the BCP**

In the wake of the Somalia crisis, the role of Liboi BCP was negatively impacted on. The operations of the BCP were transformed by the emergent scenario. For instance, the role of controlling the migration of Somalis into Kenya was challenged by the massive inflow of those fleeing the conflict. The mandate of the BCP officers to control the entry of the incoming refugees is hindered by the porous nature of the border. The inflow of refugees introduced a new mandate at the BCP which was to register the refugees. The new mandate is impeded by the hundreds of irregular routes on the border. These routes are used by the Somalia refugees to illegally access Kenya. Those who report to the BCP are screened and registered, then settled in the refugee camps. The BCP mandate was, therefore, transformed from control of migration to the facilitation of legal migration into Kenya.

The Somalia crisis has heightened the need to patrol the border. The interest of individuals from Somalia has increased the propensity to use illegal entry routes. This has been induced by the need for economic freedom in Kenya. The use of gazetted routes leads one into the refugee camps where there is limited opportunity for self development. Therefore, life outside the camps is preferred as it enables the illegal migrants to participate in entrepreneurship.

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<sup>161</sup>Anna, Simmons., *Networks of Dissolution: Somalia Undone*, op, cit, p.165.

<sup>162</sup>David, L., and Said, Samatar., *Somalia: Nation in Search of a State*, op. cit, pp.41-3.

Some of the migrants are combatants seeking safe operational grounds in Kenya. Hence, they evade registration at the BCP. They access the refugee camps with their arms which are later utilized for other purposes, such as trade, rape or criminal offenses. Therefore, the effort by the BCP officers to channel entry through the designated route is challenged by individual interests of migrants and the porous expansive border. The illegal migrants have contributed to the proliferation of small arms and light weapons. The increase in the illegal possession of arms has increased the risks associated with border patrols. Thus, the crisis has led to the increased insecurity at the border limiting the performance of officers due to fear of attacks.

The crisis has also engulfed Liboi BCP in the international war on terror. The presence of the Al Shabaab at the border draws the BCP into the GWoT by the international community. The pressure on Kenya to fight terror focuses on the along the Kenya/Somalia border among them Liboi. This is a new mandate for the BCP of which the officers are not adequately trained to handle. Nevertheless, the government has posted an officer from the anti-terrorism department to the BCP. The role of the officer is to interrogate suspected terrorists. The officer transfers the peculiar cases to the anti-terror offices in Garissa and the headquarters in Nairobi. The growing international pressure to fight terrorism has affected the relations between the officers and some of the local residents.

There are residents of Liboi who believe that the Al Shabaab is a group of people who are defending the rights of Muslims against western influence. The group therefore, deserves to be supported by all Muslims in this endeavour. This group of residents thus, have the perception that the BCP officers are undermining the efforts of a group that will 'save' them from western influence. Nevertheless, there are those residents who value their security, thus, consider the Al Shabaab as a threat to individual and economic security.

#### **4.8 Conclusion**

The Somalia crisis has had significant impacts on the Kenyan state. The absence of a central government in Somalia has heightened criminality which spills over to the Kenyan border. This includes the influx of refugees, the proliferation of small arms and light weapons and the increase in insecurity. These impacts have affected the mandate of Liboi BCP given that there has been a transformation in the nature and magnitude of migrants.



The BCP mandate has been further challenged by the porous border on which the people fleeing the conflict exploit the porous border to gain access to the Kenyan territory at points of convenience, posing a challenge to the BCP mandate.

The crisis has brought the rural area of Liboi into the international as well as national limelight due to the emerging trend of international terrorism. At the national level, the government of Kenya is under pressure to protect its territorial integrity and national security. Internationally, the BCP presents a focal point for assessing Kenya's role in the fight against terror. The BCP's proximity to Somalia, thus, deserved a case study on the implementation of counter-terrorism measures in Kenya. Hence, the next chapter will be a discussion on the international terrorism and the role of the BCP.

## CHAPTER FIVE

### International Terrorism and the Role of the BCP, 2001-2007.

#### 5.0 Introduction

Over the recent decades, several states have experienced mounting difficulties in fulfilling state functions, such as guaranteeing territorial integrity and maintaining law and order. The state functions have been challenged by the rising phenomenon of terrorism. Terrorism is a widespread feature of the modern world which has threatened the world peace and security. Internationally, terrorism poses threats, mistrust and fear due to the suspicion of unexpected attacks. More often than not, terrorism employs political violence whose impact is devastating to the civilian population.

The terrorism phenomenon seems to have captured world attention from the 2001 when the second bombing of the World Trade Centre (hereafter, WTC) occurred. However, before then, acts of terrorism were witnessed in different parts of the world but with little attention from the international community. For instance, in the World War II, the resistance fighters used methods which could be classified as terrorism. Similarly, in Palestine the period before the foundation of the state of Israel, the Zionist Irgun organization carried out acts of terrorism against the British who were governing the territory.<sup>163</sup> In Africa, terrorism was associated with the resistance to colonial rule. Indeed, in South Africa during the apartheid era, the Terrorism Act was enacted in 1967. The Act permitted the state to detain people perceived to be internal security threats indefinitely. Under the apartheid system, such threats were likely to be people who challenged the state's enforced racial segregation laws.<sup>164</sup>

In Kenya, the first recorded terrorist attack was witnessed at the Norfolk Hotel in 1980. The Hotel was then owned by an Israel citizen. The bomb was planted by a Moroccan terrorist, Qaddura Mohammed Abdul Hamud who was a member of the Popular Front for the Liberation of Palestinians (hereafter, PFLP) guerrilla movement. The attack served as a retaliation for Kenya's decision to allow the launch of the 1972 Israel military raid on Entebbe, Uganda.<sup>165</sup>

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<sup>163</sup>Anna, Simmons., *Networks of Dissolution: Somalia Undone*, op, cit, pp.218-9.

<sup>164</sup>Wittkopf, R., *World Politics: Trend and Transformation*, New Brunswick, Transaction Books, 1989, p.104.

<sup>165</sup>*Ibid.*p.106.

In the USA, terrorists carried out the first bombing of the WTC in New York in 1993. The attack was associated with Muslim terrorists from Afghanistan. The impact of the attack was, however, minimal. The attack led the USA to introduce security measures which involved the increase of border patrols. The terrorist attacks on the USA spilled over to her allies in Africa. In 1998, the American embassies in Kenya and Tanzania were bombed. The attacks were associated with the Al-Qaeda terrorist networks.<sup>166</sup>

In Africa, in general, and Eastern Africa, in particular, acts of terrorism have been on the increase in the recent times due to armed conflicts. For example, the state of Somalia has been described as a safe haven for terrorists due to its protracted conflict and absence of central government. Therefore, this chapter examines the effects that Somalia has had on international terrorism. The chapter also examines measures taken by the international community and Kenya to counter terrorism.

### 5.1 Somalia and Terrorism

After the fall of the Barre regime in 1991, the state of Somalia was engulfed in protracted conflict. The absence of central government in the state has resulted to chronic anarchy creating a suitable environment for terrorist activities. The situation in Somalia suddenly acquired international significance as interest and focus on international terrorism was stimulated by the September 11<sup>th</sup> (hereafter, 9/11) bombing of the Pentagon and World Trade Centre. In response to the attack, the USA launched counter-terrorism measures through the GWoT initiative.<sup>167</sup>

The 9/11 attacks led to the USA invasion of Afghanistan. The invasion aimed at freeing the state from terrorists. The operation was referred to as Operation Enduring Freedom (hereafter, OEF). As a result of the operation, the Taliban regime was defeated. Al-Qaeda members in Afghanistan fleeing the American invasion moved to the Horn of Africa states of Ethiopia, Somalia and Sudan.<sup>168</sup> The Horn of Africa was considered a safe haven for the Al-Qaeda due to the civil wars, poverty and the failed governments. For instance, in Somalia the central government had collapsed, hence terrorists could operate beyond the rule of law.

<sup>166</sup>Chandler, Dennis., et al, 'Evaluation of the United States Agency for International Development Bombing, op, cit, p.5.

<sup>167</sup>Roland, Jacquard., *In the Name of Osama bin Laden: Global Terrorism & the Bin Laden Brotherhood*, Durham, Duke University Press, 2002, p.34.

<sup>168</sup>Report by the US Military Academy, 'Harmony and Disharmony: Exploiting Al-Qaeda's Organizational Vulnerabilities', West Point, New York, 2006. <http://www.etc.usma.edu/aq.asp>.

Furthermore, the high levels of insecurity in Somalia had reduced the physical presence of western states in Somalia. Moreover, the Muslim population provided an environment for easy blending with the Al-Qaeda members who are largely of Islamic faith. The poor economic conditions in Somalia also provided opportunities for recruiting militias by the Al-Qaeda members.<sup>169</sup>

Al-Qaeda terrorist networks established an operational base at Ras Kamboni in Somalia. They worked in close cooperation with the ICU leaders, such as Dahir Aweys and Dheere. Al-Qaeda operations aimed at eliminating Americans from the Middle East and Somalia. The Al-Qaeda launched military operations on the Americans in the Arabian Peninsula led by Mohammed Atef.<sup>170</sup> In Somalia, the Al-Qaeda targeted the USA and UN forces. However, the fight against the Americans in Somalia was not a new occurrence. The Osama Bin Laden led Al-Qaeda terrorist network supported local militias in the fight against western influence in Somalia. For instance, in 1993 the Al-Qaeda provided military and financial aid to the military faction allied to Farah Aideed in the attack on the UN peace keeping forces and the USA troops. Consequently, the UNOSOM forces were withdrawn from Somalia.<sup>171</sup>

In retaliation, the USA conducted a series of airstrikes on Ras Kamboni, aimed at eliminating the Al-Qaeda from Somalia. However, the attacks did not effectively stamp out Al-Qaeda from the area. Instead, Al-Qaeda members retaliated by attacks on American allies in the Eastern Africa region such as the 2002 Kikambala Hotel bombing in Mombasa, Kenya.<sup>172</sup> The USA responded to this attack by launching a counter-terrorism body in the Horn of Africa.

The organization is known as the Combined Joint Task Force-Horn of Africa (hereafter, CTF-HOA). The mission of the organization is to disrupt terrorist groups in the Horn.<sup>173</sup> Additionally, the USA provided financial aid to the TFG to fight the ICU. The ICU was a threat to the USA due to its alliance with the Al-Qaeda.

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<sup>169</sup>Marc, Sageman., *Understanding Terror Networks*, Philadelphia: University of Pennsylvania Press, 2004, p.43.

<sup>170</sup>Report on 'Terrorism in the Horn of Africa', United States Institute of Peace, Washington, DC, 2004, pp.9-11.

<sup>171</sup>Carson, J., 'Kenya: The Struggle against Terrorism', Massachusetts, USA, 2005, pp.183-88.

<sup>172</sup>Ken, Menkhaus., *Somalia: State Collapse and the Threat of Terrorism*, Oxford, Oxford University Press, 2004, p.90.

<sup>173</sup>Chandler, Dennis., et al, 'Evaluation of the United States Agency for International Development Bombing, op. cit, p.9.

The conflict between the ICU and TFG led to the emergence of a radical wing of ICU called the Al Shabaab. The Al Shabaab continues to be a source of terror in the region.<sup>174</sup>

## 5.2 The Al Shabaab

The term Al Shabaab refers to the 'Movement of Warrior Youth' commonly known in Somalia language as *Harakat al-shabaab al-mujahidin*. Al Shabaab is inspired by the Somalia Islamic scholars who trained in Saudi Arabia. The group broke off from the ICU after their defeat in the war with the TFG.<sup>175</sup> The group is synonymous with the 'Islamic hardliners', 'terrorists' and 'jihadists'. The group believes in the establishment of a *Sharia* ruled state in Somalia. It comprises two branches, *Jaysh Al-Usra* meaning the army of hardship and *Jaysh Al-Hesbah* referring to the army of morality. The *Jaysh Al-Usra* is responsible for the organization of military activity while the *Jaysh Al-Hesbah* maintains law and order.<sup>176</sup>

The Al Shabaab is led by Aden Hashi Ayrow and Hassan Dahir Aweys. Aden was a radical leader of the ICU which advocated for total elimination of western influence from Somalia and the creation of a *Sharia* ruled state. Aweys, on the other hand, has been designated on the list of terrorists by the USA government. He is believed to have links with the Al-Qaeda. Indeed, he provided a safe haven for the Al-Qaeda fleeing Afghanistan in 2001.<sup>177</sup>

The Al Shabaab membership comprises of youths aged between twenty to thirty years. Membership to the group is motivated by various factors. The most significant factor is the Islamic religion. Islamic fundamentalism has produced religious loyalists who fight in defence of Islamic principles.<sup>178</sup> Hence, the youths who are opposed to western influence in Somalia join the group voluntarily.

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<sup>174</sup>Muriithi, Mutiga., 'Al Qaeda Veterans now run Al Shabaab militia, The East African; July 26<sup>th</sup> – August 1<sup>st</sup>, 2010, pp.25-30.

<sup>175</sup>*Ibid*, p.47.

<sup>176</sup>Muriithi, Mutiga., 'Kenya Warned Against Courting Militia Danger', Sunday Nation, 15<sup>th</sup> November, 2009. p.8.

<sup>177</sup>Giathara, Patrick.. 'The Group wants to create and impose strictly Islamic Wahhabi doctrine in Somalia and the rest of the African continent, The East African, July 26<sup>th</sup> - August 1<sup>st</sup>, 2010, pp.25-32.

<sup>178</sup>Wachira, Muchemi.. 'Leaders Hold Peace Meetings to Allay Fears of the Al Shabaab Attacks,' Daily Nation, 1<sup>st</sup> June, 2009, pp.6-7.

Some youths are driven by poor economic conditions to join the group. The state of anarchy in Somalia has adversely affected the economic opportunities available to the citizens. The youths join the Al Shabaab because of the economic activities available, ranging from piracy, manning of roadblocks and borders to looting.<sup>179</sup>

Al Shabaab activities are funded in three main ways. The main source of finances is the taxes collected from the roadblocks, the business people who use the ports. The group levies taxes on the goods imported into Somalia through the ports of Kismayu and Mogadishu by businessmen. They also levy taxes to people for use of the highways as well as the ports. The second source of revenue are foreign donors, including the Saudi Arabia charities such as the Muslim World League (hereafter, MWL) and the International Islamic Relief Organization (hereafter, IIRO). Other foreign donors are the Islamic non-governmental organization known as Mercy International Relief Agency (hereafter, MIRA) based in Dublin. The third source of revenue is piracy. Piracy by the Al Shabaab is usually along the Mogadishu and Kismayu coastline.<sup>180</sup>

Al Shabaab has engaged in conflict with the TFG since 2006. They have attacked the AMISOM troops in a bid to defeat the TFG. The attacks have been a source of propaganda for the Al Shabaab. For instance, when Al Shabaab militias attacked the AMISOM troops in the overcrowded Berbera market, they blamed the resultant shelling of the market and the destruction of property on the AMISOM troops. This led to complaints by the members of the public against the presence of the troops in Somalia. The Al Shabaab employed propaganda to incite the locals into rebellion against the AMISOM troops. The net effect of the Al Shabaab attacks has been the forced migration of civilians, a majority of whom move to Kenya.

Al Shabaab is one of the major sources of insecurity in the entire NEP. The security threats posed by Al Shabaab impedes the performance of BCP officers. The insecurity has led to psychological trauma due to the fear of the unknown.<sup>181</sup>

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<sup>179</sup>Kelly, Kevin.. 'Kenya now a major base for Al Shabaab Fighters'. The East African, March 29<sup>th</sup>-April 14<sup>th</sup>, 2010, pp.3-4

<sup>180</sup>Adow, Jubat, and Boniface, Onger., 'We were Recruited to Evict Illegal Occupants,' The Standard, 18<sup>th</sup> February, 2009, p.8.

<sup>181</sup>Bocha, Galgalo., 'Riots: Saitoti Blames Al Shabaab Group', The Sunday Nation, January 17<sup>th</sup>, 2010, pp.1-5.

The Al Shabaab has also threatened the national security of the Kenyan state due to the proliferation of small arms and light weapons into the Dadaab refugee camps. The majority of the Al Shabaab members have their families in the camps making it easy for them to store the illegal arms. The refugees in turn enhance the circulation of these arms into other regions of Kenya, thus endangering state security.<sup>182</sup>

The group is responsible for various attacks at the BCP due to their presence at Doble town. They have on several occasions attacked the Kenya Army and the GSU officers. The attacks have impacted on the ability of the officers to patrol the border.<sup>183</sup> Al Shabaab members take advantage of their ability to blend well with the local community, thereby making it difficult for the BCP officers to identify them.<sup>184</sup> Also, Al Shabaab members are well known to the locals but their identity is concealed for fear of retaliatory attacks.

### 5.3 The Global War on Terror

Increasing acts of terrorism have led states to mount joint counter-terrorism measures. The war on terrorism is spearheaded by the USA government under the umbrella of the GWoT. The GWoT involves states allied to the USA and UN member states. The war on terror aims at combating terrorist activities although little has been done to limit conditions that inspire terrorism. The USA government takes a leading role in the fight against terrorism not only as a superpower but also as the most vulnerable state to threats of terrorism. However, as many states join the war against terrorism, they in turn become targets by the terrorist networks.<sup>185</sup>

The increasing fears of deteriorating world security caused by terrorist acts led to the adoption of Resolution 1373 (2001) by the UN Security Council. The resolution declared that acts, methods and practices of terrorism are contrary to the purposes and principles of the UN. The resolution called upon all member states to become parties to the relevant international conventions and protocols and fully implement them.

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<sup>182</sup>Wabala, Dominic., 'Raids Heighten Fear of Terrorist Activities in Northern Kenya,' Sunday Nation, 16<sup>th</sup> November, 2008, p.5.

<sup>183</sup>Ombati, Cyrus., 'Border Security Intensified as rival Militias Clash,' The Standard, July 29<sup>th</sup>, 2010, p.25.

<sup>184</sup>Kihuria, Njonjo., 'The Trouble with Somalia,' Sunday Nation, 22<sup>nd</sup> February, 2009, p.34.

<sup>185</sup>Bradbury, M., 'Somalia: The Aftermath of September 11th and the War on Terrorism,' unpublished report for Oxfam, London, February 2002.

The resolution called for prevention and suppression of financing of terrorist acts and criminalization of the wilful provision or collection, by any means, directly or indirectly, of funds with the intention that the funds were to be used for the funding of terrorist acts.<sup>186</sup> The resolution also established the Counter-Terrorism Committee (CTC) of the Security Council. The function of the committee is to monitor the implementation of the resolution by all member states and increase the capability of states to fight terrorism. The CTC has since then become the UN's leading body that promotes collective action against international terrorism.<sup>187</sup>

On its side, the USA government created two institutions to counter terrorism; the National Strategy for Homeland Security (hereafter, NSHS) and the National Strategy for Combating Terrorism (hereafter, NSCT). The NSHS is responsible for preventing terrorist attacks within the USA while the NSCT identifies and diffuses threats before they reach the USA borders.<sup>188</sup> These strategies were adopted with the view that international terrorism is a migration issue. Therefore, threats emanate from within and elsewhere. To combat terror threats from elsewhere, the USA funds counter-terrorism efforts in various states.

In the Horn of Africa, the USA government through the Anti-Terrorism Assistance (hereafter, ATA) programme initiated the CJTF-HOA. The body was established in 2002 with headquarters in Djibouti. The CJTF-HOA serves seven countries; namely, Ethiopia, Eritrea, Djibouti, Kenya, Somalia, Sudan and Yemen. The mission of the CJTF-HOA is to detect, disrupt and defeat trans-national terrorist groups, to counter the re-emergence of trans-national terrorist groups and to enhance long term stability in the region.<sup>189</sup> The base at Djibouti has over 2000 USA military and civilian personnel who are responsible for monitoring the fight against terrorism.<sup>190</sup>

In East Africa, the USA created the East African Counter Terrorism Initiative (hereafter, EACTI). The mission of the EACTI is to improve police and judicial counter-terrorist capabilities in the East African states.

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<sup>186</sup>Bradbury, M., 'Somalia: The Aftermath of September 11th and the War on Terrorism,' op, cit, p.54.

<sup>187</sup>Reuters, 'UN Warns Over Somalia Crisis', Daily Nation, Wednesday, 22<sup>nd</sup> July, 2009, p.19.

<sup>188</sup>James, Phillips., 'Somalia and Al-Qaeda: Implications for the War on Terrorism,' Washington, D.C, The Heritage Foundation, 2002. <http://www.heritage.org/Research/HomelandDefense/BG1526.cfm>.

<sup>189</sup>*Ibid*.

<sup>190</sup>Darby, John, and Roger MacGinty, (eds) *Contemporary peacemaking: Conflict, violence and peace processes*. New York, Palgrave MacMillan, 2003.



The EACTF provides training and equipment for special counter-terrorism units in the region. Through this initiative the East African states share information on suspected terrorists.<sup>191</sup>

In Africa, the OAU created the Convention on the Prevention and Combating of Terrorism, known as the Algiers Convention, in 1999 which states that member states should cooperate in the fight against terror. The African Union adopted additional protocols in 2002. The protocols developed a Plan of Action on the prevention and combating of terrorism.<sup>192</sup> The AU Plan of Action emphasises the objectives of member states to eradicate terrorism through the exchange of information among member states. The information involves the activities and movements of terrorist groups in Africa. The plan mandates states to take stringent measures in relation to policing and border control.<sup>193</sup> However, the implementation of these plans depends on the financial support of the USA.

On her part, Kenya has ratified the United Nations Convention on Terrorism. The government continues to submit regular reports to the UN Counter-Terrorism Committee. Kenya has also reaffirmed its commitment to the 1999 Organization of African Unity Convention on Preventing and Combating Terrorism.<sup>194</sup> Kenya remains a strategic ally to the USA in the GWOI. As a result, Kenya receives a range of assistance from the USA to pursue her counter-terrorism strategies. This includes military training for security officers, a variety of programmes to strengthen the intelligence gathering and financing for capacity building of key institutions.<sup>195</sup>

As part of the efforts to counter-terrorism, the Kenyan government came under international pressure to increase security on the Kenya/Somalia border. The USA government supported the strengthening and expansion of Kenya's security services. They provided military equipment and training to the security forces especially to those in Mombasa and the NEP.

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<sup>191</sup>David, Shinn., 'Fighting Terrorism in East Africa and the Horn', *Foreign Service Journal*, 2004, pp.36-41. <http://www.humanrightsinitiative.org>.

<sup>192</sup>Howell, J. and Lind, J., 'Changing donor policy and practice on civil society in the post-9/11 aid context.' NGIPA Working Papers No 25, July 2008, [www.lse.ac.uk/ngipa](http://www.lse.ac.uk/ngipa).

<sup>193</sup>*Ibid.*

<sup>194</sup>Menkhaus, Ken., 'Counter-Terrorism in Somalia: Losing Hearts and Minds,' *Africa Report*, No. 95, Brussels, International Crisis Group, 2005, pp.7-9.

<sup>195</sup>Howell, J. and Lind, J., 'Changing donor policy and practice on civil society in the post-9/11 aid context.' op, cit.

This was due to the heightened concerns of the exploitation of the coastline by criminal groups and terrorists.<sup>196</sup>

The international support for counter terrorism has required that Kenya enacts an anti-terrorism legislation. In response, the state drafted the Suppression of Terrorism Bill in 2003. The bill was presented to parliament for enactment into law but it was rejected. This was due to the criticism that the bill was an infringement on the human rights.<sup>197</sup> The government carried on her efforts to enact the terrorism law. In 2006, another anti-terrorism bill was proposed. The bill was never formally presented to parliament due to protests over its content. The human rights groups in Kenya criticized the bill for erosion of human rights gains in Kenya.<sup>198</sup>

The Kenya government continues to receive finances for capacity building against terrorism from the USA government. USA aid played a significant role in the establishment of the Anti-Terrorism Police Unit (hereafter, ATPU) in 2003. The ATPU is a unit of the Kenya Police, with headquarters in Nairobi, and two branches in Mombasa and Garissa. The ATPU has a representative at Liboi BCP.<sup>199</sup> The unit is involved in the arrest, detention and interrogation of suspected terrorists. Due to lack of terrorism legislation, the unit has no legal code of operation. The officers in the unit follow the usual criminal procedures.<sup>200</sup> The USA support to Kenya also involved air and naval surveillance on Somalia to monitor the state for possible terrorist activities.<sup>201</sup> Moreover, the assets of the Somalia Company, *Al Barakaat*, were frozen as part of USA efforts to shut down al Qaeda's financial capacities.<sup>202</sup>

<sup>196</sup> Oral interview, Informant 17, 14/07/2010.

<sup>197</sup> Hesbon, Masese., *An Analysis of the Phenomenon of Terrorism and Kenya's Counter-Terrorism Strategy*, M.A. Thesis, University of Nairobi, 2007, pp.71-4.

<sup>198</sup> Oral interview, Informant 14, 14/07/2010.

<sup>199</sup> *Ibid*

<sup>200</sup> *Ibid*

<sup>201</sup> Nation Correspondent, 'USA given Green Light to Patrol Somalia Waters,' Daily Nation, Tuesday, 18<sup>th</sup> April, 2006, p.12.

<sup>202</sup> Ken, Menkhaus., 'Counter-Terrorism in Somalia: Losing Hearts and Minds,' op.cit, pp.7-9.

#### **5.4 The War on terror and the Role of the BCP**

The Somalia crisis has engulfed Liboi BCP into international terrorism. Consequently, the efforts by the international community in the fight against terror are reflected in Kenya in various forms. This range from empowering the security forces to the formation of institutions which are significant in combating terror activities. Though these efforts are established at the capital city of Kenya, the main areas of concern are those bordering Somalia. Liboi BCP therefore, is an epicentre of Kenya's agenda to counter terrorism. The susceptibility of Liboi BCP to terrorist attacks has been heightened due to the presence of the Al Shabaab at Doble. The government, thus, experiences international pressure to suppress the terrorist activities.

In compliance to the international fight on terror, the Kenya government has implemented several measures. One of the measures is the increase in the number of security forces at the BCP. The security forces at the BCP comprise of the Army, the Administration Police, the Regular Police, and the GSU. These security agencies are responsible for the protection of the security of the state. One of the ways through which they ensure that the security is enhanced is through regular patrols along the border. The patrols are, however, not fruitful due to the existence of hundreds of illegal entry routes used by Al Shabaab to attack Liboi. In addition, there are informers at the BCP allied to the Al Shabaab who gather intelligence that is utilized by the Al Shabaab to launch attacks. In response to the increased terror activities at the BCP, the ATPU has a representative at the BCP. The duty of the officer is to interrogate suspected terrorists for further action either in Garissa or Nairobi. The GWOt has contributed to the attacks on the officers at the BCP by the Al Shabaab. The attacks are aimed at pre-empting any anti-terror measures that the government would wish to pursue. Consequently, the BCP officers are not able to implement measures such as shooting anybody found at the border after the office operation hours (6am to 6pm). Thus, the GWOt has impacted on the performance of officers at the BCP.

## 5.5 Conclusion

Terrorism remains a threat to the world security, in general, and Kenya, in particular. The threats have led to the adoption of several counter-terrorism strategies. In Kenya, the fight against terrorism continues to attract funding from the USA. However, the USA relations with Kenya expose the state to terrorist attacks. Liboi BCP presents a dilemma on the implementation of the counter-terrorism strategies. The USA support for counter-terrorism impacts on the perception of the locals regarding the BCP officers who consider the fight on terror as an infringement on Muslim rights. Consequently, the officers are constrained in their actions due to the fear of retaliatory attacks. Hence, the next chapter is an evaluation of the BCP mandate.

## **CHAPTER SIX**

### **The Evaluation of the BCP Mandate**

#### **6.0 Introduction**

The intent for the establishment of BCPs is the enhancement of state sovereignty and territorial integrity. In this regard, BCPs are established for enhancement of national security and regulation of the entry of migrants. It is upon this need that Liboi BCP was established with several mandates to guide its operations. However, a few years after its establishment, the neighbouring state of Somalia plunged into civil war, further complicating the environment in which the BCP operates. The long period of the war presented a new dimension to the state security as well as the migration patterns. The migration was driven by the humanitarian crisis arising from the civil war. The migrants fleeing the war arrived in Kenya *en masse* as refugees. Due to their overwhelming numbers, officers at the BCP found themselves unable to adequately handle the refugee inflows.

This chapter, therefore, seeks to examine the mandate of Liboi BCP. Primarily, the chapter evaluates the attainment of the mandate and the impediments to the same. Thus, the chapter examines how the mandate of the BCP has been able to accommodate the emerging migration trends. The chapter is organized into various sub-topics; control of the Somali migration, protection of national security, control on the movement of goods and challenges to the BCP mandate.

#### **6.1 The Control of the Migration of Somalis**

Civil wars have great impact on human settlement. The civil war in Somalia has led to massive displacement of her people. In most cases, these people have fled to Kenya as refugees. This has necessitated the establishment of refugee camps to host them. The Kenya government has had to call upon the international community to assist in the provision of basic necessities to the huge number of refugees.

Despite this effort, increased desire among Somalis to seek safe haven has caused illegal entry and settlement into Kenya especially in the NEP. The scenario has exposed Kenya to threats of insecurity.<sup>203</sup>

The government efforts to enhance the national security led to the initiation of a screening programme intended to ascertain the status of refugees as required by the Refugee Convention of 1951. In the early 1990s, the successfully screened refugees were settled at the Liboi Refugee Camp (hereafter, LRC). At the camp, the refugees started to re-group and organized attacks into Somalia. Due to the deteriorating security, the government 'closed' the border and the LRC in 1994. The refugees in the LRC were relocated to Dadaab refugee camps. The government allocated the UNHCR land in Dadaab, where they constructed three camps: Ifo, Hagadera and Dagahaley.<sup>204</sup>

After the establishment of Dadaab Refugee Camps, the government 're-opened' the border in 1996. A rigorous screening exercise was initiated to ensure that refugees were not armed. The exercise was challenging due to the massive inflow of refugees. Their numbers sometimes overwhelmed the officers at the BCP. Other times, language barrier impeded the effectiveness of the exercise.<sup>205</sup> Moreover, the officers experienced inadequate training especially as relates to handling humanitarian crisis. Normally, the officers at the BCP handled low level of migrants. But owing to the civil war, the numbers of migrants were overwhelming against the available personnel.

To help solve the problem, the Kenya government invited the UNHCR which undertook the screening of the incoming refugees in a process known as Refugee Status Determination (hereafter, RSD). The RSD process involved the disarmament of incoming refugees before registration. However, some refugees would hide their arms and after successful registration process they re-armed. Similarly, not all incoming refugees entered Kenya through the designated entry point. Some used the hundreds of illegal entry routes. This made it possible for such refugees to get entry with their arms, hence posing threats to the state security.<sup>206</sup>

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<sup>203</sup> Oral Interview, Informant 13, 13/07/2010.

<sup>204</sup> Goldsmith, Paul., 'The Somalia Impact on Kenya, 1990-1993' in Hussein Adam and Richard Ford, (eds), *Mending the Rips in the Sky: Options for Somalia Communities in the 21<sup>st</sup> Century*. Lawrenceville, The Red Sea Press, 1997, pp.467-9.

<sup>205</sup> Oral Interview, Informant 15, 14/07/2010.

<sup>206</sup> Oral Interview, Informant 18, 14/07/2010.

The screening process was complicated following the renewal of the civil war in Somalia in 2006. The war between the ICU and TFG saw the retreat of the ICU members to the border town of Doble. The civil war made it difficult to differentiate between combatants and civilians as all sought refuge in Kenya. Following the dilemma, the government declared the Kenya/Somalia border 'closed' in January 2007. The objective of the 'closure' was to stop Somalis from accessing the Kenyan territory. However, illegal migrants continued to access the Kenyan territory through the illegal routes on the porous border.<sup>207</sup> Furthermore, illegal migration is facilitated by human trafficking. The trafficking of Somalis into Kenya became lucrative business in 2007 due to the 'closure' of the border.

Unlike the internationally recognized human trafficking that involves the recruitment, transportation, transfer, harbouring, or receipt of persons by means of threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of abuse of power or of a position of vulnerability or of giving or receiving of payments or benefits to achieve consent of a person having control over another, for purposes of exploitation, the trafficking of Somalis is considered a 'humanitarian action'. The 'humanitarian action' is conducted by a syndicate of cartels that have networks in Somalia, Kenya and various countries in Europe and the Republic of South Africa. The cartels involve different groups of people; brokers, travel guides, accommodation facilitators, document providers, safe travel enhancers, agency operators and the owners of the business.<sup>208</sup>

The travel agencies are responsible for recruiting those to be trafficked. The people to be trafficked, usually referred to as customers, are taken through a vetting process to avoid traps. The customers are interviewed by the traffickers or brokers to ascertain their dreams, where they intend to go and how much they are willing to pay. The most preferred customers are those with relatives in the diaspora particularly in the Republic of South Africa or Europe. This is because the relatives finance the trafficking process.<sup>209</sup>

The brokers are responsible for identifying as well as receiving those to be trafficked. While the travel guides accompany the people being trafficked to their specific destinations, the guides are 'specialists' in identifying 'safe' illegal entry routes.

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<sup>207</sup>Oral Interview, Informant 9, 13/07/2010.

<sup>208</sup>Oral Interview, Informant 19, 14/07/2010.

<sup>209</sup>*Ibid.*

They are also known to some of the border officials so that they are allowed entry in case of any encounter, for the right amount of bribe. For accommodation, they use the lodges at the Liboi trading centre. The safe travel enhancers are charged with the responsibility of making telephone calls to ensure that there will be no 'obstacles' on the way. They give bribes where the trafficked people have been arrested or make telephone calls to the owners of the business in Nairobi when the situation is difficult for them.<sup>210</sup>

The trafficking process begins with the interview of the customer, after which the he or she is monitored by the brokers for about two weeks. All the people to be trafficked assemble at Kismayu. They are then taken through an induction process. This includes orientation to the Kiswahili language which would be used in case of any encounter with the Kenya authorities. They are also taught place names in Garissa which they could tell the police are their homes. The induction also includes a highlight on the process of acquiring a Kenyan identification card. After the induction, the customers trek to the Kenyan border where they meet the travel guides. The guides lead them to the place where they board vehicles or to accommodation facilities at the Liboi trading centre.

The traffickers charge fee ranging from US \$2,000 to US \$15,000. These rates depend on the social status of those to be trafficked. The rates determine the travel modes as well as the living conditions. The people who pay less than US \$ 4,000 are left at Dadaab. For those who pay above US \$ 8,000, they are transported in more comfortable trucks or sometimes private vehicles that belong to either some of the security officers or to the refugees. The people are also protected from arrests through bribery, though the amounts given are not revealed. Most of the people in this category are destined for Nairobi and abroad.<sup>211</sup>

From Dadaab, the next destination is Garissa town. Those who are destined for the town are dropped off. From Garissa to Nairobi, the traffickers experience challenges with the officers especially at the Tana River Bridge checkpoint. To cope with the challenge the businessmen have resolved to the use of varied means of transport. The traffickers use either taxis or canoes. After crossing the check point, the people board public service vehicles or lorries to the next destination, Eastleigh in Nairobi.

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<sup>210</sup>Oral Interview, Informant 7, 13/07/2010.

<sup>211</sup>*Ibid.*



The routes of chosen depend on the final destiny. Those who are destined for the Republic of South Africa use the Hola-Mombasa route while those coming to Nairobi or Europe use the Kitui route. The Mwingi-Nairobi route is avoided due to the multiple check points.<sup>212</sup>

The trafficking thrives due to corruption among some of the check point and BCP officers. The brokers bribe their way out of the security checks. Hence, the trafficking thrives without much interference from the government officials. Indeed, a senior police officer was arrested at the Tana River Bridge for trafficking Somalis in a police vehicle. One informant said that,

The policemen play a key role in the facilitation of trafficking of Somalis. They ask for bribes from the people arrested at the border. Those who give bribes are allowed entry while those who do not are arrested and later deported. At times, some police officers carry the people to be trafficked in their personal cars especially from Garissa to Nairobi.<sup>213</sup>

The officers at the BCP argued that they lacked the capacity to control the trafficking of Somalis into Kenya. The officers said that it was not easy to identify the people being trafficked because the brokers use public service vehicles. They conducted checks on the buses to isolate the 'illegal migrants'. They nonetheless found none for they relied on the identification documents such as the national identification card. Apparently, all the people on the buses had the identification cards. The study revealed that the identification cards are obtained fraudulently by brokers to facilitate the trafficking process. This is easy due to corrupt practices in government offices and the fact that the Somalis share names.<sup>214</sup>

In cases where arrests are made, the offense of trafficking is not easy to prove in the court of law. In fact, those arrested could only be charged with illegal migration. Hence, the traffickers easily evade the law.<sup>215</sup> The officers admitted that lack of legislation on human trafficking in Kenya is an impediment to the efforts to combat the crime. They stated that the trafficking of Somalis is facilitated by brokers who operated with a lot of impunity. The brokers are aware of the weaknesses of the prosecution procedures and do not fear the law enforcers.<sup>216</sup>

<sup>212</sup> Oral Interview, Informant 7, 13/07/2010.

<sup>213</sup> Oral Interview, Informant 12, 13/07/2010.

<sup>214</sup> Oral Interview, Informant 11, 13/07/2010.

<sup>215</sup> *Ibid.*

<sup>216</sup> Oral Interview, Informant 20, 14/07/2010.

One of the officers said,

We are aware that human trafficking goes on, but there is nothing much we can do. The people who are trafficked are brought in at night and we do not know at what hour. We are responsible for a very long and porous border, where there exist more than one hundred illegal entry points. In fact the topography, of this area cannot allow us to trace the routes used because any place can be a route. We have no surveillance technologies to monitor the entry of Somalis along the porous border. Therefore, we rely mainly on informers who act on 'goodwill'. If they witness any incidence and inform us, we always attend to it. But most of the times we find the areas of the incidence already deserted or we meet armed men who attack us using firearms. So we are faced with the dilemma of the need to be informed and the levels of trust for the information given because the informers are double dealers.<sup>217</sup>

The control of the migration of Somalis is a key mandate for the BCP. The achievement of the mandate remains a challenge given the scenario in Somalia. The illegal migration of the Somalis to Kenya has increased the number of illegal migrants in the country some of whom poses illegal arms. The presence of Somali illegal migrants has various implications to the state. Key among them is the participation in illegal trade in Small Arms and Light Weapons (hereafter, SAIW).

## **6.2 Protection of State Security**

One of the mandates of the BCP is to protect the security of the state. This mandate has been adversely affected by the Somalia crisis. The worsening security threat emanates from the prolonged civil war. During the civil war, some combatants and civilians sought refuge in Kenya. The officers at the BCP had to ensure that the insurgents in Somalis could not cross over to Kenya and endanger national security. The government, thus, took security measures such as 'closing' its border. The 'closure' of the border implied that there should be no movement of people between Kenya and Somalia.<sup>218</sup>

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<sup>217</sup>Oral Interview, Informant 13, 13/07/2010.

<sup>218</sup>Oral Interview, Informant 10, 13/07/2010.

The Kenyan authorities justified the measure by citing security concerns. They referred to concerns that ICU fighters and possibly Al-Qaeda operatives might enter Kenya and endanger the national security.<sup>219</sup> Indeed, the then Foreign Affairs Minister, Raphael Tuju said that,

‘Kenya was not able to ascertain whether the Somali refugees were genuine refugees or fighters, and therefore, it was best that they remained in Somalia.’<sup>220</sup>

Although the Kenyan authorities knew they could not prevent Somalia refugees from crossing the porous border, they sought to portray an image of sovereign control in the face of perceived threats to the national security.

The security situation is complicated by the proliferation of SALW. The illicit SALW are in wide circulation in Somalia and made available on the ‘black markets’ in Kenya. The availability of the illegal SALW impacted on the capacity of the state to control crimes. The arms which include the AK-47, G3-rifle and the Ceska pistol cost as low as Kshs. 10,000.<sup>221</sup> The arms are ferried from Somalia together with the goods in lorries and trucks for concealment. The trucks are driven in from Somalia at night through the illegal entry routes to avoid any incidence with the security forces. In Kenya they are sold by some refugees especially those related to the militias in Somalia or the Al Shabaab.<sup>222</sup> The ‘black markets’ are mainly found in Dadaab camps, Garissa town and Eastleigh in Nairobi.<sup>223</sup> The ‘black markets’ have inflated the number of civilians in Kenya who own arms illegally. This has in turn increased the crime rates.

In response to the insecurity, the government increased the number of security forces at the BCP. The security officers are called upon to increasingly patrol the border. However, during the patrols, they are at times attacked by armed men. The patrols rarely yield any fruitful results as the ‘illegal migrants’ cross over to Kenya at night. Nights are convenient because the illegal migrants are able to spot an oncoming vehicle and hide.<sup>224</sup>

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<sup>219</sup> African Rights Watch, *The Nightmare Continues: Abuses Against Somali Refugees in Kenya*, Op. Cit. p.6.

<sup>220</sup> *Ibid*

<sup>221</sup> Mayoyo, Patrick., ‘Kenya Firms Make Killing from Piracy,’ Daily Nation, 19<sup>th</sup> July, 2010, p.34.

<sup>222</sup> Ngumo, Kuria., ‘Government Warns Refugees over Arms’, The Standard, Saturday, 26<sup>th</sup> January, 1991, p.2.

<sup>223</sup> Oral Interview, Informant 8, 13/07/2010.

<sup>224</sup> Oral Interview, Informant 9, 13/07/2010.

The insecurity at the BCP impacts on the psychological wellbeing of the officers. The availability of arms in the hands of civilians has posed a threat to the safety of the BCP officers especially during the patrols. The officers are not able to combat the smuggling of small arms and light weapons, hence, not meeting the mandate of protecting the state.

### 6.3 The Control of the Entry of Goods

The BCP mandate of controlling the movement of goods across the border is adversely affected by the Somalia crisis. The crisis led to the collapse of the centralised marketing boards in the state. The marketing boards had controlled the trading activities in Somalia, hence the customs officials at the BCP only charged customs duty on the imported goods. The conflict in Somalia opened up the state to more economic opportunities. There emerged a group of entrepreneurs who engaged in trade in commercial goods.<sup>225</sup> The ports of Mogadishu and Kismayu became instrumental in the importation of commodities into Somalia. The commodities are warehoused at Kismayu and Mogadishu, and then marketed in Kenya. The Kenyan market is accessed through Liboi BCP.

The customs and security officers at the BCP played a critical role in the scrutiny of the commodities to ensure that no illegal goods were brought in. Similarly, the KEBS officers verified the standards of the goods to protect Kenya from becoming a dumping ground. Once in Kenya, the goods were transported to various places such as Liboi, Dadaab refugee camps, Garissa town and Eastleigh in Nairobi.<sup>226</sup> The goods included sugar, powdered milk, cooking oil, fruit drinks, pasta, canned foodstuffs, clothes, perfumes and cosmetics, electrical and household items. The cross-border commerce, thus, is a major source of livelihood to the people of Liboi.<sup>227</sup>

The cross-border commerce declined when the border was declared 'closed' in January 2007. This implied that no transactions could take place between Kenya and Somalia. The 'closure' of the border led to widespread shortage of basic commodities at Liboi. The Kenyan government responded to the crisis by distributing food aid to the locals and BCP officers.

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<sup>225</sup> Oral Interview, Informant 16, 13/07/2010.

<sup>226</sup> *Ibid.*

<sup>227</sup> *Ibid.*

Nonetheless, the food aid was inadequate.<sup>228</sup> Therefore, in an attempt to survive, the businessmen resorted to smuggling goods into Kenya.

The businessmen who are engaged in the smuggling operate through committees. The committees ensure the safe operation of the business. The members of the committees are responsible for collection of money from the businessmen in order to bribe some of the officers so that the goods could be brought in. The committee members also gather intelligence information pertaining to the operations of the business.<sup>229</sup> The smuggling of goods has drawn Kenya into the Somalia economy, with Mogadishu as the warehousing site and home to top businessmen while Nairobi provides the principal market and site for banks.

The smuggled goods though illegal play a significant role in the economy of Liboi. Smuggling ensures a steady supply of foodstuffs to the community as well as the officers. However, smuggling of goods raises security concerns. The lorries that ferry the goods also carry SALW. The officers are not able to differentiate between the lorries ferrying goods only from those carrying goods blended with the SALW. This is because the businessmen evade the relevant authorities at the BCP, that is, the customs and KEBS officers. The businessmen prefer to involve the police in the fraudulent transactions.<sup>230</sup>

The fight against smuggling is hampered by corruption of some officers. The smugglers pay bribes to the officers in order to have their goods brought into Kenya. The bribes are also used to solicit intelligence information from the officers. The bribed officers would tell smugglers of patrol plans enabling them to evade capture. For this reason, patrols have largely been unfruitful. The bribe culture has impacted on efficiency of the BCP officers in executing their mandate. The officers are reluctant to take action due to the 'dual nature' of some of their colleagues. The achievement of the BCP mandate is further curtailed by several challenges.

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<sup>228</sup>Patrick, Muriungi., 'Armed Banditry Continues Unabated. The Standard, Wednesday, November 18<sup>th</sup>, 2009, p. 23.

<sup>229</sup>Patrick, Mayoyo., 'Kenya Firms Make Killing from Piracy,' op. cit, p.34.

<sup>230</sup> Oral Interview, Informant 9.

## **6.4 Challenges to the BCP Mandate**

The mandates of the BCP have not been achieved due to several challenges. Though these challenges constrain the operations of the BCP, they could be seen as a reflection of a laxity by the government to respond adequately to the changed environment at the border.

### **6.4.1 Border Porosity**

The Kenya/Somalia border is approximately 700 kilometres long. This borderline has only two BCPs. The stretch between the two BCPs is a vast area that has hundreds of illegal entry routes. The officers have no capacity to ensure that all migrants use designated entry routes. As a measure to deal with the porosity of the border, the government tasked security officers to patrol the long stretch. However, the huge magnitude of people fleeing the crisis in Somalia has reduced chances of curbing illegal migration.<sup>231</sup> The porosity of the border raises questions as to whether it is possible to control the migration of Somalis into Kenya. Hence, the BCP has to a large extent not achieved its mandate.

### **6.4.2 Corruption**

The Somalia crisis led to the emergence of 'need driven migration'. The individual interests to access Kenya have been the motivators for migration. Thus, illegal migrants, smugglers and traffickers use all possible means to access Kenya including corrupting officers at the border. The culture of corruption impedes the capacity to fight crimes at the BCP. The vice of corruption is a source of betrayal to the mandate of the BCP as well as the integrity of the officers. Moreover, due to corruption, illegal migrants are able to obtain Kenyan identification documents making it much harder to contain their movements as they are 'citizens'. The issuance of the identification documents is a process that involves a number of officers from the relevant government offices many of whom have succumbed to the vice of corruption.<sup>232</sup>

### **6.4.3 Personnel**

The personnel at the BCP are recruited at agency level. Each agency is responsible for the training of its personnel as well as their welfare needs. There is no central institution that coordinates the duties of these agencies. However, officers experience similar welfare problems and live in structures that are unfit for human habitation.

<sup>231</sup> LIB/IMM/AR/9/74/2.

<sup>232</sup> Oral Interview, Informant 14.

The dilapidated houses are a disaster in waiting. The officers are threatened by the impending catastrophe. The insecurity in the region also affects their performance capacity as officers live in constant fear of attacks from Al Shabaab which are usually spontaneous.<sup>233</sup>

The BCP officers also lack adequate facilities for executing their duties. For instance, one of their mandates is to control the migration of Somalis to Kenya. There are no surveillance technologies at the BCP, therefore, it is difficult for the officers to intercept illegal entries along the long and porous border. The BCP officers rely on border patrols to control illegal migration. The patrols are at times affected by the rainy seasons, which make the roads impassable. The patrol vehicles are also a challenge as they often encounter mechanical hitches. The repair for such vehicles takes time due to the difficulty of access to the spare parts.<sup>234</sup>

## 6.5 Conclusion

This chapter explored how the Somalia crisis impacts on the operations at Liboi BCP. It is observed that the crisis has led to a complex border operation cycle. A cycle in which the government of Kenya seeks to control the illegal migration of Somalis, to control the movement of goods and safeguard state security, but those charged with this responsibility are the very ones compromising on the mandate of the BCP. The vice of corruption has transformed BCP officers from being public servants to people serving the bribe givers. Therefore, the leadership crisis in Somalia has negatively impacted on the operations of the BCP to the extent that it may not be possible to achieve the mandate of the BCP.

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<sup>233</sup>Oral Interview, Informant 19.

<sup>234</sup>*Ibid.*

## CONCLUSION

This study, on conflict and border control carried out at Liboi Border Post, represents an attempt to explain the problems of border control in Kenya. The central purpose of the study was to assess the impact of the Somalia conflict on the operations at Liboi BCP. In this study, the setting has been provided by discussing the details of the political events leading to the demarcation of the border. A discussion of the post-colonial state highlights the strategies adopted by the government to enhance territorial integrity and sovereignty. Additionally, the study provides details on the Somalia crisis and its impact on the BCP operations.

The study also examines the extent to which the mandate of the BCP has been attained amidst the crisis. Therefore, this study obtained several findings when considered in the light of its objectives, hypothesis and conceptual framework. The study highlights the following findings.

The study has shown that the Kenya/Somalia border was a colonial creation. The boundary divided Somali clans between Kenya and Somalia. After the establishment of colonial rule, the British sought to limit the relations between the Somalis across the borders through policies such as 'controlled grazing'. The attempts by the colonial government to control movements stimulated Somalia political activity, known as Somalia nationalism. The growth of Somalia nationalism led to the *shifto war*. The war was an important factor in the establishment of the BCP. The mandate of the BCP was to control the migration of Somalis into Kenya, flow of goods in and out of the country, as well as the protection of state security.

The study also sought to find the impact of international terrorism on the operations at the BCP. The terrorist activities in Somalia have drawn Kenya into the international war on terror. Liboi BCP is the epicentre of the war due to its proximity to Somalia. The BCP is prone to attacks from the Al Shabaab who operates at the border town of Doble. The Al Shabaab occasionally attack the officers.

These attacks have impacted on the operations of the BCP in several ways. The attacks have led to insecurity which has impacted on the performance of the officers. The fear of armed militias in the area has adversely impacted on the morale of the officers and their ability to patrol the border.



The study has also revealed that the BCP has not attained its mandate due to several factors. The porosity of the border has been the most challenging aspect to the BCP mandate. The attempt by the officers to channel entry through the designated entry point has failed due the existence of hundreds of illegal entry routes on the border. The situation is further complicated by the culture of corruption among some of the officers. Some of the security officers who arrest the illegal migrants crossing to Kenya ask for bribes and allow illegal entry. The illegal migration has also been facilitated by human trafficking. The traffickers bribe the officers, thus, the practice continues to be the most convenient way for Somalis utilize to access Kenya. The trafficking of Somalis to and through Kenya has rendered the BCP ineffective.

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