



**EXCLUDED AND DISPLACED  
IN YOUR OWN HOMELAND**

# **LAND-RELATED INJUSTICES AND CONFLICTS IN LAMU COUNTY**



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## ***Land-Related Injustices and Conflicts in Lamu County***

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## ABBREVIATIONS

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ADR	-	Alternative Dispute Resolution
CIPEV	-	Commission of Inquiry into Post-Election Violence
ELC	-	Environment and Land Court
ESIA	-	Environmental and Social Impact Assessment.
FGD	-	Focus Group Discussions
ICT	-	Information and Communications Technology.
IDPs	-	Internally Displaced People
KWS	-	Kenya Wildlife Services
LAPSSET	-	Lamu Port-South Sudan-Ethiopia-Transport
MCA	-	Member of the County Assembly
NET	-	National Environment Tribunal
NEMA	-	National Environment Management Authority
NLC	-	National Land Commission
NGO	-	Non-Governmental Organisation
PCRC	-	Public Complaints and Resolutions Committee.
SPM	-	Senior Principal Magistrate
TDR	-	Traditional Dispute Resolution
TJRC	-	Truth, Justice and Reconciliation Commission of Kenya.
UNESCO	-	The United Nations Educational, Scientific and Cultural Organization

## FOREWORD

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It is said that many of the greatest conflicts are often found in the most beautiful spots on earth. That maxim would most certainly hold true in the case of Lamu County. Anyone who has ever visited it is struck by its natural beauty, its relaxed atmosphere and its gentle, welcoming and friendly residents. Charmed by the place and its people, many visitors wish to settle there and make it their home. Many individuals have made that choice and have been made to feel very welcome.

Over the centuries, however, many others have arrived unannounced and uninvited. They came in large numbers with the intention to plunder, make money and occupy the land without any discussions with the indigenous communities. Lamu has been invaded by slave traders, colonialists, settlers, other Kenyan communities and more recently by industrialists, investors, big government and even terrorist groups. They all want to get a share of the beautiful place.

Lamu is changing rapidly, but life is improving very little for the local people. For some who have been displaced and reduced to squatting in their own homes, life has become unbearable. It would appear that everyone can find a piece of land to call their own in Lamu, except those who are its first citizens. Yet, the population of the county is a mere 144,000 and there certainly is sufficient land to satisfy the needs of the locals and still have parcels for investment and new projects. All that is needed is political will to do what is right, but that has been lacking since time immemorial.

This research was conducted by Haki Yetu to both highlight the historical and current land injustices and give voice to stakeholders and the local people. It involved research and documentation but also deep listening so that we could give hope and reasonable solutions to the land crisis in Lamu. There are very clear recommendations in the report to all stakeholders that if implemented will bring change, justice and equality to the people of Lamu. They deserve that after years of suffering.

This report is not intended to be the final word on the subject, but a stepping stone for more reflection, planning and engagement, so that other stakeholders can respond and advance the cause. Our prayer is that the small seeds of change and hope that we are planting will bear fruit a hundred-fold. We trust that you the reader may be challenged to also play your part to transform this land conflict into a peaceful, just, inclusive and favorable outcome.

**Fr. Gabriel Dolan,**

**Executive Director, Haki Yetu**

**March 2023.**

## ACKNOWLEDGEMENTS

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He worked for four months on this project, traversing all ends of the county and interviewing all stakeholders, constantly reviewing and revising his data as he attempted to leave no one out of the findings. He also made regular visits to Nairobi and elsewhere to further his investigations. He was assisted in some of his field work by our staff member Clement Kaunda, and supported by local religious leaders. In particular, we are grateful to the Coast Interfaith Council of Clerics (CICC) and Bishop Wilybard Lagho of the Catholic Diocese of Malindi for their cooperation, advice and assistance in mobilizing communities to attend the focus groups discussions.

We appreciate the financial and moral support we have received from our partner Luminate. Finally, acknowledgment is made for the few who have reviewed the various drafts. In particular, we appreciate our board member, Rasna Warah, as well as Muhuri's Executive Director, Omar Elmawi, and colleagues Peter Kazungu and Munira Ali, as well as others who choose to remain anonymous.

While acknowledging the wonderful work of the research team, Haki Yetu takes full responsibility for all of the contents in the final product.

***"The land is the only thing in the world worth working for, worth fighting for, worth dying for, because it's the only thing that lasts"***

***Gerald O'Hara, Gone With the Wind.***

## Chapter 1: INTRODUCTION

### 1.1 RESEARCH BACKGROUND AND CONTEXT

When Kenya adopted the current constitution in 2010, the hope for most of its citizens, and especially residents of the Coast region, was that historical and current land injustices would be comprehensively addressed. The 2010 Constitution of Kenya contains an entire chapter on land, documenting how it should be used and managed in a manner that is equitable, efficient, productive and sustainable.<sup>1</sup> It acknowledges the scarcity of the resource, and borrows heavily from the National Land Policy, adopted one year before the constitution.

Over a decade later, steps have been taken to actualise the provisions of the constitution, including: the establishment of the National Land Commission; documentation of historical land injustices; the adoption of enabling legislations; the passing of the National Land Use Policy; the creation and operationalisation of the Environment and Land Court; the establishment of the Truth, Justice and Reconciliation Commission; and most recently, the digitisation of land records through the National Land Management System.

Despite the steps taken, unresolved land issues continue to haunt residents of the Coast region. Lamu County, in particular, has experienced probably the worst repercussions of unresolved land issues in the recent past. Since 1908, when the British colonial government approved a law giving Africans roughly six months to claim their properties, there has been a continuous land grab in Lamu County, and consequently, an increase in landlessness in the area. Due to the fact that many Africans were unable to establish their claims because they were unfamiliar with gazette notices, Lamu was eventually bundled up and declared government land, which is more frequently referred to as public land.

By that time, it was assumed that everyone in Lamu was a squatter who had no land of their own, yet the communities had no idea how to make a claim.

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<sup>1</sup> Chapter 5 of the Constitution of Kenya 2010, Article 60.

This was the beginning of a long list of injustices against the people of Lamu County. Successive governmental regimes – colonial, post-independence, as well as local authorities – had full authority over land, which resulted in massive land grabbing, skewed distribution and unfair allocations. Land-related conflicts, evictions and displacements have characterised the social and economic arena of the region unabated.

*Lamu County, in particular, has experienced probably the worst repercussions of unresolved land issues in the recent past. Since 1908, when the British colonial government approved a law giving Africans roughly six months to claim their properties, there has been a continuous land grab in Lamu County, and consequently, an increase in landlessness in the area.*

In recent years, the county has experienced an increase in national investments, including Lamu Port, South Sudan, Ethiopia Transport Corridor (LAPSSET), the Coal Power Plant Project (that was fortunately halted thanks to advocacy efforts by local actors) and a wind power project. This influx of mega infrastructural projects has seen the scramble for land in Lamu heightened, and with it more conflicts. Since 2014, there have been sporadic attacks in parts of Lamu West, initially attributed to terrorist attacks. Even with reinforced national security, these attacks have continued with tens of lives lost each year.

Lamu County in general, and Lamu West constituency in particular, has experienced tension between the settlers and indigenous people caused by fraudulent land acquisition and land invasions in the past and right up to today. As a result, sensitive ecosystems like wetlands, woods, and ranches have been invaded. Due to the increased population and siting of large-scale national development projects inside the delicate, fragile ecosystem, the county faces competition for land. Despite having an abundance of natural resources, the coastline region is among the most underdeveloped in the

nation. According to government statistics, Lamu is one of the six poorest counties in Kenya.<sup>2</sup>

To understand the co-relation between the frequent attacks, under development and the unresolved land issues, Haki Yetu conducted fact-finding visits to the county in early 2022, following a series of attacks that left six people dead and scores displaced.<sup>3</sup> The organisation met with religious leaders from different parts of the county and different denominations to try and understand why there were sporadic attacks in parts of the county.<sup>4</sup> One of the major issues coming out from the inquiries was the role of unresolved land injustices in the frequent attacks in the region. Land, it emerged, remains an emotive issue, often used by politicians to divide residents during electoral seasons. Furthermore, mega infrastructural projects being implemented in the county, including the famed LAPSSET project, may have significantly contributed to the injustices in the land sector.

Land is without doubt the most valuable asset for the citizens of Lamu and for Kenyans in general. It is central to the county's economic activities. In addition to being an economically significant resource, land serves as a means of production, the foundation of livelihoods, an asset for economic and social security, a source of political influence and wealth, and a source of social standing and a sense of ancestry and identity. This may well explain why most conflicts in Lamu involve the issue of land. With this background and listening to the advice of community and religious leaders, Haki Yetu decided to undertake this research to understand and record what the land-related injustices and conflicts in Lamu County are all about. There is a strong belief that the recurrent terrorist attacks in Lamu are a result of land-related

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<sup>2</sup> Rasna Warah; SQUATTERS ON THEIR OWN LAND: Why calls for secession are likely to intensify in the coast region Retrieved from

<https://www.theelephant.info/features/2017/11/09/squatters-on-their-own-land-why-calls-for-secession-are-likely-to-intensify-in-the-coast-region/> on 23/07/2022

<sup>3</sup> <https://www.africanews.com/2022/01/04/kenya-four-arrested-over-lamu-attack-that-left-6-dead/>

<sup>4</sup> <https://hakiyetu.ke/a-statement-by-lamu-inter-religious-leaders-on-the-state-of-security-in-the-county/#more-186>

conflicts, although others speculate that the attacks may also be politically instigated. Only time and quality research can reveal the truth. That is why we undertook this challenging and arduous task.

## **1.2 OBJECTIVES OF THE RESEARCH**

The research seeks to provide a comprehensive understanding of the land question in Lamu, with a view to contributing to long-term solutions to the problem. In particular, the purpose of conducting this exercise and documenting the findings was to:

- Provide a comprehensive historical background of the question of land in the area;
  - Document ongoing and previous government interventions to resolve land problems in the area;
  - Document the socio-economic impact of the long-standing unresolved land issues in the area;
  - Identify new trends on land related conflicts in the area including the emergency of mega infrastructural projects;
  - Recognise the opportunities and threats to resolving the land question in the area; and
- Provide recommendations to state and non-state actors on short-term and long-term solutions to the land question.





*Figure 1: Interfaith stakeholders meeting in Lamu Island, January 2022*

### **1.3 RESEARCH METHODOLOGY**

The consultant relied on both literature reviews and qualitative research techniques. The findings herein are based on the reviewed literature drawn from government policies, laws, previous publications and studies by government and non-government entities, and academia – both local and international. Further information herein is informed by the narrative information provided by the various participants and respondents drawn from memoranda from various interests' groups, including key informant interviews, focus group discussions (FGD) and searches conducted at appropriate land and court registries where land cases in the county would ordinarily be filed i.e. the Environment and Land Court (ELC) High Court in Malindi, the Senior Principal Magistrate (SPM)'s Court at Mpektoni and the SPM's Court at Mkomani Ward on Amu Island.

The discussion herein was also informed by the various statistical tests. Data analysis involved the ordering of data into consistent parts in order to obtain answers to research questions. A few questions were framed in an open-ended style. Most questions were framed in close-ended style using the Likert scale of strongly agree, agree, no opinion, disagree and strongly disagree.

The quantitative data was organized, sorted and analysed using themes reflecting the research objectives. This data was used to reinforce and enhance descriptive data drawn from close-ended questions, interviews and case studies.

The research questions were targeted to establish;

- How the unresolved land issues had affected the economic productivity of the residents of Lamu;
- How the unresolved land issues had impacted their standards of living;
- The role played by both the National and County Governments in addressing land tenure issues;
- The impact of the emergency of mega infrastructural projects in Lamu on land ownership;
- The involvement of the public in the establishment of Mega infrastructural projects.
- The co-relation between lack of land tenure security and general insecurity in Lamu.

One hundred and thirty (130) people from a variety of leadership positions in Lamu County were interviewed. These key informant interviews were conducted at appropriate land and court registries where land cases in the county would ordinarily be filed, i.e., The Environment and Land Court in Malindi, the Senior Principal Magistrate's Court in Mpeketoni and the Senior Principal Magistrate's Court in Mkomani Ward on Amu Island.

Then, over 570 people took part in a variety of focus groups discussions at the community level. These participants were a very representative sample of the community in terms of ethnicity, gender, religion and economic potential. They also came from several different locations in the county. They did not always answer all of the questions but what is reported and analysed is a fair sample and representation of the community responses.

### 2.1 BACKGROUND INFORMATION AND DEMOGRAPHICS OF LAMU COUNTY

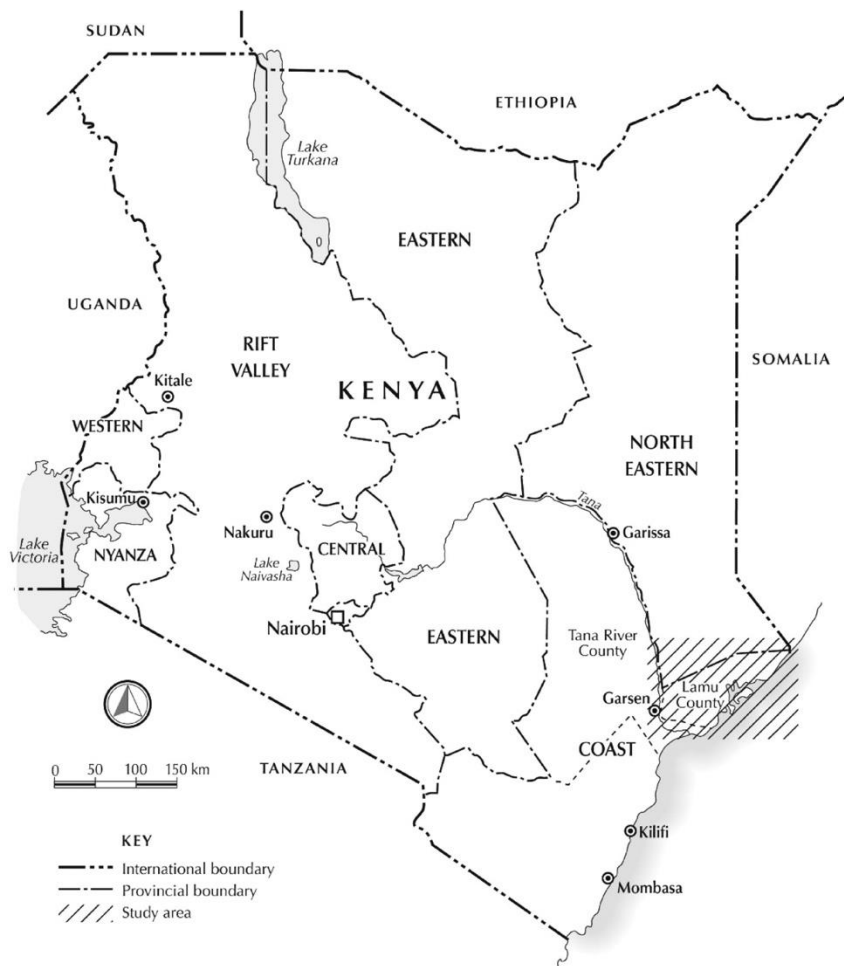


Figure 2: Map of Kenya indicating the location of Lamu County, courtesy of Ngala Chome

One of Kenya's six coastal counties, Lamu County is situated on the country's northern coast. It shares boundaries with Somalia to the north, Garissa County to the north-northeast, Kilifi County to the south-west, and the Indian Ocean to the East

The county's 6,273.1 km<sup>2</sup> of land surface area comprises both the mainland and the more than 65 islands that make up the Lamu Archipelago. On Kenya's northern coast, close to Somalia, there is a small collection of islands known as the Lamu Archipelago. It is mostly composed of the islands of Kiwayuu, Manda, Pate and Lamu. The shoreline stretches for a total of 130 km, while the area covered by land and water is 308 km.<sup>5</sup>

With the exception of the coastal sand dunes and the Mundane sand hills, which seldom rise over 100 meters above sea level, Lamu County is mainly flat and is located between zero and 50 meters above sea level. The county is vulnerable to floods during rainy seasons and at times of high tides because of its flat landscape.<sup>6</sup>

The United Nations Educational, Scientific and Cultural Organisation (UNESCO) designated Lamu Old Town as a World Heritage Site in December 2001. The oldest and best-preserved Swahili settlement in East Africa, it still performs its historic functions, according to UNESCO.<sup>7</sup> Lamu is the oldest Swahili town in East Africa and the only coastal settlement to maintain its original character. It is built from coral stone and mangrove timber and is distinguished by the simplicity of structural forms enhanced by such features as an inner courtyard, verandas, and elaborately carved wooden doors.

Lamu, like other coastal towns, is thought to have been established by immigrants from the Arabian and Persian empires who intermarried with the indigenous populace to produce the distinct ethnic community of the Swahili.

### **2.1.1 Administration and Political Systems**

Politically, Lamu is divided into Lamu East and Lamu West constituencies. An elected member of Parliament, who is chosen every five years, represents each constituency. Lamu County has a county government led by Governor Issa Timamy. Ten county wards, each with a representative in the County Assembly, make up the county: Mkomani, Shella, Faza, Kiunga, Basuba,

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<sup>5</sup> [www.lamu.go.ke](http://www.lamu.go.ke)

<sup>6</sup> LAMU COUNTY INTEGRATED DEVELOPMENT PLAN 2018 - 2022

<sup>7</sup> <https://whc.unesco.org/en/list/1055/>

Hindi, Hongwe, Bahari, Mkunumbi, and Witu. For administrative purposes, the county is made of seven divisions, 23 locations and 39 sub-locations.

### **2.1.2 Population**

The 2019 Kenya Population and Housing Census indicates that Lamu County's population is 143,920, comprising 76,103 males and 67,817 females.

Access to economic options, including agriculture, cattle keeping, fishing and trading, are just a few of the variables that affect how people are distributed around the county. Over 50% of the county's residents reside in Amu and Mpeketoni in Lamu West Constituency, whereas just 17% of the county's residents are in Lamu East Constituency, which is illustrative of this tendency.

*According to the 2019 Kenya Population and Housing Census, Lamu County's population is 143,920, comprising 76,103 males and 67,817 females.*

Lamu County is extremely cosmopolitan. Its population comprises people from the Boni, Orma, Swahili, Bajuni and Arab communities, plus Kikuyus, Luos and other migrants. The Orma community mostly live around Witu, which is primarily a livestock zone. Settlement plans in Mpeketoni and Hindi are mostly agricultural and multicultural, The Bajuni community, for the most part, resides in Lamu island and other islands that include Pate, Kizingitini, Ndaui and Siyu. The communities of Boni and Bajunis live in Kiunga.<sup>8</sup>

### **2.1.3 Economic Activities**

The economic spectrum of Lamu revolves around two main sources of income, which historically have been fishing and tourism. Mangrove export, trade, traditional maritime pursuits, and traditional woodcarving have given Lamu a sound economic foundation on which to expand. Agriculture, carpentry, and handicrafts like the creation of kofias (traditional embroidered Swahili caps) are examples of other economic activity.

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<sup>8</sup> Ibid, see 2.

Lamu is rich in minerals like titanium, salt, limestone, coral stones and sand. Currently there is titanium mining research and ongoing exploration for oil and gas in Pate Island.

#### 2.1.4 Social and Cultural Practices



*Figure 3: Donkey racing during a past cultural festival in Lamu. Courtesy of Capital News.*

Socially and culturally, the residents of Lamu are Swahili people who can also be found along the coasts of Kenya, southern Somalia, Tanzania and Mozambique. The Bajunis and Arabs make up the majority of the mainland and island of Lamu's Swahili population.<sup>9</sup>

Lamu has been regarded as a significant religious hub in East Africa since the 19th century. Every year, during the famed Maulidi celebrations, which are conducted during the third month of the Islamic calendar to commemorate the birth of Prophet Muhammad, hundreds of Muslims from all over East Africa come here. The people organise a lot of entertaining and interesting

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<sup>9</sup> eLimu; Lamu County. Retrieved from <https://learn.e-limu.org/topic/view/?t=1506&c=468> on 08/08/2022

events throughout the festivities, including dhow races, a donkey race, bao games, henna painting, kofia creation, swimming competitions, and football games.

Lamu is a significant cultural hub renowned for its ancient past and long-standing socio-cultural customs. As a result, Lamu offers a wide range of historical and cultural attractions to its visitors. Lamu's districts contain the ruins of numerous historical sites.

The recently established Lamu Cultural Celebration, which honors and protects the culture of the Lamu Archipelago, is another well-organised event. The festival is scheduled each year to coincide with high tides, which provide the ideal backdrop for a series of races between the giant jahazi and smaller mashua dhows, in addition to various contests and performances of traditional dance. Visitors are thrilled during this yearly three-day festival with the traditional dances of Pate, Siyu, Bajuni from the mainland, and Lamu. Various traditional craft techniques are also exhibited.

#### **2.1.5 Topography**

Lamu county has a total of 6,604.7.1 km<sup>2</sup> of land, including 5517 km<sup>2</sup> of arable land, 649.7 km<sup>2</sup> of non-arable land, 130 km<sup>2</sup> coastline and 308 km<sup>2</sup> of submerged land that together make up the county's total land surface. Lamu West occupies 66.3% of the country's total land area, leaving Lamu East with 33.7%. Lamu East's Kiunga division takes up 96.6% of the land there.

*Thirteen thousand homes in Lamu County currently possess title deeds. This figure represents 42% of all homes in the county. However, it is estimated that only 20% of the indigenous population have titles.*

While Lamu East has most of the water mass, Lamu West has the majority of the arable land. The county is divided into the following agricultural and ecological zones based on its topography and climate: coastal lowlands, coconut-cassava zone, cashew-cassava zone, livestock millet zone, and lowland ranching zone.

The salty groundwater, lakes, seasonal rivers, dams, pans and the ocean are the county's principal water sources. The county's water supply is managed by four organisations: Lamu Water and Sewerage Company, Lake Kenyatta Water Association, Hindi Water Association, and Witu Water Users Association. The primary source of clean, soft water for the county's people is rainwater. Due to its prohibitive cost, only private individuals and hotels use desalination. A household must travel about 5 kilometers on average to acquire potable water.<sup>10</sup>

Thirteen thousand homes in Lamu County currently possess title deeds. This figure represents 42% of all homes in the county. However, it is estimated that only 20% of the indigenous population have titles.<sup>11</sup> The majority of homes in the county don't have title deeds. The county still has a sizable amount of unregistered land. Areas in Kiunga, Faza, portions of Hindi, Manda Island, Witu, and Bahari are among them. The government claims it is accelerating the resettlement process with the intention of also conserving the Swahili communities in the county because the majority of these regions are ancestral territory. A significant amount of the area set aside for ranching purposes is still unoccupied, understocked, and in some cases, not even used.<sup>12</sup>

## **2.2 HISTORICAL BACKGROUND ON THE LAND QUESTION IN LAMU**

### **2.2.1 Pre-colonial and colonial period**

Lamu's land history over the past centuries has been marked by a breakdown in land administration, disparities in land ownership, tenure insecurity and

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<sup>10</sup> Lamu County Government. Ministry of Lands, Physical Planning, Urban Development and Infrastructure. Retrieved from <https://lamu.go.ke/land-physical-planning/> on 8/8/2022

<sup>11</sup> Rasna Warah: <https://www.theelephant.info/features/2017/11/09/squatters-on-their-own-land-why-calls-for-secession-are-likely-to-intensify-in-the-coast-region/>

<sup>12</sup> Ibid. See 2



conflict.<sup>13</sup> In the coastal regions of Lamu, Kilifi, Mombasa, Kwale and Taita Taveta, land injustices began with Arab colonisation of the coast and continued with the excesses of the British colonial empire.

The coastal land problem began with the arrival of Arab settlers in the 9<sup>th</sup> century and the intensification and consolidation of the slave trade in the latter half of the 19<sup>th</sup> century. The Arab settlers occupied the land and the slaves worked the land for them. The Mijikenda fled into the forests and plateaus to escape enslavement and that was pretty much the situation when the British colonialists arrived in the early 20<sup>th</sup> century.<sup>14</sup>

The British administration acknowledged the Arab right of ownership of the Ten-Mile Coastal Strip through an agreement with the Sultan of Zanzibar. Both the British and the Germans realised the power and the influence of the Sultan and they needed his cooperation and support to gain access from the Coast to the fertile interior, which was their ultimate goal.

As a result, in 1886, they created the Mwambao, the Ten-Mile Strip stretching from the high waters in the Indian Ocean and running from Tana River Delta in Kenya to the Ruvuma River in Tanzania, and including the Lamu Archipelago. That secured the land of the Arabs and Swahilis. The reward for the British colonialists was that they could now declare the interior land “Terra Nullius” (No Man’s Land) and take possession of it as it was untitled and “unoccupied”, according to English Land Law. The colonial administration further exacerbated the land question by only allowing Arabs and Swahilis to register their ownership of land while excluding both the Mijikenda and the ex-slaves. In the process, the new legislation created a new category of

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<sup>13</sup> Kenya Human Rights Commission; Redress for Historical Land Injustices in Kenya, *A Brief on Proposed Legislation for Historical Land Injustices*. Retrieved from <https://www.khrc.or.ke/publications/114-redress-for-historical-land-injustices-in-kenya/file.html> on 20/7/2022.

<sup>14</sup> Karuti Kanyinga: RE-DISTRIBUTION FROM ABOVE: The Politics of Land Rights and Squatting in Coastal Kenya. Uppsala 2000

Kenyans for the first time – people without land, or squatters, as they became known.<sup>15</sup>



*Figure 4: Lamu Island sea front*

With the advent of settlers, colonialism and squatters in East Africa, the issue of land became both contentious and competitive. Land issues then became and continued to be a politically sensitive and culturally complex issue in Lamu owing to its importance as a factor of production for the people's survival and identity.<sup>16</sup> The entrenchment of the colonial administration resulted in direct

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<sup>15</sup> Op Cit, 9

<sup>16</sup> Musyoki Benjamin Mwikya; ADDRESSING PAST AND HISTORICAL LAND INJUSTICE IN KENYA: ARTICLE 67(2)(e) OF THE CONSTITUTION AND SECTION 5(1)(e) OF THE NATIONAL LAND COMMISSION ACT. Retrieved from [http://erepository.uonbi.ac.ke/bitstream/handle/11295/100286/Musyoki\\_Addressing%20Past%20And%20Historical%20Land%20Injustice%20In%20Kenya%2c%20Article%2067%282%29%28E%29%20Of%20The%20Constitution%20And%20Section%205%281%29%28E%29%20Of%20The%20National%20Land%20Commission%20Act.pdf?sequence=1&isAllowed=y](http://erepository.uonbi.ac.ke/bitstream/handle/11295/100286/Musyoki_Addressing%20Past%20And%20Historical%20Land%20Injustice%20In%20Kenya%2c%20Article%2067%282%29%28E%29%20Of%20The%20Constitution%20And%20Section%205%281%29%28E%29%20Of%20The%20National%20Land%20Commission%20Act.pdf?sequence=1&isAllowed=y) on 20/7/2022.

inequality in land ownership and use, landlessness, squatting, land degradation and resulting poverty.

The region's widespread landlessness, therefore, has a unique historical origin. It can be traced back to the colonial government's decision to forcefully implement a system of individual land title deeds under the Land Titles Ordinance for those who claimed ownership rights within the Ten Mile Coastal Strip. Unfortunately, only a few of the locals were aware of the process, and even fewer saw the need to take advantage of the opportunity to register land in their own names. As a result, the land they lived on was declared Crown Land, which later became Government Land after the country gained independence.<sup>17</sup> The indigenous communities were now dispossessed of their land, or put another way, they moved from being slaves to squatters on their own land.

*The colonial administration further exacerbated the land question by only allowing Arabs and Swahilis to register their ownership of land while excluding both the Mijikenda and the ex-slaves. In the process, the new legislation created a new category of Kenyans for the first time – people without land, or squatters, as they became known.*

Although they did not live there, numerous people of Arab heritage purchased substantial chunks of land in the Ten Mile Coastal Strip. Many still act as absentee landlords and continue to collect rent from the local populace. The locals, who are squatters on their ancestral property, understandably hold a great deal of resentment with regard to this issue.

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<sup>17</sup> Kenya Land Alliance, Kenya Human Rights Commission; Policy Brief. Righting the Wrongs: Historical Injustices and Land Reforms in Kenya. Retrieved from [https://mokoro.co.uk/wp-content/uploads/kla\\_historical\\_injustices\\_brief.pdf](https://mokoro.co.uk/wp-content/uploads/kla_historical_injustices_brief.pdf) on 24/07/2022

The ongoing squatter issue in Lamu is caused by two pre-colonial sections of legislation. These include the Mazrui Trust Land Act Cap. 289 of 1912 and the Land Titles Ordinance of 1908, which subsequently evolved into the Land Titles Act in independent Kenya. The citizens of the coast region had only six months after the British government passed the Land Titles Ordinance in 1908 to file claims with the Mombasa recorder of titles in order to receive title deeds. Unfortunately, the majority of the indigenous populations along the coast at this point were still hiding in the Nyika Plateau away from the slave owners. After the complete abolition of slavery, the locals discovered that their land had been taken over when they returned to their traditional patch.

*During the Lancaster Independence Conferences, the British took the easy route and bequeathed the Ten-Mile-Strip to the independence government in 1963, without making any gesture towards addressing the land injustices that they had created.*

During the Lancaster Independence Conferences, the British took the easy route and bequeathed the Ten-Mile-Strip to the independence government in 1963, without making any gesture towards addressing the land injustices that they had created. According to the Truth, Justice and Reconciliation Commission (TJRC) report, the Coast leader and politician Roland Ngala also reluctantly agreed to the integration of the Ten-Mile-Strip into Kenya for the sake of cohesion and integration.<sup>18</sup> The same report admits that “the rights of coastal communities that lost their land to Arabs and the British having been completely ignored or overlooked at Lancaster. That was a recipe for conflicts in subsequent years.”<sup>19</sup> The report also notes that all the land in Lamu County was categorised as government land, thus rendering the indigenous population as “squatters” on their own land.<sup>20</sup>

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<sup>18</sup> TJRC Report Chapter 2B, Page 219

<sup>19</sup> Op Cit No 14, Page 226

<sup>20</sup> Op Cit No 14, Page 244

### 2.2.2 Post-colonial period

The fact that after 1963, the independence administrations launched numerous programmes to provide new economic prospects and access to settlement schemes in areas like the “White Highlands” while ignoring the Lamu peoples' "land hunger" further exacerbated the desperation and the anger over the county's land issues. With the arrival of new politically well-connected landlords, the situation worsened after independence. As a result, the people either returned to their properties that were registered in the names of Arabs or became surrounded by the widespread elitist land alienation from upcountry “foreigners”. Locals could now only access the environmentally marginal hinterland, which was dry, difficult to access, and vulnerable to invasion by pest and disease vectors.<sup>21</sup>

*Many times, indigenous communities' claims to their ancestral lands went unacknowledged. As a result, when they were uprooted from their traditional lands, they were not even legally recognised as internally displaced people (IDPs).*

The transfer of power from colonial authorities to indigenous elites was expected to result in a fundamental restructuring of the legacy on land. This did not happen, and as a result, colonial land policies, laws, and administrative infrastructure continued as before, with changes only in names and officeholders. This was due to the country's decolonisation process being an adaptive, cooperative and anticipatory process that provided new power elites with access to land grabs, markets and opportunities.

Property rights preservation was considered essential for the successful conclusion of the Lancaster House talks of 1960-1962. After striking an amicable agreement, the new rulers set about consolidating their power in the new state. The issue of landless natives proved difficult for this new

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<sup>21</sup> Amason Jeffar Kingi; Analysis: How to resolve the land question at the Coast. The Standard. Dec 10th 2018. Retrieved from <https://www.standardmedia.co.ke/commentary/article/2001305681/how-to-resolve-the-land-question-at-the-coast> on 24/07/2022

government, prompting it to enact measures to appease the vocal Africans who continue to demand the land taken from them.

Many times, indigenous communities' claims to their ancestral lands went unacknowledged. As a result, when they were uprooted from their traditional lands, they were not even legally recognised as internally displaced people (IDPs). These communities became highly vulnerable to forceful evictions due to the absence of legal land ownership deeds. There was little to prevent absentee landlords from reclaiming the property for so-called development purposes, thus leaving the indigenous people frequently in the dark and without recourse. These problems were made worse by evictions brought on by governmental development initiatives and land conflicts.<sup>22</sup>

Consequently, the loss of land and unresolved land injustices are a major source of conflict and violence in the area, especially for farmers and pastoralists who place a high value on their land. The amount of land still available to these two groups is decreasing due to Kenya's rising tendency of land privatisation, as well as an expanding population. Regular occurrence of natural catastrophes like floods and droughts, which may have disastrous impacts on agriculture and pastoralism, and land resources becoming even more scarce, further escalate tensions and result in relocation and displacement.

Unfortunately, and unfairly, the process of land adjudication, consolidation, and registration was never carried out in the Coast region, including Lamu County, after independence, as mentioned in the TJRC report. As a result, many areas and households were left without any proof of ownership of the property they occupied, making their land more susceptible to appropriation by strangers.<sup>23</sup>

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<sup>22</sup> Internal Displacement Monitoring Centre; Why unresolved land issues lay at the heart of displacement in Kenya's Coast region. 3<sup>rd</sup> July 2014. Retrieved from <https://www.internal-displacement.org/expert-opinion/why-unresolved-land-issues-lay-at-the-heart-of-displacement-in-kenyas-coast-region> on 22/07/2022

<sup>23</sup> Retrieved from <https://www.knchr.org/Portals/0/Transitional%20Justice/kenya-tjrc-summary-report-aug-2013.pdf?ver=2018-06-08-100202-027> on 24/07/2022

Regional settlement plans, like the Lake Kenyatta Settlement Scheme in Lamu West, prioritised resettling landless “outsiders” from upcountry rather than the indigenous people. Many of the natives who were forced out of these settlement programmes ended up being internally displaced; more were compelled to travel to other regions of Kenya or Tanzania or to live in slums in urban areas. Thus, the local populace has experienced considerable friction and conflict as a result of these internal colonisation plans.<sup>24</sup>

When Al Shabaab militants viciously slaughtered more than sixty innocent people from the ethnic Kikuyu community in the villages of Mpeketoni and Poromoka in Lamu West in June 2014, long-simmering tensions between the local population and settlers and landlords from outside the area came to a head and to the nation’s attention for the first time.

Before the incident, the majority of Kenyans were not even aware that Lamu was home to a sizeable Kikuyu minority. Mpeketoni is one of the settlement schemes that the late President Jomo Kenyatta established in the 1970s for the underprivileged and landless Kikuyus from Kenya's central highlands. Despite the fact that the Kikuyu settlers are not native to the region, they had lived in relative calm with the local Bajuni and Swahili communities for decades and had turned Mpeketoni into a thriving rural and market settlement.

Some people referred to the settlement projects in Lamu West as a “culture invasion” and others call it “internal colonialism”. “How do you go to someone's home, steal their land, force them out, bring your own family members, recreate and rename the communities after your own villages upcountry,” a Lamu resident said in an interview.<sup>25</sup>

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<sup>24</sup> Rasna Warah; SQUATTERS ON THEIR OWN LAND: Why calls for secession are likely to intensify in the coast region Retrieved from <https://www.theelephant.info/features/2017/11/09/squatters-on-their-own-land-why-calls-for-secession-are-likely-to-intensify-in-the-coast-region/> on 23/07/2022

<sup>25</sup> Op Cit 24





Figure 5: Mpeketoni attacks, June 2014. Courtesy of Reuters

Even when the people received compensation, they were frequently misled about the true worth or intended use of the land. The Save Lamu Coalition<sup>26</sup> has evidence of a land purchase that took place in the Magogoni region during the 1990s. While the land was actually privately registered in the name of a former senior navy officer who later sold it to a notorious Mombasa-based business tycoon, the locals were misled into believing that it was going to be used as a naval base.<sup>27</sup>

*A toxic mixture of land injustices and government corruption and neglect has resulted in the county remaining in abject poverty despite being blessed with fertile land and endless resources.*

While the Kenyans uprooted by the 2007/8 post-election inter-ethnic violence are referred to as IDPs, the Lamu community members who were driven from their farms in twelve villages, including Shakani, Sendeni, and Mvundeni, by

<sup>26</sup> <https://www.savelamu.org/>

<sup>27</sup> Save Lamu Coalition; Memorandum on Historical Land Injustices in Lamu. Presented to TJRC. Retrieved from <http://www.savelamu.org/wp-content/uploads/2011/08/Save-Lamu-TJRC-Memo.pdf> on 25/07/2022



security forces during the Shifta war in the 1960s have received little attention and no compensation. These natives, who were essentially the first IDPs in independent Kenya, were harassed, sexually abused, had their homes destroyed and were reduced to living in Lamu's slums.<sup>28</sup>

Along with these historical wrongs, Lamu County saw a number of land rights breaches against indigenous tribes residing in and surrounding gazetted National Reserves. Kenya Wildlife Services (KWS) has persistently hounded people who want to develop their land since the reserve's gazettement in 1979, despite the fact that they had lived on Kiwayu Island for centuries before that time. While using suspicious titles provided by the Ministry of Land, KWS permits foreign investors to build major hotels on the island. It is a flagrant breach of the new constitution and the rule of law to allow external parties who meet certain criteria—like race, ethnicity, and financial muscle—to possess land while continuing to ignore indigenous peoples' land rights.

The invisible but powerful presence of absentee landlords continues to be a huge obstacle towards investment and development projects. The reluctance by both national and county governments to confront this long-standing injustice is a further frustration for the local communities and is just as problematic as those from upcountry who acquire titles in the county.

Indeed, despite having an abundance of natural resources, the coastline region is among the most underdeveloped areas in the nation. A toxic mixture of land injustices and government corruption and neglect has resulted in the county remaining in abject poverty despite being blessed with fertile land and endless resources.

### **2.2.3 Post-2010 Constitution**

The fact that all land in Lamu County was regarded as government land before the advent of the 2010 constitution further complicates the land issue in the county. The political elite greatly abused this classification by giving land in Lamu to people they considered to be administration allies. In Lamu County, it is estimated that only between 10 and 20% of property titles are held by

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<sup>28</sup> Ibid; see 16.

members of the local indigenous community. Even worse, those who own titles frequently sell their property due to financial hardship or expensive land adjudication procedures.<sup>29</sup>

A 2008 report of the Commission of Inquiry into Post-Election Violence (CIPEV)<sup>30</sup> noted that the country did not have a national land policy in place then, which had resulted in a weak land administration and management framework. Many problems stemmed from an ineffective regulatory framework, including claims of historical land injustices among some communities, the proliferation of unplanned urban settlements, poor land use practices, and human-wildlife land use conflicts. Environmental degradation, uneconomic land subdivisions, unequal land distribution, and other land-related issues are all critical factors in the land crisis. Needless to say, this has further contributed to the high poverty levels in the county.

*In several cases, locals who protest the illegitimate land distribution have frequently faced threats, intimidation, and even imprisonment. In one well-known instance, a man from Mkokoni was jailed for demolishing the boundary walls of a property that was allegedly improperly registered.*

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<sup>29</sup> Op Cit No 14

<sup>30</sup> GOK (2008) Report of the Commission of Inquiry on Investigation of Post-Election Violence (CIPEV), [www.kenyadialogue.org](http://www.kenyadialogue.org) Retrieved on 24/7/2022.



*Figure 6: Burnt houses in Lamu County due to land related conflicts, courtesy of the Standard*

According to the Truth, Justice and Reconciliation Commission (TJRC) 2013 report, "there is a very close linkage between land injustices and ethnic violence in Kenya" and that "communities at the coast, especially the Mijikenda, the Taita, and the Pokomo, have suffered the most and the longest" despite the fact that "land-related injustices have affected every part of Kenya". The Commission also discovered that communities and individuals frequently turn to violent tactics since colonial and post-independence governments failed to address the issue of landlessness.<sup>31</sup>

In several cases, locals who protest the illegitimate land distribution have frequently faced threats, intimidation, and even imprisonment. In one well-known instance, a man from Mkokoni was jailed for demolishing the boundary walls of a property that was allegedly improperly registered. The provincial government threatened him, and he later passed away in jail. His cause of death has not yet been determined. Political officials, the provincial

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<sup>31</sup> Ibid. See 14.

government, security personnel, and the economic elite have historically threatened community people to take minimal compensation and remain silent about any injustices experienced.<sup>32</sup>

In the beginning of 2022, an 18-year-old dispute over the ownership of a 63,000-acre ranch was thrust to the spotlight after the murder of seven people in Widho sub-location, Majembeni location and Hindi in Lamu County. The ownership of the ranch has been the source of conflict between the owners and the squatters or settlers since 2004. The ranch cuts across Widho, Milihoi, Ndeu and Bobo in Hindi.<sup>33</sup> On Christmas Day, 2022 two more were killed in Ziwa la Taa village in what Coast Regional Commissioner John Elungata described as another land-related conflict. Once more, this attack led to many families fleeing their homes and seeking refuge in Witu Trading Centre, 12 kms away.<sup>34</sup>

Inter-communal tensions are prevalent in Mpeketoni, as they are in many other areas of the region. This is mostly attributable to the government's long history of relocating displaced and landless individuals from other locations to indigenous people's land. In other words, the traditional or customary rights of indigenous populations are all too frequently disregarded when it comes to land.<sup>35</sup>

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<sup>32</sup> Ibid, see 17.

<sup>33</sup> Willis Oketch, Lamu hit with curfew as land fights rage. The Standard. Retrieved from <https://www.standardmedia.co.ke/the-standard/article/2001433538/lamu-hit-with-curfew-as-land-fights-rage> on 23/08/2022

<sup>34</sup> Daily Nation, Thursday December 29<sup>th</sup> 2022

<sup>35</sup> Ibid. See 13.

### 3.1 ENTITLEMENT WITHOUT TITLE

The Lamu region has inherited a complicated connection to its land. The practice of distributing land to “outsiders” with close ties to the ruling government has existed for the most part since the colonial era, when foreign settlers seized vast tracts of productive land. Since then, this approach has either forced indigenous people to leave what they view as their ancestral lands or left them vulnerable to eviction by returning absentee landlords.

These historical wrongs have not been adequately rectified, and they are still destroying the fabric of the community until now. Since a small number of rich people currently own a large portion of the property in the Lamu region, many indigenous people are left exposed to land confiscations because they frequently live on land without valid title deeds.<sup>36</sup>

Many times, indigenous tribes' claims to their ancestral lands are unacknowledged; as a result, when they are uprooted from that territory, they are not recognised as IDPs. This community is highly vulnerable to forceful evictions due to the absence of legal land ownership deeds.<sup>37</sup> The fact that up to 60% of Lamu's population still lacks title deeds to their properties makes it very easy for land grabbers to continue with their actions. It also indicates how the national and local government have utterly failed to address the injustices that have plagued the county for centuries.

Large-scale land acquisition is specifically aimed at common use areas like pastures and woods. Sporadic or seasonal use may give the commons the appearance of being “empty” and promote outsider claims. Common ownership is frequently contested by the state and groups with traditional claims. The fact that ownership is disputed, and frequently aggressively contested, indicates the further need to address the issue of community land in the county.

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<sup>36</sup> Ibid, see 14.

<sup>37</sup> Ibid, See 14.

Interviews conducted during research brought out the feeling that as more Kikuyus and other “outsiders” from the upcountry have migrated to the region, they have been buying up land and changing the ethnic makeup of the county. The majority of Lamu County's residents currently live in rural communities on the mainland rather than the county's historical centre, Lamu Island, and in towns like Mpeketoni that have sizable “non-indigenous” populations. Yet it is scandalous that sixty years after independence influential people with titles migrate from Nairobi, and the locals are expected to welcome them with open arms and are told that Kenyans are free to live and own property anywhere in the Republic.

Those who hold title documents have authority over their assets, which can be used as collateral aside from occasionally forcing people off the land they have cultivated for generations. These disparities and injustices in land tenure and ownership have exacerbated ideas of a divide between indigenous residents of the area and “outsiders,” or “upcountry people”.

The value of land has also increased, particularly in regions near the port, as a result of massive land speculation by investors—mostly non-local, politically connected Nairobi-based elites who are referred to by the locals as “land grabbers”. The research revealed that titled land is also likely to cause conflict emanating from the irregular, corrupt or illegal ways the beneficiaries of settlement schemes were allocated the land. A title is no guarantee of your security if it was irregularly or illegally acquired.

*The value of land has also increased, particularly in regions near the port, as a result of massive land speculation by investors—mostly non-local, politically connected Nairobi-based elites who are referred to by the locals as “land grabbers”.*

The research revealed that land-related conflict can take various forms but usually is the result of conflict between an individual with a title and another person claiming the same land either as an occupier or claiming that the title was illegally obtained by the current title holder. Conflict can also arise when there is a dispute between two claimants of land that has not been surveyed.

Similar large-scale conflicts emerge when communities and not just individuals lay claim on the same grounds as above.

From the various responses from interviews and brainstorming sessions in the Lamu West County (Witu, Mkunumbi, Hongwe, Hindi and Bahari) it was found that land ownership, land use and occupancy in Lamu County are intricately related. The research noted in particular the following trends:

Those considered to be of Swahili and Somali origin have since time immemorial been living in settlement towns and villages while going out to fish or do small-scale farming (Swahili communities) or as pastoralists (Orma communities). These settlement towns and villages include Witu Town, Pangani, Poromoko, Jima, Mkunumbi, Kiongwe Mjini, Mapenya, Ndambwe, Mararani, Bargoi, Bodhei, Magumba, Mambasasa, Bora Imani, Hidio, Pandanguo, Ngini, Koreni Village, and Mokowe, Wiyoni, Shella and Matondoni. Another notable feature is that these communities are predominately Muslim. Only in recent times have a few people from the “other communities” (who hail from Kikuyu, Giriama, Kamba, Luhya and Luo origins) lived in these towns or villages.

*Although Lamu County is seen as a county of racial, ethnic and religious diversity, there is little or no integration or cohesion between the diverse communities or religions.*

In between these towns or villages are farms. These “farms” are lands which either have titles (in settlement schemes), large chunks of privately-owned lands called ranches or unsurveyed government lands. The “other communities” living inside these ranches and the unsurveyed lands are generally crop farmers. Another notable feature is that these communities are predominately Christian. Only in recent times have a few people from Swahili and Somali communities lived in these farms.

Although Lamu County is seen as a county of racial, ethnic and religious diversity, there is little or no integration or cohesion between the diverse communities or religions. The communities are diverse but distinct in that one can easily identify a community, a group or individuals who may be subject to

attack or discrimination. This further indicates that the settlement scheme allocation of 60% local and 40% outsider was never implemented from day one.

The research further revealed that land ownership, land use and occupancy in Lamu County are intricately related and greatly contribute to the state of insecurity in Lamu County.

### **3.1.1 Land grabbing and displacement**

Despite the county boasting large tracts of arable land and numerous other natural resources, the county remains one of the poorest. Until recently, when the government launched the LAPSET project, most people kept away from investing in the county due to the uncertainty and insecurity associated with the county.

*Despite the county boasting large tracts of arable land and numerous other natural resources, the county remains one of the poorest.*

Numerous issues and disputes have arisen during the planning and building of the port, particularly in the areas of land rights, the environment, local livelihoods, and security. Numerous grievances from locals over compulsory land acquisition have been documented by various rights organisations. According to one analysis, the government had appropriated more land than it had compensated for.<sup>38</sup>

Lamu's biodiversity and local livelihoods are highly threatened by land insecurity. Multiple individuals and corporations have encroached on plots in gazetted water towers and catchment regions and claimed ownership of the land, including the Shella sand dunes where wells for the town are located.

With the elites aware of the existence of gaps in the management of land in Lamu, crooked individuals have capitalised on this and amassed huge tracts of land in the form of ranches. Government officers continue to exploit the situation by allocating themselves parcels of land in the few settlement

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<sup>38</sup> Ibid, see 38.



schemes that have been initiated in the areas. Lamu's remoteness from the centre of government has also proven an advantage to the unscrupulous and opportunistic grabbers.

Private investors and squatters have also encroached on reclaimed lands in the Wiyoni region of Lamu Island that were formed during dredging operations and intended for public utility and have already started developing the area.

*With the elites aware of the existence of gaps in the management of land in Lamu, crooked individuals have capitalised on this and amassed huge tracts of land in the form of ranches. Government officers continue to exploit the situation by allocating themselves parcels of land in the few settlement schemes that have been initiated in the areas.*

Resorts have been built on Kiwayu Island by hotel owners who have shady or illegal title rights to the property, but locals are forbidden by KWS from even minimal development because the island is a National Reserve. Due to the lack of clear benefits to holding onto the land, this prejudice has bred mistrust among community and natural resource organisations and encouraged communities to sell their land rather than conserve its resources.

Additionally, fish landing sites have been taken, endangering local livelihoods and ecology, particularly turtle breeding grounds. Lamu has over 40 fish landing sites spread across the various islands within the archipelago. None of the sites has a title deed which has exposed them to grabbing and re-allocation.

Some persons have also amassed thousands of acres of land under the guise of "ranches," and they have been successful in acquiring titles without taking into account the demands of the pastoralist Orma population for grazing corridors. Some people have unlawfully divided the ranches into smaller sections and then sold the land to outsiders who decided to develop the area.<sup>39</sup> As more migrants invade the area pretending to be squatters in order

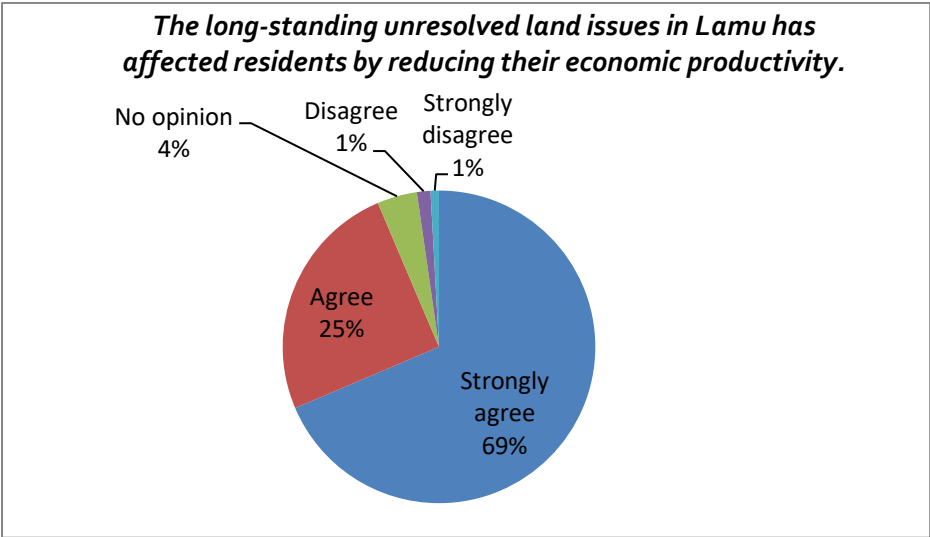
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<sup>39</sup> Ibid, see 16.

to take advantage of the settlement scheme programme, the Boni and Witu Forests continue to depreciate.

**3.1.2 Economic marginalization**

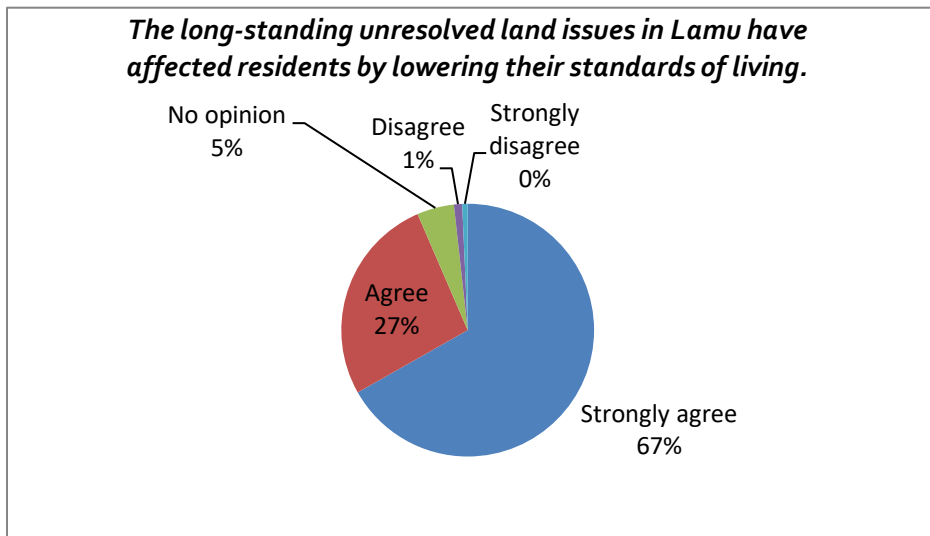
Despite the county boasting large tracts of arable land and numerous other natural resources, the county remains one of the poorest.



The representations above are from the test sample of the research, from which it emerges that a large majority of Lamu residents are of the strong opinion that the long-standing unresolved land issues in Lamu have negatively affected both their productivity, as well as their economic development. 94% of the sample population responded in the affirmative, while 4% expressed no opinion. Only 2% disagreed with this analysis.

The findings above are in close relation to the ratio that a majority of the test group that believe that long-standing unresolved land issues in Lamu have affected residents by lowering their standard of living. Only 1% of the test subjects disagreed with the proposition in question. An overwhelming 94% either strongly agreed or agreed with this notion.

From the literature review also, it is evident that land issues in Lamu are indeed time-hallowed. Historical wrongs, according to the majority of Lamu



citizens, have not been addressed or redressed and are still impoverishing and retarding the community today. Indigenous people are left exposed to land dispossessions since a small number of wealthy people now hold a large portion of the land in the Lamu region, while the majority of them live there without formal title deeds.

***A large majority of Lamu residents are of the strong opinion that the long-standing unresolved land issues in Lamu have negatively affected both their productivity, as well as their economic development.***

The issue is that "local people don't have the title documents, they don't even know about it, they don't know how to get it, or they don't know what it is", as one local put it. When powerful individuals with titles travel from Nairobi, the small people suffer. Those who hold title documents have authority over their assets, which allows them to take out loans, aside from occasionally forcing people off the land they have occupied and cultivated for generations.

On the island and the mainland, there is a sizeable population of low-income people who are compelled to live in slums that are rapidly expanding. Many

people have been forced out of their ancestral homes as a result of the high expense of living in the predominantly tourist-oriented Lamu and Shela centers.<sup>40</sup>

In places like India, Kashmiri, Bombay, and Kandahar Gadeni where housing is inexpensive and land is still reasonably priced, they are crammed together. Yet, none of these communities, which have a combined population of around 10,000, have a hospital or a school. There have been several occurrences of bilharzia and diarrhea as a result of the widespread water contamination caused by poor sanitation.

These groups are not assisted to adapt to changing socio-economic circumstances, which are entrenched in inequalities brought about by the long-standing land issues. The poverty level in Lamu County is 19% according to Open Data<sup>41</sup>, which takes into consideration the fertile soil and the relatively small population. Perhaps another way of measuring poverty is to show 17% of the population have no formal education and 54% have not gone beyond primary education and only 13% have completed secondary education or above<sup>42</sup> It is patently obvious then that the long-standing land disputes and injustices have impoverished thousands and retarded development considerably.

### **3.1.3 Conflicts and Insecurity**

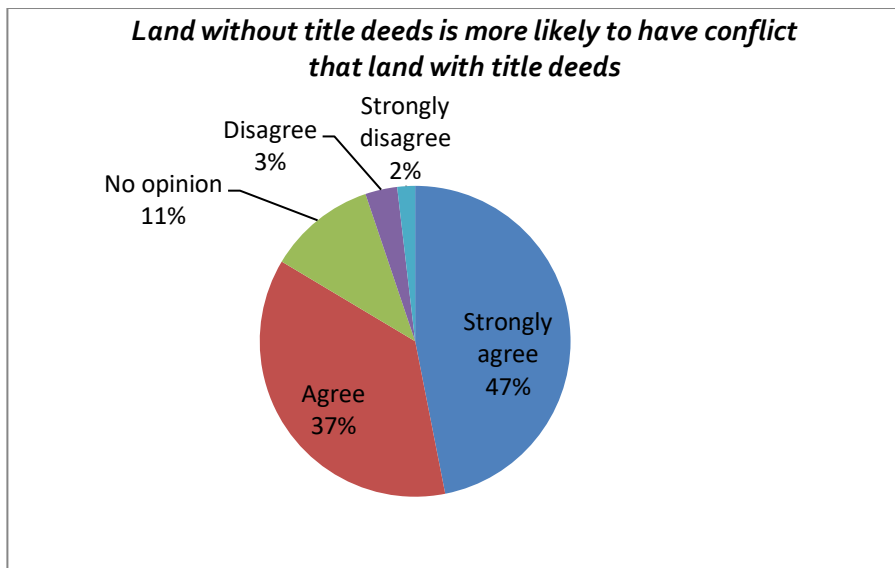
The community in Lamu is of the strong belief that lack of title documents have massively contributed to the conflicts experienced in the area. Of 700 Lamu residents and stakeholders in the land sector interviewed, 47% strongly agreed while 37% agreed that lands without title deeds are more likely than lands with title deeds to be the subject of conflict.

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<sup>40</sup> <https://reliefweb.int/report/kenya/why-unresolved-land-issues-lay-heart-displacement-kenya-s-coast-region>

<sup>41</sup> <https://opendataforafrica.org/atlas/Kenya/Lamu>

<sup>42</sup> <http://inequalities.sidint.net/kenya/wp-content/uploads/sites/2/2013/09/Lamu.pdf>



Land conflict claims have largely been influenced by ethnicity. Particularly contentious claims to land or resources that are in conflict with one another end up dividing ethnic groups. There is a great risk of radicalisation if group identities become "fixed" through media portrayals, especially by conflict entrepreneurs, and if communities' live separate lives. Conflicts frequently escalate tensions and lead to violence.

The village of Mpeketoni was invaded by a sizeable group of armed men on the evening of June 15, 2014. They started setting buildings on fire and yelling Islamic chants. By the end of the night, 47 non-Muslim men had been killed, all of whom were identified and named before execution.<sup>43</sup>

Attacks on the following night in a nearby village resulted in the deaths of 15 more individuals. On June 23, 2014, an attack occurred at a neighbouring village. Large gangs of armed men attempted similar attacks on 5 July in Hindi and Gamba (in neighbouring Tana County), two metropolitan centres

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<sup>43</sup> Inside Kenya's war on terror: the case of Lamu. Retrieved from <https://www.saferworld.org.uk/long-reads/inside-kenyaas-war-on-terror-the-case-of-lamu> on 8/9/2022

primarily occupied by Kikuyus, Kenya's majority ethnic group, who are largely seen as “outsiders” by Lamu communities.

Then, on July 19 in the same year, a bus travelling between Malindi and Lamu was attacked, resulting in the deaths of 30 passengers. Lamu and the surrounding environs had already almost 100 murders in just one month.<sup>44</sup> Many of the victims were Kikuyus, but there were also non-Kikuyu Christian men killed, as well as members of indigenous coastal ethnic groups; no one, however, witnessed the assailants ask their victims about their ethnicity.<sup>45</sup>

The Somali based terrorist group, Al-Shabaab, claimed responsibility and justified the attacks as payback for the Kenyan government's actions in Somalia. Local sentiments and grievances, however, also played a significant role in the propaganda and the killings. The group publicised the attacks on social media, and included a film titled "Reclaiming Muslim Territories under Kenyan Occupation" that was made available in both Kiswahili and English.

*Al-Shabaab was so skilled at locating its violence on Lamu's fault lines of identity, land and politics that there was intense debate about whether the organisation alone was really responsible for the attacks.*

This included footage of radical Kenyan Imams from the coast preaching about land in Mpeketoni stolen by “disbelievers”. A sign was placed on the road after the Hindi attacks stating: “Muslims, it’s your land. Your land is being taken away. Wake up and fight.”

Al-Shabaab was so skilled at locating its violence on Lamu's fault lines of identity, land and politics that there was intense debate about whether the

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<sup>44</sup> David M. Anderson & Jacob McKnight (2015) Understanding al-Shabaab: clan, Islam and insurgency in Kenya, Journal of Eastern African Studies, 9:3, 536-557, DOI: [10.1080/17531055.2015.1082254](https://doi.org/10.1080/17531055.2015.1082254). Pg. 548. Retrieved from <https://www.tandfonline.com/doi/pdf/10.1080/17531055.2015.1082254> on 7/9/2022

<sup>45</sup> Insult to Injury. The 2014 Lamu and Tana River Attacks and Kenya’s Abusive Response. June 15, 2015. Retrieved from <https://www.hrw.org/report/2015/06/15/insult-injury/2014-lamu-and-tana-river-attacks-and-kenyas-abusive-response> on 9/9/2022

organisation alone was really responsible for the attacks. "The attack in Lamu was well planned, orchestrated, and politically motivated ethnic violence against a Kenyan community, with the intention of profiling and evicting them for political reasons," said Kenya's President Uhuru Kenyatta in a televised address to the nation.<sup>46</sup> Government officials initially blamed the attack on criminals and bandits and denied that it was a terrorist act carried out by Al Shabaab. The truth of the matter is that the land injustices and ethnic and religious tensions were always under the surface and only needed incitement and ignition to lead to bloodshed.

Of course, it is worth noting also that terrorists have taken advantage of the fault lines in Kenyan society and have seen the divisions between the indigenous community and the settlers to further promote their message of radicalisation. For the more desperate and alienated, the Al Shabaab agenda has had a strong appeal. That may explain why they have managed to get a foothold in an area that has had no previous history of radicalisation.

### **3.2 STAKEHOLDER INTERVENTIONS**

#### **3.2.1 National government**

In order to advance land reform and displacement, the Kenyan government has implemented a number of laws, policies and regulations on land matters, including a national act on the protection and aid of IDPs. The government has also sent out some clear signals about its intention to resolving these land concerns.

To address these issues, the government initiated the development of a National Land Policy through a broad consultation process, with the goal of producing a policy that will "guide the country toward a sustainable and

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<sup>46</sup> Uhuru blames massacre on tribalism, hate politics. The Nation Newspaper. Tuesday, June 17, 2014 — updated on July 02, 2020. Retrieved from <https://nation.africa/kenya/news/Uhuru-blames-massacre-on-tribalism--hate-politics/1056-2352306-wyy1laz/index.html> on 2/9/2022.

equitable use of land".<sup>47</sup> The adoption of Kenya's Constitution in 2010 re-conceptualised the framework of land management practices on the basis of equity, efficiency, productivity, and sustainability. Laws and policies that are informed by this framework include the review and harmonisation of Kenya's land statutory regime through the enactment of the Land Act (2012) and the Land Registration Act (2012), and the establishment of the National Land Commission (NLC) as the manager of public land, the articulator of the National Land Policy, and the investigator of the National Land Policy.<sup>48</sup>

Additionally, the Environment and Land Court Act, which was passed in 2011, established courts with the status of the High Court that would be dedicated to handling land-related issues.

The Kenyan Constitution of 2010, Kenya Vision 2030, and Sessional Paper No. 3 of 2009 on National Land Policy each call for a systematic procedure for effectively addressing land-use challenges. The Land Use Policy was created in response to this call, and it includes all activities that are likely to have an impact on the use of land and its resources.

The Acts outline the fundamental principles that Article 60 of the 2010 Kenyan Constitution mandates the Commission to focus on. The use of Alternative Dispute Resolution (ADR) methods, as well as Traditional Dispute Resolution (TDR) methods in dispute resolution, is one of the key principles.

Land cases were handled by district and provincial land tribunals, the Public Complaints and Resolutions Committee (PCRC) at the Ministry of Lands and courts of law at the time the NLC came into being in February 2013. Although the decisions of tribunals and the PCRC were final and binding, they were frequently never carried out or respected.

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<sup>47</sup> Ministry of Lands; National Land Policy formulation Process. Retrieved from <https://www.kpda.or.ke/documents/Policies/Draft%20National%20Land%20Policy.pdf> on 24/07/2022

<sup>48</sup> Ibid, see 10.



More than 60% of all court proceedings in Lamu were reportedly land-related. The Ministry of Lands transferred 7,000 land court cases to the NLC in 2013, and since then, 2,000 more cases have been added. Only 1,000 of the 9,000 court matters have been resolved as of this point. In 2016, the NLC used ADR to resolve the oldest case it had ever been a part of, which had been ongoing for 76 years.<sup>49</sup>

### 3.2.2 County government



*Figure 7: Lamu County Government Offices, at Mokowe*

The County Government of Lamu, through its Ministry of Lands, Physical Planning, Urban Development and Infrastructure, boasts of a vision that promotes an innovative use of land, water and other natural resources supported by good infrastructure for rural development. The Ministry's

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<sup>49</sup> Geoffrey Nyamasege, Muhammad Swazuri & Tom Chavangi, *Alternative Dispute Resolution as A Viable Tool in Land Conflicts: A Kenyan Perspective*. 2017. Retrieved from <https://land.igad.int/index.php/documents-1/countries/kenya/conflict-3/530-alternative-dispute-resolution-as-a-viable-tool-in-land-conflicts-a-kenyan-perspective/file> on 23/8/2022

mission is to “improve the livelihoods of the county residents through equitable distribution and sustainable management of land, water, forestry and wildlife and easy access to economic infrastructure”.<sup>50</sup>

To accomplish the vision and mission, the county seeks to conduct a land audit, redistribute land through the creation of settlement schemes, conduct spatial planning, and reduce the distance from accessible clean water to less than 1 km for the majority of residents. Additionally, in coordination with the national government, the county aspires to put in place permanent economic infrastructure, such as roads, electricity and information and communication technology (ICT).

Lamu County is one of the few counties in the Republic to have a County Spatial Plan (2016-26). Its main purpose is to establish clear and consistent guidelines for land use management in the county while taking into consideration land laws and policies that apply to the whole country. Unfortunately, however, its implementation is still at the infancy stage.

*Lamu County is one of the few counties in the Republic to have a County Spatial Plan (2016-26). Its main purpose is to establish clear and consistent guidelines for land use management in the county while taking into consideration land laws and policies that apply to the whole country.*

The Lamu County government recently launched an initiative in its determination to resolve land issues in Lamu by ensuring that the rightful owners get their title deeds. The county government acknowledged that due to the county's historical past and the fact that indigenous residents lost their property, conflict management in Lamu County mostly depends on how well the national and county administrations cooperate to resolve land disputes in the county.

In efforts to ensure that community land rights of the indigenous communities are recognised, planning, survey and regularization of Swahili

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<sup>50</sup> <http://lamu.go.ke/land-physical-planning/>

villages and issuance of titles has been done in Lamu East and West sub-counties.

As of July 1<sup>st</sup> 2022, then Governor Fahim Twaha stated that the county government was working closely with the national government to fast track the processing of title deeds in a bid to address land management issues in the county. He also stated that 36,000 land title deeds are ready to be handed over to Lamu residents by the Lamu County government.<sup>51</sup> The areas where title deeds will be distributed to beneficiaries include Mpeketoni town, Sinambio town centre, Kisiwa Cha Pate in Witu location, Mkokoni and Vumbe area in Lamu East.

Previously, in 2019, members of the Boni minority community who lived in Lamu County finally acquired title deeds for their property after waiting 56 years. To residents of ten villages in the area, the Lamu County administration granted a total of 6,232 title deeds, 3,232 of which went to the Boni.<sup>52</sup>

However, the general lack of awareness of the need for documentation of land matters remains an issue that is unresolved and has allowed land grabbers to get fraudulent titles and create a chaotic state of double allocations. The recent plan by the Ministry of Lands to digitise all land documents may appear a progressive initiative but unfortunately the land grabbers may also find their own ways to “digitise” documentation.

*Community perceptions on the role of the county and national government.*

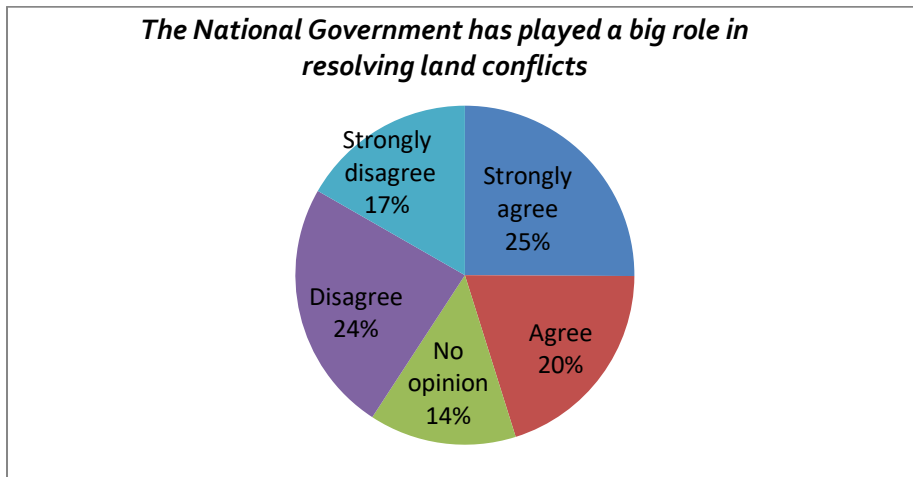
On whether the national government had played a significant role in resolving land conflicts, the respondents seemed to lie equally on both sides of the

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<sup>51</sup> Kenya News Agency, 36,000 Lamu Residents to Get Title Deeds. July 1, 2022. Retrieved from <https://www.kenyanews.go.ke/36000-lamu-residents-to-get-title-deeds/> on 23/8/2022

<sup>52</sup> Kalume Kazungu, Lamu's Boni community gets title deeds after 56 years wait. Nation Media Group. Wednesday, April 24, 2019 — updated on June 29, 2020. Retrieved from <https://nation.africa/kenya/counties/lamu/lamu-s-boni-community-gets-title-deeds-after-56-years-wait-161406> on 23/8/2022

divide; a total of 45% strongly agreed or agreed, while at total of 41% strongly disagreed or disagreed. 14% had no opinion.

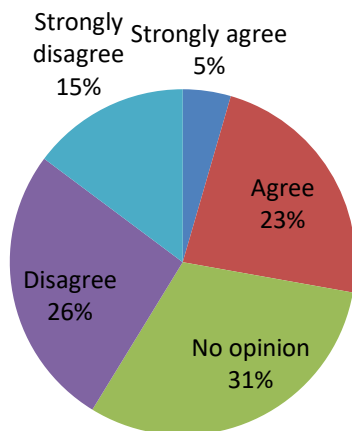


Research results indicated that 31% of respondents had no opinion on whether Lamu County had played a role in resolving land conflicts. This suggests that they are not even familiar with the role that the county government could play in resolving land matters, another strong indictment on its governance outputs. 28% agreed, however, in various degrees, that the county government had played some role in resolving land conflicts.

***On whether the national government had played a significant role in resolving land conflicts, the respondents seemed to lie equally on both sides of the divide; a total of 45% strongly agreed or agreed, while at total of 41% strongly disagreed or disagreed.***

However, a majority (41%) of the test samples disagreed with the fact that the county government had played a major role in resolving land conflicts. This is a very interesting conclusion in that one might have expected that the county government, which has been in place for a decade, would have by now contributed more to resolving the land crisis since it has both its own resources and its own devolved structures of government.

### The County Government has played a big role in resolving land conflicts



Residents of Lamu County generally acknowledge that in order to advance land reform and displacement, the Kenyan government has passed a number of laws and regulations, including a national act on the protection and aid of IDPs. The Government of Kenya has also sent out some clear signals about its intention to resolve these land concerns. But much more is required. What they have are paper pledges but little has changed in the past decade, with the county government appearing to have disappointed its citizens even more than the national government.

Any major progress toward ensuring that these laws and regulations actually result in any meaningful improvement for the people on the ground has also been hindered by funding shortages and the government's lax management of land at the local and national levels.

Concerns have also been raised regarding the lack of compensation for families who had to relocate after their property was confiscated for government projects, which exacerbates tensions and resentment relating to land. When local activists have protested over land injustices, they have found little support from the county government, which gives the impression that it

is more on the side of investors than of the local people. This further indicates that perhaps the county government might be indifferent to the plight of its citizens because they are somehow part of the problem, particularly so with regards to ownership of the ranches and the beneficiaries therein.

*When local activists have protested over land injustices, they have found little support from the county government, which gives the impression that it is more on the side of investors than of the local people.*

According to Human Rights Watch, some people who opposed the government's initiatives and its treatment of the Lamu people have vanished and one is reported to have been killed. They also claim that some years ago, an activist who opposed the construction of an airport vanished, and no one has seen him since. State officials intervened and interrupted meetings that activists had scheduled to assemble and talk about environmental issues associated to the project. Government officials have frequently harassed local activists about their apparent opposition to the project.<sup>53</sup>

There is also a lot of mistrust between Lamu residents from certain areas and the county government. A resident of Mgini village expressed skepticism regarding the county government's plans to provide all landowners with a 5-acre title deed regardless of whether they currently have a larger or smaller plot. One resident said, "We have reason to be suspicious of the county government because it wants to give each of us a 5-acre title deed but has never built any social facilities like schools, clinics, or even a reliable water supply."

The research revealed that despite the national and county governments having caused, facilitated, condoned or connived in the illegal or irregular land allocations for the ranches and settlement schemes, the two governments have done little to remedy the situation and resolve the land question or

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<sup>53</sup> <https://www.hrw.org/news/2018/12/17/interview-downside-kenyas-massive-development-project>

prevent the land-related conflicts that ensued after the land grab or illegal allocation.

### **3.2.3 Non-Governmental actors**

Save Lamu is a coalition of community-based organisations in Lamu County that focuses on human and natural resource rights. Its mission is “to engage communities and stakeholders to ensure participatory decision-making, achieve sustainable and responsible development, and preserve the environmental, social and cultural integrity of the Lamu community”.<sup>54</sup> Due to their extensive advocacy work, they have gained national and international respect and have partnered with Katiba Institute in their litigation work that has had a huge impact way beyond the Lamu and Kenya borders.

The Government of Kenya had laid out plans to develop a 1,050 MW coal-fired electricity plant in Lamu, the first coal-powered plant in Kenya. Save Lamu was among other organisations in the forefront advocating against the project, citing various social, economic, and environmental concerns. It carried out several meetings, protests and workshops to lobby and raise awareness on the negative impacts of the project. The organisation partnered with other national and international partners under the banner of “deCOALonize” to campaign for alternatives to fossil fuels and to embrace clean energy in Kenya.

On June 26<sup>th</sup> 2019, the Kenya’s National Environmental Tribunal (NET) revoked the licence granted to Amu Power Company to build the coal power plant. The National Environment and Management Authority (NEMA), according to the tribunal, did not complete a thorough Environmental and Social Impact Assessment (ESIA) that complied with the law. They lacked critical information, such as the amount of coal, dust and ash pollution the plant would produce and how this would harm people, plants, animals, and marine life. A critical benchmark for environmental and social impact evaluations in East Africa has been established by virtue of this decision.

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<sup>54</sup> Retrieved from <https://namati.org/network/organization/save-lamu/> on 4/9/2022

Thereafter, The Industrial and Commercial Bank of China declared in 2020 that it would no longer be financing the project.

**Land Acquisition and Compensation:** Even though the plant has not been built, there have been growing disagreements regarding relocation and compensation for the loss of land and other natural resources as a result of the project. More than 100 farmers were evicted due to road construction and none of them received any compensation. According to Business and Human Rights Resource Centre, “Due to a lack of information and consultation, local farmers have struggled. They have also encountered inconsistencies in compensation plans that excluded many people and raised anxiety for those who had not yet been relocated.”<sup>55</sup>



*Figure 8: Residents protest against the establishment of a coal plant in Lamu, in 2016. Courtesy of Save Lamu*

In their petition, Save Lamu demonstrated how the Kenyan electrical utility would have been obligated by contract to pay USD 362 million in minimum capacity costs per year for 25 years, despite concerns about the project's

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<sup>55</sup> <https://www.business-humanrights.org/en/latest-news/kenya-lamu-coal-power-plant/>



economic sustainability.<sup>56</sup> According to proposal documentation, Kenyan taxpayers would have eventually been responsible for practically all project risks. Additionally, the project would have increased Kenya's external governmental debt owed to Chinese banks by roughly 20% in 2020. Save Lamu then also saved Kenya a burdensome and crippling addition to its national debt. The African Development Bank initially showed interest in the project but quickly withdrew when the protestors moved to court.<sup>57</sup>

*In their petition, Save Lamu demonstrated how the Kenyan electrical utility would have been obligated by contract to pay USD 365 million in minimum capacity costs per year for 25 years, despite concerns about the project's economic sustainability*

The grassroots Lamu anti-coal plant actors illustrated to other civil society groups how a well organised, networked and publicised group could stop multinational organisations and conglomerates in their tracks from plundering the environment and endangering the health of the community. The collaboration in this exercise was with Katiba Institute, who provided the litigation team and the international experts who together were successful in halting the plant's construction.

Additionally, there are a number of NGOs, such as Haki Africa, Muhuri, MUHURI, Lamu Youth Mbunge and Sauti Ya Wanawake, who fight for the rights of coastal communities. However, most of them mainly engage in Alternative Dispute Resolution (ADR) and advocacy. Few of them deal with litigation or land matters. Another shortcoming is that all of these NGOs are stationed in Mukomani Ward, Lamu Island, and hence their impact is hardly felt in the mainland wards.

Despite the remarkable work done by these organizations, there is a feeling among residents of Lamu that they are most often left to their own devices by non-state actors especially when things get tough. The gap left by the

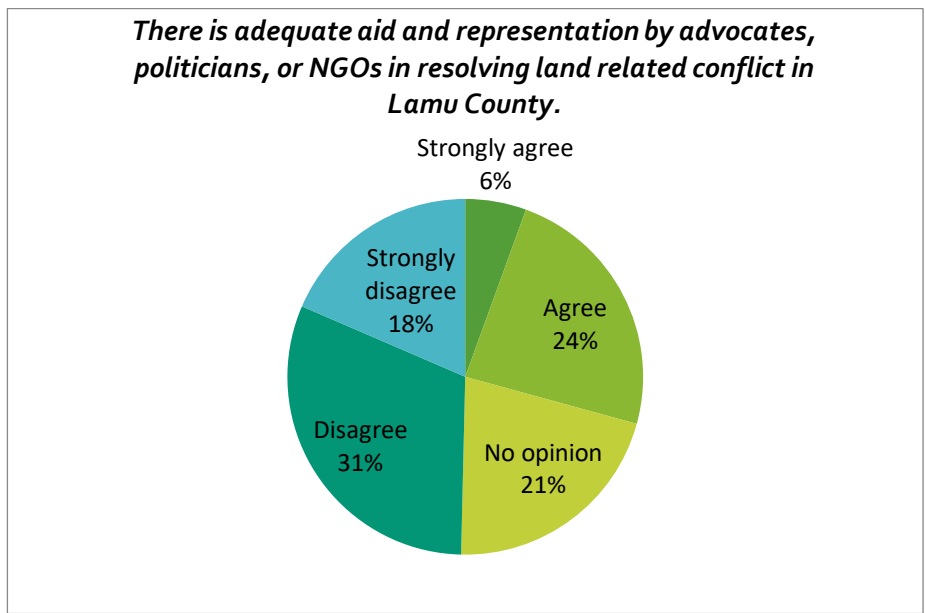
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<sup>56</sup> Rasna Warah: <https://www.theelephant.info/op-eds/2019/07/15/saving-lamu-how-a-campaign-for-environmental-justice-was-fought/>

<sup>57</sup> Op Cit No 43

government agencies in representing the interests and rights of the indigenous community was not filled by the elected representatives or by civil society according to the residents. There was little or no oversight by any independent group nor was there any recourse for the affected parties. The figures below indicate that only 30% of the combined respondents feel that they get the required support in defending their claims or representing them in court or Parliament.

At a time when Kenya prides itself on an effective and professional civil society, these figures are a shocking indictment as regards their national spread or influence.



During our interviews and research, it was frequently recommended that Haki Yetu should establish a full-time office in one of the mainland wards and complement the activities of the existing organisations in Advocacy, ADR, and public interest litigation. HAKI Yetu could also be engaged in other activities which normally go hand in hand with land conflicts, such as peacebuilding and responding to human right violations.

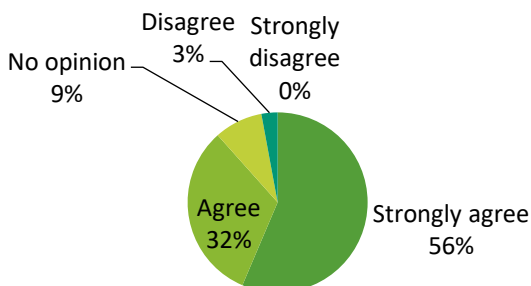
## CHAPTER 4: EMERGING TRENDS

### 4.1 EMERGENCE OF MEGA INFRASTRUCTURAL PROJECTS

Due to the significant number of expansive, land-intensive infrastructure projects, the government is implementing in accordance with its Vision 2030, there is a heated discussion in Kenya about the legality of compulsory land acquisition. Since independence until the present, the process has changed, with the "public purpose" and payment of compensation serving as the main justifications for acquisition. However, legal issues and irregularities have made the process not only emotional but also in numerous ways in violation of human rights principles. In Lamu County, land acquisition has turned into a curse.<sup>58</sup>

Lamu once more experienced the intense effects of forcible acquisition in 2013. To make room for the building of the County Government Headquarters, locals were forced off their property. In 2016, the government, through the NLC, began to acquire land in Kililana for the construction of the LAPSSET project.

***The development of MEGA PROJECTS in Lamu have increased land related conflicts in Lamu***



<sup>58</sup> Winne Changwony, Daniel Masinde & Sarah Ngachi; The Curse of Compulsory Land Acquisition in Lamu, Kenya. 10 December 2020. Retrieved from <https://naturaljustice.org/the-curse-of-compulsory-land-acquisition-in-lamu-kenya/> on 23/8/2022

Our findings indicate that an overwhelmingly 86% of the respondents agree that the major projects that have been undertaken in Lamu County have contributed to increased land-related conflicts.

One clear evidence of the above results is shown in a situation where fishermen were evicted from their accustomed onshore fishing grounds in Manda Bay because of the construction of the Lamu Port situated at the southernmost point of the Lamu Archipelago.

**Our findings indicate that an overwhelmingly 86% of the respondents agree that the major projects that have been undertaken in Lamu County have contributed to increased land-related conflicts.**

The research revealed that the hatching of the LAPSET idea was the beginning of the land problem because it made land which was previously considered as idle or “useless” useful, not for purposes of use but for purposes of sale.

The research further revealed that officers of the then County Council and other highly placed individuals who had prior knowledge of the coming of LAPSET and other mega projects lined themselves up along the development corridors and allocated themselves large chunks of land as so-called ranches and named themselves as the legal occupants and shareholders. However, since the land was for “sale” not for use, the owners of the ranches never took possession of the land.

#### **4.1.1 Lamu Port and South Sudan Ethiopia Transport (LAPSET)**

LAPSET is a major Kenya Vision 2030 flagship project that aims to alter regional economies by boosting commerce, integration and interconnectivity across Kenya, South Sudan, Ethiopia, and other landlocked nations.

The projected LAPSET route includes Lamu County as a major node. The county is home to several LAPSET infrastructure elements, including a new, contemporary port with 32 berths and a planned network of new transport

infrastructure, which includes an airport, a number of motorways, a standard-gauge railway, and an oil pipeline.<sup>59</sup>

Lamu is expected to compete for transshipment business with other regional ports, including the Port of Durban in South Africa, the Port of Djibouti, and the Port of Salalah in Oman, thanks to the Kenyan government's detailed plans to develop Lamu into a significant transshipment centre for the region. However, to date since its opening, the port has handled very little commercial business and enthusiasm for its development appears to have declined since William Ruto became president in September of 2022. According to a report in the *East African Standard* of January 12<sup>th</sup> 2023, only 13 ships docked at Lamu Port in the whole of 2022<sup>60</sup>. More worrying still, they handled only 1,821 twenty-foot containers and a meagre 213 tonnes of commercial cargo.<sup>61</sup>

*Lamu once more experienced the intense effects of forcible acquisition in 2013. To make room for the building of the County Government Headquarters, locals were forced off their property. In 2016, the government, through the NLC, began to acquire land in Kililana for the construction of the LAPSET project.*

The Lamu Coal Power Project, a crucial source of electricity for LAPSET, was established on additional acres of land that NLC purchased in the same year. This compelled the communities to seek solace in the legal system, where judges decided on their claim to property and awarded them damages for losing their land. The LAPSET project runs the risk of fostering further types of economic inequality. Some still claim that "more educated people from upcountry obtain the employment in the big projects and in the hotels,"

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<sup>59</sup> Ngala Chome (2020) Land, livelihoods and belonging: negotiating change and anticipating LAPSET in Kenya's Lamu county, *Journal of Eastern African Studies*, 14:2, 310-331, DOI: 10.1080/17531055.2020.1743068. Retrieved from <https://www.tandfonline.com/doi/full/10.1080/17531055.2020.1743068> on 8/9/2022

<sup>60</sup> Philip Mwakio, *East African Standard*, Business Thursday January 13<sup>th</sup> 2023

<sup>61</sup> Op Cit No 57

despite the government's efforts to train local teenagers so they can profit from greater development in the area.



*Figure 9: Lamu Port, courtesy of the Star Newspaper*

Approximately 4,600 fishermen were evicted from Manda Bay in Lamu County, where work was being done on a modern deep-water port. On May 1, 2018, a three-judge panel sitting in the coastal town of Malindi ordered the Kenyan government to pay \$170 million in compensation.<sup>62</sup> The verdict addressed serious issues of concern to a segment of the Lamu community and noted that the fishermen were not primarily opposed to the new port, but rather the way the larger LAPSET corridor – in which the port forms an integral part – was conceptualised and implemented. That compensation is yet to reach the fishermen but what was unique about this case was that the

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<sup>62</sup> Kalume Kazungu. 2018. "Lamu Fishermen Laud Sh.1.7bn Pay Order." *Daily Nation*, May 2. <https://mobile.nation.co.ke/counties/Fishermen-happy-with-new-Sh1-76bn-award/1950480-4541314-r037ju/index.html>

Court recognised Fishermen's Rights as property rights and worthy of compensation.<sup>63</sup>

Farmers in Kwasasi want their property back as a result of the Lamu coal project's failure to get off the ground. Additionally, they want payment for the time they were unable to cultivate their land. The Kililana fishing community agrees, accusing the government of seizing more property than was originally planned and neglecting to compensate them.

*Approximately 4,600 fishermen were evicted from Manda Bay in Lamu County, where work was being done on a modern deep-water port. On May 1, 2018, a three-judge panel sitting in the coastal town of Malindi ordered the Kenyan government to pay \$170 million in compensation.*

LAPPSET is generally well-received in the county, but it has ramifications for one of the most contentious subjects here: land. Land is where the whole thing began. The residents of Lamu felt endangered because when LAPPSET started, new people arrived and occupied land there.<sup>64</sup> The LAPPSET project runs the risk of fostering further types of economic inequality. Some still claim that the project will benefit people and communities from outside Lamu and not the locals.<sup>65</sup>

There is also emerging concern that while the newly constructed road from Garsen to Lamu has brought positive change the powerline KETRACO did not adequately compensate residents who had to surrender land for its installation.

It is reasonable to anticipate fast payment to be made to genuine proprietors. However, the Land Value (Amendment) Act, 2019 (LVA) poses a challenge to this expectation, which shields people from arbitrary property deprivation.

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<sup>63</sup> That case can be accessed at Mohamed Ali Baadi and others v Attorney General & 11 others [2018] eKLR <http://kenyalaw.org/caselaw/cases/view/156405>

<sup>64</sup> Tinderbox of grievances: inequality and politics in Lamu. Retrieved from <https://saferworld-indepth.squarespace.com/tinderbox-of-grievances-inequality-and-politics-in-lamu#section2footnotes> on 23/8/2022.

<sup>65</sup> Ibid. No 57

The LVA extends the time it takes to pay compensation by up to a year after purchase, adding to the pain Lamu locals are already going through.

#### **4.1.2 Baharini Wind Power Project**

The planned construction of the 90MW wind farm in Lamu was halted after the County Assembly voted to cancel the project due to alleged failure to meet set conditions. The Members of the County Assembly (MCAs) voted to halt the Sh21 billion Baharini Wind Power project due to failure to meet the conditions set by lawmakers. The wind farm was to be built by Baharini Wind Power Company, a joint venture between Elicio Company in Belgium and Kenwind Holdings Limited in Kenya. The project had been allocated 3,206 acres of land in Baharini village in Lamu West, about 40 kilometres from the LAPSET Corridor project in Kililana.<sup>66</sup>

Plans were in the works to install 38 turbines capable of producing 90MW of electricity, which would be sold to Kenya Power, which had signed a 20-year power purchase agreement with Baharini Wind Power. Among the requirements was that Baharini Wind Power would not use the land set aside for the project for anything other than the construction of the wind farm. According to reports, the investors failed to meet some of the conditions, causing displacement and disorder in the local community. The land on which the investors planned to resettle those impacted by the project had been demarcated, surveyed, and titled without any free land set aside for resettlement.

The Sh15 billion Kinangop Wind Park, which was cancelled in 2016 due to hostilities from locals, was the first wind farm to not get off the ground due to political resistance. The Bahari Wind Power project is now the second wind farm to do so.

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<sup>66</sup> Jane Mwangasha, Political turbulence hits Sh21bn Baharini wind power project. August 1, 2020. Retrieved from <https://www.constructionkenya.com/8299/baharini-wind-power-project/> on 30/09/2022



#### **4.1.3 Establishment of Northern Rangeland Trust Conservancies.**

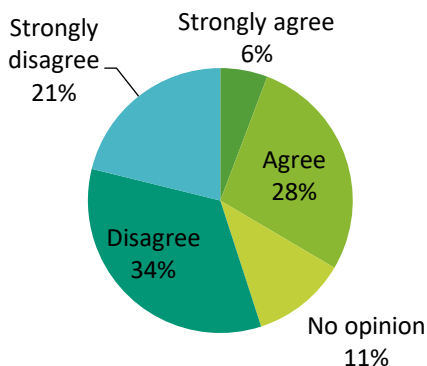
The Northern Rangeland Trust in the person of Ian Craig has been establishing a series of conservation areas in the county for the past decade. These seem to have had a lot of support from local and national politicians as they promised to bring development projects to the affected communities as rewards for their cooperation in these conservation projects.

However, there has been growing resentment about NRT activities as they have somehow taken possession of ranches that locals feel should have been allocated to the landless and poor locals. They claim that the locally hired rangers – some of whom are armed – are the only beneficiaries and the fishermen too claim they are constantly harassed and their traditional fishing areas no longer accessible to them. There are several NRT Conservancies in Lamu. These include Awer, Ishaq Bini- Ijara ward, Kiunga Marine, Pate Marine, Ndera Conservancy, Witu Kinyongoro and Lower Tana- Garsen. These conservancies appear to have produced a lot of resentment and discontent among the communities and can be a further cause of more serious conflict if the community concerns are left unaddressed.

#### **4.2 RIGHT TO PUBLIC PARTICIPATION**

What is very obvious from the above is that there is very little, if any, public participation in decision making around mega projects or land settlement schemes. This does not meet the threshold required by the law or the constitution, as was evidenced in the Save Lamu coal petition. Moreover, 90% of the group of those who answered the questionnaire and who are the most influential group in the county as regards positions of power stated that public participation was not adequate.

***There is adequate public participation in when dealing with land issues in Lamu***



What is patently obvious in reviewing the impact and damage of the multimillion-dollar projects is that there was little or no consultation, information sharing or public participation in the decision making about compulsory acquisition of the land, or details of the intended projects. The local people have been taken for granted and frequently for a ride and that has been the trend and major experience for most of them for decades.

Yet, there is a growing understanding that democracy calls for considerably greater citizen involvement in government than is typically attainable through representation by elected leaders. Modern democracies must include direct citizen participation in the formulation of public policy, the creation of laws, and the execution of development initiatives. Most democracies have adopted a variety of methods, processes, and techniques to improve citizen participation in governance, particularly in decision-making processes, in light of this realisation.<sup>67</sup>

Kenya has developed laws governing citizen involvement in decision-making. The Constitution sets forth the normative foundation for public involvement,

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<sup>67</sup> THE STATUS OF PUBLIC PARTICIPATION IN NATIONAL AND COUNTY GOVERNMENTS. Retrieved from <https://countytoolkit.devolution.go.ke/sites/default/files/resources/27.%20The%20Status%20of%20Public%20Participation%20in%20National%20and%20County%20Governments%20.pdf> on 30/09/2022.

mandates it for policy- and law-making. In Article 10 of the 2010 constitution, which is compulsory on all state agencies when formulating or carrying out public policy, involvement of the people is recognised as a "national value". The courts have strengthened this obligation for public participation through case law, drawing on other progressive constitutions like South Africa's. The constitution and relevant case laws were used by the tribunal in the Lamu coal issue to some extent in making its decision.<sup>68</sup>

*What is patently obvious in reviewing the impact and damage of the multimillion-dollar projects is that there was little or no consultation, information sharing or public participation in the decision making about compulsory acquisition of the land, or details of the intended projects.*

An environmental permit for Amu Power Company to build a coal plant in Lamu County was revoked by the Kenya's Environmental Tribunal, a branch of the country's national judiciary. Save Lamu launched a lawsuit in 2016 in response to the licence's issuance. Almost three years later, the courts ruled in favour of the locals on the grounds that the corporation and the National Environmental Management Authority (NEMA) had improperly excluded the public from the Environment and Social Impact Assessment (ESIA) procedure.<sup>69</sup>

The regulations governing public participation in the environmental impact assessment process, which were at issue in the Lamu coal case, require a developer to solicit feedback from residents who will be impacted by the project. The developer must post posters near the site, run advertisements in national newspapers, and run radio spots in official and local languages for two weeks. Three public meetings must be held and announced one week in

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<sup>68</sup> Jason Lakin, Save Lamu! Drawing lessons on public participation from other sectors. 15<sup>th</sup> July 2019. Retrieved from <https://internationalbudget.org/2019/07/lessons-on-public-participation-from-other-sectors/> on 30/09/2022.

<sup>69</sup> Ibid No 61

advance. To collect comments and forward them to NEMA, a qualified "coordinator" must be appointed, with translation as needed.

An intriguing aspect of the Lamu coal case is that the project developer was discovered to have implemented public participation at the incorrect time. The participation meetings were held too early in the process and thus were too general to allow for a proper discussion of impact and mitigation, as the regulations intended. As a result, the regulations provide sufficient detail to hold companies and government agencies accountable for flawed participation processes.

The forms of facilitating an appropriate level of participation in the legislative process are indeed infinitely variable. What matters is that, at the end of the day, members of the public and all interested parties have a reasonable opportunity to learn about the issue and have an adequate say. What constitutes a reasonable opportunity will vary depending on the facts of each case.

In a decision delivered against a county government, the court faulted the county government's legislative and policy making processes due to inadequate public participation by stating: "*Public participation ought to be real and not illusory and ought not to be treated as a mere formality for the purposes of fulfilment of the Constitutional dictates...*"<sup>70</sup>

All Lamu residents have a constitutional right to adequate participation in the development and implementation of laws and public policy decisions. In cases of insufficient public participation, an aggrieved party may petition the courts for a declaration or order invalidating the contravening legislation or policy.

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<sup>70</sup> WMC Legal. Retrieved from <https://mwc.legal/public-participation-and-the-public-participation-bill/> on 30/09/2022.

### 5.1 CONCLUSIONS

The Kenyan government has consistently contended that the Lamu port will develop into a viable and essential complement to the hub of Mombasa by issuing projections about future trade. Local government officials place a lot of hope in plans for a special economic zone, but these have been elusive thus far. If this were to materialise, however, it could guarantee substantial port investment and the procurement of hundreds of jobs.

The Lamu port, which will primarily act as a transshipment hub, is anticipated to draw important shipping lines by competing with the ports of Durban in South Africa and Djibouti on the Horn of Africa. Additionally, it would supply important markets in South Sudan and southern Ethiopia. Around 19 shipping lines have shown interest in the port thus far. The Kenya Ports Authority hopes that a large number of people will use it and take advantage of the current attractive promotional offers.<sup>71</sup>

In addition, construction on the roads that connect Lamu with Nairobi via Garissa is well underway. Additionally, since trucks and travellers no longer have to pass through Mombasa, the new route connecting Lamu and Garsen has already considerably lowered transport costs. The old northern "border" area may profit from the connection to the port once the project's route towards Garissa and Isiolo is also complete.

There are tremendous opportunities for the economic development of the county but our research has shown that unless the historical and current land injustices are addressed with the seriousness they require, most of these opportunities will be missed and the much-lauded investors will take their resources and investments to safer and less troublesome areas.

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<sup>71</sup> Jan Bachmann, Bernard Musembi Kilaka, Kenya launches Lamu port. But its value remains an open question. May 20, 2021. Retrieved from <https://theconversation.com/kenya-launches-lamu-port-but-its-value-remains-an-open-question-161301> on 10/08/2022

Put another way, if the Kenyan Government is willing to invest billions of taxpayers' money and acquire huge overseas debts to proceed with the LAPSSET project and the accompanying infrastructure, to ignore the ticking bomb on their doorstep would be pure folly and economic suicide.

The amount of money required to address the land crisis and conflicts is just a fraction of what the mega projects would cost. It would be an investment that gives a huge return but it would also demand political will and a divestment from the power brokers and the political elites – locally and nationally – who are the major obstacles towards redress and change.

*Unless the historical and current land injustices are addressed with the seriousness they require, most of these opportunities will be missed and the much-lauded investors will take their resources and investments to safer and less troublesome areas.*

The opportunity is there and the local and national governments must eventually realise that it is in their own interests to address the land crisis or otherwise their investments will be a complete waste of time and money.

Even when there is proper public participation and collaboration, the key stakeholders must be sensitive to the local culture and its historical and religious sites that may be interfered with during any major development project. Lamu has a rich culture, known and respected all over the world, so any violation could be a new source of conflict in the area.

It is, therefore, imperative that the implementation of such projects be preceded by a quick knowledge mapping to determine and document such knowledge before destruction or adulteration. Such mapping and documentation could be enhanced with community participation. Such a mapping can still be done for the LAPSSET Corridor and Isiolo Resort City before full implementation takes off.

In other quarters, in an effort to ensure that the legitimate owners receive their title deeds, the Lamu County government recently initiated a programme to jumpstart this process. Planning, survey, and regularisation of

Swahili villages, as well as the issuance of titles, have been completed in Lamu East and West sub-counties in an effort to ensure that the community land rights of the indigenous communities are acknowledged.

This may well be a good start but much more is needed, and a collaborative effort with the national government is required if the desired impact is to be achieved in a reasonable timescale. As stated frequently, as long as local people are denied titles, there is a serious threat to cohesion, peace and the mega projects. A further threat comes from the fact that as long as “outsiders” continue to be allocated land through Nairobi insiders and come to Lamu as brokers, the animosity from the indigenous community will continue to increase.

*Review of Kenya's current land purchase laws reveals that there are no safeguards governing interactions with the host community nor are there safeguards for forced resettlement in the event of displacement through land acquisition.*

Additionally, the lack of formal land title deeds leaves this population extremely exposed to forced evictions. Again, as Mwathane and Makathimo show, most locals do not have clear details on grievance mechanisms in the land administration system, and while some have managed to access the National Land Commission, most were unable to since it is based in Nairobi.<sup>72</sup> The constant threat of the insurgent group, Al Shabaab, could also undermine any prospective investors. The group also seems to have also metamorphised from a terrorist group to a criminal gang available for hire for displacement or ethnic-based attacks.

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<sup>72</sup> Large Scale Land Acquisitions for Investments in Kenya: Is the Participation, and benefits for affected local communities meaningful, and equitable? A case study of the situation in Lamu, Isiolo and Siaya Counties, Kibugi, Robert, Makathimo Mwenda, and Mwathane Ibrahim, Nairobi, (2016) copy at <http://profiles.uonbi.ac.ke/rmkibugi/publications/large-scale-land-acquisitions-investments-kenya-participation-and-benefits-aff>. Accessed on 8/9/2022

When it comes to the overall economic benefit of a second deep-water port in Kenya, there are several open questions. This worry stems from Lamu and Northern Kenya's inadequate infrastructure integration. Due to the significant uncertainty surrounding its primary purpose, logistics experts also caution that Lamu Port has a tremendous potential to become a white elephant project.

Another significant issue relates to the port's environmental effects, some of which were revealed in the 2019 High Court decision. Additionally, Kenyan security agents have harassed local protestors who are opposed to the project.

## 5.2 RECOMMENDATIONS TO STATE ACTORS

In this section, we make many proposals on how state actors can intervene to resolve land-related conflicts. We are particularly indebted to work done by Robert Kibugi, Mwenda Makathimo and Ibrahim Mwathane,<sup>73</sup> whose research can well be considered a blueprint for Lamu and other counties facing similar land conflicts and injustices arising out of mega projects and historical land injustices.

### *a) Regularise landholding and tenure systems*

In the majority of the research sites there was a lack of formal landholding and registration systems; where the systems existed, they were found to be very poor. This is true even though Kenya updated its land laws in 2012 to implement constitutional protections for land rights. The new systems and opportunities presented have not taken root in Lamu.

This has either led to the emergence of informal systems for land administration and conveyance, the emergence of a complicated formal system for land allocation that results in multiple land allocations through the issuance of allotment letters, or the non-adjudication and registration of community lands.

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<sup>73</sup> Op Cit No 52



In either case, this weakens security of tenure and increases the vulnerability of affected communities who will have trouble protecting their interests in the land before any significant land acquisitions because of the entry of speculators and people eager to seize the land by being the first to obtain formal registration.

In order to determine the nature and scope of the issuance of multiple land allocations in Lamu and to take action to address it, the national government of Kenya should increase its collaboration with the county government in Lamu. Additionally, it is crucial to put in place a programme for the regularisation of tenure rights by resolving the issues faced by those without title since it will improve the security of tenure for those impacted by forcible acquisition.

This will require that the county government takes the initiative and the lead in addressing the tenure system. As mentioned previously, in the first decade of devolved government, the county government has not given priority to titling or to addressing new threats or opportunities that the community might face. They must also acknowledge the trust deficit that exists among the local community, something the new administration must address as a matter of urgency. Further evidence of a trust deficit in the issuance of titles is reflected in the decision of Shungwaya Welfare Association, a community-based organisation, to proceed to court in late 2022 to prevent the issuance of any title deeds in the county. The ELC granted them an injunction until the case is heard and determined.<sup>74</sup>

***b) Improve the tenure of some communities through the application of the Community Land Act's provisions***

This conclusion was reached based on research conducted with members of the Boni communities, who voiced concern about the security of their tenure in the face of land acquisition for LAPSET infrastructure. This is due to the fact that, notwithstanding the Land (Group Representatives) Act, which

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<sup>74</sup> ELC no 36 of 2021, Malindi

existed before the 2016 Community Land Law, the land has not yet been fully adjudicated or registered in the community's favour.

As a first step toward ensuring the beneficial interests of the community members, by protecting tenure rights and then by providing for equitable community land governance mechanisms, it is advised that the government expedites the application of the Community Land Act provisions for the Lamu communities affected by these land acquisition projects.

However, this is a lengthy and painstaking process and it must begin with awareness among the concerned communities on the Community Land Act, 2016 itself. Registration of community land requires development of maps and by-laws with which the communities will need technical and financial support, and above all, convincing the communities why it is necessary to register their land.

***c) Clarify the approach and practice of valuing real estate and other assets for compensation***

Resolving the repeal of the Land Acquisition Act and the Schedule that set forth the procedure for valuing land is necessary. In any case, it is necessary to formally settle the entitlement to compensation for those without legal title based on the analysis in the research and conclusions. Kenya must also specify in legislation or regulations the technique to be used in valuing non-land assets, such as the loss of livelihoods, identity and psychological damage as a result of forced relocation.

Application of the **full replacement cost methodology** offers a workable solution because, in addition to relying on the market value of the land, it also extends compensation to non-land assets by using the real cost of full replacement, excluding any deduction for depreciation of the non-land assets being replaced, and accounting for all transaction costs (such as conveyancing fees and other costs), as well as logistical costs of replacement<sup>75</sup>.

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<sup>75</sup> Op Cit 52

***d) Make policy linking investment promotion regulations with investments resulting from land acquisitions to ensure communities benefit through agreements and business models***

At the policy level, it is crucial for Kenya to review the framework for using investment promotion laws and legally binding contracts to protect local populations' socio-economic and environmental assets and livelihoods. This usually refers to the progression of an investment, starting with the acquisition of land and continuing through its execution. Despite addressing the benefit to Kenya requirement, the Investment Promotion Act is not administered vigorously, and as shown by the Dominion contracts, important socio-economic protections were not incorporated. To prevent affected project communities from feeling anxious about the proposed business models, a clear policy review of business model applications, whether contracts in the context of farming investments or other sorts, should be carried out.

This might be done in accordance with Section 12 of the Land Act, which mandates that regulations be made by the National Land Commission to control how investments in public land will protect community benefits.

FAO and the NLC developed Large Scale Land Acquisition Safeguards in 2022, the first safeguard being: Negotiations and consultations leading to investment agreements should be conducted in full transparency and with the participation of the local communities. NLC should take responsibility in enforcing these safeguards while civil society organizations should create awareness around them.

***e) Improve meaningful public participation across the board through efficient consultations and the release of pertinent data***

It will be essential to incorporate a constructive and meaningful process of consultation with potentially affected communities from early on during project planning and feasibility studies, to onboarding of investments, in order to strengthen the voice of the community prior to any process of land

acquisition. This would be especially helpful in providing information on local situations and threats that technical teams are often not aware of.

***f) Compensate "occupants in good faith" without title to land***

According to Article 40(4) of the Kenyan Constitution, "arrangement may be established for compensation to be paid to occupants of land acquired under Section (3) who may not hold title to the land and who have occupied the land in good faith." Although the guidelines for the discretion implied by this Article have not yet been established, the study shows that the state has successfully used this discretion at the Lamu Port site and the Isiolo Airport site. Despite not having legal ownership of their properties in the two locations, claimants in Lamu and Isiolo received cash for property and land for land compensation, respectively.

For other regions of the nation where official procedures to register communal land have not been applied for or completed, these cases serve as exemplary cases.

***g) Develop regulations governing the methods used to determine just recompense***

A number of infrastructure projects that require the forced acquisition and compensation of land are currently being worked on in Kenya. Section 111 of the Land Act mandates that the National Land Commission creates regulations to control the determination of appropriate compensation when land is obtained forcibly. These regulations hadn't yet been created as at the time of this report. The development of these rules should have been given priority because they will help standardise the methodology for the anticipated assessment and make the process more predictable in a setting where the government is engaged in infrastructure development that calls for significant compensation of forcibly acquired land.

It should be emphasised that the Land Act's operational regulations have not yet been created. The recent changes made to the Land Act may have caused a delay in the creation of these regulations and the guidelines for evaluation

for appropriate compensation. After the revisions are finished, it is advised that the regulations governing the calculation of just compensation due to landowners impacted by significant land investments be developed quickly.

#### ***h) Implementation of the County Spatial Plan (CSP)***

As noted earlier, Lamu is one of the few counties that has a CSP, but it is weak on its implementation. Its primary purpose is to create guidelines for land use management in the county and it is essential for protecting the natural resources in the county as well as for effective and efficient planning. This will require that the county adheres to its CSP and budgets generously for its implementation.

#### ***i) Invest in Alternative Dispute Resolution and Traditional Dispute Resolution***

Alternative Dispute Resolution is a mechanism of solving a dispute out of court. It includes disciplines like fact-finding, expert determination, negotiation, mediation, arbitration, reconciliation, arbitration and private adjudication. As opposed to court procedures, it is claimed that these approaches are less expensive and quicker to resolve.

Communities are the main focus of Traditional Dispute Resolutions, which aim to settle disputes between disputants. Before colonialism, this approach was very much the trend and the methods used differed depending on the community. Both conflict management techniques have been employed successfully because they can provide people with closure.

The Constitution of Kenya 2010, under Article 159, provides for alternative forms of dispute resolution, including reconciliation, mediation, arbitration and traditional resolution mechanisms, which shall be promoted as long as they do not contravene the Bill of Rights and are not repugnant to justice and morality or inconsistent with any written law.

ADR is increasingly being institutionalised in Kenya in many areas to facilitate dispute resolutions and settlement, including family disputes, civic disputes, commercial disputes and labour disputes. ADR is now recognised in the

Kenyan legal framework as a primary dispute resolution mechanism. This is quite encouraging, particularly in the present day when court proceedings can drag on for years. The use of ADR in resolving disputes in the land and natural resources sector is crucial to Lamu County in the coming years.

***j) Fast track the digitisation of land records in the county***

As gathered from the numerous interviews conducted with Lamu residents, it is apparent that most of the land disputes and eventual conflicts experienced have been as a result of a compromised land register. Land records have been tampered with, files disappeared, and land transferred irregularly. Many are cases of strangers appearing from nowhere with land titles, and evicting people in Lamu forcefully.

The Ministry of Lands, through the National Land Management System, has started to digitise all land records. Digitization will enhance transparency in land dealings, and protect vulnerable communities from arbitrary disinheritance of their land by dubious characters.

***k) Audit county land***

For all of these recommendations to be implemented, a first but essential step would be for the national and county governments to avail a current Audit of Land in the County. In that way, stakeholders would become aware of who owns what in the county and what might still be available for allocation and settlement. There is currently too much secrecy and fear around that but no progress can be achieved without that information.

### **5.3 RECOMMENDATIONS FOR NON-STATE ACTORS (CSOs)**

What is glaringly obvious is that land injustices have bedeviled the county for over a century. The land is fertile, strategically located and has enormous potential. As a result, it became a magnet for a variety of land grabbers, developers and opportunists. The local communities have been consistently dispossessed and became squatters in their own backyard.

The community has lacked knowledge, representation and advocacy skills. The only group that has made any impact in addressing some of these ills has been Save Lamu. But there is profound ignorance on land matters, legal options and even the basic land laws. There is inadequate public participation when dealing with land issues in Lamu and there are no strong advocates to mediate and represent the community.

The relative remoteness of the county has kept national civil society organizations away, apart from the frequent fact-finding visit. There is a definite gap for Haki Yetu and/or other organizations that have built a profile on land matters and have the skills, patience and networks to set up shop in the county. They would be advised to not be based on the island but to establish themselves where the issues are and where they can be accessed by the communities.

Awareness on basic land registration processes, the Land Act 2012 on Compulsory Land Acquisition, and succession laws are urgently required. This type of civic education is best provided for by civil society organizations. However, this engagement should include the functions of the various departments within the Ministry and County: The Registry, Land Survey, Land Adjudication Office and the Planning Department under the county government.

They should have a permanent presence and have capacity to do mediation, arbitration, ADR and AJS. As a last resort, they may well need to support land-related litigation in a limited number of sample cases.

Working with the religious bodies on the ground would be essential also as they have the capacity to build trust and cohesion among the very many diverse communities.

Such organizations must also have the experience and commitment to maneuver the politics of the county as well as that of the county administration whose defense of the locals has been weak to date. In the process, they should not only lobby for the implementation of the above proposals but, if possible, to work with or demand that the county

government does an audit on all the land, an audit that would include the landowners and users, as well as the ground status report at the moment.

***"Because no matter who we are or where we come from,  
we're all entitled to the basic human rights of clean air to  
breathe, clean water to drink, and healthy land to call  
home."***

***Martin Luther King III***











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*'... act justly, love tenderly,  
and walk humbly with thy God.'*  
**Micah 6:8**