

DIGGA Institute Working Research Paper - I

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Facts or Fiction: The Genesis Of Possible Oil and Gas Dispute Offshore Somalia and Kenya



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Executive Summary

African countries that are new as producers of Oil and Gas often have legal, transparency, Institutional, and technical challenges. After the establishment of the United Nations and the ILC under its auspices, the First United Nations Conference (1949-1956) on the Law of the Sea took place (UNCLOS I). As a result of this Conference two conventions were adopted; The 1958 Geneva Convention on the territorial sea and contiguous zone and 1958 Geneva Convention on the Continental Shelf. Preference was given to equidistance/special circumstances ruleⁱⁱⁱ. The UNCLOS progressed from I to III in 1982. It came into force in 1994.

Somalia claims that the equidistance line or rather the 90 degrees rule of UNCLOS has been around since the formation of Somalia in 1960 and can be found in a number of corporate agreements, maps^{iv}, books, research papers, and presentations all reference are available from the full version of the paper. While the Kenyan Government's a new dispensation come around since 7th April 2009 after they got an MOU from a Minister in the transitional federal government of Somalia. The validity of the MOU was clearly challenged on the grounds of time, relevance, and Authority and in the judgment of the 2nd Preliminary objections of Kenya in 2017 when the court found out that Kenya's position was not only inaccurate but defective in nature – and the 2nd Preliminary objection was thrown out.

Recent diplomatic war of words between the neighbourly countries of Somalia and Kenya seem to have no basis for the Kenyan government to fire the first salvo by throwing out the Somali Ambassador. The Kenyan government is adamant that an MOU signed with a Somali Minister is valid and is binding on Somalia to accept. It is somehow trying to arm twist a weak Somali Federal Government that lacks both military and the necessary intellectual fire-power. Somalia's successive leaderships are considered as being the most corrupt in the world according to Transparency International. That is why Somalia chose the legal avenue of the International Court of Justice (ICJ) instead of the arm twisting bilateral avenue. We shall leave the legal gymnastics with the ICJ.

This unpublished confidential research will look into previous literature, treaties, maps, books, Oil and Gas agreements, and interviews of key individuals in both countries. We also note that maps used in the brochures of the Kenyan Government at global road shows for the upstream sector does not have the so called line of parallel or the 45 Degrees line^v in the early to late 1990's. At that time the only offshore blocks available were Block 5 and 6. While on the Somalia side the 90 Degrees line is used. This happened from as far back as in the 1960s up to today. Multinational oil corporations dealing with oil and gas have maps to that effect showing in detail their coordinates^{vi}. The UN also has a database of all territories, boundaries and their coordinates.

The Norwegian Government assisted both Kenya and Somalia in their submissions to the CLCS and we note that on one side the so called technical assistance team suggested to Kenya that they should submit to the CLCS for 450 nautical Miles (nm) as the extension of

their continental shelf, while they advised Somalia to go for only 350 Nautical Miles (nm). Statoil of Norway was initially involved in the 2012 bid rounds but pulled out later after they got advice from the Norway Government. Somalia's application could have been more than even 450nm but it seems the advice from the Norwegians was faulty and myopic. The closest Island^{vii} to Somalia in the Indian Ocean is Diego Garcia (a US Military base) owned by the British in the form of a British Indian Overseas Territory company called (BIOT). The distance is 1739 nautical miles(nm) and Somalia could have control over all those areas. It is worth noting that the US a military power is not signatory to UNCLOS because it does not want any hindrances imposed by UNCLOS over its God given Seas. As for the legal tussle between indigenous Diego Garcians and Britain and BIOT is covered in details though that legal tussle has been ongoing for close to 50 years

The UK has retained possession of a remote archipelago in the Indian Ocean that includes the strategic US airbase of Diego Garcia through political pressure and secret threats. In the opening submissions of a legal challenge to British sovereignty of the Chagos Islands at the court in The Hague, Sir Anerood Jugnauth, Mauritius's defence minister, alleged that his country was coerced into giving up a large swathe of its territory before independence.

That separation was in breach of UN resolution 1514, passed in 1960, which specifically banned the breakup of colonies before independence, the Mauritian government argued before the UN-backed court, which specialises in territorial and border disputes between states. The four-day session which was held at the Hague heard from representatives of 22 countries in a dispute over colonial history and the rights of exiled islanders to return. The ICJ's judgment will be advisory, rather than legally binding. Nonetheless, it will be a significant moment in the UK's increasingly isolated efforts to hold on to the Chagos archipelago.

The Minister told the court: "I am the only one still alive among those who participated in the Mauritius constitutional conference at Lancaster House [in London] in 1965, where talks on the ultimate status of Mauritius were held." Those talks resulted in "the unlawful detachment of an integral part of our territory on the eve of our independence", he said.

"These secret meetings were not, at that time, made known to the other Mauritian representatives, myself included, although we were later told of the immense pressure that was imposed on the small group." After independence in 1968, most of the 1,500 islanders were deported so that the largest island, Diego Garcia, could be leased to the US for a strategic airbase in 1971. The islanders have never been allowed to return home^{viii}

The role of multinationals and their exploration history in both Kenya and Somalia is covered from 1950s up to today. A case in point is Total Ltd a multinational oil company that was negotiating for blocks in both Kenya and Somalia. The maps they used in both countries are also looked into details in Somali in 2001 and in Kenya 2012 (please see Appendix).

The new reality of extending the continental shelf from 200nm to 350 and beyond has surely created jurisdiction issue among many countries especially countries that have opposite coastlines. In this paper we noted the closest point of intersection between Kenya and Somalia could only happen at around the 302nm point if the 90 degrees method is used and that might require an MOU. Since Somalia's new delimited distance now stands at 350nm.

In the resources sector Joint Development Areas (JDA) happen or become a reality when commercial quantities of oil and gas is discovered at an area of intersection between two countries in the case of Kenya and Somalia no areas exist yet and no Oil and Gas has been discovered at all in the offshore areas. The Deep Sea well Pomboo-1 drilled on Kenyan side on 2nd December to 26th-January 2007 clearly showed that no oil existed and the well was plugged and abandoned by Woodside Energy of Australia who wrote off \$50million for a single well. It is also wise to note that legal wrangles over maritime borders and JDA run for several decades as in the case of Australia vs Portugal/Indonesia/Timor Leste (Finally) that took forty six years and was expected to have concluded by March, 2018 but has been made more complex by Multinational oil companies equity positions and project costings – it expected to conclude in early march, 2019.

Finally we look at the Legal, Policy and Security implications for all stakeholders; that is Somalia, Kenya and multinational companies. On the legal front we leave it for the ICJ to deal with. On policy issue both countries should refrain from igniting more diplomatic and economic confusion. Further, proper and objective technical evaluation is required before jumping to conclusions. As for Multinational corporations in the Oil and Gas sector it would be wise to avoid areas of contention between two countries until a final judgment is made from the ICJ. As for Multilateral organizations extensive capacity building injection is required in the extractives industries of developing African countries in good governance and transparency.

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ⁱⁱ Digga Institute was formed on 28th January 2019, and is based Garowe, Puntland. It is a pan African Think Tank with a vision of developing Africa through Good Governance.

ⁱⁱⁱ UNCLOS(I)

^{iv} Forbes, VL 1995, *The Maritime Boundaries of the Indian Ocean Region*. 1st edn, Singapore University Press, Singapore.

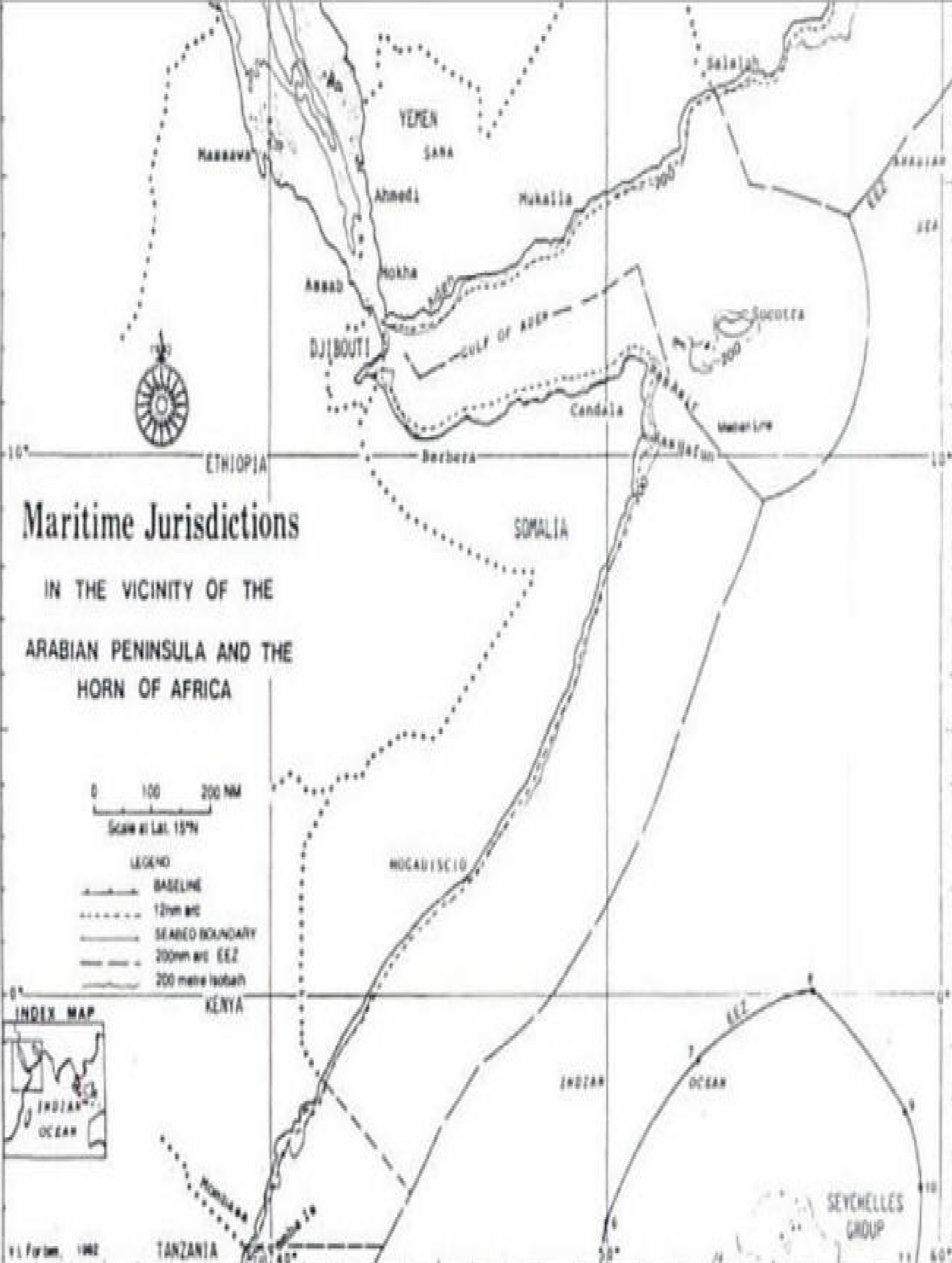
^v Ministry of Energy and National Oil Company of Kenya Petroleum road show 1995

^{vi} Continental Shelf Limits, Peter J. Cook & Chris Carleton (2000)

^{vii} Regime of Islands in International Law" H.W. Jayewardene(1990)

^{viii} The Guardian, 2018

Appendix



Maritime Jurisdictions

IN THE VICINITY OF THE
ARABIAN PENINSULA AND THE
HORN OF AFRICA

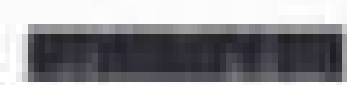

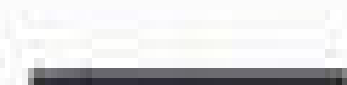

0 100 200 NM
Scale at Lat. 15°N

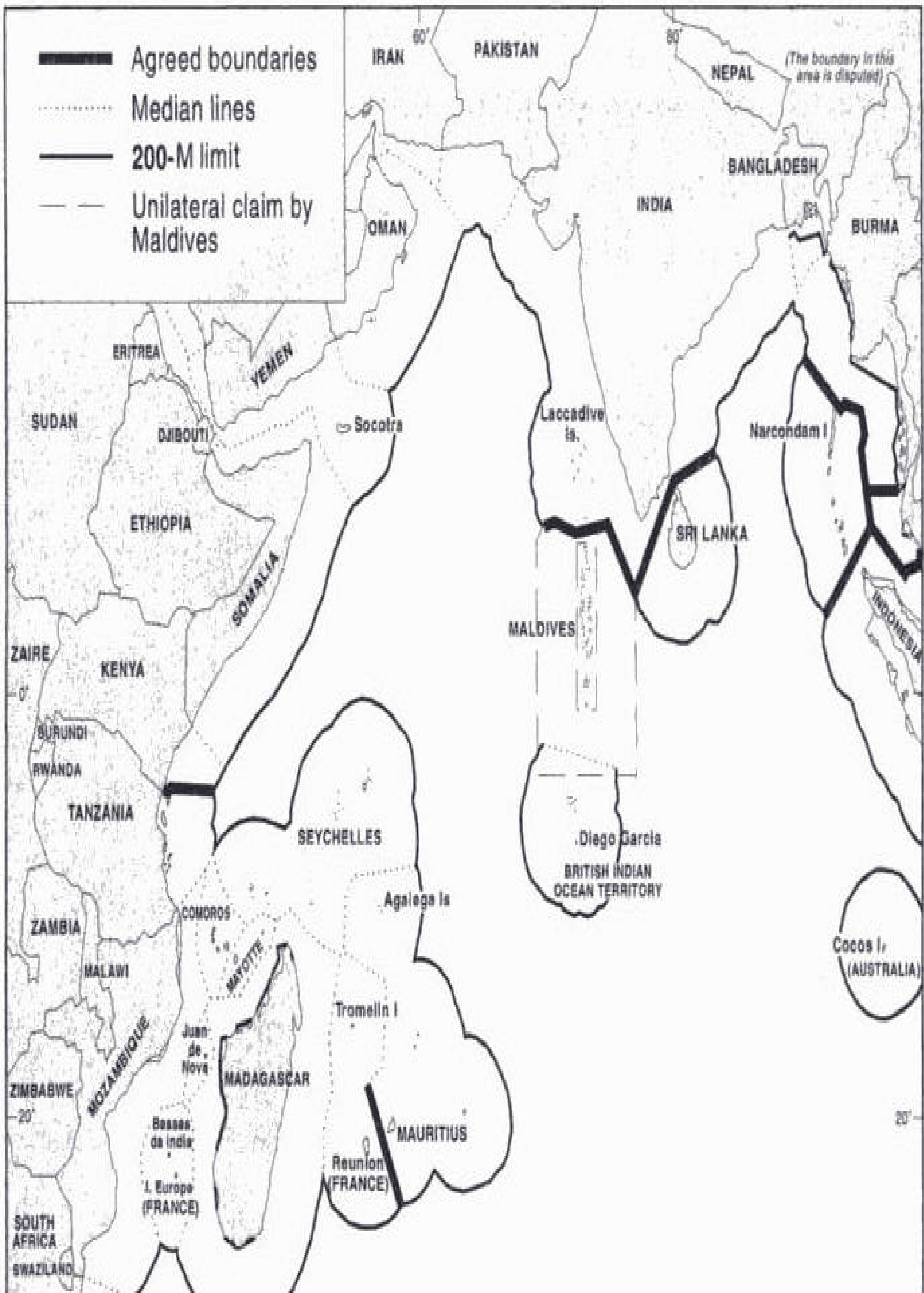
LEGEND

- BASELINE
- 12nm limit
- STATED BOUNDARY
- 200nm EEZ
- 200 metre isobath

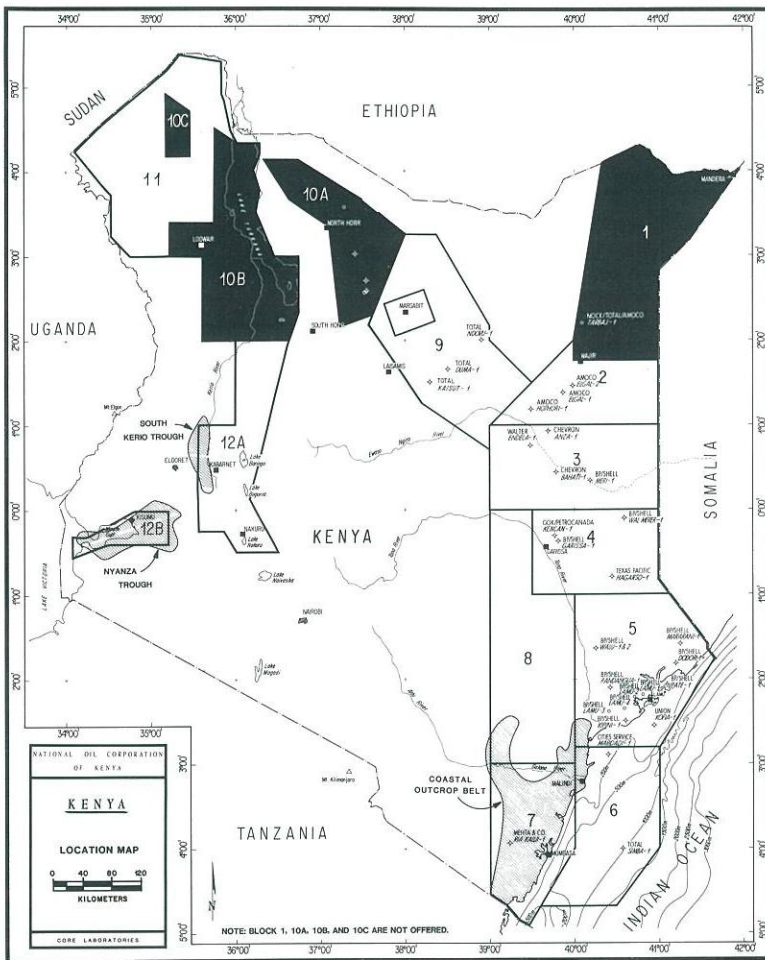
INDEX MAP



-  Agreed boundaries
-  Median lines
-  200-M limit
-  Unilateral claim by Maldives



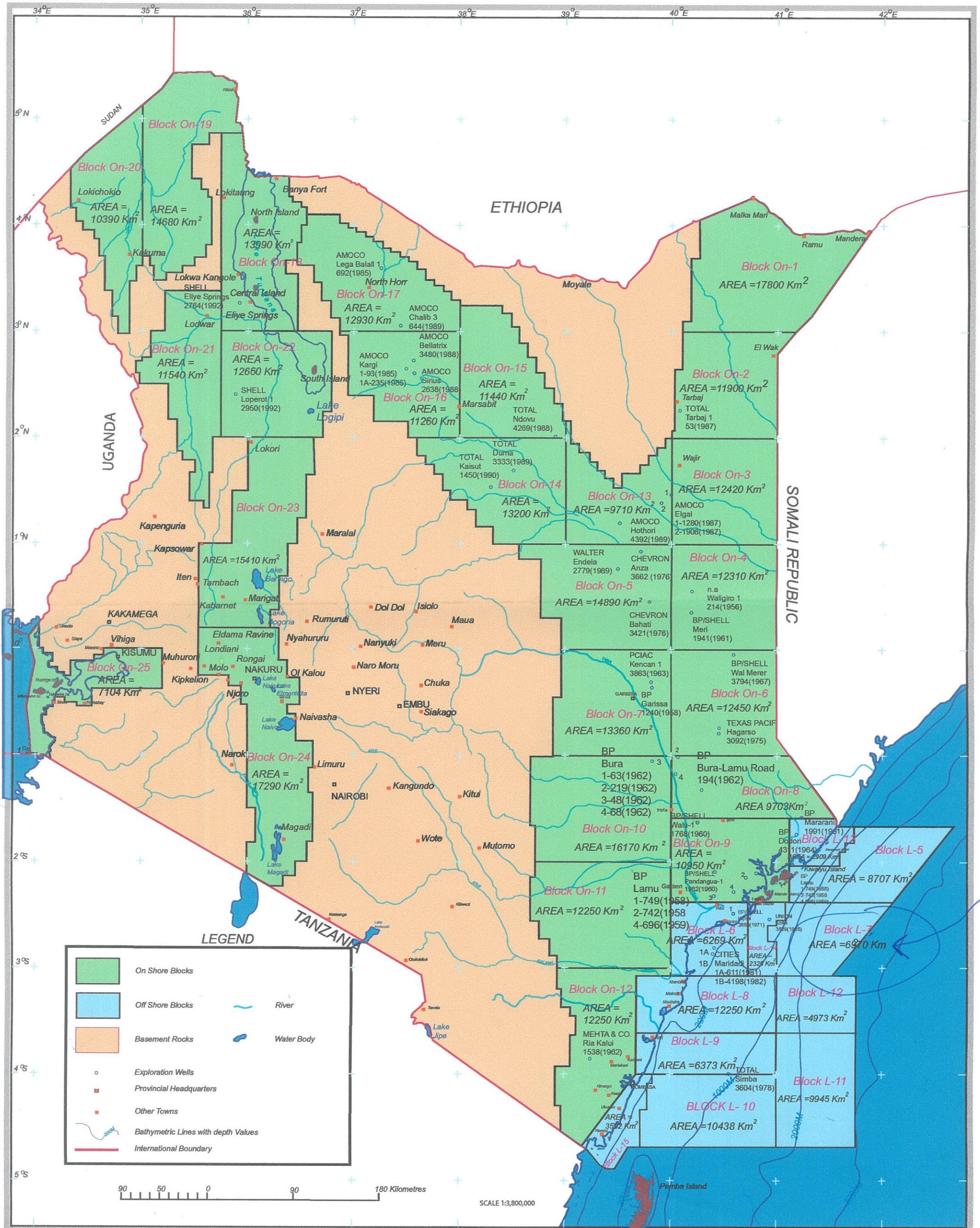
Republic of Kenya Invitation to Bid for Petroleum Exploration Acreage



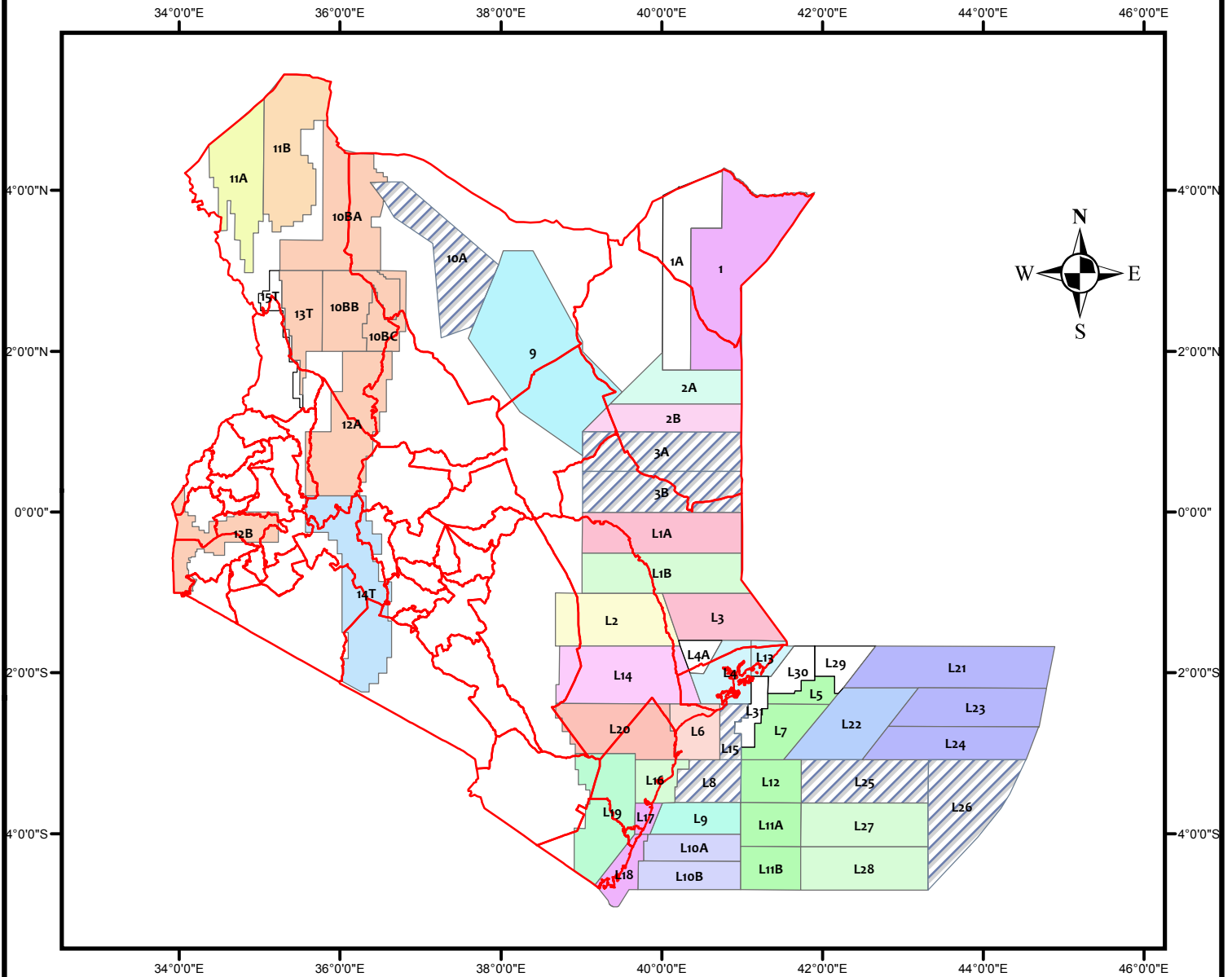
Areas of Kenyan Exploration Blocks

Block	Area (km ²)
1 (not offered)	33,636
2	15,528
3	24,539
4	18,509
5	29,985
6	22,662
7	19,332
8	30,731
9	27,778
10A (not offered)	15,289
10B (not offered)	25,512
10C (not offered)	2,370
11	33,416
12A	18,788
12B	4,169

PETROLEUM EXPLORATION BLOCK MAP OF KENYA

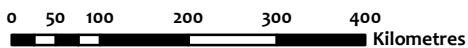


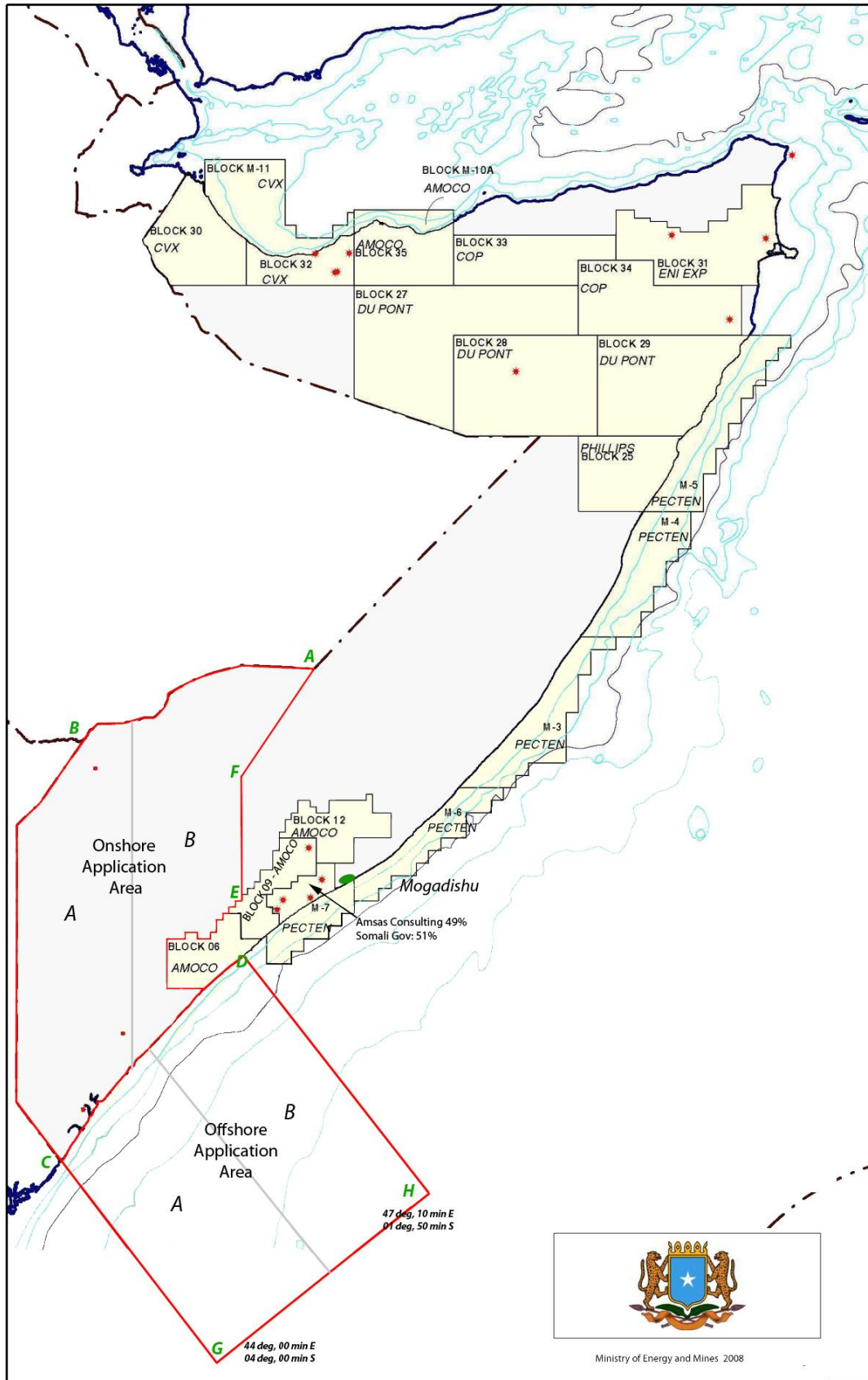
Kenya Exploration Block Map

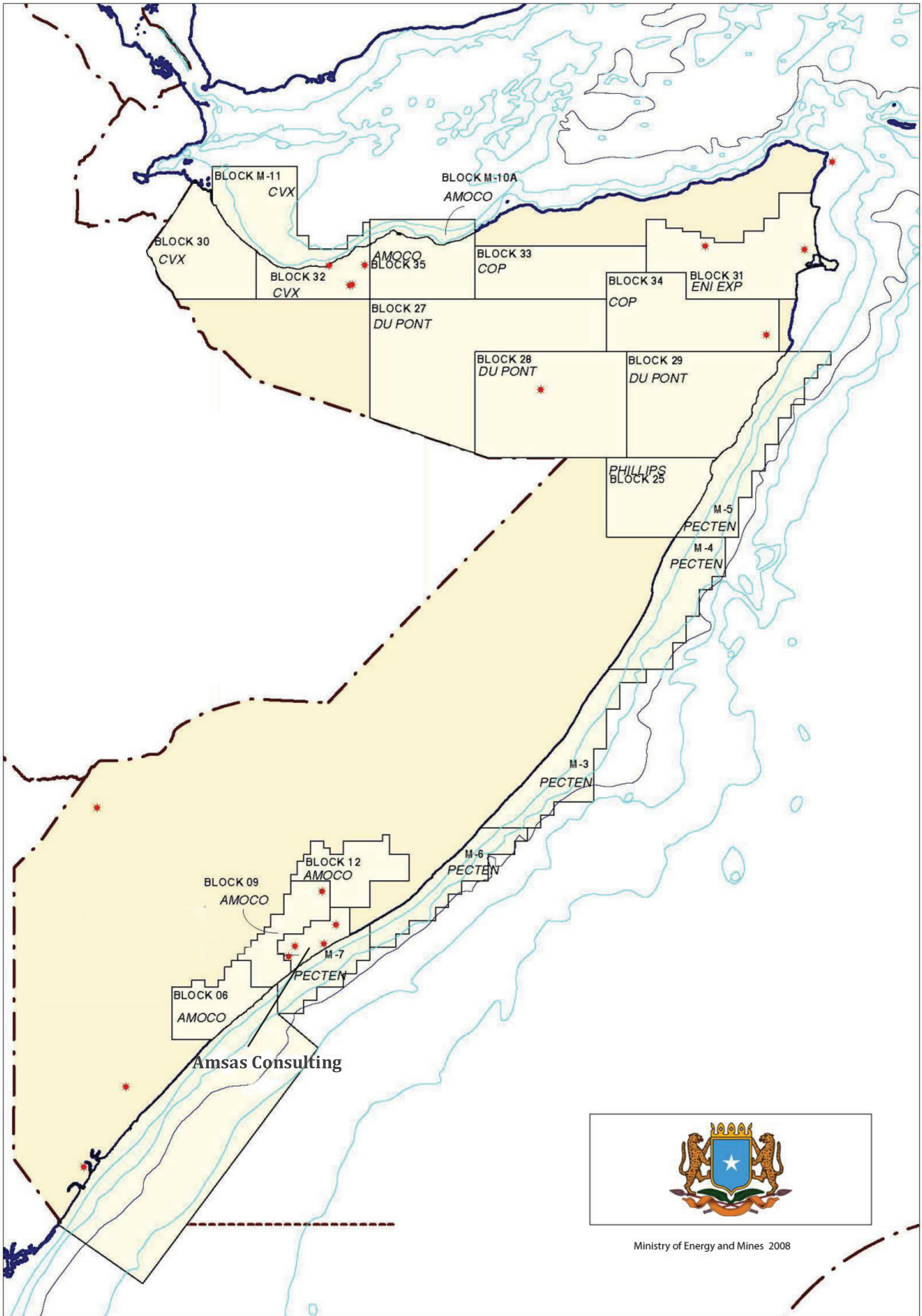


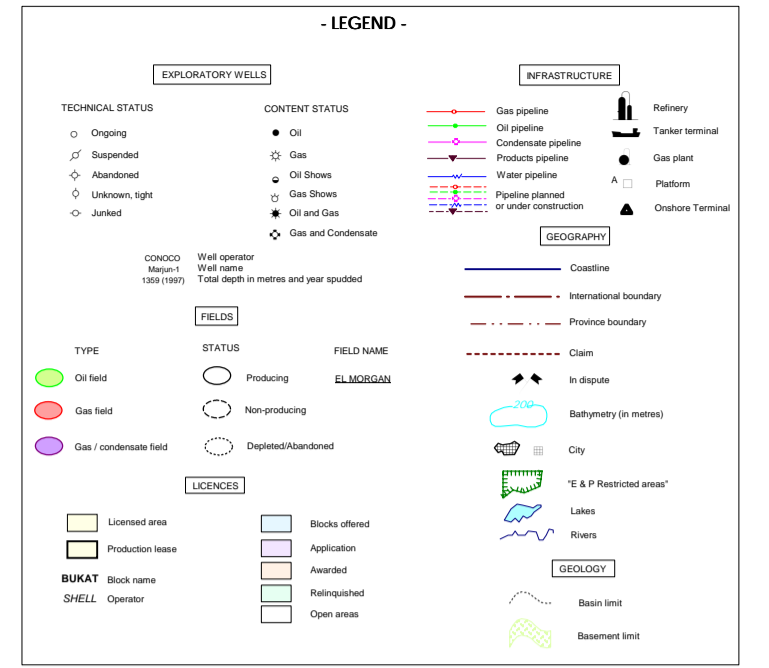
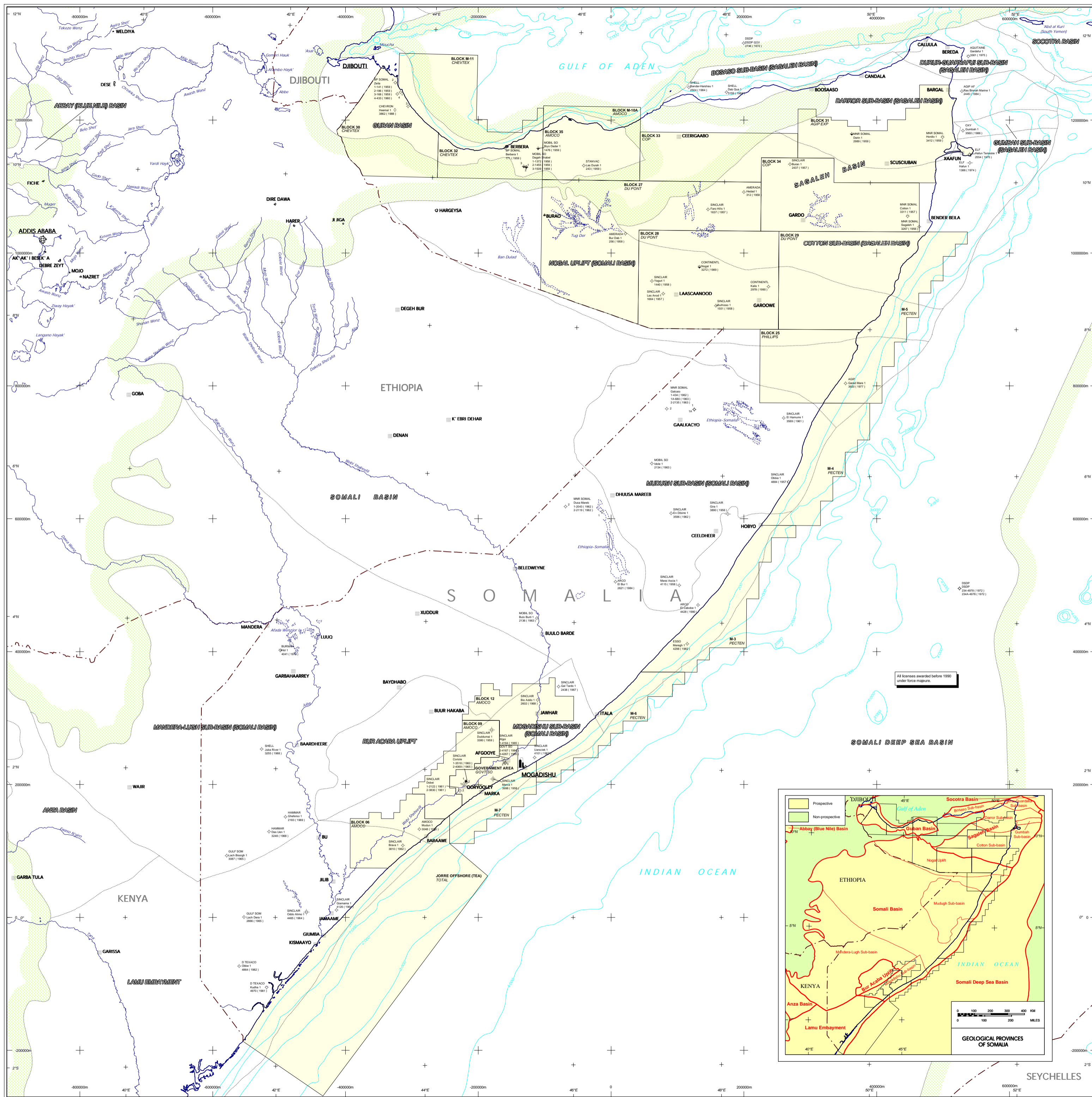
Legend

Counties	CAMAC - L1B,L16,L27,L28	Pacific Seaboard Investments - L20
Blocks	CEPSA -11A	Relinquished
Operator	ENI - L21,L23,L24	Rift Energy - L19
A-Z Petroleum - L1A,L3	FAR - L6	Simba Energy - 2A
Adamantine Energy - 11B	Imara Energy - L2	Taipan Resources - 2B
Afren - 1,L17,L18	Lamu Oil & Gas - L14	Total - L22
Africa Oil - 9	NOCK - 14T	Tullow Oil - 10BA,10BB,10BC,12A,12B,13T
Anadarko - L5,L7,L11A,L11B	Not Gazetted	Zarara - L4,L13
BG Group - L10A,L10B	Ophir L9	



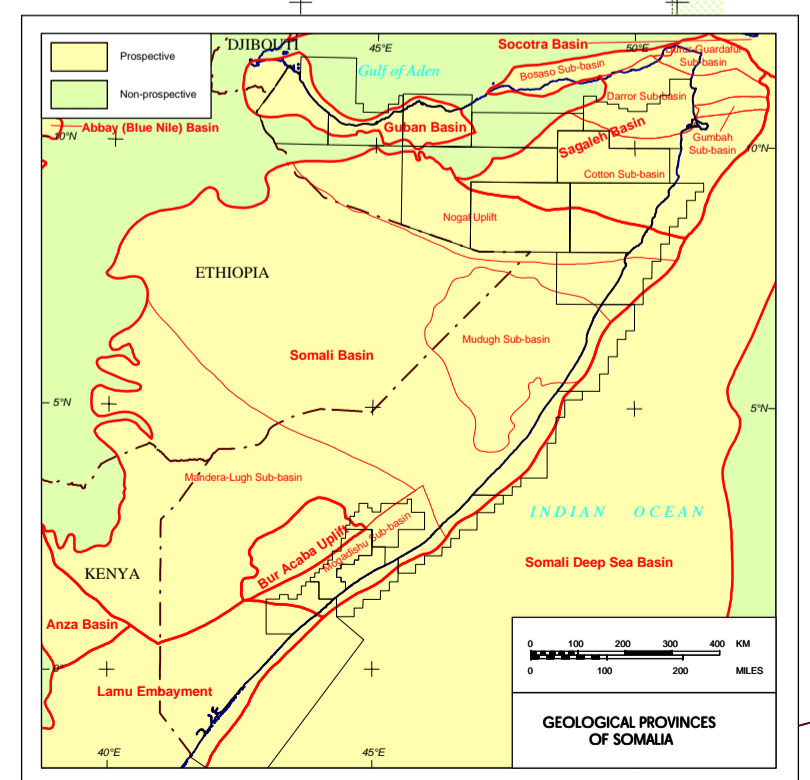






- LIST OF RIGHTHOLDERS -

Group	%	Block	Sqkm	Award Date	Renewal/ Expiry
* operator					
* Agip Exploration BV	100.00%	Block 31	20145.00	2-Mar-86	2-Mar-92
* Amoco Somalia Petroleum Co	50.00%	Block 06	8811.00	30-Apr-87	30-Apr-93
Agip Exploration BV	50.00%	Block 09	8038.00		
		Block 12	9489.00		
* Amoco Somalia Petroleum Co	50.00%	Block 35	12588.00	21-Jan-86	21-Jan-92
Talisman Energy Inc	30.00%	Block M-10A	3764.00		
Murphy Eastern Oil Co	10.00%				
Fortum Corp	10.00%				
* Chevron/Texaco Corp	100.00%	Block 30	15500.00	29-Jan-86	29-Jan-92
		Block 32	8700.00		
		Block M-11	18300.00		
* Conoco/Phillips Company	100.00%	Block 33	15603.00	16-Oct-88	16-Oct-91
		Block 34	23125.00		
* Du Pont E & P No 1 B.V.	75.00%	Block 27	39500.00	17-Jun-86	30-Jun-91
Phillips Petr. Corp Somalia	25.00%	Block 28	31200.00		
		Block 29	29000.00		
* Pecten Somalia	100.00%	M-3	13424.00	Nov-88	Nov-94
		M-4	13975.00		
		M-5	15885.00		
		M-6	9505.00		
		M-7	6962.00		
* Phillips Petr. Corp Somalia	100.00%	Block 25	14283.00	23-Sep-89	Sep-95
* Somalia Government	100.00%	Government Area	4700.00	1981	
* TOTAL SA	100.00%	Jorre Offshore (TEA)	57000.00	3-Feb-01	2-Feb-02



GLOBAL EXPLORATION & PRODUCTION SERVICE

SOMALIA

SCALE: 1 : 2 000 000 AUGUST 2003 REF: SO03E1GEN CO

DATUM: WGS 84 W G S 84 SPHEROID: WGS84
 PROJECTION: U.T.M. GRID: N39 IND: UTM Zone 39 N
 CENTRAL MERIDIAN: 51 deg 00' 00.000 E Greenwich
 LATITUDE OF ORIGIN: 0 deg 00' 00.000 N
 SCALE FACTOR: 0.9996
 FALSE EASTING: 500000.000 m
 FALSE NORTHING: 0.000 m

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