Special EDITION

Preventing Human Rights Violations by External Economic Involvement in the Wider Horn of Africa Security Complex

By Jules Swinkels

Countries in the wider Horn of Africa security complex are experiencing increasing involvement from external economic and security actors. Several countries, multinationals, and non-state armed groups have set up shop, influencing existing dynamics between and within the target countries in the region. These target countries include Central African Republic (CAR), Democratic Republic of the Congo (DRC), Somalia, and South Sudan. Interestingly, all these countries are experiencing one form of conflict or another. In their engagements with these countries, foreign businesses and states should take note of the UN Guiding Principles on Business and Human Rights, the Paris Principles, and UN Human Rights Council Resolution A/HRC/RES/17/4, adopt effective human rights due diligence, and ensure that their policies and legislation are effective in preventing human rights violations by external economic involvement.

There is significant interconnectedness between countries in the wider Horn of Africa security complex. These countries share long and often very porous borders; have intertwined economies; share common languages and cultures; and have to deal with similar security uncertainties. Examples of the latter are the threat of non-state armed groups such as al Shabab in Somalia and Allied Democratic Forces in DRC; the threat of corruption, cronyism, and civil strife; political, governmental, and economic mismanagement; and persistent human rights violations by state and non-state actors. All in all, countries in the wider Horn of Africa security complex share certain common characteristics that could cause or increase instability and insecurity.

These characteristics are not static and can be influenced, amplified, enforced or diminished through national, regional and international policies and actions. Melving (2019) noted that a new distinct security engagement in the region after the Cold War has been the growing economic and political significance of the Horn region with regard to trade, refugees, and global power projection efforts. Additionally, three different external economic engagements are present in the region: engagement to gain concessions for drilling, mining, and other extractive industries; engagement to gain concessions for large scale construction projects; and engagement for the sale of arms, military equipment and the training of local security actors.

Often, external economic engagements go hand in hand with external security engagements. Nationalized companies or large multinationals often start economic engagements under the umbrella of security cooperation, or vice versa. In fact, the following countries have been excessively targeted by external interests, mostly due to their already high level of instability, rampant corruption and extractive potential.

Somalia

State collapse in 1991; clan-based competition over resources including land; positions of power; and a complex Islamist insurgency by the Islamic Courts Unions (ICU), and later al Shabab, have fostered high instability and insecurity in Somalia. The Transitional Federal Government (FGS) has been in power in Somalia since 2012, but has had trouble stabilizing the country. Some local dynamics that contribute to instability in Somalia are the prolonged tensions between the semi-autonomous region of Somaliland and the FGS, internal political

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disagreements and struggle over the relationship between the FGS and regional states, a maritime border dispute with Kenya, and an ensuing insurgency by al Shabab. These local dynamics have been influenced by external engagements from countries, companies, and non-state groups.

In August 2013, the UN Monitoring Group called for a stop on all new oil deals in Somalia, citing concerns they could fuel instability in the volatile region. Shortly after, a British company, Soma Oil and Gas, acquired rights to conduct seismic surveys off the coast of Somalia in exchange for first choice of up to 12 oil blocks (Global Witness, 2015). In August 2015, Soma Oil and Gas was being investigated by the Serious Fraud Office for alleged mishandling of Somalia's resources. There is a real danger of foreign companies snapping up Somalia's valuable resources without minding the potential of further destabilizing Somalia and without redistributing its profits with Somali society. In 2019, another oil-related issue resurfaced. Somalia allegedly auctioned off oil blocks to Norwegian and British oil companies in a disputed maritime border area with Kenya. Kenya and Somalia are currently in a dispute over the potentially lucrative, triangular stretch of 100,000 square kilometers of offshore territory believed to contain large oil and gas deposits. There are allegations that Somalis of the diaspora with close relations to these oil companies were instrumental in the auctioning. The case is currently at the International Court of Justice (ICJ) and has caused a diplomatic rift between the two neighbors. The Court is expected to deliver a ruling between September, 2019.

Additionally, tensions have risen between the semi-autonomous region of Somaliland, the FGS, and federal member states, particularly due to the expansion of the Gulf and Middle Eastern security and economic space into the Horn region. The semi-autonomous region and the federal member states have aligned with the Saudi-UAE bloc, while the FGS is aligned with Turkey and Qatar. In the Gulf Crisis, Somalia tried to stay neutral, but this was perceived by the Saudi-UAE bloc as favoring Qatar. Tensions escalated when Somaliland struck a deal with a Dubai-based company to open a commercial port in Berbera. After the break, the UAE kept warm ties with regional governments, while the FGS got closer to Turkey, who provided the FGS with unprecedented military, humanitarian and infrastructural support. The regional elections (Jubaland) in August 2019, and national general elections in 2020, could be significantly hampered by external economic involvement because it pits member states against the FGS, resulting in a broken relationship in a country where all parties need to be equal partners in the national statebuilding effort.

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Central African Republic (CAR)

Current president, Faustin-Archange Touadéra, was elected in 2016 but has been struggling to bring peace and security to the country, even though a peace deal has been inked during his tenure. In October 2017, Russian foreign minister Sergey Lavrov met with the president of CAR in the Russian Black Sea resort of Sochi and discussed a range of issues. According to an official statement, they deliberated on the, "…potential for partnership in mineral exploration" and other areas of "practical cooperation." *The New York Times* (2019) reported that mining rights are being sold for fractions of the normal price to Russian businesses to hire trainers and buy arms from Moscow. Later that year, Touadéra appointed the Russian Valery Zakharov as his national security advisor. In early 2018, Russia and CAR signed a military cooperation agreement. Shortly after, mercenaries from the Wagner Group, a private military corporation (PMC) founded by a former Russian intelligence officer with ties to associates of President Putin, started showing up in CAR. Wagner Group currently has around 175 instructors in the country that have trained at least 1,000 CAR soldiers. In August 2018, three Russian journalists were shot dead in CAR while investigating activities of the Wagner Group.

Recent developments and Russia's increasing encroachment have had a detrimental effect on achieving justice for human rights violations by non-state actors. Under the auspices of the African Union (AU), with United Nations (UN) support, and synchronized with mediation efforts from Sudan and Russia, the government and 14 non-state armed groups signed the agreement on February 6, 2019. A key problematic issue during the talks was the idea of general amnesty for perpetrators of war crimes and crimes against humanity. Under pressure from western powers (France and the Netherlands), the UN and the African Union, general amnesty was not granted in the latest agreement, mostly because the 2015 Bangui Forum had established that impunity and injustice were key drivers of cyclical violence.

A clause of presidential discretion gives Touadéra the power to pardon leaders of armed groups who are arrested and convicted by the newly created Special Criminal Court (SCC), something he has already done on several occasions. For example, at the end of March 2019, Touadéra used presidential discretion to name Ali Darassa, the leader of Union for Peace (UPC), Mahamat al Khatim, leader of the Central African Patriotic Movement (MPC), and Sidiki Abass, the commander of Return, Reclamation and Rehabilitation (3R), as special military advisers to the prime minister's office. They will also command special mixed units, consisting of soldiers from various militant groups. Human Rights Watch accuses the three commanders of gross human rights violations and crimes against humanity. CAR's recent closeness to Russia means it is less dependent on Western aid and security assistance, potentially paving the way for amnesty for human rights violators, increasing involvement of PMC Wagner, and extracting resources at suspiciously low prices.

South Sudan

The world's youngest nation has seen several armed conflicts since its birth in 2011, predominantly between the majority Dinka and the minority Nuer. Following a peace agreement in September 2018, President Salva Kiir and his main opponent, Dr. Riek Machar, are supposed to govern the country together. However, Machar has not yet come back to the capital Juba, citing security concerns. Insecurity and instability still plague South Sudan. During a session organised by the Rift Valley Institute in May 2019, commentators argued that the peace agreement currently only serves one purpose: a ceasefire. Other aspects of the deal, such as creating mixed security units or dividing governmental posts among warring parties, have not been dealt with.

Additionally, there is widespread controversy around state-owned Nile Petroleum Corporation (Nilepet). The corporation has fallen under direct control of President Salva Kiir and his inner circle, and is being used to funnel millions in oil revenues to the country's brutal security services and ethnic militias, with limited oversight and accountability. Nilepet is deeply integrated into global oil supply chains because it lacks the capacity and infrastructure to refine the oil. Big oil companies, especially from China, which is the biggest investor in South Sudan's oil industry, buy and refine the crude, despite Nilepet's deplorable human rights record.

In 2018, the United States put Nilepet (and 14 other oil-industry entities) on the US Department of Commerce Entity List, meaning licensing would be required on all exports, re-exports and transfers of any items destined for these entities from the U.S. However, in February 2019, the UN Commission on Human Rights in South Sudan's third report showed that Nilepet still demonstrated a "total lack of transparency and independent oversight" in its diversion of oil revenues. Considered a private company (despite being under complete control by the government), Nilepet is not subject to the same oversight as a government agency (Council on Foreign Relations, 2019).

Democratic Republic of Congo (DRC)

Corruption in the DRC is endemic, hindering effective government services and diminishing revenues from industries. While the vast majority of Congo's population suffers from a lack of basic services, the state has sold off valuable mining assets at suspiciously low prices, denying the Congolese treasury hundreds of millions of dollars in crucial revenue in the process. A 2015 report by Global Witness found that between 2013 and 2015, more than USD 750 million of mining revenues that were paid by companies to state bodies in the DRC never reached the treasury. Instead, the money disappeared into a dysfunctional state-owned mining company (Gécamines) and opaque national tax agencies.

One of the biggest (known) scandals involving DRC's extractive industries revolves around Glencore-Xstrata, the world's largest commodities trader. According to Global Witness (2015), Glencore bribed a friend of DRC's President Joseph Kabila, Dan Gertler, tens of millions of dollars and structured deals to protect his interests as it gained control of one of Africa's biggest copper mines, the Kamoto mine from Gécamines. Just five of these suspicious mining deals have resulted in the Congolese state losing out on some USD 1.4 billion, almost twice the country's annual spending on health and education combined. In the period around the disputed 2011 elections, reports suggest that these deals, struck with anonymous offshore companies, were used to contribute to an election fund. Such corrupt practices involving external economic engagements have significantly weakened DRC's capabilities to deal with pressing security issues and growing health concerns, especially in the eastern provinces of North Kivu, South Kivu, and Ituri.

External Business Involvement

Fuelling all of the above are foreign businesses, buyers, dealers, and commodity traders. There is a complete lack of oversight and transparency in external economic involvement in unstable and fragile countries. Foreign states do very little to ensure business

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enterprises operating in those contexts are not involved in human rights abuses, corruption, and cronyism. Additionally, business enterprises and commodity traders often focus on short-term profits, neglect human rights in acquiring resource-rich territories and in exploitation activities, and do not conduct sufficient due diligence. Economists argue that foreign investment is a positive trait of any economy. In the wider Horn of Africa though, foreign investment can have detrimental effects if done without taking into account the complexities of individual states and the sometimes troubled relationships between different groups or parties within those states. Insensitive and unchecked external economic involvement can reinforce corruption, cronyism, ethnic tensions, bad governance, internal and external conflicts, environmental degradation, and human rights violations, and should thus be following certain guidelines and protocols to prevent these effects.

Recommendations

Businesses and states should both be held accountable for human rights violations flowing from their economic activities, as well as assisted in preventing unforeseen human rights violations.
To that extent, states should, at the very least, based on the UN Guiding Principles on Business and Human rights and UN Human Rights Council Resolution:

- Engage with business enterprises to help identify, prevent, and mitigate HR related risks
- Develop early-warning indicators to alert government agencies and business enterprises to problems related to human rights
- Attach appropriate consequences to any failure by enterprises to cooperate in these contexts, including by denying or withdrawing existing public support or services, or where that is not possible, denying their future provision
- Strengthen its legal framework to include civil, administrative or criminal liability for enterprises housed or operating in their territory and/or jurisdiction that commit or contribute to gross human rights abuses
- Assist business enterprises, commodity traders, and foreign investors in setting up protocols, 'do-no-harm' business practices, and prevention measures aimed at preventing unforeseen human rights violations flowing from economic activities

Business enterprises, commodity traders, and foreign investors conducting business in fragile and unstable countries and communities should:

- Respect human rights and prevent violations of the same
- Conduct effective (ongoing) human rights due diligence to avoid causing or contributing to adverse human rights impacts through their own activities, and identify, prevent, mitigate, and account for how they address violations of human rights
- Publicly state and adopt policies and processes in order to meet their responsibility to protect human rights. To this extent, enterprises, traders and investors should set up protocols and 'do-no-harm' business practices, and develop adequate prevention measures
- Identify and assess any risks associated with their business relationships through meaningful consultation with potentially affected groups and other relevant stakeholders
- Abide by the UN Guiding Principles on Business and Human Rights (2011) and UN Human Rights Council Resolution A/HRC/RES/17/4 (2011)

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