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Enhancing Africa's response to transnational organised crime

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Is Mombasa Port a safe haven for licit trade?

An assessment of governance-related vulnerability to illicit activities

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POLICY BRIEF

Summary

Poor governance issues have exposed the Mombasa Port to a major spate of transnational organised crime. Located along the east coast of Africa, the port has been undergoing rapid expansion and modernisation over the last decade, with improvements designed to bolster its efficiency. But patronage by politically connected individuals aimed at influencing key management decisions at the state-owned port have hobbled the changes and left the port vulnerable to criminal networks operating with minimal risk.

Key Points

- Political interference in the running of the Mombasa Port has opened it up to transnational organised crime.
- Improvements intended to enhance security and efficiency are only partly successful as competing factions hinder their operation.
- The constant turnover of managing directors creates instability at the top, while political differences between coastal and hinterland politicians play out at the port.
- Port stakeholders have little to no influence and businesses using the port are forced to pay bribes so that their goods are handled timeously.

Introduction

Top management at the Kenya Ports Authority (KPA), which manages the Mombasa Port, remains shipwrecked in a turbulent sea of vested interests and corruption that has expended the energies of six managing directors in two decades. Three of these men and one woman were unable to complete their first three-year renewable terms and left in disgrace under controversial circumstances with their reputations and professional credentials in tatters. Paradoxically, the KPA has remained profitable, having raked in after-tax profit of approximately KSh15.4 billion (US$142.6 million) in the 2018-2019 fiscal year.[1]

Concerns aside for whether KPA could do better, this profitability makes KPA a prized gem that some politicians and traders compete to control for tender and employment opportunities, while some position themselves to protect illicit activities at the port. This competition for control explains the high turnover of managing directors.

The research found that despite KPA's impressive profits, port users still found bottlenecks stifling the movement of goods and leading to penalties. The competition for control has exacerbated the port's vulnerability to illicit activities as users seek to circumvent delays caused by inefficiencies.

Against the backdrop of instability in leadership over the last decade, the KPA received state and donor funding to modernise the port. Apart from profits linked to the improvement and upscaling of services, the port is unlikely to make further and more sustainable profits based on quality and efficiency. The equipment may be new and the walls may have a new coat of paint but the rot in the governance system remains intact.

Based on the crime pattern theory perspective, according to which ports are either generators or attractors of crime or both,[2] this research focuses on ways bad governance and corruption generate and attract crime at the port by enabling illicit activities.

The study draws on secondary as well as primary data gathered through interviews with 65 key respondents. They included KPA staff and other government officials linked to the port, freight forwarders, clearing agents, transporters, logistics managers, dock workers, dry port staff and owners, journalists, staff and managers of shipping lines and representatives of various trade associations.

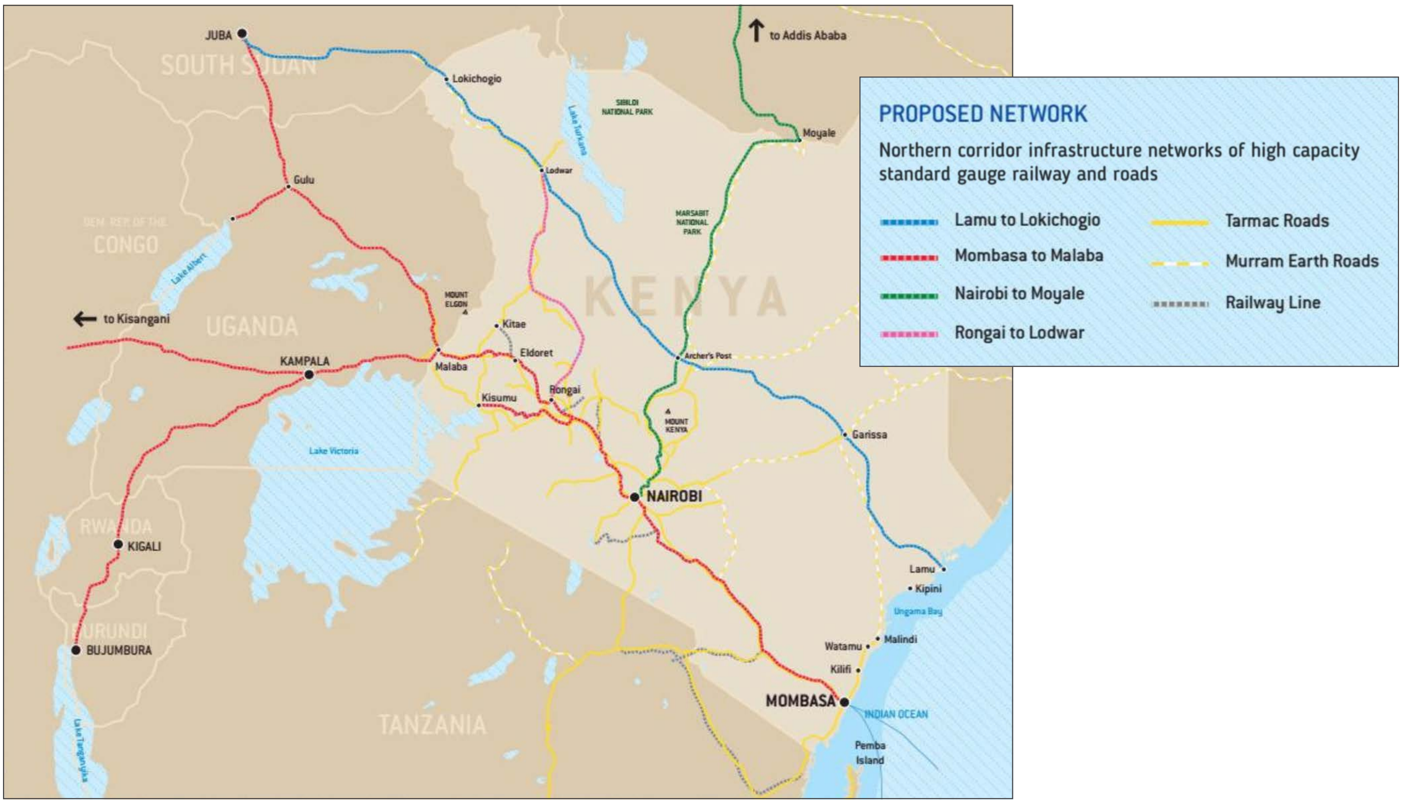
Part one of the study deals with Mombasa Port's potential that is undermined by politics, while part two shows how political interference and vested interests have led to bad governance at the port's top management. Part three demonstrates, through analysis of primary and secondary data, the forms of crime and the consequences thereof.

The Port: great potential and debilitating politics

Mombasa Port, the largest seaport in Kenya and the region, is the entry point to eastern Africa and the Great Lakes Region. It is managed by the Kenya Ports Authority (KPA)[3] the agency of the Government of Kenya mandated to maintain, operate, improve and regulate the port, as well as manage smaller ports along Kenya's coastline and on inland waterways, like the Kisumu pier on Lake Victoria and inland container depots in Nairobi, Eldoret and Kisumu.[4]

One of Mombasa Port's improved container terminals and the Standard Gauge Railway (Source: KPA website)

Figure 1: Economic corridor served by the Mombasa Port[5]



The Mombasa Port is 130 years old, with a rich history connected with trade. The original, Old Port, was built in the 1890s on Mombasa Island. The port was later relocated to the Kilindini Harbour, west of the island. In 1975, the KPA took over running the port from the East African Harbours Corporation. The map below shows the economic corridor that the Mombasa Port serves in eastern Africa.

The KPA's investment in modern infrastructure, equipment and automated port operations over the last decade aims to establish a world-class regional hub. The modernisation has enabled the KPA to comply with International Maritime Organisation (IMO) security regulations by introducing measures to make the port a safer and efficient space for business.[6] This is vital for establishing the port as a viable gateway and transhipment hub in a highly competitive global market.[7]

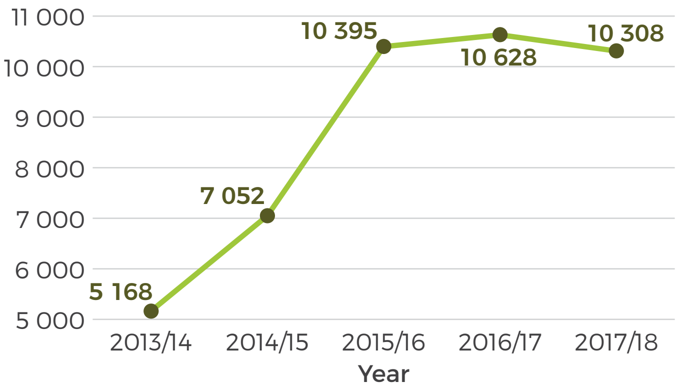
The multi-million dollar three-phase Mombasa Port Development Programme (MPDP) includes a second container terminal shown below – the expansion of Nairobi's inland container depot, construction of berths for Kenya's second port in Lamu, expansion of gates and yard capacity and the installation of an integrated port security system.[8]

The port has registered about 60% growth since the KSh28 billion (approximately US$258 million) first MPDP phase became operational in 2016 and it is currently the deepest in the east and central African region with capacity for larger Panamax container ships of up to 8000 TEUs. The KPA plans to instal modern navigation aids to allow access to post-Panamax vessels.

The port currently serves over 30 regular shipping lines and provides connectivity to over 80 seaports worldwide in a region whose cargo volume is 14 million tonnes a year.[9] The region's hinterland has a population of approximately 204 million people living in Uganda, South Sudan, Rwanda, Burundi and the Democratic Republic of Congo (DRC).[10] The port handles bulk traffic, container and roll-on/roll-off traffic, and facilitates imports, exports and quick transportation of goods and people to and from these countries. It is a critical link to the global network of shipping hubs.

The KPA's envisaged 5% growth rate is equivalent to the World Trade Organization's (WTO) annual growth rate for ports globally over the last few years. It has reported higher business volumes following the progressive implementation of its 25-year port improvement plan launched in 2005. Major infrastructure development and the acquisition of new equipment has enhanced the Mombasa Port's score in the UN Commission on Trade and Development (Unctad) liner shipping connectivity index (LSCI) between 2013-2018.[11] This is reflected in the KPA's profits within the same period as shown on the diagram below.

Figure 2: KPA's profit before tax (millions)



Source: Kenya Ports Authority profits between 2013 and 2018[12]

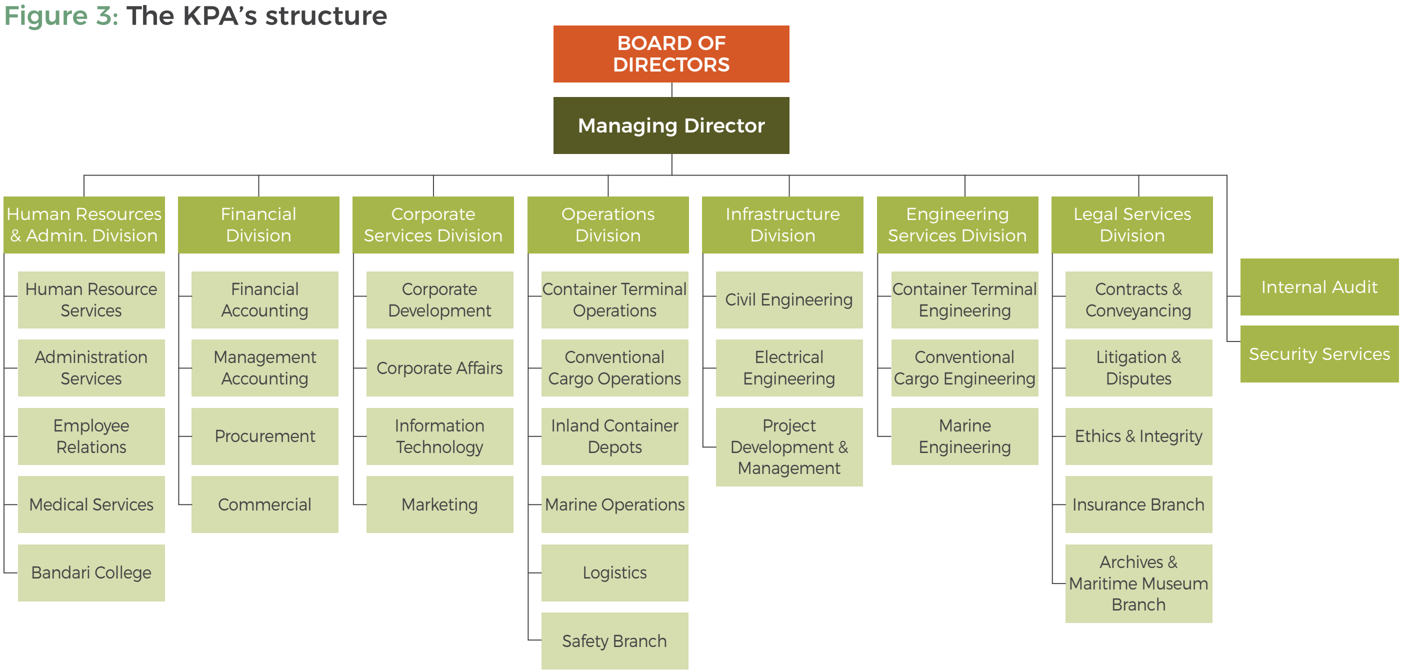
The port's performance peaked in 2018 at 21.08 points of the index, Kenya's best ever in the global scorecard published every year since 2006. However, a sharp decline in maritime trade connectivity was recorded in 2019 when this score dropped to a five-year low of 16.98 points. In contrast, Tanzania's port at Dar es Salaam posted an improvement in the 2019 LSCI to realise its highest ever score of 15.94 points. This is partly due to perceived better efficiency, less corruption and stricter law enforcement against illicit trade.

The growth in performance and profits could be explained by the modernisation and improvements that have seen the Mombasa Port acquire more business but it cannot be explained by efficiency. If anything, the 2018-2019 fiscal year's US$142.6 million after-tax profit is said to be backed by its monopoly status that allows it to charge private businesses exorbitant haulage fees from the port to the Nairobi Inland Container Depot.[13]

Constant change of MDs leads to poor governance

The KPA management is run by a managing director appointed by a nine-member board of directors with representation from the government's key ministries of transport and finance, along with representatives from the shipping industry and the KPA's senior management. The Kenya Ports Authority Act[14] gives the minister in charge of transport power over the board of directors. The minister is represented on the board and is mandated to direct the board in consultation with the minister in charge of finance. For instance, the two ministries consult in approving KPA fees, staff remuneration and terms of service, capital work exceeding KSh5.4 million (about US$50 000), and engagement with external actors. The diagram below shows the KPA's organisational structure.

Figure 3: The KPA's structure



Source: Kenya Port Authority[15]

As ministers are political appointees, this practice influences appointments to the board and eventually the appointment of the managing director. The board chairperson is appointed directly by the president of Kenya, traditionally from among political personalities from the country's coastal region.

Respondents during the study observed that feedback from port users from the shipping industry in Kenya has not yielded much information. Included in this category are various business interests meeting weekly with KPA senior management and shipping industry businesses referred to as port stakeholders or the port user community. This is because the leverage the so-called port stakeholders wield is not as consequential as that wielded by elites representing political interests.

The political elite is represented by politicians in two geological camps. One group represents mainly the coastal counties – Mombasa, Kilifi and Kwale. On the other side of the divide are politicians with business interests from counties in the hinterland, mainly from the central part of Kenya.

The coastal political elite take advantage of their perceived role as custodians of the claim to assume first right of refusal by coastal residents with regard to changes in the status quo at the port. The hinterland political elite defend the national government's right to use the port to benefit the entire nation. Both elites are careful to look after their own vested interests in the process.

These are the lines along which political interference[16] has taken prominence in the management of port affairs, including the appointment of the managing director, as illustrated by decisions to hire and fire managing directors over the last two decades.

Daniel Manduku (2018-2020), the immediate former managing director during whose tenure this study was conducted, was appointed in March 2018 and resigned after two years in office following graft investigations. The allegations involved a KSh2.7 billion (US$25 million) irregular procurement.

President Uhuru Kenyatta himself got involved, citing 'a mega-scandal at the port among other dubious undertakings'.[17] The scandal concerned the tender to build an oil terminal at the Kipevu area of the Mombasa port which was awarded to the China Communications Construction Company. The company had been blacklisted by the World Bank after being found guilty of engaging in collusive practices in World Bank-funded projects in the Philippines.[18]

Manduku's predecessors suffered similar fates, beginning with Brown Ondego, who was due for renewal of tenure after serving from 1999 to 2005. WikiLeaks cited press reports claiming the KPA board found that Ondego had exceeded expectations and recommended renewing his contract after it expired in December 2005.

However, coastal politicians demanded that a person from the coast should head the parastatal in order to secure more port jobs for locals. And so then-transport minister Chirau Ali Mwakwere got permission from then-president Mwai Kibaki to appoint Abdallah Mwaruwa (2006-2008), a fellow coastal.[19] Mwaruwa was sacked two years later for inability to manage port congestion. His removal was described by then prime minister Raila Odinga as a move to 'improve infrastructure to create a favourable environment for the private sector to thrive'.[20]

Political interference has taken prominence in port affairs, including the appointment of the managing director

James Mulewa (2008-2009) was appointed in August 2008 when unscrupulous businessmen and politicians illegally took possession of land on planned Lamu port project areas with the intention of selling it back to the government at higher prices when acquisition began, leading to protests by Lamu residents. He was sacked after only a year and a half for receiving bribes and was ordered to pay over KSh74.6 million (US$680,000) to the state for acquiring unexplained assets.[21] The Parliamentary Committee on Transport criticised the transport minister for an unprocedural dismissal reeking of 'malice and witch-hunt'.[22]

Gichiri Ndua (2009-2016) was sacked in February 2016 after seven years in office alongside three top managers over graft allegations and amidst international pressure to act on drug and ivory smuggling through the Mombasa Port. Long experience as the manager at the port before ascending to the top worked in his favour and earned him useful support from various interest groups there.

Ndua led the port in undertaking major projects, including dredging the channel to accommodate larger vessels and construction of the KSh21.5 billion (US$200 million) second container terminal. Controversy in the management of these projects had led to the early exit of his predecessors. His tenure started shortly after the government decided in December 2008 to convert Mombasa into a landlord port leasing freight storage stations to private players. Ndua is also said to have questioned KPA's controversial guaranteeing of the SGR loan from China whereas KPA was only a cargo handler.

Catherine Mturi Wairi (2016-2018), KPA's legal secretary, ascended to the position of managing director in July 2016 amid the launch of an ambitious state-driven Standard Gauge Railway (SGR) project. She was forced to resign over frosty relations with Kenya Railways, the state corporation that runs the SGR, after she demanded over KSh9.25 billion (US$8.5 million) from Kenya Railways for KPA labour and equipment used by the railways.[23] She was also blamed for the disappearance of containers and for her refusal to pay an inflated cost for land to be used to build an inland container depot.

Political interference and vested interests

The port's managing directors have over the last two decades been recruited or dismissed based on the whims of political patronage. Their actual or perceived involvement in corrupt practices was more often than not an excuse rather than a reason for being forced out. Only a few of the alleged cases were logically determined in court. A 2010 World Bank report criticised the disruptive change and instability at the top of the KPA.

A competitive recruitment process[24] was observed in appointing Manduku but in 2018 the government resisted demands for further reforms and a court allowed the KPA board to appoint his successor. The court dismissed a petition by the Commission for Human Rights and Justice (CHRJ) and the Dock Workers Union seeking to compel the board to televise interviews for the sake of transparency and accountability to the public and the publication of the list of applicants in at least two newspapers, since KPA is a publicly owned corporation.

Attempts to break from other aspects of poor operating systems through key reforms have not worked. Before 2009, all paperwork for clearing cargo was done at the port's Document Processing Centre (DPC), where clearing agents were accused of easily fuelling corruption by bribing port officials. This has not changed, according to observations made by respondents, after attempts to reform the system were derailed.

> The 2010 World Bank report blames narrow vested interests for effectively undermining investment and reform

In 2008, the government phased out the manual system with the new Kilindini Waterfront Automated Operating System (Kwatos) to automate container operations, conventional cargo operations, inland container depot operations at Nairobi and Kisumu and marine operations.[25] However, port insiders opposed the changes, with the system initially facing huge resistance from some players. Combined forces of business interests from both sides of the political divide successfully pushed for its implementation, but the old manual system, which had led to slow cargo clearance and cargo theft, also remained in operation.

The 2010 World Bank report blames narrow vested interests for effectively undermining investment and reform at the Mombasa Port. The port's governance has been stifled by years of political patronage and the fight to control port projects. This hardly creates an enabling environment that would attract private investment, create more jobs, boost efficiency at the port and have a positive impact on regional growth.

The World Bank verdict was vindicated in 2011 when the privatisation commission proposed a complete transfer of port operations to a private entity. Initial opposition by the Dock Workers Union set in motion a political standoff between the two geographical rivals.[26]

Politicians from the coastal counties quickly branded the privatisation bid an attempted takeover of a coastal heritage by people from the hinterland. This is because it was identified with government officials – Transport Minister Amos Kimunya and Permanent Secretary Cyrus Njiru, the then-KPA Managing Director Gichiri Ndua and the majority of the board members, who all happened to be from the same ethnic community in central Kenya. The commission behind the privatisation bid was forced to explain to the public that the government had not yet decided to privatise the port.

How poor governance attracts illicit activities

The study found that the Mombasa Port's security infrastructure and operations are conventional and generally in line with international port security standards developed and maintained by the International Maritime Organisation.[27] Ports have to adhere to this set of standards to be allowed to operate as international facilities receiving, exporting and transhipping cargo.

However, the study's findings show that poor governance has rendered the port vulnerable to crime by attracting and generating organised illicit activities at the port and facilities associated with the port. Interviews with key respondents provided information on the prevalent illicit activities at various points of port infrastructure shown on the port map below.

Most respondents confirmed that criminal networks from both within and without the port itself had abused the Mombasa Port. It was noted that corruption among and between port users was the greatest challenge affecting operations.[28]

An instance that provided a glimpse of how things worked was when port stakeholders attending a meeting on 31 May 2019 complained that for any service to be provided at the port, clients had to offer a bribe. The meeting heard that the capacity of the yard was overstretched and congested, creating delays and additional costs to importers. They claimed they had to pay bribes to fast track cargo clearance in order to avoid incurring additional demurrage charges levied by ship owners for days beyond the free loading period.

Figure 4: Map of Mombasa Port showing infrastructure and the hinterland served by the port[29]

In response to the complaints top KPA management blamed a lack of cargo handling services, such as transportation to verification areas, creating delays in scanning reports by the Kenya Revenue Authority (KRA) without explaining how the problem would be resolved.

> 'Shall we agree at this meeting that bribery is a widely and a generally accepted mode of operation at this port?' asked one participant at the meeting.

Main port at Kilindini harbour

The Kilindini waterfront is the initial and main infrastructure of the port complex marked in navy blue on the map. Respondents explained that infrastructure modernisation carried out since 2009 was designed to deter illicit activities. The modernisation resulted in expanded gated yards complete with port pass recognition machines, facial recognition machines at the container terminal operations, the erection of watchtowers at strategic points of the port that are manned on a 24-hour basis and over 600 CCTV cameras.[30]

This, together with the improvement of the road network, would perhaps resolve the infrastructural aspect of congestion but not the deployment of security personnel. For instance, a senior security official who sought anonymity complained that:

> 'Security agencies at the port duplicate roles and the different agencies in reality respond to their relevant departments/bosses and not to a central command. This goes against unity of command, the principle that promotes coordination, and encourages competition with rival agencies fighting over similar tasks.'

The government in 2019 reduced the multitude of agencies that inspected the same containers with separate mandates and no affiliation to KPA authority. A presidential order on 4 June 2019 streamlined operations to minimise delays by reducing the number of inspection agencies from over 20, permitting access to only the Immigration, Port Health and Port Security Office, the KRA, the KPA and the Kenya Bureau of Standards.

The order also enabled the KPA to introduce a new arrangement which simply requires the relay of notification of pre-verification of conformity at the point of export to customs and standards agencies in Mombasa. This decision exempted imported goods from re-inspection at the port once cleared at the port of origin[31] and bypassed further inspection unless prior intelligence on non-compliance pointed to the need to do so.

This decision to review the convoluted controls at Mombasa Port that attracted and generated illicit action was a concrete effort to cut shipment costs and accelerate the flow of goods at the port and in the markets it serves in Kenya and the region.

Container terminal

Part of the main port is the container terminal with six ultramodern scanners, replacing manual inspection at the container terminal. These scanners are designed to deter concealment, fraudulent declaration and trafficking of prohibited goods.

> 'The port of Mombasa suffered rampant cargo theft in the period preceding the modernisation of the port.' This point of view was expressed by container freight stations, the Kenya Ships Agents Association (KSAA) and a number of cargo consolidators.[32]

> Cargo theft is encouraged by corruption, a low risk of detection and limited law enforcement capabilities

About 500 containers disappeared at the port, most notably in December 2017 when 300 containers mysteriously vanished without trace. According to the KPA Security Department, a number of staff were arrested for fraud and cargo theft in the purge against corrupt cartels at the KPA, though the courts are yet to determine the matter. The Security Department also highlighted the irregular release of 124 containers from the port in May 2016, leading to a US$1 million loss in tax revenue and the theft of 12 containers, nine of which were intercepted before leaving the port, between June and July 2016.

Many respondents noted that cargo theft is encouraged by corruption, a low risk of detection and limited law enforcement capabilities to stop perpetrators. Most respondents said criminal groups engaging in cargo theft are well-organised and highly 'professional'. Their operations include gathering information on the type of cargo, its market price and destination for sale. Cargo theft occurs along the supply chain at the container operations terminal, in storage yards, at consolidators, carriers, freight forwarders and depots.

High seas and small/satellite ports

> 'The porosity of the small or satellite ports makes them a security risk, but one that is not easy to solve because of inadequate capacity of the marine police, especially lack of adequate surveillance equipment,' said a senior security officer attached to the Mombasa Port.[33]

The KPA has in place a seller-to-buyer operation to ensure cargo gets to the intended parties and to deter the stripping of cargo on the high seas before it reaches its final destination.

Almost all respondents said cartels of unscrupulous businessmen strip cargo on ships at sea and load it onto small boats to smuggle these goods into Kenya through often poorly secured small ports. This was confirmed by the chief of the Mombasa Old Port area.[34] Marked in red on the map below are about half of the more than 30 satellite ports along the Kenyan coast.

Despite establishing a small port management unit, the KPA lacks the material and legal capacity to sustain the monitoring of these ports. One respondent noted:

> 'Small ports are indeed blackspots used by powerful cartels to traffic all manner of illicit goods.'

Illicit activity continues despite the sharing of intelligence reports with higher authorities, 90% of which comes from local residents. Trademark East Africa estimates that 90% of counterfeit products enter the country through the port and they cost Kenyan manufacturers KSh30 billion (approximately US$275 million), while the government lost over KSh6 billion (approximately US$55 million)in tax revenue annually.[35] A respondent who sought anonymity said:

> 'Some of the goods mostly trafficked through the satellite ports are narcotics, electronics – goods that are not very bulky.'

Figure 5: Map at the KPA Security Department[36]

An interview with officers at the newly commissioned Kenya Coast Guard Services revealed that night fishing boats interfere with effective policing of the waters by the marine police.

> ‘Due to lack of high-tech radar and other enabling surveillance equipment, we can’t distinguish between the fishing vessels and the other boats being used to smuggle goods into the country illegally,’ said one officer who sought anonymity.

Technology

The KPA Security Department blamed cargo disappearance on cyber-attacks, such as the fraudulent use of the passwords of retired staff. According to the department, modernisation has significantly deterred cargo theft and other illegal activities. However, seizures of illicit goods in many parts of the country in the course of 2019 and 2020 when most of the modernisation was already complete tell a different story.

Respondents said that increased manipulation, with breaches including tactics such as the digital manipulation of information tracking and regulatory systems internally and externally, the hacking of biometric passwords and the theft of the passwords of retired staff, compromised surveillance and tracking systems. This access to KPA and KRA systems allows for an array of ‘manipulations’ along the full value chain of illicit trade, both at the port in Mombasa and the internal container depot in Nairobi (ICDN).

> There is a drive to increase automation and streamline processes between shipping lines, the KRA and the KPA

The KPA’s Kwatos was introduced in 2008 and upgraded in 2016[37] while the KRA’s ICMS was introduced in 2018 to consolidate customs systems into one ‘system built on the latest technology with capability of seamlessly interfacing with other internal and external systems as need arises’.[38]

Despite the declared benefits of this system integration, respondents expressed frustration at the continued lack of interface between the ICMS and the Kwatos systems. This also points to inertia in decision-making and persistent inefficiencies. As highlighted throughout this report, criminal elements exploit these vulnerabilities in the system. In this instance the continued use of manual cargo clearance, which is slow and inefficient, favoured these criminal elements.

There is a drive to increase automation and streamline processes, particularly in the cargo clearance system, between shipping lines, the KRA and the KPA. One respondent at the KPA IT Department pointed out this apparent contradiction and noted:

> ‘Increased automation and the decrease of human intervention on ships and in ports provides fertile ground for security breaches. Cybersecurity on ships and in ports now becomes of paramount importance.’

These systems are said to be so secure that targeting specific cargo requires inside information and complicity to succeed. Thus the level of fraud indicates vested interests within port management and the government are still at work reaping illegal benefits.

Based on the information from interviews and economic and security information, the existing policy framework as a response to transnational organised crime is inadequate. According to respondents, neither the Mombasa Port nor the KPA has a separate policy on transnational organised crime, and there is no policy in place to compel shipping lines to conduct background checks of their customers or establish the real beneficiaries of the businesses, which makes arrest and successful prosecution impossible.

A pertinent finding of this report is that insisting on using the manual cargo clearance systems, or using insiders to manipulate secure and sophisticated systems, point to common thinking summed up by a shipping agent who has operated in Mombasa for over 30 years:

> ‘No matter the policies in place, or processes and systems used, the profit and power motive of organised crime and political influence will innovate to take advantage of existing opportunities to further their interests.’[39]

For respondents in charge of security, bearing in mind this profit and the power motive, there will always be vulnerabilities and risks.

Crime and its consequences

Over the last two decades, the management of the Mombasa Port has been driven by the need to improve infrastructure at the expense of quality leadership and the need to tackle illicit activities. According to a PricewaterhouseCoopers study in 2018, 'any of the (cargo) handling inefficiencies and long container dwell times … are a consequence of poor port management, customs and associated container clearing processes, as well as inadequate landside connections which prevent containers leaving ports without delay'.[40]

At the Mombasa port, these appear to emanate from competing external and internal vested interests that influence the current ownership and management of the Mombasa Port: state ownership, political, functional, legal and regulatory, and market interests. These vested interests include politicians with influence in relation to government agencies at the port, shipping lines and cargo owners. On the flipside of these vested interests are the business interests of stakeholders. The two types of interests are affected by poor governance differently and their response is also quite different.

Vested interests

The control over port operations and administration fits into a 'gatekeeper state model'[41] in which the stakes 'are often made so high that the consequences of exclusion from it are politically catastrophic'.[42] To avoid these consequences, the political elite engage in complicated behind-the-scenes negotiations to ensure access to gatekeeping rents.[43] This is sometimes characterised by horse-trading between sides representing rival vested political interests. Even staffing considerations are influenced by the system of corruption that controls the operations and administration of the port.

Gatekeeping and rent-collecting behaviour, and the tolerance thereof, mean that few management decisions that genuinely embrace efficiency have a chance of being fully implemented.[44] Political involvement by the state and influential individuals in port affairs may lead to lowered capacity in operations and organisation that are critical to port profitability.

Continued exclusive state control of decision-making at the Mombasa Port goes against the trend in a region where ports in neighbouring countries, like Tanzania and Djibouti, have been privatised in part or wholly. There have been myriad attempts over the years to privatise the Mombasa Port but this has met repeated resistance due to vested political interests, especially those of the elite in Kenya's coastal counties, concealed as fighting for the electorate. These result in continued vulnerabilities where colluding 'people of influence' and officials enable criminal networks to operate.[45]

A further illustration of this influence is that politicians from coastal counties representing businesses that run container hauling trucks momentarily managed to force the government to beat a retreat in its attempts to replace their hold over container and cargo goods management. The government effort was to use a rail system to directly transport cargo to recently developed government inland container depots.[46] Though the government continues to quietly implement this policy, weakness in enforcing laws and policies that is inherent in the gatekeeper state model plays a big role in attracting crime at the port.

For instance, in a debate over cargo hauling by rail on the recently state-built Standard Gauge Railway as opposed to using private trucks, truck operators have done everything to politicise and discredit the decision. In both cases there is evidence of political competition or compromise in controlling one of the country's main points of interaction with the rest of the world.[47]

> These webs of illicit trade are not possible without facilitation and insider assistance

The exploitation of ports by embedded and external criminal networks through corruption has a name: 'facilitation'. Respondents revealed a cartel system where individuals who enjoy connections with politicians or senior state officials own several companies. This enables greater scope for hiding involvement and fraudulently falsifying documents to win tenders, falsely declaring goods, bypassing clearance, evading customs and excise duties, and 'planting' staff who act for their benefit. These activities extend to controlling cargo trucks and owning or controlling clearing and forwarding agencies along with other critical services that facilitate port operations.

These webs of illicit trade are not possible without facilitation and insider assistance. Resources from customs revenue, tender negotiations[48] and permits, among others, are re-distributed within the corruption system via patronage networks to maintain political support.[49] This in turn feeds the systemic corruption of officials that is deeply rooted within the port's operational and administrative structure. The political patronage that has captured security, management and operational systems at the port is well served in this system.[50]

Corruption among port users is the greatest challenge facing the commercial viability of the port in the long term. Respondents identified corruption within the security apparatus as a key vulnerability at the Mombasa Port that directly affects normal business activities, leading to operational and structural weaknesses. Respondents largely connected these officials' abilities to exploit the port's internal system weaknesses with the cartels who seem to take advantage of the poor remuneration of officials to nurture and maintain 'facilitation'arrangements.

The systemic corruption facilitates embedded and external criminal networks at the port and within the flow-of-goods value chain to control a heavily flawed procurement system. For instance, a respondent mentioned that 'The port is a big boys' club; it is not easy to bid and win competitively without an insider's help'.

Corruption remains a barrier to recruiting skilled and empowered staff to address transnational organised crime (TOC) and illicit trade at the port. Involvement of individuals from both sides of the divide in TOC-related activities is the greatest challenge to fighting illicit trade at the port. The prevalence of corruption means the ability to buy protection, information and power to penetrate state institutions in order to entrench and expand illicit influence. This explains the lack of political will to fast-tracking policies and legislation aimed at addressing the gaps exploited by the TOC networks.

Port stakeholder interests

Port stakeholder interests suffer greatly under poor governance, especially raising the costs of doing business. Respondents reported that decisions are often made without consulting port stakeholders, despite regular meetings with the KPA. For instance, the port stakeholders complained that a Mombasa Port and Northern Corridor Community charter that had been agreed upon and signed in 2018 had not been implemented.

Respondents from this group expressed frustration that meetings were simply talk shops since decisions of the meetings did not translate to action by the KPA. For instance, the Kenya International Freight Forwarders Warehousing Association (Kifwa) national chairman Roy Mwanthi told the 31 May 2019 port stakeholders meeting:

> 'The private sector is not afforded any opportunity as members are not allowed at the table for consultations during decision-making.'

Despite streamlining of operations by reducing the number of inspection agencies from over 20 agencies to five and the pre-verification of conformity at the point of export, other key reforms identified in the charter to enhance port productivity remain unimplemented. The implementation of the charter remains highly politicised as vested interests with emotive political agendas divert attention from focusing on optimal port functionality.

Recommendations

The government of Kenya should:

- Hold dialogue with coastal leaders and negotiate in good faith a win-win partial or full privatisation of the port in order to foster inclusivity for all port users.
- Formulate and enact maritime policy that would outline special laws, regulations, institutions and systems that govern port management.

The KPA should:

- Adopt a multi-dimensional, multi-sectoral and multi-stakeholder anti-corruption strategy to holistically deal with graft and enhance integrity and transparency in staff appointments and procurement processes.
- Set up a single, comprehensive, central, integrated and secure online service platform with regular upgrades, processes, intelligence and general information with differentiated levels of access.
- Tackle small port insecurity by establishing multi-agency control units and streamline relations and collaboration between the KPA and the agencies working at the port as well as between the agencies.
- Carry out mandatory KPA and KRA-led regular and continuous capacity building, sensitisation and training on fighting illicit trade and other illicit activities.

Conclusion

The paradox in the situation at the Mombasa Port is the need for 'political will' to rid the port of vested interests in order to establish and drive a genuinely productive, internationally competitive port management system. The port generates more than half of Kenya's annual revenue; thus any illicit activities effectively rob the Kenyan people, businesses and the whole economy.

The government's acknowledgement of widespread malaise at the Mombasa Port needs to be accompanied by the recognition that much-needed leadership to achieve greater port efficiency will benefit Kenya's economy and the economies of the region.

This requires balance and/ or convergence of the interests of the political elite from both sides of the divide and that of port stakeholders. Key leadership reforms are required at the port if its operations and profits are to be sustainable in the face of competition from other ports in the region.

Poor governance as discussed above requires a remedial system-wide approach to deter the fertile environment for illicit activities at the Mombasa Port. Curbing political interest and influence, disrupting self-serving corruption, and precision decision-making require an inclusive and genuinely-negotiated public-private partnership that would ensure the government plays an effective oversight role while the private sector provides much needed efficiency in management and operations.

The clash between the interests of the political elite from both sides of the divide and that of port stakeholders has consequences that only attract and generate illicit trade at the port, which in the long run undermines its long-term viability. The status quo does not augur well for an efficient and competitive port but perpetuates corruption, poor management decisions based on political expediency, and weak port controls due to low capacity and disincentives to transparency, as well as under-development and poor policing of vantage points along the coastline.

These factors coalesce to undermine massive infrastructural investment intended to increase port efficiencies and create useful conditions for illicit trade by organised criminal groups. The consequences of this dysfunction and criminality is costly for businesses, port authorities and the Kenyan government.

Thus, there is a need for all parties to realise that there is more to gain rather than lose in an inclusive arrangement that is solidly based on a scientific and business approach. This would ensure that high levels of efficiency and profitability are attained while millions of jobs are created and sustained, with the port working at full potential and warding off illicit activities that undermine efficiency and eat into profits.

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About ENACT

ENACT builds knowledge and skills to enhance Africa's response to transnational organised crime. ENACT analyses how organised crime affects stability, governance, the rule of law and development in Africa, and works to mitigate its impact. ENACT is implemented by the ISS and INTERPOL, in affiliation with the Global Initiative Against Transnational Organized Crime.

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