

**REPORT OF
THE FACT FINDING COMMISSION
FOR THE RECONCILIATION
OF KENYA AND SOMALIA
FROM 9 TO 13 JANUARY 2021**

At the 38th IGAD Summit held in Djibouti on 20 December 2020, the Heads of State and Government meeting discussed behind closed doors the diplomatic crisis that has affected the relationship between Kenya and Somalia.

Indeed, Somalia broke off diplomatic relations with Kenya on 15 December 2020, after having earlier recalled its ambassador and sent the Kenyan representative back to his country for consultations with his authorities on 30 November 2020.

During the discussions, the President of the Federal Government of Somalia, His Excellency Mohamed Abdillahi Formajo, made any resumption of diplomatic relations with Kenya conditional on the withdrawal of the armed forces that Kenya has gathered at the border and the end of the armed militia hostile to his government that he maintains on its soil.

The Kenyan President His Excellency Uhuru Kenyatta has denied the facts. The Ethiopian Prime Minister His Excellency Abye Ahmed has requested verification.

In response to the request, the Assembly of Heads of State and Government mandated the Head of State of Djibouti, His Excellency Ismail Omar Guelleh, to carry out this double verification.

Immediately said, immediately done, the President of the Republic of Djibouti His Excellency Ismail Omar Guelleh set up, two days after the Summit, a commission made up of diplomats and military officers and an IGAD Representative.

The mission of this Commission of Inquiry was to travel successively to Somalia and Kenya to collect facts and data justifying the respective positions of the two countries.

This commission is composed of :

- H.E. Yacin Elmi Bouh, Ambassador of Djibouti to Kenya
- H.E. Aden Hassan Aden, Ambassador of Djibouti to Somalia
- General Taher Ali Mohamed, Djibouti Armed Forces, FAD
- Colonel Ali Aden Houmed, FAD
- Colonel Mohamed Barkad Aden, FAD
- Commander Houssein Idriss Egueh, FAD
- Commander Abebe Muluneh, Director IGAD Security Sector Program

Due to the festive season, the commission could not begin its work before 9th January 2021.

The commission travelled to Mogadishu to start its first meeting with the Minister of State for Foreign Affairs of the Somali Federal Government at the Ministry's premises.

After the customary welcome and introductory remarks, the Commission questioned Minister Balal Mohamed Osman on the reasons that led his government to break off diplomatic relations with its Kenyan neighbour.

The Minister described the close and historic ties between the 2 countries which were consolidated during the long years following independence. He recalled that this decision which was not easy was imposed on his government which wisely endured the unfriendly acts towards its people and country.

He listed the following 5 grievances against Kenya:

1. The violation of the airspace of Somalia. Without any agreement, Kenyan planes enter Somali airspace and land on its soil.

2. The violation of Somalia's land borders. Kenyan forces, led by AMISOM, leave their positions and move on to other locations. They are

abandoning the people they were supposed to protect to the Shababs who do not hesitate to suppress them. The Kenyan forces proceed to destroy telecommunication equipment in places outside their authority, such as Guedo.

3. Recognition and collaboration with the Jubaland Regional State. The Kenyan authorities have recognised Mr. Ahmed Madobe as President of Jubaland after elections that were not validated by the central government.

4. Participation in the illegal sugar and coal trade in Kismayo. Kenyan troops under AMISOM are contributing to the enrichment of Shababs in the region.

5. The creation, training and maintenance on Kenyan soil of an armed group under the authority of Abdirashid Janan. This militia hostile to the government of Somalia is based in Omar Jilo, 30 km from Mandera, inside Kenyan territory.

The Minister invited the commission to meet with the people of Mandera to ascertain this. In support of these charges, the Minister provided us with a series of documents attached to this Report.

In Mogadishu, the commission also met with the Deputy Minister at the Prime Minister's Office, the Representative of the UN Secretary General in Somalia, Ambassador James Swan, and with the Deputy Special Representative of the African Union His Excellency Simon Molingo.

The commission thanks all these officials for having devoted some of their time to it.

The Commission would like to mention that the visit at Beled Hawo at the Somali border was not made possible.

The commission then flew to Kenya.

It arrived in late afternoon in Nairobi where the Commission was welcomed by the Director of Bilateral Affairs for Africa His Excellency George Orino, the Kenyan Ambassador to Djibouti His Excellency John Mwangemi and the Kenyan Ambassador to Somalia His Excellency Lucas Tumbo.

The following day, Monday, January 9, 2021, the commission met in camera with a working group set up by Kenya on the matter.

The working group was co-chaired by the Minister of Foreign Affairs, Her Excellency Ambassador Raychelle Omamo and her Defence colleague Her Excellency Ambassador Monica Juma.

The Chief of Staff of the Kenya Defence Forces, General Robert Kibochi, the Africa Bilateral Director and Kenya's ambassadors to Djibouti and Somalia also attended the meeting.

Subsequently, the ministers welcomed the commission and welcomed the establishment of the Fact Finding Commission.

They said that in Kenya, the reasons behind the severance of diplomatic ties with Somalia were unknown while expressing regret that it has come to this final point.

They urged the commission to expedite its work to enable the IGAD Heads of State and Government to resolve this crisis with the sister republic of Somalia, which is actually not a crisis.

The commission was quick to share with the Kenyan authorities the grievances put forward by Somalia as developed by the Minister of State for Foreign Affairs of the Federal Government of Somalia.

In response to the Somali allegations, the Kenyan authorities first denied the existence of any violation of airspace or territory.

They then argued that Kenya had never recognised the Jubaland region as a state.

As for the maintenance on its soil of armed militias hostile to the Federal Government of Somalia, the Chief of Staff of the Kenyan Forces called this accusation false.

He asked the commission to travel the country to ascertain the inaccuracy of this information. General Robert Kibochi offered to provide the Commission with all the means to travel within the country.

Finally, the Chief of the Kenyan Army has attributed the responsibility for the behaviour of Kenyan troops operating under the authority of AMISOM to the African Union, which remains legally the sole guarantor.

At the end of the meeting with the high-level working group, the commission held another meeting with ambassadors and senior officers of the Kenyan forces to inquire about the situation at the northern border of the country.

The senior officers explained that in the north, the border is porous and that the people living on either side of this line, which is symbolic to say the least, belong to the same ethnic group. Mandera extends beyond the Kenyan, Somali and Ethiopian borders to form a giant triangular town whose economy is interdependent.

Armed with this useful information, the commission travelled to Mandera on Tuesday 12th January 2021.

After enjoying a welcome refreshment at the Mandera Air Force camp, the members of the commission split into two groups to sweep an area of 50 km in diameter from the border to the interior of the country on board two helicopters.

During these overflights, members of the commission were able to observe Somali military troops massed on the border. The commission was unable to identify an additional camp populated by Somali militias in the overlooked area under control.

Back in Nairobi, the commission met on Wednesday 13 January with the Minister of Defence and the Chief of Staff of the Kenyan Armed Forces.

The commission took the opportunity to thank them for their hospitality and their indispensable technical assistance.

The Minister of Defence requested the commission to convey the greetings of the President of the Republic of Kenya HEM Uhuru Kenyatta to the President of the Republic of Djibouti HEM Ismail Omar Guelleh.

Furthermore, the Minister of Defence entrusted the commission with a request from President Uhuru Kenyatta to President Ismail Omar Guelleh to recommend to the Somali troops to respect the legal retreat from the border.

Finally, the Kenyan authorities provided the commission with a series of documents which are attached to this Report.

In the light of all that the commission has seen, heard or read during its travels, the Commission members believe that:

- With regards to the violation of Somalia's airspace, the Commission considers that there is sufficient evidence that Kenyan aircraft entered the Somali territory in disregard of the provisions of the Convention on Civil Aviation signed in Chicago on 7 December 1944. In disagreement with the local authorities in Jubaland, the federal government had instructed all aircraft to land in Mogadishu. Kenyan planes braved the ban to defeat a total air embargo that provides no exemptions for any reason, including humanitarian evacuations.

- On the charges brought against the Kenyan troops under the authority of AMISOM, the commission considers unjustified this ostracism against the military forces acting on behalf of AMISON. They fall under the responsibility of the African Union on whose behalf they act in the same way as its other troops of various nationalities.

- On the recognition and collaboration with the regional state of Jubaland, the commission has no evidence of such recognition. The participation of two influential Kenyan political figures, MPs Aden Douale and Youssouf Hadji in the enthronement ceremony of the president of Jubaland does not constitute a recognition.

However, no one can contest the proximity of the Kenyan government to the regional authorities to preserve security on their soil in a region infested by terrorists. Kenya has made great human sacrifices to free this region from the shebabs in order to protect itself from the many attacks that have been perpetrated on its soil.

- On the trade of charcoal and sugar in Kismayo, the commission welcomes the diligence with which the issue has been addressed. Indeed, by Resolution 2551 of 12 November 2020, the

Security Council banned these types of trade and AMISOM as well as the federal government of Somalia welcome the good result. This fight has dried up the accounts of the shebabs who have fallen back on the imposition of taxes on the country's traders.

- On the creation, training and maintenance on Kenyan soil of an armed group under the authority of Abdirashid Janan, the commission was able to verify that Abdirashid Janan is the Minister of the Interior of the local government of Jubaland and that his troops are under the authority of the army of this region. It should be recalled that during the London meeting of 17 May 2017, a Somali security architecture was adopted which maintains the armies of the regions in addition to the regional police.

This army has in the past scored notable victories against Alshabab alongside American forces and AMISOM. Its men have become intruders since they were deposed by the Federal Army.

Therefore, the commission can affirm that on the day of its visit, it located them inside the Somali territory. To preserve the security of this defeated force, the commission refrains from revealing their exact location.

The commission considers that these grievances, some of which are long-standing, do not appear to it to be sufficient to justify a diplomatic separation between Kenya and Somalia.

It is true that the federal government of Somalia is sovereign in its decisions. However, on closer examination, it cannot help but be considered disproportionate and unproductive because the two countries are intimately linked politically, humanely and economically.

The consequences of this measure on the three thousand Somali children attending Kenyan schools on the other side of the border, the hindrance to the functioning of AMISOM which has since been experiencing difficulties in relief operations among Kenyan troops and the economic impact of the embargo on khat in the agricultural region of MERU are a perfect illustration of this.

The Commission recommends more diplomatic efforts to be deployed at the Highest Level in order to reconcile the two sisterly countries of Kenya and Somalia.

APPENDIX 1

DOCUMENTS SUBMITTED BY THE SOMALI GOVERNMENT

- Exhibit N° 1: retracing the history of the elements of the latent crisis that has persisted between the 2 countries

- Exhibit N° 2: Africa Confidential 2019 article relating to Kenya's request for sanctions against Al Shabab.

- Exhibit N° 3: Image of Kenyan parliamentarians participating in the inauguration of Ahmed Madobe, Jubaland.

- Exhibit N° 4: Air violation complaint to the Kenya Civil Aviation Authority

- Exhibit N° 5: Licence revocation against BUFF AIR SERVICES registered in Kenya

- Exhibit N° 6: Statement by the Kenyan Ministry of Foreign Affairs on the Jubaland presidential elections.

- Exhibit N° 7: Licence revocation against Jubba Airways and FLYSOM registered in Kenya

- Exhibit N° 8: Verbal Note from the Kenyan Embassy in Somalia requesting continuity of Kenya Airways operations to Mogadishu

- Exhibit N° 9: Mail from the Ministry of Transport and Civil Aviation addressed to the CEO of Kenya Airways.

- Exhibit N° 10: Letter addressed to the Director General of Kenya Civil Aviation regarding a violation of Somali airspace.

- Exhibit N° 11: Application to the Prosecutor of the Republic of Somalia by HORMUD Telecom against the Kenya Defence Forces.

APPENDIX 2

DOCUMENTS PROVIDED BY THE KENYAN GOVERNMENT

- Exhibit N° 1: Verbal Note to Somali DFAIT on charges against Kenya dated March 1, 2020

- Exhibit N° 2: Verbal Note from the Kenyan Embassy in Somalia relating to the holding of the Joint Commission on 22 November 2020

- Exhibit N° 3: PowerPoint presentation on the situation between Mandera/Beled-Hawo of 11/January/2021 before the Commission of Inquiry, Slides 1 to 14