

THE REPRISAL ATTACKS BY AL-SHABAAB AGAINST KENYA

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The incursion of Kenya Defence Forces (KDF) into Somalia was met by a series of threats from the Al-Shabaab that it would increase the attacks against Kenya if the troops were not withdrawn. The capture of Kismayu by KDF has weakened the nerve of Al-Shabaab but has not eliminated the imminent danger of a substantive terror attack. Since the incursion by KDF, Kenya has succumbed to a sequence of grenade and Improvised Explosive Devices attacks, roadside bombs, landmines and raids by fighters using small arms and light weapons and Rocket Propelled Grenades against Kenyans mostly in North Eastern, Coastal and Nairobi counties, marking the resurgence of terrorism in the country. We argue that Kenya is more vulnerable to Al-Shabaab terrorists attack than before the KDF incursion by citing the frequencies of reprisal attacks from October 2011 to January 2013. Hence, our troops should be withdrawn and deployed within our boundary.

Key words: *incursion, international law, reprisal attacks.*

1. INTRODUCTION

Since the entry of the Kenyan defence forces (KDF) into Somalia, it was expected that Kenya would suffer blows of reprisal attacks from her neighbour. Even before it started, the military expedition was met by a series of threats from the Al-Shabaab that it would attack Kenya if it dared send its forces to Somalia [1].

Kenya Defence Forces' (KDF) preemptive and preventive actions were justified after the terrorist

group Al-Shabaab performed a series of kidnappings and cross-border incursions into Kenya, all of which threatened security and the lucrative tourism industry in East Africa's largest economy [2].

Towards the end of 2011 events like the kidnapping of two foreigners and the killing of another in the Kenyan resorts on the east coast, the abduction of two aid workers from the Dadaab refugee camp, and the attack against Kenyan soldiers in cross-border raids raised a lot of concern for the Kenyan

government [3]. There was credible intelligence that the Al-Shabaab terrorist group would continue to attack Kenya. Therefore, the most appropriate decision on behalf of Kenya was to conduct a military operation to take preventive action to stop such further attack [4]. Because the terrorist group had previously attacked Kenya, preventive action was justified. Given the sporadic nature of terrorist attacks, it appeared that the threat was escalating. Therefore, a decisive opportunity to attack and damage such a group prior to it launching another attack on Kenya was seized [5].

The Kenya Defence Forces decided to use a campaign strategy because, given the nature of the terrorist group, it was difficult, if not impossible, to defeat a terrorist group in a single strike. But in most cases, terrorist groups do not facilitate the targeting structure to carry out this approach since, for example, most terrorist groups are dispersed across a number of cells with little contact between them [6].

As a result, there may not be enough information to stage a campaign. Consequently, in most situations, governments are reduced to attacking terrorist organizations on a piecemeal basis, using a series of individual strikes [7].

2. METHODOLOGY

The research was gathered primarily through desk-based research. The secondary data on the subject was drawn from journals, newspapers, conference proceedings, government/corporate reports and Internet and was critically analyzed. According to Bryman

[8], secondary analysis is analysis of data by researchers who will probably not have been involved in the collection of data and in addition, is concerned with analyzing already collected data within another study [9]. Secondary analysis allows for the examination of existing data, yet it can produce new and more detailed information, including the emergence of conclusions that differ from those in the original report [10]. The advantages of secondary analysis are that it provides high quality data [11] and, as a result of the quick and easy access to materials since documentary research is largely free of the restrictions and difficulties faced in primary data research, the researchers do not encounter rejection, non-response, bias, or any other respondent-based problems [12]. The findings and analysis are presented under the sub headings of: Kenya Defence Forces (KDF) incursion into Somalia and the International Law, Self-Defense in International Law, The Consequences of KDF's incursion into Somalia, Kenya Defence Forces (KDF) Successful Capture of Kismayu is merely suspended hostilities with Al-Shabaab, Reconstruction as a phase in war termination and Escalated reprisal attacks against Kenya by Al-Shabaab since KDF's incursion into Somalia.

3. KENYA DEFENCE FORCES' (KDF) INCURSION INTO SOMALIA AND THE INTERNATIONAL LAW

International law holds that the use of force between states is illegal. Article 2(4) of the UN Charter prohibits the "*threat or use of force against the territorial integrity or political*

*independence of any State” [13]. The two exceptions to this general rule are the Security Council authorization for the use of force to keep peace as provided in Chapter VII of the Charter, and that done in self-defence. Article 51 of the United Nations (UN) Charter, that says “*nothing shall impair the inherent right of individual or collective self-defense if an armed attack occurs against a Member of the United Nations, until the Security Council has taken measures necessary to maintain international peace and security. Measures taken by Members in exercise of this right of self defence shall be immediately reported to the Security Council*” [14].*

There should be an armed attack prior to the preemptive strike for Article 51 to be applied. However, there is no unanimous interpretation of this provision. The advocates of preemption say there is no explicit mention of any prohibitions and the states have the right to act. Since there is no unanimous acceptance or rejection of whether an armed attack is a necessary pre-condition for preemption, it has generally been accepted that a preemptive strike can be launched irrespective of a prior armed attack [15].

3.1. Self-Defense in International Law

Article 51 is not the only authority that permits the use of force in self defense. Even though the issue of when an armed attack is justified because of the right to self-defense is still under debate, the Security Council has clarified that “*an attack must be underway or must have already occurred in order*

to trigger the right of unilateral self-defense” unless an earlier response has already been approved by the Security Council. Therefore, no state can take it as its own right to attack another state on reasons that the latter is hypothetically planning or developing weapons for a likely campaign. The use of force should not involve “*anything unreasonable or excessive, since the act justified by the necessity of self-defence must be limited by that necessity and kept clearly within it*” [16].

At the onset of the entry into Somalia, Kenya advanced the argument of the country’s right to self-defence as embodied in Article 51 of the UN Charter, [17] which clearly recognizes the inherent right of individual or collective self-defence in the wake of an armed attack against a member of the UN. The use of this particular article as the legal justification for Kenya’s invasion raised a lot of questions regarding what constituted an armed attack against the state and whether such actions necessitated an incursion. Some argued that Kenya did not follow the right procedure required in pursuit of the right to self-defence as the country did not report its intended actions to the UN Security Council (UNSC) [18].

However, even after news of the invasion surfaced, the UNSC remained silent, despite the fact that it was not informed of Kenya’s intentions to intervene in Somalia. Utterances by the UN Secretary-General Ban Ki-moon came nearly two months into the incursion; he commended Kenya on its role and efforts in stabilizing Somalia [19]. Many analysts have drawn comparisons between the

incursion in Somalia and the 2003 invasion of Iraq by the US [20].

Kenya's incursion was launched "to protect its territorial integrity from foreign aggression" as explained by Saitoti, Kenya's late minister for internal security a day before the launch of the incursion in mid October 2011[21]. This statement implied that the KDF would move in and advance as far into Somalia as possible in pursuit of Al-Shabaab terror group. The move marked Kenya's largest military operation since its independence in 1963 [22].

4. THE CONSEQUENCES OF KDF's INCURSION INTO SOMALIA

The incursion into Somalia has made Kenya more vulnerable on the domestic front as the country risked its national security as a result of the offensive in Somalia. By its incursion into Somalia, Kenya provided ample justification for Al-Shabaab to finally make good on its threats to attack Kenya. The terror group subsequently announced that it would carry out reprisal attacks against Kenya [23]. It was clear that the Al-Shabaab terror group is against Kenya intervention in Somalia. There have been escalated terror attacks in North Eastern, Coastal and Nairobi Counties since the beginning of the incursion, providing evidence that threats of Al-Shabaab counter attacks are real. By Al-Shabaab losing Kismayu to Kenya Defence Forces, reprisal attacks on Kenya are likely to become more pronounced [24].

4.1. Kenya Defence Forces (KDF) and SNA's Successful Capture of Kismayu is Merely Suspended Hostilities with Al-Shabaab

The Al-Shabaab terror group were uprooted from Kismayu by KDF and SNA forces. Military personnel possess a strong desire to ensure that assigned tasks are completed successfully and their confidence in their own solutions makes it harder for them to accept a war ending short of victory. From a tradition of past conflicts, the notion of victory has widely pervaded into the military as the only form of ending a war with honour [25]. Nevertheless, Al-Shabaab might only be retreating in order to regroup and re-emerge stronger in tactics similar to those of other radical groups like the Taliban in Afghanistan.

The capture of Kismayu by KDF and SNA has raised fundamental question, like: does Somalia's young and newly-elected government have adequate means to govern Kismayu [26]. The question relating to the governance of Kismayu is one that needs to be addressed urgently so as to open the port for operation and the issue of the charcoal, estimated to cost billions, be sorted out. This the Somalia government should do in consultation with all stakeholders.

4.2. Reconstruction as a phase in war termination

A key component of war termination is to determine how the liberated areas will hold free and fair elections and have democratically elected leaders to govern them. War will always come at a great cost. For Kenya the incursion into Somalia has been very expensive. Financial experts estimate the cost of the

incursion at Ksh.210 million (US\$2.8 million) per month in personnel costs alone, this during a year when Kenya has recorded a Ksh.236 billion (US\$3.1 billion) total budget deficit [27].

Kenya's government has no financial capability to do this in Somalia because the high cost of keeping troops in an open-ended war is one of the reasons behind Kenya's decision to integrate into AMISOM [28]. It is estimated that the Kenya government is spending at least Sh200 million per month on the war, a staggering amount especially in a year of record Sh236 billion budget deficit [29]. This inability to fund its own budget shows that it cannot fund the reconstruction in Somalia which is part of war termination [30].

The cost of supporting personnel, maintenance and procuring military equipment and hardware became too much for Kenya to bear alone. Therefore, the country turned to the international community, the UNSC, the Intergovernmental Authority on Development (IGAD) and the AU to support its invasion of Somalia in the hope that this support would ease the financial and legal burden of the invasion. The response was positive when, on 22 February 2012, the UNSC authorized an increase in the AMISOM force to 17,731 troops. An increase in funding from US\$300 million per annum to around US\$500 million was also awarded [31]. However, the KDF allocation still accounted for the largest increase in the 2012/2013 Kenya budget at Ksh.70 billion [32]. This huge spending on the war continues to put pressure on the country's budget as funds to the military are partly responsible for the diversion

of spending from key sectors like agriculture, health environment and education.

5. ESCALATED REPRISAL ATTACKS AGAINST KENYA BY AL-SHABAAB SINCE KDF INCURSION INTO SOMALIA

The KDF incursion into Somalia has increased Kenya's civilian casualties as reprisal attacks from Al-Shabaab [33]. In Kenya, grenade attacks did not only cost lives, they also fuelled feelings of resentment from locals who blamed the government for focusing more on the KDF invasion of Somalia while neglecting the internal security of the country. Seemingly, the KDF might have been successful in rallying up citizen opinion in support of the invasion during the early stages. However, if civilian casualties continue, the forces will receive more condemnation from citizens in Kenya.

The first attack by Al-Shabaab was on a blue-collar bar known as Mwaura's in downtown Mfangano Street in Nairobi on Monday, 24 October 2011, at around 1:15am [34]. The hurled grenade left one person dead and wounded more than 28 [35]. A second blast occurred later the same day, when a grenade was tossed out of a moving vehicle into the Machakos bus terminus where 59 men and ten women were subsequently hospitalized, of which two were in intensive care and five people were confirmed dead [36].

On November 5, 2011, a grenade attack at Garissa's Pentecostal Church left two people dead and five seriously injured while on November 24, 2011 four people are killed by blasts in border towns. Three people

were killed and scores wounded in twin grenade attacks in Garissa, one in Ngamia Road and the other at Chege's Café. Militants blow up a Kenya military truck using an improvised bomb and open fire on troops in Mandera. A soldier was killed and three others injured [37].



Garissa is the most attacked town by Al-Shabaab sympathizers

The Al-Shabaab terror group is suspected of carrying out six attacks in Kenya in December 2011; some of the attacks resulted in injuries and casualties while some resulted in no injuries [38]. On December 5, 2011 an administration police officer was killed and three others critically injured in an explosion at IFO refugee camp in Garissa County. On December 11, 2011 two separate explosions caused by roadside improvised explosive devices (IEDs) near the Somalia border left an administration police officer dead, and two regular police officers injured in Mandera and nine Kenya Defence Forces soldiers wounded in Wajir when their truck ran over an explosive on the road. On December 12, 2011 an intelligence officer and his driver were injured in an explosion in Wajir and on December 15, 2011 twin grenade attacks in Garissa, one at Florida Hotel and the other at a local prison officers' canteen at Bulaistin left two

people injured while on December 19, 2011 two people were injured after gunmen shot at them in Garissa Town and on December, 21, 2011 police officers escape unhurt after an explosion in Dadaab [39].

In January 1, 2012, four attackers in military uniform hurled a grenade at revelers celebrating the New Year at Locus night club in Garissa Town and indiscriminately sprayed bullets on hundreds fleeing from the blast at the packed club, killing five people and also killing an administration police officer at Bula Sheikh residential area as they fled, while on January 11, 2012 about 100 heavily-armed attackers bomb an administration police camp in Gerille Division, Wajir, killing seven people, including three administration police officers. The attackers also stole a cache of assorted firearms, and abducted two government officials [40].

In March 10, 2012 a series of explosions rocked Machakos bus station, Nairobi, killing six people and injuring 63 and in March 31, 2012 a hand grenade and a home-made bomb were used in the simultaneous attacks at a prayer rally in Mtwapa and in a restaurant at Mombasa's Tononoka area in which a man died and 33 other people were injured.

On 29 April 2012, an attack was reported at God's House of Miracle Church at Ngara Estate in Nairobi [41]. One person died and 11 people were admitted at Kenyatta National Hospital [42]. In the month of May 15, 2012 three grenades hurled at Bella Vista Club in Mombasa by unknown people killed a woman and injured five other people [43]. An Administration police officer was killed and four others seriously injured

in Dagahaley, Lagdera Division, after the Land Cruiser they were travelling in was blown up by an explosive while on May 28, 2012 explosive blew off the roof of Assanand's House on Moi Avenue, killing one person and injuring 36 people.

On June 2, 2012 a man hurled a petrol bomb at the Nyerere Road Oil Libya petrol station in Kizingo. No one was injured while on June 24, 2012 an explosion at Jericho Beer Garden in Mishomoroni, Mombasa left four people dead and 30 injured and ripped off the roof of a house next to the pub [44].

There were several terror attacks between the months of July and December. On 1 July at around 10:15am, masked gunmen attacked two churches (the Central Catholic Cathedral and AIC churches) simultaneously in Garissa, located approximately 140 kilometers from the Somali border. The assailants killed seventeen people and left fifty injured [45]. The churches are 3 kilometers apart and the dead included two police officers, four men, nine women and two children [46].

Four people were reported injured on 18 July when two hand grenades went off at a barbershop in Wajir. On July 21, 2012 police in Kitale arrested two terror suspects, Abraham Kemoi Setot and Caleb Anyela Onyango, who were on a mission to allegedly bomb the Umoja Catholic Church, a busy parish in the Eastlands area of Nairobi. In addition, three police officers were injured on 25 July when their patrol vehicle hit a landmine [47]. The police also arrested a man who was carrying two grenades at the Nakuru Agricultural Show shortly before President Mwai Kibaki arrived

to deliver a speech [48].

On 3 August, one person was killed and six more were left injured at the Eastleigh neighborhood near the Kenya Airforce headquarters in Nairobi [49] and on 28 August, three Kenyan policeman were killed and over a dozen wounded in a grenade attack during riots in the port city of Mombasa over the killing of Islamist cleric Aboud Rogo Mohammed [50].

On 20 September, a 9 year old boy was killed when a grenade was hurled to Sunday school children at St Polycarp Anglican Church along Juja road in Nairobi [51]. On 21 September, four police officers and three civilians were injured during a series of two explosions. The first explosion targeted a GSU lorry and the secondary explosion went off when officers rushed to the scene [52]. There were several attacks on administration police officers in September. On 30 September, two police officers were shot dead from behind while patrolling along Ngamia road in Garissa [53]. Additionally, on 15 September, two administration police officers were injured in an explosion when their vehicle hit a landmine [54]. On 27 October, CID officer Yussuf Yero was shot and killed in a Hagadera, Daadab mosque as he read the Koran [55].

On 1 November, a policeman was shot dead and another seriously injured by assailants in Garissa town. The officers were on patrol when they were ambushed by four men, one of whom was a teenager [56]. On 4 November, a policeman was killed and 10 people were injured in a grenade attack on a church in Kenya [57]. On 18 November 10 people were killed and 25 seriously injured when

an explosive went off on a mini-bus (matatu) in Eastleigh. The explosion is believed to be an improvised explosive device or bomb [58]. On 20 November, three Kenya Defence Forces soldiers were gunned down in Garissa as they changed their burst tyre.

An explosion went off on 5 December in Eastleigh, Nairobi killing 1 person and wounding 6 others [59]. The explosion that occurred during rush hour traffic was caused by a roadside bomb [60]. On 7 December 5 people were killed and 8 others injured in an explosion near a mosque in Eastleigh area of Nairobi. The wounded included the former area Member of Parliament Abdi Yusuf Hassan [61]. A second attack was carried out at the same mosque on 16 December, seriously injuring one person [62]. On 19 December, two people were injured after two blasts went off outside Al Amin mosque in Eastleigh area of Nairobi. The blasts took place during rush hour [63] and suspected Al-shabab militants shot three people dead and injured one person on Kenyatta Street in Garissa on 20 December at 7pm. On 27 December, at 11pm a police officer was shot dead while his colleague escaped unharmed after being attacked by suspected Al-Shabaab terror group in Mandera town [64].



A grenade was thrown into this passenger mini bus in Eastleigh area of Nairobi

On 4 January, 2013 at 7pm two people were killed and seven wounded in a grenade attack at Dagahale area in Garissa. The grenade was hurled from a saloon car at a tent where people were chewing Khat [65]. A grenade was thrown into a police vehicle as it drove past a crowd along Ngamia road near the local District Officer's (DO) office on 7 January 2013. Four people including three police officers were seriously wounded in a grenade attack on a police car in Garissa town [66]. On the evening of 9 January 2013, two grenades were thrown into the World Food Programme (WFP) compound in Mandera Town. There were no injuries reported. The blast occurred as a group of worshipers were leaving a nearby mosque after their prayers [67].



Doctors attending to the injured

On 16 January 2013, suspected Al-Shabaab terror group shot dead 5 people and injured 3 others at a restaurant in the eastern town of Garissa. Authorities said they believed the gunmen belonged to the Al-Shabaab group, because the victims included a senior prison warden, fitting a pattern of attacks against security forces [68]. Two men believed to be suicide bombers of Somali origin died on the morning of 17 January 2013 after Improvised Explosive Devices (IEDs) they had went off in Hagadera refugee camp in Dadaab [69].

6. CONCLUSIONS

The incursion by Kenya Defence Forces (KDF) into Somalia and return of semblance of peace proved to be a daunting task, since other former initiatives by United Nations and United States of America with more resources and military might and experience had failed. A logical conclusion is that a military approach alone to counter a complex conflict cannot work.

A more comprehensive and integrated approach involving political and social actors, relevant national stakeholders, as well as regional and international players is a better strategy to adopt. Kenya needs to understand that the elimination of Al-Shabaab from Somalia is not going to mean the end of the threat of terrorism within its own borders. The stability and development of Somalia will help create an environment where both Kenya and Somalia can co-exist peacefully as neighbors, resulting in more peaceful relations in the region

7. RECOMMENDATIONS

A. Demobilization and reintegration of Kenyan unemployed youths who had joined the terrorist group Al-Shabaab by providing amnesty, education, vocational opportunities and employment for former combatants may prevent them from rejoining Al-Shabaab terrorist group.

B. Development of proactive policies to combat International terrorism. The government needs to refine current policies and explore alternative ways and means to combat International terrorism, especially given that al-Shabaab

has resorted to launching counter-attacks on Kenyan soil. Kenya cannot ignore the retaliatory terrorist attacks that are now more prevalent within the country while fighting the enemy outside. It is prudent for the government to implement long-term measures to guard against threats to the country by enhancing the capacity of security personnel in strategic approaches to International terrorism at Kenya's National Counter-Terrorism Centre which will provide enough pool of highly trained professionals in the area of counter-terrorism which will minimize the infiltration by Al-Shabaab and hence reduce collateral damage and deaths of Kenyans caused by Al-Shabaab terrorist.

C. A post Conflict reconstruction plan- KDF having neutralized the threat of Al-Shabaab by the capture of Kismayu, the government of Kenya needs to partner with the Somali government to support the new administration by empowering the military and leaving them to take control of their country.

D. Kenya Defence Forces (KDF) combat success alone will not provide a sustainable peace. Recognize the importance of inclusivity in trying to achieve a stable Somalia. The conflict in Somalia has socio-political, economic and humanitarian dimensions to it that the Government of Kenya needs to recognize and take into consideration. Greater inclusion of the Somali government as well as regional and international stakeholders is important for efforts to stabilize Somalia.

E. Somali administration to take lead in decision-making-Since Somalia people have a young and fragile government, the government

of Kenya should note that this new government needs to be consulted prior to any action being taken within its territory. It is imperative for Kenya to offer its support to the new government in dealing with Al-Shabaab while Somalia is in the process of reconstructing its social fabric and physical infrastructure and resettling thousands of Somali refugees and Internally Displaced Persons.

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