

# The Turkana Grazing Factor In Kenya-South Sudan Ilemi Triangle Border Dispute

James Kiprono Kibon

PhD Candidate, Department of International Relations,  
United States International University-Africa, Nairobi, Kenya

*Abstract: This article examines the place of the customary grazing grounds of the Turkana, which was one of the most salient factors in the making of what is today the Kenya-South Sudan boundary. It is argued in this article that while the making of the Kenya-South Sudan boundary was driven by British colonial interests, the issue of the customary grazing grounds of the Turkana was major consideration in the actual demarcation. The Kenya-South Sudan boundary was the outcome of a deliberate effort to delimit the customary grazing grounds of the Turkana in the Ilemi area between 1914 and 1950. The northward evolution of the Kenya-South Sudan border from the Uganda Line reflected in the series of boundary adjustments gave birth to the disputed Ilemi Triangle border. The boundary changes were majorly driven by the quest to determine the northern extent of the customary grazing grounds of the Turkana, based on the provision of a second alternative boundary option by 1914 Uganda Order in Council. It is argued in this article that unlike other Africa's colonial boundaries, the Kenya-South Sudan boundary was conceived with the objective of placing all the customary grazing grounds of the Turkana in Uganda and Kenya. This article therefore, argues that just as Turkana grazing grounds was key crucial factor in the emergence of the Kenya-South Sudan boundary, it is also central to the Ilemi Triangle border dispute. This article is arranged into mutually reinforcing themes. The article begins with a brief insight into the place of the Turkana grazing ground in the making of Kenya-South Sudan boundary. It then proceeds to address the ethnic dimension of Africa's arbitrary boundary discourse with an aim of highlighting why the Kenya-South Sudan boundary was different. The article further examines the ethnic context of the Ilemi Triangle reflected in the contestation among various pastoralist groups. The article then demonstrates the empirical manifestation of the customary grazing grounds of the Turkana in the evolution of the Kenya-South Sudan boundary. The article lastly, put forth a thesis on the centrality to the Turkana grazing as factor in the Ilemi Triangle border dispute.*

**Keywords:** boundary, demarcation, Turkana grazing rights

## I. INTRODUCTION

The Kenya-South Sudan boundary has its roots in the making of the Uganda-Sudan boundary. In particular, the entire stretch of the Kenya-South Sudan boundary has its roots in the delimitation and demarcation of the boundary of Uganda Protectorate and Anglo-Egyptian Sudan. The making of the Kenya-South Sudan boundary, like other boundaries in Eastern Africa, was driven by European colonial interests. The initial boundary of what is today Kenya and South Sudan was delimited in 1902 within the context of the delimitation of the boundaries of the Empire of Ethiopia and British East Africa.

The delimitation was motivated by the British desire to ward-off the challenge to its East African possessions by other European colonial powers and Imperial Ethiopia. The 1914 *Uganda Order in Council* demarcated the 1902 boundary which is generally known as the *Maud Line*. The resulting line is generally referred to as the *Uganda Line* and sometimes as the *1914 Line*. The north eastern section of the *Uganda Line* was the initial boundary between British East Africa Protectorate (Kenya) and Anglo-Egyptian Sudan. Several adjustments were however, made to the *Uganda Line* after 1914 driven by the quest to delimit the customary grazing grounds of the Turkana. Almost all the post-1914 boundary

demarcations undertaken north of the *Uganda Line* were connected to the quest to delimit the Turkana grazing grounds or the security of such grounds. This article demonstrates the centrality of the customary grazing grounds of the Turkana in the making of the Kenya-South Sudan boundary and its indispensability in the *Ilemi Triangle* border dispute.

## II. ETHNIC DIMENSION IN AFRICA'S ARBITRARY BOUNDARIES THESIS

The world of sovereign states is one that is divided by international boundaries (Taylor, 1993). Boundaries are crucial attributes of the state as they have important theoretical and empirical role in interstate relations. Their importance is captured in the 1994 ruling by the International Court of Justice (ICJ) in the territorial dispute between Libya and Chad. It emphasized the centrality of boundaries in defining the state. The court held that "To define territory is to define frontiers and fixing frontiers is the work of sovereign states". Boundaries are inseparable features of the state. Boundaries as political institutions mark sharp discontinuities in the political jurisdiction of states (Boyd, 1979). They are crucial as they play pivotal role in facilitating cooperation among states. Despite the crucial positive roles played by boundaries in the promotion of inter-state relations, when they are contested they can lead to strain in inter-state relations and conflict. More often, when boundaries are contested, they become some of the most intransigent and protracted sources of interstate disputes (Oduntan, 2015). This is particularly so with the ill-defined and poorly delimited and demarcated boundaries as is the case with many of Africa's boundaries.

The general view of Africa's boundaries is one that conceives them as artificial colonial constructs (Médard, 2009 & Herbst, 1989). This conception of Africa's boundaries is rooted in the strong perception that they are resultant consequences of arbitrary colonial processes. The making of African boundaries has been criticized as failing to adhere to the conventional antecedents and instead prioritizing the use of physical features that least matter for African societies (Ajala, 1983). The widespread use of physical features and astronomical lines in the making of Africa's boundaries for instance, has made some scholars to view the resultant boundaries as de-humanizing (Griffiths, 1986:205). The tendency to describe African boundaries as arbitrary suggests that the boundaries were drawn with no regard to local conditions (Touval, 1966 & 1972). Most colonial boundaries in Africa for instance, rarely coincided with ethnic and communal boundaries. However, not all support the thesis that African borders are arbitrary. Touval (1966), for instance, while acknowledging the inadequate consideration and attention given to local conditions and realities in the drawing of Africa's boundaries, rejects the thesis that they are arbitrary. The argument is that as all boundaries are consequences of human considerations, they are in one way or another artificial. The arbitrary nature of Africa's boundaries have combined with their ill-defined and poorly demarcated status to make them prone to interstate disputes.

The issues that underlie the long running discourse surrounding the conceptualization of Africa's boundaries as

arbitrary are many and broad. There are also many dimensions of the arbitrary borders debate. One such prominent dimension surrounding the conceptualization of Africa's boundaries as arbitrary is the strong criticism that they disregarded ethnic boundaries and discontinuities. This is explainable by the fact that few of the continent's boundaries correspond to the patterns of socio-cultural environments or settings (Boyd, 1979). The failure of Africa's boundaries to take into consideration the complexity of the continent's ethnic realities is cited by those who fault them as arbitrary and artificial. The arbitrary and artificial nature of Africa's boundaries makes them susceptible to disputes. This informs the strong tendency to attribute or link Africa's border disputes to their so-called arbitrary roots. In propounding the arbitrary and artificial narratives about the continent's boundaries, Asiwaju (1985) argues that African boundaries deliberately partitioned ethnic groups and cultural areas. The arbitrary and artificial narrative is also encapsulated in Griffiths' (1986) thesis that every land boundary in Africa cuts at least through one cultural area. Asiwaju (1985) and Griffiths (1986) criticize Africa's boundaries as splitting ethnic groups and their cultural areas. This proposition is at the core of the arguments that are propounded by those who hold the view that the continent's boundaries are arbitrary and hence, artificial. The proposition by Onah (2015) that Africa's boundaries created and perpetuated the people of two worlds, capture an important element that underlies the broad debate and discourse surrounding the push to depict the continent's boundaries as arbitrary and artificial. The thesis by Abraham (2007) that Africa's boundaries unite those who should be divided and divide those who should be united captures the radical depiction of the arbitrary and artificial nature of the continent's boundaries. There are many cases where colonial boundaries in Africa have divided ethnic communities into different spheres of control and jurisdiction. The Maasai, Somali and Anuak are some of the glaring examples of the many ethnic groups that have been divided into various countries as a result of arbitrary colonial boundaries (Ajala 1983). The division of the Somali people is however, a unique example of arbitrary nature of colonial boundary making in Africa. The colonial boundaries divided what was the Somali territory into Ethiopia, Somalia, Djibouti and Kenya (Touval, 1966). One can be excused for not viewing these fragmentations within the context of what Griffiths (1986) conceives as de-humanizing effects of Africa's arbitrary borders. In the case of the Somalis, their fragmentation into different countries has at times imbued in them the quest for unification, which has manifested in irredentism.

The question as to why Africa's boundaries have remained unchanged and more sacrosanct in the face of the strong criticism that they are arbitrary and artificial comes into the fore. The permanence of Africa's boundaries in the face of such enduring criticism puts under strain the thesis that they are artificial and arbitrary colonial constructs. Herbst (1989) views the permanence of Africa's boundaries as only weakening the criticism but not obviating their artificial and arbitrary nature. The conceptualization of African boundaries as arbitrary notwithstanding, they perform critical theoretical and empirical roles akin to international boundaries. Like other boundaries, Africa's boundaries define what in Taylor

(1993) is conceived as the geographic limits of sovereignty. This is the function of boundaries that Taylor (1993) regards as dividing the world of sovereign states.

### III. ETHNIC CONTEXT IN THE ILEMI TRIANGLE BORDER

The *Ilemi Triangle* is a sparsely populated territory that is home to a mosaic of pastoralist groups (Khadiagala, 2010 & Amutabi, 2010). The Toposa, Turkana and Nyangatom are among the several pastoralist groups that inhabit or use the *Ilemi Triangle* as dry season grazing grounds (Collins, 1981-82 & 2005; Mburu, 2003 & Amutabi, 2010). Other ethnic groups that have some presence in the *Ilemi Triangle* are the Didinga, Dassanech and the Murle. Most of pastoralist groups in the *Ilemi Triangle* and its immediate environs belong to the *Ateker* ethno-linguistic group. In the *Ilemi Triangle* proper however, the Toposa and Turkana are the most dominant ethnic groups. The two tribes have been involved in internecine conflicts since time immemorial for the control of the grazing lands and vital water points of the *Ilemi Triangle* (Collins, 1981-82).

Most of the pastoralist groups that inhabit or use the *Ilemi Triangle* as dry season grazing grounds are trans-boundary ethnic groups as their presence transcend the international frontiers of Ethiopia, Kenya, Uganda and South Sudan. The Didinga, for instance, inhabits parts of the former Eastern Equatoria state of South Sudan but they have small presence in north-eastern border area of Uganda (Mburu, 2003). The Nyangatom and the Murle inhabit south western Ethiopia but occasionally migrate to the borderlands of south-eastern South Sudan especially during dry season (Oba, 1993; 2013 & Yntiso, 2017). The Dassanech on the other hand inhabits parts of the northern tip of Lake Turkana in Ethiopia and Kenya with perennial season migration to eastern *Ilemi Triangle* (Oba, 1993; Mburu, 2003 & Waithaka & Maluki, 2016). This leaves only the Turkana and Toposa as the only pastoralist groups in the *Ilemi Triangle* that are not trans-border ethnic groups. The situation however, becomes even more complex if Mburu's (2003) assertion that the Turkana was a trans-border ethnic group living in Kenya and South Sudan was to suffice. Trans-border or not, most of the above ethnic groups in one way or another stake claim to the *Ilemi Triangle*. Of all the ethnic groups in the *Ilemi Triangle*, it is the Turkana that had direct impact in the emergence of the *Ilemi Triangle* as a territorial reality.

### IV. TURKANA GRAZING FACTOR IN KENYA-SOUTH SUDAN BOUNDARY MAKING

The making of the Kenya-South Sudan boundary cannot be examined in isolation of other boundaries in Eastern Africa. The boundary was a resultant consequence of a process that was driven and motivated by similar imperatives as other boundaries in East Africa and is thus not any different. The delimitations and demarcations of the boundaries of Eastern Africa were driven by European imperial interests (Okumu, 2010). This imperative was replicated in other parts of Africa

where colonial interests underpinned the various boundary demarcations (Griffiths, 1986). The same rationale underlined the making what is today the Kenya-South Sudan boundary. The making of the Kenya-South Sudan boundary therefore, needs to be viewed within the broader context of European colonial interests and more specifically, British imperial interests in what is today Sudan, Uganda and Kenya. The boundary of Kenya and South Sudan has its roots in the European colonial boundary making in Eastern Africa in the last decade of 19<sup>th</sup> century and the first half of the 20<sup>th</sup> century. The roots can be traced to delimitation and demarcation of the Uganda-Sudan and by implication Kenya-Sudan (south Sudan) boundary in the first half of the 20<sup>th</sup> century. In particular, the boundary is rooted in the making of the boundary of Anglo-Egyptian Sudan and the British Protectorate of Uganda (Uganda Protectorate) as well as the British East Africa Protectorate (Kenya) in the first two decades of 20<sup>th</sup> century. More specifically, the re-arrangement of the boundaries of what is today Kenya and Uganda in 1902 and the demarcation of the Uganda-Sudan boundary in 1912-13 are important in understanding the roots of Kenya-South Sudan boundary. The Kenya-South Sudan boundary has its roots in these two boundary changes and demarcations.

The strong evidence indicative that the boundary making in Eastern Africa and other parts of Africa was driven by colonial interests notwithstanding, the making of the Kenya-South Sudan boundary was somewhat different as it was conceived with some ethnic imperatives. The boundary was conceived with an important ethnic consideration (Blake, 1997). The Turkana grazing rights was a key factor in the delimitation and demarcation of the north-eastern section of the Uganda Protectorate-Anglo-Egyptian Sudan boundary. This is the section of the boundary between Uganda Protectorate and Anglo-Egyptian Sudan that became the boundary of the Kenya Colony and Protectorate and Anglo-Egyptian Sudan in 1926 following the transfer of Uganda's *Rudolf Province* to Kenya. This boundary has however, changed since 1914 due to various adjustments driven mainly by the search to determine the customary grazing grounds of the Turkana pastoralists. Several of the boundary demarcations that traverse the current Kenya-South Sudan border as discussed in the latter part of this article represent progressive attempts to delimit the customary grazing grounds of the Turkana. There is contestation as to which of these boundary demarcations constitute the Kenya-South Sudan boundary. However, whatever their legality as boundaries, most if not all the demarcations resulted in a way from efforts to delimit the customary grazing grounds of the Turkana. Thus, whether it is the *Uganda Line* or the *Patrol Line of Sudan Defence Force*, their existence were either intricately linked to efforts to establish the grazing grounds of the Turkana or prevent incessant disputes between the Turkana and other pastoralist groups in the *Ilemi* area.

The centrality of the Turkana grazing grounds in the delimitation of the Sudan-Uganda boundary and by implication, Kenya-South Sudan boundary, it however, needs to be viewed in the context of British colonial interests. The mainstreaming of the Turkana grazing grounds in the making of the Kenya-South Sudan border were first and foremost conceived to serve British colonial imperial interests in Kenya,

Uganda and Sudan. The incorporation of the customary grazing rights of the Turkana was in itself important as it marked a divergence. Unlike other boundary making processes in Africa that disregarded ethnic and cultural areas, the case of Kenya-South Sudan boundary was different, at least as far as the customary grazing rights of the Turkana were concerned. The Kenya-South Sudan boundary resulted from a process that was majorly driven and determined by the imperatives of Turkana grazing rights. The boundary was conceived with the objective of placing all the territory constituting the customary grazing grounds of the Turkana in what was then Uganda Protectorate and later, British East Africa Protectorate. The framers of the Kenya-South Sudan boundary in seeking to place the customary grazing grounds of the Turkana under a single colonial sovereign as opposed to different colonial entities were intent on avoiding the fragmentation of a people (ethnic groups and cultural areas) albeit only in the case of the Turkana. The latter case as observed earlier in this article is central to the much touted thesis that Africa's boundaries are artificial and arbitrary colonial constructs. The British colonial administrations in Kenya and Uganda and their Anglo-Egyptian counterparts in Sudan, whether by intent or default sought to avoid creating what Onah (2015) called trans-border ethnic groups or obviate what is implied in Abraham (2007) as fragmentation or division of communities by arbitrary and artificial boundaries.

Two important boundary delimitations and territorial transfers that took place in the short period of 1902-3 had direct relevance to the present day Kenya-South Sudan boundary. The first was the boundary re-adjustments and territorial transfers between British Protectorate of Uganda and British East African Protectorate (Kenya) in 1902. The boundary changes, which were enshrined in the 1902 *Uganda Order in Council* saw the transfer of the Eastern Province of Uganda (Rudolf Province) to British East Africa Protectorate (Mburu, 2003). The boundary adjustments meant that for the first time, British East African Protectorate was destined to share a boundary with Anglo-Egyptian Sudan. The second were the surveys by the British of the boundaries of its territorial possessions in East Africa and Ethiopia. In particular, of relevance to this study is the 1902-3 survey of the boundaries of Anglo-Egyptian Sudan, Ethiopia and British East Africa Protectorate by Captain Philip Maud. The resulting line, generally known as the *Maud Line* was the first boundary delimitation between Anglo-Egyptian Sudan and East Africa Protectorate. As enshrined in the 1902 *Uganda Order in Council*, the boundary of Anglo-Egyptian Sudan and Uganda Protectorate was arbitrarily delimited in the map as line 'following 5° degree latitude eastward from *Lado* to a point on the northern extremity of Lake Rudolf' The *Maud Line*, which is sometimes known as the *1902 Line* is the only boundary delimitation in the Kenya-South Sudan border that was conceived devoid of any consideration of the customary grazing grounds of the Turkana. Thus, for all purposes, the *Maud Line* was arbitrary boundary delimitation as it was based on astronomical considerations. The line was just one of the many boundary delimitations that were being arbitrarily drawn by European colonial powers in Africa as they carve their respective spheres of influence. Notwithstanding its arbitrary

nature, the *Maud Line* was recognized as the boundary between Ethiopia and British East Africa Protectorate.

Most if not all the other boundary demarcations and decisions relating to Kenya-South Sudan boundary as observed earlier, have a strong nexus with efforts to define the customary grazing grounds of the Turkana. The surveying of the northern extent of the traditional grazing grounds of the Turkana pastoralists was for instance, one of the main objectives of the Uganda-Sudan Mixed Boundary Commission that demarcated the 1914 *Uganda Line* (Collins, 1962 & 2005 & Blake, 1997). The commission was unsuccessful in demarcating a boundary that reflected the concise extent of the customary grazing grounds of the Turkana. This notwithstanding, the commission proposed for future adjustments of the resultant boundary to reflect the customary grazing grounds of the Turkana in the *Ilemi* area (Collins, 2005). The recommendation was incorporated in the provisions of the 1914 *Uganda Order in Council* that adjusted or redefined the initial boundary between Uganda Protectorate and the Anglo-Egyptian Sudan as defined by the 1902 *Uganda Order in Council*. The 1914 *Uganda Order in Council* defined the boundary between the Uganda Protectorate and Anglo-Egyptian Sudan as a line;

"Beginning at a point on the Sanderson Gulf, Lake Rudolf, due east of the northernmost point of the northernmost crest of the long spur running north of Mt Lubur; thence following a straight line to the northernmost point of the northernmost crest of the long spur running north from Mt Lubur; thence a straight line, or such a line as to leave to Uganda the customary grazing grounds of the Turkana tribe"

The entrenchment of the customary grazing grounds of the Turkana in the 1914 *Uganda Order in Council* demonstrates its importance in the making of what is today, the Kenya-South Sudan boundary. The two boundary options provided for in the 1914 *Uganda Order in Council* were conceived with strong consideration of placing the Turkana grazing grounds in the *Ilemi* area under single colonial entity that was Uganda Protectorate and by implication, East Africa Protectorate. The 'straight line' defined in the *Order in Council* and generally known as the *Uganda Line* or the *1914 Line* was conceived as the first boundary option. However, the adoption of the 'straight line' delimitation as the boundary was dependent upon the confirmation that it placed all the customary grazing grounds of the Turkana in Uganda. The subsequent adoption of the *Uganda Line* was based on the assumption that it placed all the customary grazing grounds of the Turkana in Uganda. This was however, proven wrong as the 'straight line' divided the customary grazing grounds of the Turkana people and placed a number crucial watering points to the north. This undermined one of the main objectives of the mixed boundary commission that sought to place all the customary grazing grounds of the Turkana nomads under Uganda (Tungo, 2008; Amutabi, 2010 & Mburu, 2003). The 'straight line' however, instead of placing all the customary grazing grounds of the Turkana in Uganda, left a large swath of such territory in Anglo-Egyptian Sudan. In other words, the 'straight line' divided the customary grounds of the Turkana, which was not supposed to be the case.

The adoption of the 'straight line' as the boundary between Uganda Protectorate and Anglo-Egyptian Sudan without adjustments would have frustrated the objective of placing the customary grazing grounds of the Turkana in the *Ilemi* area under the former. The adoption of the line as it were would have transformed the 'straight line' into another arbitrary colonial boundary with all the attendant structural disadvantages. In particular, it would have created what Onah (2015) defined as the people of the two worlds or as argued by Abraham (2007) and Asiwaju (1985) divided those who should be united or divided cultural areas respectively. The *Uganda Order in Council* had an in-built safeguard against such outcomes inherent in its provision for a second boundary option. The *Uganda Order in Council* provided for the future demarcation of an alternative boundary that was to leave to Uganda, the customary grazing grounds of the Turkana. In light of the provision, the *Uganda Line* as conceived in 1914 was for all purposes, more of a provisional boundary between Uganda Protectorate and Anglo-Egyptian Sudan. The permanence of the *Uganda Line* as a boundary was not only dependent on the completion of the survey of the section of the boundary between Jebel Mongila and Lake Turkana, but also the demarcation of the customary grazing grounds of the Turkana. Such a territory resulting from the proposed demarcation of the boundary and which constituted the customary grazing grounds of the Turkana was to be placed under Uganda. The rationale of placing the customary grazing grounds of the Turkana in Uganda was based on the fact that the Turkana inhabited Rudolf Province was at the time, administered by Uganda Protectorate.

The post-1914 demarcations of what is today the Kenya-South Sudan border was mainly driven by the imperatives of addressing the inadequacies of the *Uganda Line* inherent in its failure to reflect the customary grazing grounds of the Turkana. The transfer of the Turkana Province to Kenya Colony and Protectorate in 1926 had implications not only on the Kenya-South Sudan boundary, but also on the administration of the customary grazing grounds of the Turkana as defined in the 1914 *Uganda Order in Council*. Following the formal transfer of the Turkana Province, Uganda ceded the administration of the customary grazing grounds of the Turkana to the Kenya Colony and Protectorate. Even prior to the assumption by the Kenya Colony of sovereignty over the Turkana Province in 1926, the question of the grazing rights of the Turkana had been a key agenda in the various forums on the delimitation and demarcation of the Uganda Protectorate and Anglo-Egyptian Sudan boundary. The issue of the grazing rights of the Turkana in the *Ilemi* area was for instance, a key agenda in the Kitgum Conference of 1924. The issue was discussed within the context of the need to prevent perennial conflicts in the *Ilemi* area amongst the various pastoralist groups that were domiciled in the territory or competing for dry season pasture. During the Kitgum conference, officials from the Kenya Colony and Uganda Protectorate pushed their Sudanese counterparts to cede the *Ilemi* area as they had failed to establish effective administration and control over the territory. In particular, the failure of the Anglo Egyptian authorities in Sudan to halt incessant raids by the Toposa against the Turkana forced the colonial authorities in Kenya and Uganda to push Sudan to

cede part of the *Ilemi* area that included the *Ilemi Triangle* (Tungo, 2008; Collins, 2006; Amutabi, 2010 & Mburu, 2003). The Sudanese authorities were not opposed to the ceding of part of *Ilemi* area but needed more time for consultation given the intricate nature of dual British-Egyptian rule in the Sudan.

The British colonial administration in Kenya and its Anglo-Egyptian counterparts in Sudan undertook several joint surveys of their boundary between 1931 and 1938 driven by two mutually reinforcing objectives. The first was the need to determine the exact northern limit of the customary grazing grounds of the Turkana pastoralists in line with the 1914 *Uganda Order in Council*. The second objective and which, was linked to the question of the customary grazing grounds of the Turkana was the need to establish a demarcation line that could prevent frequent feuds among the various pastoralist groups in the *Ilemi* area, particularly between the Toposa and the Turkana. In line with the above objectives, between 1929 and 1934, the colonial authorities in Kenya and Sudan embarked on the process of delimiting the northern extent of the customary grazing grounds of the Turkana. As part of this agenda, in 1931, Kenyan colonial officials met with their Sudanese counterparts in Lokitung in Kenya to discuss issues of delineation of the boundary as well as cross-border security. The Lokitung meeting proposed the demarcation of a boundary line north of the *Uganda Line* (Amutabi, 2010; Mburu, 2007 & Collins, 2005; 2005). The boundary demarcation, which came to be known as the *Red Line* or *Glenday Line*, gave birth to the initial manifestation of the *Ilemi Triangle*. At the time of its delimitation, the framers of the *Red Line* regarded it as representing the northern limit of the customary grazing grounds of the Turkana. As stated earlier, such a territory forming part of the customary grazing ground of the Turkana was to be placed under the jurisdiction of Uganda Protectorate. This time however, the territory constituting the customary grazing grounds of the Turkana was to be placed under Kenya Colony and Protectorate. The Kenya Colony by then was close to six years since assuming sovereignty over the Turkana Province in line with the boundary changes occasioned by the 1902 *Uganda Order in Council* and operationalized by the *Kenya Colony and Protectorate (Boundaries) Order in Council* of 1926. The *Red Line* demarcation was an important milestone in the quest to delimit the customary grazing grounds of the Turkana north of the *Uganda Line*.

The British colonial administration in Kenya however, had strong reservations on the viability of the *Red Line* as an international boundary or its suitability to provide protection and security for the Turkana from their Toposa neighbours to the north. The operations by the British to disarm the Turkana among other ethnic groups in the *Ilemi* area including the Labor Patrol of 1918 had weakened them vis-à-vis the Toposa (Amutabi, 1999 & Collins, 2006) The Turkana were exposed to frequent attacks, which forced the British to consider intervention measures. The failure of the Anglo-Egyptian authorities in Sudan to effectively administer the territory contiguous to the *Red Line* to the north made the situation worse. This reinforced the reservations and concerns of the British colonial administration in Kenya on the viability of the *Red Line*. The reference of the area that included the *Ilemi Triangle* as the *un-administered territory* in the various

official Sudanese communications pointed to the absence of Sudanese administration in the area (Johnson 2010). The absence of Sudanese authorities in the *Ilemi Triangle* and its immediate northern borderlands is evident in the fact that they first set foot in Toposaland in 1927 (Mburu, 2001). The administrative vacuum occasioned by the failure of Anglo-Egyptian authorities to establish effective administration of the territory north of the *Red Line*, made the British colonial administration in Kenya to sustain the push for a boundary with Sudan that was to serve both as a strategic boundary and protective buffer for the Turkana. Such a boundary as far as the colonial authorities in Kenya were concerned was to be to the north of the *Red Line* demarcation. The incessant feuds among the various pastoralists in the *Ilemi* area made such a line more imperative. In addition, frequent conflicts pitting the Turkana against the Toposa, Merille and Nyangatom in the *Ilemi* area north of the *Red Line* showed that the customary grazing grounds of the former lay further north. It was a clear indication that the *Red Line* did not represent the northern extent of the customary grazing grounds of the Turkana pastoralists. The colonial authorities in Kenya and Sudan appeared to be aware of this reality as evident in the fact that as far back as 1928, the colonial authorities in Kenya did request their Anglo Sudanese counterparts for permission to deploy in the *Ilemi* area north of the *Red Line* to prevent incessant attacks against the Turkana.

The boundary demarcations that took place after 1931 need to be viewed in the context of the concerted push by the colonial administration in Kenya to establish a strategic boundary with Anglo-Egyptian Sudan. Such a strategic boundary as far as the colonial authorities in Kenya were concerned was to serve not only as an international boundary, but also accord the Turkana pastoralists the necessary security to enjoy their traditional grazing rights in the *Ilemi* area (Tungo, 2008; Amutabi, 2010 & Mburu, 2003). The demarcation of the *Provisional Administrative Boundary* and the *Blue Line* in 1938 and 1947 respectively represented such deliberate efforts to identify and delimit the customary grazing grounds of the Turkana pastoralists as well as a strategic boundary north of the *Red Line*. The northward adjustments of the *Red Line* by the *Green Line* and *Wakefield Line* demarcations were part of the efforts to delimit the northern extent of the customary grazing grounds of the Turkana and a strategic boundary (Tungo, 2008 & Mburu, 2003). The *Wakefield Line* demarcation brought 1167 square miles of territory north of the *Red Line* in the larger *Ilemi area* under the administrative control of Kenya (Collins, 2005). The consequence of the *Wakefield Line* is that it expanded the *Ilemi Triangle* as a territorial reality further north from the *Red Line*. The *Green Line* and *Wakefield Line* also revealed further, the extent of the customary grazing grounds of the Turkana in the *Ilemi* area. The *Red Line* as adjusted by the the two boundary demarcations brought under Kenya's control further territory north of the original *Red Line* that constituted the customary grazing grounds of the Turkana pastoralists. This was a further step in a delimitation of the line, which was conceived in the 1914 *Uganda Order in Council* as constituting the customary grazing grounds of the Turkana and which was to be placed under Uganda but by then, Kenya.

The *Red Line* was renamed as the *Provisional Administrative Boundary* in 1938. The *Provisional Administrative Boundary* was not only more defensible than the initial *Red Line*, it was also considered more reflective of the northern extent of the customary grazing grounds of the Turkana in the *Ilemi* area. The *Provisional Administrative Boundary* demarcation was thus, an important step in the efforts of the colonial administrations in the Kenya and Anglo-Egyptian Sudan to establish the northern limit of the customary grazing grounds of the Turkana in the *Ilemi* area. The British colonial authorities in Kenya regarded the new boundary demarcation as appropriate for civilian administration. However, like in the case of the *Red Line*, the colonial administration in Kenya had reservations about its suitability as an international boundary or ability to afford the Turkana security and protection in their newly identified customary grazing grounds in the *Ilemi* area. The colonial administration in Kenya therefore, advocated for the establishment of a boundary north of the *provisional administrative boundary* that would reduce the perennial feuds between the Turkana pastoralists and their Sudanese and Ethiopian counterparts.

The importance of such a boundary became paramount following sustained raids by the Murle and Toposa against the Turkana in 1939 and 1940. The raids by the Nyangatom and Dassanech in August 1944 marked a turning point in the push by the British colonial administration in Kenya to establish a more defensible boundary north of the *Provisional Administrative Boundary*. The raids, which took place across the *Provisional Administrative Boundary*, inflicted huge losses on the Turkana (Collins, 2005 & Mburu, 2003). In the aftermath of the 1944 raids, the British Foreign Office in London proposed the adjustment of the north eastern section of the *Provisional Administrative Boundary* further into the *Ilemi* area. The resulting line named the *Blue Line Boundary* brought into Kenya an additional 1000 sq miles of the *Ilemi* territory and thus, further expanded or enlarged the size of the *Ilemi Triangle*. The colonial authorities in Kenya regarded the *Blue Line* as reflecting a realistic extent of the customary grazing grounds of the Turkana in the *Ilemi* area.

The push by British colonial administration in Kenya for a strategic boundary in the *Ilemi* area coincided with a similar move by the Anglo-Egyptian authorities in Sudan. As in the case of the Kenya colonial authorities, the move by the Sudanese authorities was driven by the need to ensure the safety and security of their pastoralists. There were constant skirmishes between the Toposa and the Turkana and the Nyangatom in northern *Ilemi* between 1949 and 1953 (Collins, 2004). The Anglo-Egyptian authorities in Sudan were concerned of the perennial attacks by the Nyangatom and the Turkana against their Toposa subjects. The Anglo-Egyptian authorities in 1950 demarcated the *Patrol Line of Sudan Defence Force* north of the *Provisional Administrative Boundary* and the *Blue Line* in response to attacks by the Turkana and Nyangatom against the Toposa. The line, which is also referred to as the *Yellow Line*, was conceived with the aim of preventing incursions into the Sudanese territory by the Turkana from the south and the Nyangatom from east respectively. The delimitation of the patrol line was done in anticipation of rectification of the boundary (Collins, 2004).

Following the establishment of *Patrol Line of the Sudan Defence Force*, the Anglo-Egyptian authorities in Sudan ceased to have any administrative presence in all the area of the *Ilemi* south of the demarcation up to the *Uganda Line*. This is the area that constitutes the *Ilemi Triangle* at its largest extend. Since then, no cession of territory has ever taken place (Collins, 2005). This is evident in the fact that Sudan did not demand the *Ilemi Triangle* from Kenya upon its independence in 1956. This was to continue for all the duration that Kenya and Sudan shared a common border. The territorial *status quo* in the *Ilemi Triangle* has prevailed since South Sudan became independent in 2011 (Eulenberger, 2013).

#### V. THE TURKANA GRAZING FACTOR IN ILEMI TRIANGLE BORDER DISPUTE

The overwhelming view is that the *Ilemi* was created for the convenience of Sudan (Tungo, 2008; Mburu, 2007 & Collins, 2004). This view draws from the fact that the *Ilemi* was a Ugandan territory that was exchanged for *Lado Enclave*, which was a Sudanese territory (Tungo, 2008; Collins, 2005 & Nur, 1971). The emergence and evolution of the *Ilemi Triangle* into the territorial reality that it is today is however quite different. The *Ilemi Triangle* was part of the larger territory that was referred in the 1913-14 territorial swaps between Anglo-Egyptian Sudan and Uganda Protectorate as the *Ilemi*. The *Ilemi Triangle* as a territorial reality is a consequence of various attempts by the colonial administrations in Kenya and Sudan to delimit the customary grazing grounds of the Turkana in the *Ilemi* area. This draws from the observation that the determination of the customary grazing grounds of the Turkana was one of the main factors in the making of the current Kenya-South Sudan boundary. The importance of the Turkana grazing rights in the making of the Kenya-South Sudan boundary is evident in the fact that it was a key factor in most if not all of the post-1914 boundary demarcations that traverse the borders of the two countries. The demarcations were in most ways connected to the quest to determine the customary grazing grounds of the Turkana pastoralists in the *Ilemi* area or their security and safety. The demarcations, for instance, by the British authorities in Kenya and their Anglo-Egyptian counterparts in Sudan of the *Blue Line* and *Patrol Line of Sudan Defence Force* respectively, were driven by security imperatives. The two demarcations however, also had both direct and indirect nexus with the central question of the customary grazing grounds of the Turkana in the *Ilemi* area. Thus, just as the establishment of the Turkana grazing grounds was a central factor in the making of the Kenya-Sudan boundary; it is no doubt the single most important dynamic in the emergence of the *Ilemi Triangle* as a territorial reality.

The question of the customary grazing grounds of the Turkana is thus, at the core of the *Ilemi Triangle* border dispute. The determination of such grounds was the single most important factor in the delimitation of the Kenya-Sudan boundary (Amutabi, 2010; Khadiagala, 2010; Tungo, 2008 & Mburu, 2007). There exists no fundamental disagreement between the contending parties to the *Ilemi Triangle* border dispute as to the importance of the customary grazing rights of

the Turkana in the making of the Kenya-South Sudan boundary and the *Ilemi Triangle* border dispute. The parties, however, differ only as to its scope and current relevance in the resolution of the *Ilemi Triangle* border dispute. Kenya's territorial claim in the *Ilemi Triangle* is inseparably linked to the question of the customary grazing rights of the Turkana. It regards the entire *Ilemi Triangle* as constituting the customary grazing grounds of the Turkana. This position is manifested in the country's insistence that any delineation of its boundary with South Sudan must be anchored on the customary grazing grounds of the Turkana in the *Ilemi Triangle*. This position is anchored on the thesis that the determination of the customary grazing grounds of the Turkana was the main consideration in the making of what is today the Kenya-South Sudan boundary. The various boundary demarcations that straddled the Kenya-South Sudan boundary as observed earlier were driven by the quest to delimit the northern extent of the grazing grounds of the Turkana in the *Ilemi* area. Thus, in particular, almost all the post-1914 boundary demarcations are indicative of the various attempts to identify such territory in the *Ilemi* area that constituted the traditional grazing grounds of the Turkana pastoralists. Each subsequent delimitation of what is today the Kenya-South Sudan border between 1914 and 1950 led to the enlargement of the *Ilemi Triangle* as a territorial reality. Likewise, each enlargement of the *Ilemi Triangle* came with a new known reality of the extent of the customary grazing grounds of the Turkana in the *Ilemi* area.

Closely connected to the broad issue of the customary grazing grounds of the Turkana in *Ilemi Triangle* border dispute is the associated question of relevant timelines. Prior to 2011, Sudan wanted the issue of the Turkana grazing rights to be viewed in the context of 1914, when the *Uganda Line* was delimited (Tungo, 2008). This is because as far as Sudan was concerned, the Turkana pastoralists first crossed the *Uganda Line* into *Ilemi* area in 1915 (Tungo, 2008). This position is however, contradicted by existing evidence that showed that the British encouraged the Turkana to move southward into the hinterland of Turkana Province from 1914. The position of South Sudan on the issue and the question of the *Ilemi Triangle* is no different from that of Sudan. The position of Kenya is however, at variance with that of Sudan and South Sudan. Kenya objects to any restriction to limit the issue of timeline of the customary grazing grounds of the Turkana to 1914. Kenya anchors its rejection on the *Uganda Order in Council* of 1914 that expressly provided for the demarcation of such a line that was conceived to leave to Uganda and by implication Kenya, the customary grazing grounds of the Turkana north of the *Uganda Line*. Kenya maintains that the customary grazing grounds of the Turkana in the *Ilemi* area were not yet surveyed in 1914 and hence, its exact extent by then was unknown. The country therefore, views all the post-1914 boundary demarcations as part of deliberate attempts to delimit the customary grazing grounds of the Turkana north of the *Uganda Line*. Kenya views the *Patrol Line of the Sudan Defence Force* for instance, as reflecting the northern limit of the customary grazing grounds of the Turkana in the *Ilemi* area. The unilateral demarcation by Anglo-Egyptian authorities in Sudan was conceived with the aim of preventing the Turkana and Ethiopian pastoralists from crossing into Sudanese territory.

The conflicting positions notwithstanding, the question of the customary grazing grounds of the Turkana remains a key factor in the *Ilemi Triangle* border dispute. This is because it was the core issue in the post-1914 making of the current Kenya-South Sudan boundary. As observed earlier in this article, the evolution of the *Ilemi Triangle* was a consequence of efforts to delimit the customary grazing grounds of the Turkana north of the *Uganda Line*. It can thus, be argued that the extent of the Turkana grazing grounds became more manifest the more the *Ilemi Triangle* evolved or extended northwards as a territorial reality. The customary grazing grounds of the Turkana in 1914 may have straddled deep beyond the *Uganda Line*. The grounds that constitute the grazing grounds of the Turkana pastoralists however, expanded amid the northward migration of the Turkana pastoralist deep into the *Ilemi* area. One can even argue that the establishment of the *Patrol Line of Sudan Defence Force* may have prevented further northward penetration of the Turkana into the *Ilemi* area. Such a scenario would have been accompanied by an even further northward enlargement of what is today the *Ilemi Triangle*.

It was observed above that several ethnic groups, most of which are pastoralists, inhabit the *Ilemi Triangle* (Collins, 2005; Eulenberger, 2013; Amutabi, 2010 & Khadiagala, 2010). The Turkana, Toposa, Didinga, Dassanech, Murle and the Nyangatom are the main ethnic groups that were identified as inhabiting various parts of the *Ilemi Triangle* whether on permanent or temporary basis. The Turkana is however, the largest ethnic group in the disputed territory. The Turkana makes up 90 % of the population of the *Ilemi Triangle* (Eulenberger, 2013). The Turkana, unlike most of the other ethnic groups whose habitation of *Ilemi Triangle* are seasonal, has permanent presence in the disputed territory. The extent of the Turkana presence in the *Ilemi Triangle* is evident in their occupation and habitation of the centre of the disputed territory (Collins, 2005). On the other hand, no Sudanese tribe has had permanent presence in the territory lying between Kenya and Ethiopia (Tornay, 2001). In the face of these realities, the dominance of the Turkana in the *Ilemi Triangle* is not doubt. This lends credence to the thesis that the *Ilemi Triangle* is integral part of the customary grazing grounds of the Turkana. This was also implied in unilateral establishment by the Anglo-Egyptian authorities in Sudan of the *Patrol Line of the Sudan Defence Force*. The Turkana pastoralists were never allowed north of this demarcation (Mburu, 2003 & Eulenberger, 2013). They were however, allowed to graze in all the territory straddling the *Patrol Line of the Sudan Defence Force* and the *Uganda Line* (Tungo, 2008; Amutabi, 2010 & Mburu, 2005). This territory as stated elsewhere represents the *Ilemi Triangle* in its largest extent.

Most of the pastoralist groups in the *Ilemi Triangle* use the territory for dry season grazing purposes (Tornay 2001; Mburu, 2003 & 1999 & Mulu, 2017). This implies that the presence of most of the pastoralist groups in *Ilemi Triangle* is transitory and mainly linked to the dry season grazing. This is the case with the Didinga and Toposa dry season movements or migrations into western and north western *Ilemi Triangle* respectively. The presence of the Turkana in the *Ilemi Triangle* is quite different as it is more permanent. The Turkana nomads graze their livestock in northern parts of the

*Ilemi Triangle* most of the year around (Mburu, 2003 & Mulu, 2017). Northern *Ilemi Triangle* refers to the borderlands immediate to the *Patrol Line of the Sudan Defence Force*. More specifically, the Turkana pastoralists spend eight to nine months a year in the *Ilemi Triangle* (Mburu 2003). The presence of the Turkana pastoralists north of the *Uganda Line* in the *Ilemi Triangle* for all purposes appears to point to longstanding and continuous habitation. Thus, while the extent of Turkana's presence in the *Ilemi Triangle* as at 1914 may be debatable, the presence in itself in whatever extent and form is not in dispute. In what reinforces the argument that the Turkana have continuously inhabited the *Ilemi Triangle*, Waithaka & Maluki (2016) maintain that the 1914 boundary placed a large chunk of the customary grazing grounds of the Turkana north of the line. Further, in what points to longstanding habitation of the *Ilemi* area by the Turkana pastoralists. Mburu (2003) points to the fact the British colonial officials in Kenya orchestrated a southward migration of the Turkana from the borderlands of the 1914 boundary into the hinterland of the Kenya Colony following the promulgation of the *Kenya Colony and Protectorate (Boundaries) Order in Council* in 1926. All these strengthened the view that the presence of the Turkana pastoralists in the *Ilemi* area and specifically in the *Ilemi Triangle* may predate 1914.

The demarcation of the *Patrol Line of the Sudan Defence Force* by the Anglo-Egyptian authorities in Sudan in 1950 and their subsequent ceasing of administrative presence in all the territory that is today the *Ilemi Triangle* has implicit relevance to the customary grazing ground of the Turkana in the disputed border. The Sudanese authorities managed the patrol line in a manner that was consistent with an international boundary. For instance, Sudanese authorities prevented Kenyan or Ethiopian pastoralists from crossing the patrol line demarcation (Mburu, 2003). The actions of Sudanese authorities bring into the fore not only questions over whether they regarded the territory of the *Ilemi* area south of their patrol line as part of their territory, but also reinforced the centrality of the delimitation of the customary grazing rights of the Turkana in the making of the Kenya-South Sudan boundary. In particular, the patrol line delimitation brought further insight on the northern extent of the customary grazing grounds of the Turkana in the *Ilemi* area. The Turkana is more less the only Kenyan pastoralist group in the *Ilemi Triangle*. Whereas some presence of the Kenyan Dassanech is found in the immediate vicinity of northern shores of Turkana, it is the Turkana that have widespread presence. The Turkana alongside the Nyangatom and Murle as observed earlier in this article, graze their livestock in northern *Ilemi Triangle* border area adjacent to the *Patrol Line of Sudan Defence Force*. Thus, in all probability, the Turkana, Nyangatom and Murle were the Kenyan and Ethiopian pastoralists that Sudanese authorities were keen to prevent from crossing beyond their patrol line. The Turkana pastoralists and their Ethiopian counterparts were allowed to graze in the whole of the territory to the south of the patrol line (Mburu, 2007 & Amutabi, 2010). In relation to the question of the customary grazing grounds of the Turkana, it is implied in the actions of Sudan that as at 1950, such grounds extended up to the *Patrol Line of the Sudan Defence Force*.



Customary grazing grounds of communities sometimes transcend international frontiers. This could be argued with regard to the customary grazing grounds of Turkana in the *Ilemi* area. Most pastoralist groups also move across international borders in periodic seasonal migrations, a scenario that could also explain the presence of the Turkana in the *Ilemi Triangle*. This is however, not the case as the presence of the Turkana in the *Ilemi Triangle* as observed elsewhere in this article has been more on permanent basis. Further, the actions of Sudan in the *Ilemi Triangle* between 1931 and 1950 appear to cast doubt as to whether it regarded it as its territory. The actions did not only demonstrate acts of acquiescence and abandonment, both of which undermined its claim, they also reinforce the thesis that the territory constituted an integral part of the customary grazing grounds of the Turkana. The issue of nationalities of the inhabitants of the *Ilemi Triangle* is inseparable from the competing claims over the territory. Several ethnic groups inhabit the *Ilemi Triangle* on temporary or permanent basis (Mburu, 2007; Amutabi, 2010 & Eulenberger, 2013). These ethnic groups in the *Ilemi Triangle* are citizens of the countries that are contiguous to the territory. The Toposa and the Didinga are mainly South Sudanese though the latter has some presence in parts of north eastern Uganda. The Murle and the Dassanech on the other hand are Ethiopians but the latter have cross-border presence in Kenya. The Turkana, which constitutes the largest ethnic group in the *Ilemi Triangle*, are Kenyans (Eulenberger, 2013). These pastoralist groups have been feuding amongst themselves for the control of the pastures of the *Ilemi Triangle*. The main contest has however, pitted the Turkana against the Toposa. In fact implied in the quest to delimit the customary grazing grounds of the Turkana was to separate the Turkana and the Toposa. Since 1950, the Toposa have inhabited the areas immediate north of the *Patrol Line of Sudan Defence Force* while the Turkana have inhabited areas to the south that is the *Ilemi Triangle*. In essence, the patrol line is the only boundary demarcation along the Kenya-South Sudan border that divides the Turkana and the Toposa.

The important issue in relation to the nationality question is how the various countries in the *Ilemi Triangle* border dispute perceive the presence of their nationals in the territory. There is doubt for instance as to whether the Anglo-Egyptian authorities in Sudan viewed the presence of their subjects in the *Ilemi Triangle* as permanent. The failure by Anglo-Egyptian authorities in Sudan to administer the *Ilemi Triangle* could mean that they either did not regard the territory as part of Sudan or viewed the presence of its subjects in the territory as temporary. The presence of South Sudanese pastoralists in the *Ilemi Triangle* has been a temporary phenomenon or occurrence resulting from seasonal migration. The thesis by Tornay (2001) and Johnson (2010) that no Sudanese tribe has ever inhabited the territory sandwiched between Kenya and Ethiopia appears to reinforce this viewpoint. Sudan did not demand the reverting of the *Ilemi Triangle* to its sovereignty at its independence in 1956. Sudan however, disputed Kenya's sovereignty over the *Ilemi Triangle* following the latter's publication of maps that showed the provisional administrative boundary as the international boundary (Tungo, 2008:105). Even when challenging Kenya's sovereignty over the *Ilemi*

*Triangle*, Sudan did not appeal to the issue of nationality of the inhabitants in the disputed territory.

## VI. CONCLUSION

The delimitation and demarcation of the Kenya-South Sudan boundary cannot be viewed in isolation of overall colonial boundary making in East Africa as well as the underlying motivations and interests. In particular, the making of the Kenya-South Sudan boundary was driven by British colonial interests in Sudan, Uganda and Kenya. Notwithstanding, the centrality of the British interests in the making of what is today, the Kenya-South Sudan boundary, the customary grazing rights of the Turkana was one of the major factors. Most if not all the boundary demarcations that traverse the Kenya-South Sudan border has in some way a dimension of the Turkana grazing ground as an underlying factor. The *Ilemi Triangle* as a territorial reality in all its extents was a resultant outcome of efforts to delimit the northern extends of the customary grazing grounds of the Turkana in the *Ilemi* area. Each of the subsequent boundary delimitation north of the *Uganda Line* resulted in further revelation of the customary grazing grounds of the Turkana in the *Ilemi*. Such a territory constituting the customary grazing grounds of the Turkana was to be place under Uganda Protectorate (Uganda) and later Kenya due to boundary changes occasioned in 1902 and 1926. The current Kenya-South Sudan boundary expanded northward from 1914 onwards amid the revelation of further customary grazing grounds of the Turkana in the *Ilemi* area. These grounds were brought under Uganda Protectorate and from 1926 onwards, they were place under East Africa Protectorate. The delimitation of the *Patrol of Sudan Defence Force* in 1950 marked the northernmost and last such boundary associated to the search for Turkana grazing grounds. The conclusion of this study about the centrality of the customary grazing grounds of the Turkana in the *Ilemi Triangle* border dispute draws based on the strong evidence of its manifestation in the making of Kenya-South Sudan boundary and presence of the Turkana throughout the disputed territory.

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