

BASELINE SURVEY REPORT POPULAR VERSION

**Baseline Survey on human rights
violations along the LAPSSET
Corridor: A case study of Lamu**

Produced by

Kituo Cha Sheria

(Legal Advice Centre)

With support from AMERICAM JEWISH WORLD

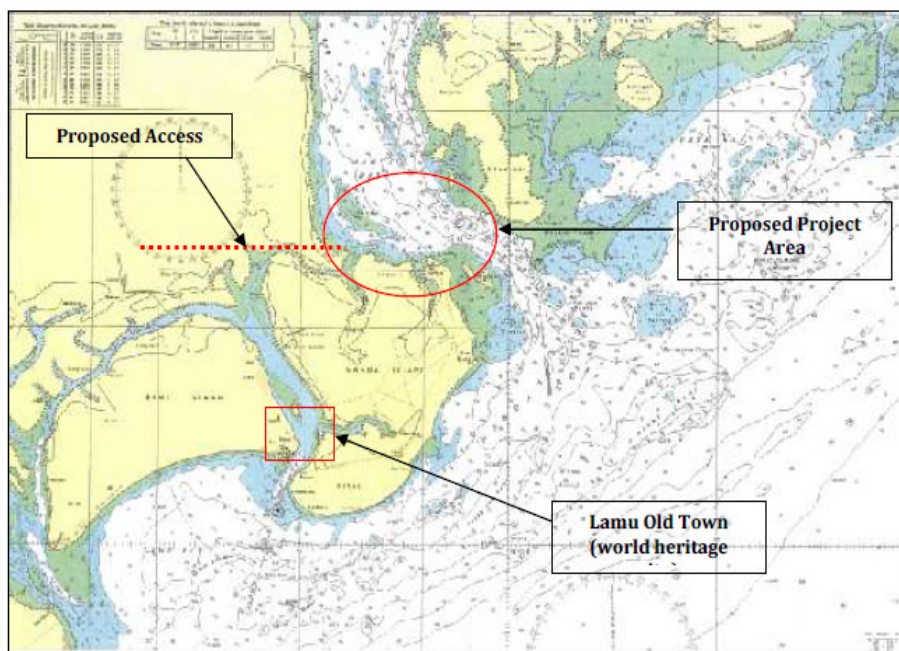
SERVICE (AJWS)

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Proposed Project Location-Source JPC

FOREWORD

The Lamu Port, South Sudan and Ethiopia Transport Corridor Project (popularly known as LAPPSET) is a government spearheaded project that is aimed at improving infrastructure and livelihoods of the people of the Coast, Rift Valley and North Eastern regions. The project has the potential of improving the livelihoods of the residents of these regions. However, for this to happen, the process of implementation of the LAPPSET project must be transparent, involve public participation and accountability and ensure proper management of natural resources.

With support from the American Jewish World Service (AJWS), Kituo cha Sheria has began building the capacity of community based organisations on the law on natural resources management and paralegalism in Lamu County where the new port is being constructed. In training of Lamu County based community organisations, Kituo cha Sheria found that there was dearth in documentation on the effects of the LAPPSET project on communities. Furthermore the lack of information and awareness around the project and its potential to breed sentiments of discontent was prominent.

Against this backdrop, Kituo cha Sheria commissioned this baseline survey on the human rights violations of the LAPPSET project in Lamu County. The purpose of the baseline survey was to uncover the real issues on the ground that would inform further project activities in Lamu County around the LAPPSET project including public interest litigation. Indeed as the present booklet discloses the failure by Government to provide adequate information on the LAPPSET project has had a huge impact on the nature and level of public participation in its implementation. Furthermore the lack of adequate legal capacity by community members on their rights in so far as natural resources management is concerned is a barrier towards them claiming and asserting these rights.

It is our sincere hope that this simplified booklet on the findings of the Baseline Survey on the Human Rights Violations of the LAPPSET Project: Case Study of Lamu County will lay a basis for further emphasis on the right to public participation and access to justice as encapsulated under articles 10 and 48 of the Constitution of Kenya.

Gertrude Angote

Executive Director

ACKNOWLEDGEMENTS

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Appreciation is extended to the American Jewish World Service (AJWS) for their support towards the building the capacities of communities on natural resources management and human rights.

Special gratitude goes to the independent Consultants Wahida Mohamed Athman Ali and Violet Mavisi who conducted the baseline study and wrote the findings herein, the Board of Directors, the Executive Director, the Kituo Cha Sheria management team and members of staff of Kituo cha Sheria Mombasa Office for tirelessly working and championing for the indigenous and land rights of the people of Lamu County during the implementation of the crucial LAPPSET project.

Special thanks go to the respondents who agreed to be interviewed in the course of the study and to those who revised and made inputs to this publication especially Prof Saad Yahya, Annette Mbogoh and Anastasia Nabukenya. Appreciation also goes to the Research, Communication and Documentation Department (RCD) for their exceptional work in editing, formatting and production of this booklet especially Tobias Mwadime and Samuel Irungu.

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PART A: INTRODUCTION

THE RATIONALE AND OBJECTIVES FOR THE BASELINE SURVEY

Lasting improvements in human rights ultimately depend on the government and the people deciding to take concrete action to bring positive change. Therefore by making plans that involve, and are clear both to the government and to the general public generates political goodwill and commitment that would otherwise not exist. To be effective, the plans need be action-oriented by indicating clearly the status of the current situation; identifying problems that need to be overcome and specifying the actions that needs to be taken.

KITUO CHA SHERIA commissioned this baseline survey along the aforementioned lines. The terms of reference (TOR) required the determination of the prevailing situation in Lamu County with regards to the lived realities of individuals, communities, civil society actors, government actors among others on human rights awareness and violations thereof specifically in the areas of Land and Environment; as relates to the LAPPSET Project. It also required the highlighting of existing gaps in law and policy that may be serving to exacerbate these human rights violations in Lamu County as well as explore best practices in natural resource management. A participatory and action oriented report, its popular version in English and Kiswahili and an audio visual CD describing the prevailing situation and actions that need to be taken have been prepared with the specific aim of promoting more constructive cooperation in and around the LAPSSET Project.

SURVEY METHODOLOGY

Desk review was undertaken to analyze and document the outputs and outcomes of KITUO CHA SHERIA Project and the status of the LAPPSET project in Lamu. Extensive site visits to the study areas of Mashundwani, Kipungani, Kililana, Kiongwe Mjini, Bori, Mtangawanda, Shela, Faza, Matondoni, Siu and Pate were made to observe and record audio visually what has happened. Four Focus Group Discussions attended by a total 34 participants comprising of 10 women and twenty four men representing the Save Lamu/Wanaharakati coalition, Kililana Farmers, Lamu West Marine Users, Duty bearers/Governing Authority and Lamu Terrestrial Users of Matondoni were also conducted. These were used to facilitate the understanding of the current and future impact of the LAPSSET Project, best practices on natural resource management and document demands of the community with regards to possible solutions to redress widespread systematic human rights violations. An induction/capacity building training for 36 data collectors was held and a questionnaire survey administered in 32 different locations¹ of Lamu County. Consent was sought and given for video and audio recording of the interviews.

¹ Amu, Bahari, Basuba, Bargoni, Bori, Digo Road, Gadani, Faza, Hindi, Hidabo, Kiongwe Mjini, Kashmir, Kandahar, Kililana, Kipungani, Kiunga, Langoni, Mashundwani, Matondoni, Milimani, Mkomani, Mkunumbi, Mokowe, Mpeketoni, Msufini, Mtangawanda, Pate, Shela, Siyu, Shindoni, Witu, Wiyoni

PART B: REVIEW OF KITUO CHA SHERIA LAPSSET PROJECT OUTPUTS AND OUTCOMES

LAMU PROJECT NEEDS ASSESSMENT

A five day rapid needs assessment on the nature of violations relating to natural resource management that are occurring in the region was carried out by KITUO CHA SHERIA targeting the general population with a special effort made to reach out to the marginalized communities. The findings that emerged from this rapid needs assessment indicate that despite the potential negative impact of LAPSSET communities in and around Lamu are not opposed to the project. However their main sources of concern include lack of adequate information, consultation and participatory decision making, lack of mitigation measures that can be used to allay environmental degradation, loss of land, forceful evictions and displacement which is especially evident in the Kilalana area. Other sources of concern include loss of fishing grounds and landing sites, closure of the Mkanda route, Increased conflict for resources, marginalization of the local people with regards to direct employment at the Port, loss of culture, loss of key sources of livelihood such as fishing, tourism and mangrove harvesting, timely management of impacts and the seeming inability of the Government of Kenya in addressing these basic concerns

LAMU WORKSHOP AND LEGAL CLINIC

A two day capacity building forum & legal aid clinic that brought together 20 participants drawn from AJWS partners and local communities. The main focus was land ownership, property management and natural

resource management. This activity built the capacity of the community on various branches of law specifically land and environmental laws; discovered and documented some violations that are currently taking place within the County due to the implementation of the LAPPSET project; provided a forum for the community to raise awareness of their concerns and highlighted KITUO CHA SHERIA'S role of providing legal assistance to the community on violations that may arise or have arisen from the LAPPSET project. Land reforms and legislation, trends in public interest litigation and environmental law and principles and the ESIA report for the construction of three berths in Lamu Port were discussed.

LAMU PARALEGAL TRAINING

This three day Lamu Para Legal training was attended by 21 paralegals. It covered basics of Para legalism and access to justice, introduction to law, family law and children's rights, Land laws, devolution and labour laws. At this forum participants indicated their need for facilities and resources that can be used to enhance their engagement with the community, refresher courses, technical support, legal recognition and a policy framework that would inform and govern their work.

TRAINING OF HUMAN RIGHTS MONITORS

The two day Human Rights Monitors training was attended by 20 participants

drawn from 19 different community based organisations². It covered introduction to human rights concepts, monitoring of human rights, identification and prioritization of efforts regarding human rights violations, information gathering process, statement taking, verification analysis and evaluation, following up, reporting and mapping of operations. The outcomes for this activity include an enhancement in the rapid response to human rights violations and monitoring visits to affected communities.



Paralegals trained by Kituo Cha Sheria

2 SAVE Lamu, Lamu Youth Alliance, Lamu Ladies Forum, Amani Women group, Sauti ya Wanawake, Kenya Muslim Youth Association, KICOZI programme group on health and Environment, Mpe Mola people with disabilities, Lamu Community Education Trust Fund, Kililana Farmers Association, Tawakul Bombay Youth Bunge, Rasini Fishermen Association, Lamu BMU, Kiunga Community Elders Association, Kiwayu Community Elders Association, Taufik Women group, Youth Alliance for Rural Development, Kitozi Programme and Aweer Community Association



Human Rights Monitors Discussion Groups



Highway to LAPSSET passing through Kiongoni and Kililani farms

PART C: REVIEW OF THE LAMU PORT SOUTHERN SUDAN ETHIOPIA TRANSPORT CORRIDOR (LAPSSET) PROJECT

BACKGROUND

The Government of Kenya in a bid to improve the livelihoods of 40% of its population -15 million people of North Eastern, Eastern, Rift Valley and the Coast has commenced the implementation of the Lamu Port, South Sudan, and Ethiopia Transport Corridor Project - LAPSSET. A development project defined under the Kenya Vision 2030 national development policy blue print; one that will cost an estimated US Dollars 29.24 billion (KES 2.5 trillion) and covers half the country's land space. A government agency, the Lamu Port Southern Sudan Transport Development Authority (LCDA) was established in 2013 to manage the project on behalf of the Kenyan government.

Lamu Port which will occupy 1,000 acres is a key pull factor for all the LAPSSET Corridor project components. It is envisioned that the development of the first three berths at the Mangrove covered island of Shaka la Paye and the Garsen-Lamu Road will trigger the subsequent development of all the other critical systems such as the oil pipeline from Lamu Port to South Sudan and the railway which feeds into and out of the Port; the resort city at Ras Kitau, oil refinery at Bargoni; airport at Manda bay, Bargoni and Mkunumbi, highway from Lamu through Isiolo to South Sudan to Ethiopia. Special Economic Zones or industrial park allotted 7,000 hectares will comprise of a Disney World-type amusement park on Manda Island, a cultural and IT centre

in Mkunumbi, a fisherman's wharf in Kiongwe, a convention centre in Ndau and a port city, which the planners refer to as the "metropolis," covering 647 km², or slightly smaller than Nairobi city's land mass.

Project activities that have already taken place include the construction of the Lamu Port offices, the power station, police post, clearing and stripping for the access road, lengthening of the Manda runway from 1.1Km to 2.3Km, improvement works on the Manda terminal building, construction of a parallel taxiway and aircraft apron.

IMPACT

- The initial construction phase of the port will cause the destruction of 2 hectares of Mangrove at the Manda Bay area and from Mkanda channel to Dodori Creek. This phase will destroy a critical habitat for a variety of fish species, invertebrates and bird life; it will also destroy a line of defense against shoreline erosion and an important carbon sink increasing green house gas emissions that cause global warming.
- The port located in the middle of the Mkanda Channel will lead to the closure of a major highway for all traffic to and from the islands of the Lamu Archipelago. A good analogy to closing this channel is like closing the Likoni ferry crossing because of the Mombasa Port.
- Destruction of an ancient burial site and mosque ruins has already taken place due to the clearing and stripping for the port access road at Kililana.
- There is ongoing displacement of people. In total The Ministry

of Lands estimates that 60,000 people will be displaced by the LAPSSET project representing more than half the county's population compounded by the increase of the population of Lamu to 1.25 Million (more than the population of Mombasa town) which if not addressed in a timely manner will exacerbate conflict for scarce resources.

- Irregular and fraudulent allocation/procurement of land that includes allocations of 13 out of the 21 berths of the Lamu Port and the controversial procurement of land meant for the port in Magogoni area.
- Protracted litigation due to tendering issues, such as those surrounding the coal powered plant.
- Interference with fish breeding sites and balance of the marine ecosystem at places such as the Manda Bay and the complete destruction of the coral reef at Iweni Conservation area due to logging activities, clearing of mangroves, introduction of pollutants from LAPSSET related industrial activity, large sea vessels, Introduction of the shark specie and dredging activities.
- Loss of traditional forest lands, sea routes, fishing grounds and landing sites will lead to the cessation of traditional means of livelihood.
- Forceful evictions; restriction to ever shrinking lands, denial of access to forests and farm lands, lack of compensation plans for loss of valuable forest trees, farm lands and fishing sites and lack of capacity building programmes for assimilation into main stream society.

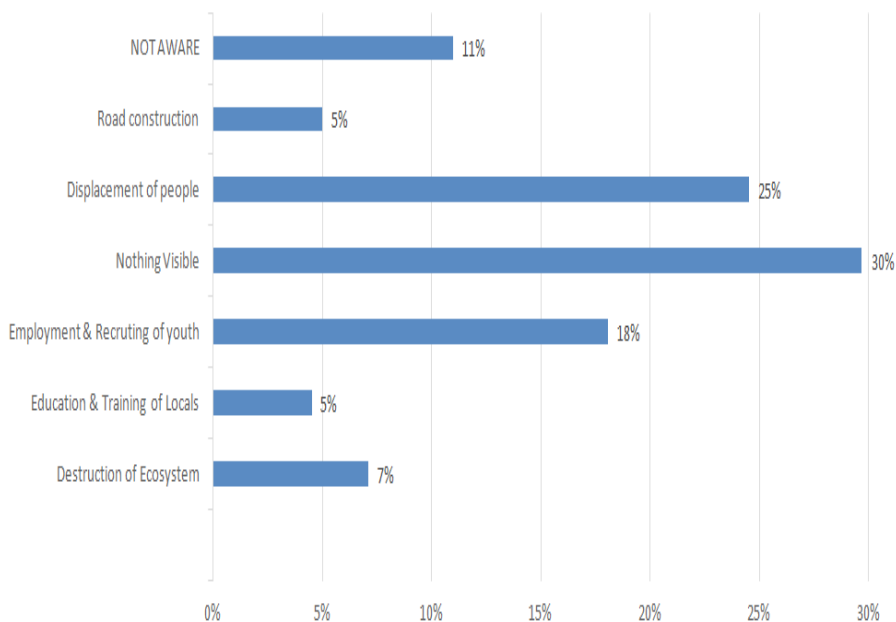
- Members of initial list of beneficiaries were deemed credit worthy and have gone ahead to procure loans from local banks only to have the list revoked. The same impact is being felt by some of the companies whose title deeds are amongst those revoked by presidential decree.



Clearing and Stripping at Kiongoni for the C112

PART D: BASELINE SURVEY FINDINGS

In terms of **demographics**, 62% of the baseline survey respondents were men which is as expected considering Lamu's conservative culture and the fact that this study in part revolves around land issues which tend to be male centered. In the area of **information** regarding the LAPSSET Project and its status 88% of respondents are aware of the LAPSSET Project although the listing of its various components was done with difficulty. This points to the extent of violation of the right to information



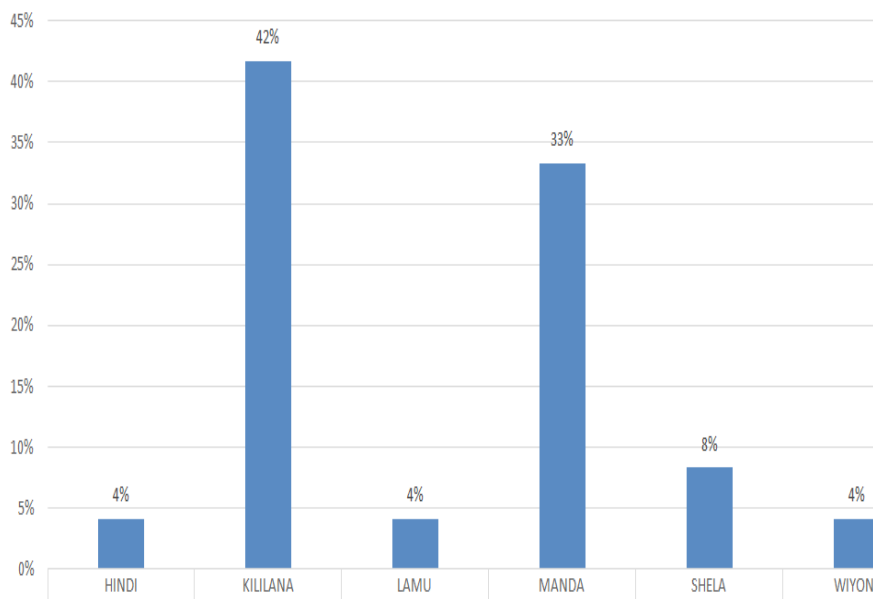
Current status of the LAPSET Project

In the area of **human, land and environmental rights knowledge and awareness**, respondents are able to name a number of basic human rights but gave low priority to rights that would assist them meet their strategic needs. Respondents made little differentiation between general human rights and **rights specific to land and environment** and made no reference to legislation, policies, conventions, charters on human, land and environmental rights. This is underscored by the fact that the majority of the respondents who are not conversant with the English language, report never having attended human, land and environmental rights training which means the transfer of knowledge to the grass roots by those who do attend such trainings needs to be facilitated through some form of policy framework that govern their work if the requisite

benchmarks are to be attained.

As far as **best practices and natural resource management** is concerned it emerged that only one stakeholders meeting has been held and even then it did not target affected communities. The Lamu Port Steering Committee is said to have had a bloated membership, not representative of the communities neither did it have any decision making powers. The manner in which it was constituted (days before the official launch of LAPSSET) and its short six months tenure raised many questions. The selection of the first batch of 200 youth for the 1, 000 scholarship scheme appears to be in dispute since the first list drawn by the Lamu Port Steering Committee has been ignored and a repeat exercise was undertaken without consultation by the County Public Service Board.

With regards to awareness of **violations** 53% of the respondents confirmed that they were aware of violations but when asked whether any of these violations were specifically caused by the LAPSSET Project only 36% of the respondents gave an affirmative answer while 48% declined to respond. Curiously enough all the respondents seemed to have an idea as to whether a violation impacted a group or individual with 35 of them presenting compelling stories of violations. Land injustice was cited as the most prominent violation while lack of information and lack participation fared equally. Other violations that were mentioned included insecurity or to use a better term conflict, environmental destruction and discrimination.



Distribution of violations within affected areas.

Advocacy, lobbying and public interest litigation are areas where respondents seemed to have the greatest difficulty which ranged from lack of understanding of the concepts leading to the formulation of some inappropriate responses intended to overcome the obstacles met. There is however some evidence of understanding aspects of the **democratic process** such as participation and involvement, but in practice, these parameters and others such as consultation and reporting back to appropriate constituencies, delegation and general effective group leadership are not undertaken. A case in point is the inappropriate response for the call for assistance in the removal of governmental and non governmental agencies that are deemed partisan. Yet on the other hand the call to have the list of names for those slated for compensation

in Kililana replaced with a genuine one drawn by community members and posted at the Mkunguni Square for validation was an appropriate response. However the community members were unable to define participatory, advocacy and lobbying strategies that would back this call to action. . There also appeared to be some form of ‘fatigue’ among community members who claim the only benefit they get from attending various forums deliberating on issues around the LAPSSET Project is the bottle of soda they drink at the end . A strategic plan aimed at instilling the ethos of democratic processes and dissemination of outcomes of forums needs to be drawn and shared with the community.

Participants also listed a number of **obstacles** they encountered while trying to exercise their rights and solutions for overcoming the obstacles. The obstacles ranged from material obstacles such as lack of resources to institute or continue with legal proceedings and conceptual obstacles such as misunderstanding, lack of cooperation, corruption, discrimination and lack of access and faith in the judicial system, illiteracy, lack of knowledge of where to seek for assistance and heavy reliance on seemingly inept government institutions. Although there was general agreement that Alternative Dispute Resolution (ADR) mechanisms did exist most of the proffered solutions tended to pass the responsibility of redressing the violations to the Village elders, County Government and National Government officials who in many cases were also identified as the alleged perpetrators of the violations.

There is an urgent need for **Capacity building programmes** targeting community members at grass root levels not just the ‘re-cycled elite’ located within Lamu town and its environs. The Modules in human, land, natural resource management and environmental Rights, gender, democracy, advocacy

and lobbying, ADR and Conflict management should be simple and taught in the local Kiswahili dialect. Ideally these modules should include documentaries that depict local case studies to demonstrate understanding or lack of understanding, effective practice or ineffective practice, promotion or violation of each of the rights concepts, and provide for the exploration of personal and group conduct to uphold the concept in order to pre-empt violation or uphold it when violation has occurred. Exercises should also be held that serve to operationalize human rights, gender, democracy, advocacy and lobbying, public interest litigation, ADR and conflict resolution at the grass root levels.

PART E: LEGAL ANALYSIS AND EXISTING GAPS IN LAW AND POLICY THAT IMPACT ON THE LAPSSET PROJECT

NATIONAL LAWS

1. Constitution of Kenya 2010

The Constitution of Kenya 2010 embodies **social-Economic rights** which place a positive obligation upon the Government of Kenya to enact legislation, policy or any other measure that will not violate the same. It also guarantees every person's **right to own property** and that whereas the LAPSSET project corridor is being implemented for public purpose or in public interest prompt; just compensation must be made and that any person who has interest or has a right over any property along the LAPSSET Corridor must be given the right to access a Court of Law. The 2010 Constitution also endeavours to achieve security of **land rights** by establishing and strengthening the functions of the National Land Commission which is important for the LAPSSET Project because land is one of its major factors of production. **The**

right to information is a constitutional one which implies that access to information regarding the LAPSSET project especially for those living along the Corridor because they are the most affected must be guaranteed. Article 69(1) (d) of the Constitution of Kenya encourages **public participation** in the management, protection and conservation of the environment while Article 69(1) (h) of the Constitution requires that oil revenues should be used to develop local livelihoods for optimal production. This implies that rather than displace the fisheries sector, oil revenues can be employed towards capacity building of the artisanal fisher-folk towards exploiting the presently under-utilized fishing zones. The 2010 Constitution is unique because it embodies **national values and principles** such as inclusiveness, good governance, non discrimination, transparency and accountability that bind both levels of Government, all state organs, state officers and all public officers inherent for the successful implementation of the LAPSSET Project. The Constitution also guarantees **the right to a clean and healthy environment** and to have the environment protected for the benefit of the present and future generations. It is the onus of the Government to therefore ensure that LAPSSET does not negatively impact on the environment and if such environmental degradation should occur then mitigating and re generation measures must be in place. Under the 2010 Constitution the rules for *locus standi* have also been relaxed allowing for **Public interest litigation**. The Constitution of Kenya 2010 embodies the **Bill of Rights** under Chapter 4. Right as under the Bill of Rights can broadly be categorized into two: Civil & Political Rights and Social-Economic Rights.

In March 2012 the Save Lamu coalition with over 200 community

members held a public vigil and demonstration citing the lack of information, consultation, and mitigation with the implementation of the proposed Lamu port. The group was denied the right to assemble and picket but they did hold a two hour prayer meeting, followed by a demonstration through Lamu town where they sang the Kenya national anthem and chanted “Haki Yetu”-“our rights”.



Save Lamu Coalition Demonstration-(Source Save Lamu website)

2. The community land bill 2013³

This is an Act of parliament to give effect to Article 63(5) of the Constitution; to provide for the recognition, protection, management and administration of community land; to establish and define the powers of Community Land Boards and management committees, to provide for the powers of county governments in relation to unregistered community land and for connected matters. However this proposed law requires some refinement especially where

³ Published on *Kenya Gazette Supplement No. 152 (Senate Bills No.11) 1 November 2013*, for introduction into the Senate

- It intends to incorporate the community land management committees as legal entities instead of making the community ‘the indivisible collective entity’ which is contrary to the constitutional approach of vesting legal rights directly to the community.
- It seeks to appoint a separate registrar for community land⁴ which contravenes the Constitutional support to unify registration of all categories of land under the chief land registrar.
- It requires community land management committee members to be those who “live in the land”⁵ because many members of a community could have legitimate reasons for not being ordinarily resident on the land.

3. Land Act No. 6 of 2012⁶

The Land Act provides for the procedure to be followed during compulsory acquisition of land by the Government⁷ and the just compensation which should be paid promptly and in full to all persons whose interest in land has been affected.⁸

4. Land Registration Act, 2012

Under the Land Registration Act, the proof of title of any proprietor of land is the Certificate of Title.⁹ The State should consider this provision

4 The Community Land Bill 2013, s 5

5 The Community Land Bill 2013, s 15(2)

6 This is an Act of Parliament to give effect to Article 68 of the Constitution

7 Land Act, 2012, s 107

8 Ibid, s 111

9 Land Registration Act, 2012, s 26(1)

to ensure that in case of compulsory acquisition of any land along the LAPSSET Corridor, only the rightful owners are in possession of Certificate of Titles and therefore compensated.

5. National Land Commission Act, 2012

This is an Act of Parliament that makes further provision for the functions and powers of the National Land Commission; that gives effect to the objects and principles of devolved government in land management and administration. It is worthy to note that the LAPSSET feasibility study directed that the boundary of the Lamu port be enacted into the National Land Bill. It would have been prudent therefore for the Government of Kenya to wait until such a time for the port land boundary had been clearly defined in this way before initiating the project. Not having done so reveals suspicious motives and serves to perpetuate the already sensitive nature of land tenure insecurity in the area.

6. The Environmental Management and Co-ordination Act, 1998

This Act Provides for the right to a clean and healthy environment¹⁰ and licensing provision for the generation, disposal and transportation of wastes.¹¹ The Act also establishes the National Environmental Management Authority (NEMA) which *inter alia* establishes and reviews land use guidelines and identifies projects and programmes on which environmental audit or environmental monitoring must be conducted. This is a command and control legislation to ensure due to the size of

10 The Environmental Management and Co-ordination Act, 1998, s 2

11 Ibid, s 88 & 89

the LAPSSET Project appropriate licences are only issued against strict adherence to regulations.

7. The Prevention, Protection and Assistance to Internally Displaced Persons and Affected Communities Act

This Act Defines IDP's among other persons as persons internally displaced by development projects including those forcibly evicted, who remain without proper relocation and sustainable re-integrations.¹² The state therefore has duty to ensure effective protection of any person displaced by the LAPSSET Project.

8. Wakf Land

The Wakf Commissions Act was enacted in 1957 which established The Wakf Commission that owns properties in the former Coast Province including pieces of land in Lamu. However these lands face challenges such as lack of proper institutional framework to manage the properties, lack of political good will and the issue of land grabbing where Wakf lands have been grabbed or illegally allocated. The LAPSSET project needs to be wary of issues concerning Wakf lands in Lamu so as to prevent protracted litigation.

9. Customary law(s)

Customary law can be applied in relation to land rights, marriage, burial rights, custody and maintenance of children, religious activities among others so long as they are not inconsistent with the Constitution. The

¹² Ibid, s 6

culture of the people living along the LAPSSET project should therefore be promoted and respected as long as it is not inconsistent with the constitution. Access to shrines and other customary worship centres and their decimation should not occur due to LAPSSET. Most of the people living along the LAPSSET corridor in Lamu are Bantus' who ascribe to the Islamic faith therefore Shari a Law and Bantu customary law will apply where applicable.



Some of Kiongoni farmers who farms have been taken by the project

INTERNATIONAL LAWS

1. The United Nations Declaration on Human Rights (UNDHR) protects all human rights is a soft Law that has acquired the status of *jus cogens*.[□]
2. International Convention on Economic, social and Cultural Rights (ICCPR) is a multilateral treaty adopted by the UN General Assembly form the International Bill of Rights.
3. The United Nations Guiding Principles on Business and Human Rights (UNGPHR) is a global standard for preventing and addressing the risk of adverse impacts on human rights linked to business activity.
4. The United Nations Guiding Principles on Internally Displaced Persons (IDPs) makes provision with respect to the protection of IDPs.
5. African Charter on Human and Peoples Rights requires members such as Kenya to protect, promote fulfil and respect all human rights
6. The AU Convention for the Protection and Assistance of Internally Displaced Persons in Africa t requires State Parties to refrain from, prohibiting and preventing arbitrary displacement of populations

7. The Vienna Convention of 1985 requires States to take measures to reduce the effects of pollution.
8. Food and Agriculture Organization (FAO): Voluntary Guidelines on the Responsible Governance of Tenure of Land Fisheries and Forests.

That is consistent with other international law instruments such as the Millennium Development Goals (MDGs) that address human rights and tenure rights

POLICIES

1. The Kenya Vision 2030 strategy which reframes Kenya government stance towards the areas that have remained outside national development processes due to low economic potential.
2. The National Land Policy obligates the government to facilitate benefit sharing and co-management processes for the sustainable use of natural resources.
3. The National Water Policy regulates the demarcation of protected areas.
4. The Housing Policy facilitates the provision of adequate shelter and a healthy living environment at an affordable cost to all socio-economic groups in Kenya in order to foster sustainable human settlements.
5. The National Energy Policy seeks to facilitate for the provision of clean, sustainable, affordable, competitive, reliable and secure energy services at the least cost while protecting the environment
6. Integrated National Transport Policy (covering Roads, Railways, Ports Airports) whose main purpose of this policy is to develop,

operate and maintain an efficient, cost effective, safe, secure and integrated transport system that links the transport policy with other sectoral policies.

7. Fisheries Policy that seeks to promote responsible and sustainable utilization of fishery resources taking into account environmental concerns while encouraging efficient and sustainable investment in the Kenya fishery sector.

LATEST JUDICIARY DECISIONS THAT MAY IMPACT ON LAPSSET

1. John Nakhabi Okelo v Obura Nelson [2013] Eklr

The learned Judge S. M. Kibunja determined that the Magistrates' courts have jurisdiction to hear and determine pending matters on environment, use and occupation of, and title to land , matters transferred from the defunct land Disputes Tribunals and new matters subject to their pecuniary jurisdiction by the time of operationalization of the Environment and Land Courts. This means that all pending matters pertaining to the LAPSSET Project will not need to be transferred.

2. Attorney General & 6 others v Mohamed Balala & 11 others [2014] Eklr

In this appeal the precondition of presidential consent before the transfer of 1st and 2nd row beach plots can be effected was found to be illegal, discriminative and therefore null and void. It was also in direct contravention to Article 40 of the Constitution of Kenya 2010 that deals

with Protection of the Right to Own Property allows the owner of land to use, transfer, enjoy and control his/her private property. This Court of Appeal ruling now gives landowners within the LAPSSET Corridor the freedom to conduct transactions on their property without the tedious and lengthy land procedures experienced at land offices.

3. John Gitonga Gachuhi & 4 Others v Commissioner of lands & 5 others [2013]Eklr

This petition relates to compulsory acquisition by the Government, for the construction of the Nairobi Southern by-pass, of certain parcels of land owned by the petitioners. It is the petitioners' contention that the Government has compulsorily acquired their land without paying compensation. Since the ownership of the suit properties were not disputed, the court went ahead to find and hold that the petitioners were entitled to compensation as a result of the acquisition intended to provide for the Nairobi Southern By-pass.

PART F: RECOMMENDATIONS

ADVOCACY:

1. Development of a comprehensive LAPSSET covenant between all the stakeholders. This should entail a communication strategy, information dissemination strategy, affirmative action, equalization models and benefit sharing standards. The covenant should also incorporate a community fund for the benefit of local residents, employment quotas; part ownership schemes and capacity building programmes.
2. Empowerment of the community on human and natural resource rights as enshrined in the Constitution of Kenya and other laws through sensitization meetings, public forums or capacity building programs aimed at adults whose native language is Kiswahili.

3. Compensation to be effected in a transparent manner, in good faith (where title documents are not in place), in line with market prices and taking into account inflation rates and dates of appropriation. A call made during the course of this survey was for the list of beneficiaries be publicly shared and discussed.
4. Undertaking of a forensic audit of land ownership and use for the entire county more so where locals are alleging violation of land rights due to the LAPSET Project. Documentation and recognition of traditional land tenure systems especially where land has not been adjudicated. Documentation and awareness raising with regards to the extent of Government Land (GL)
5. Facilitating access to Justice by advocating for the relevant judiciary services to be brought to Lamu.
6. Technical assistance and capacity building of paralegals through a participatory developed work framework, drafting of simple documents, explanation of the law to the community in simple understandable terms and referring cases of violations.
7. Awareness rising of and use of methods such as arbitration, mediation and traditional dispute resolution mechanisms that is faster, cheaper and easily accessible to the community.
8. Facilitation of development of a proactive government policy to protect minority communities and preserve the indigenous cultures
9. Compelling National Government and County Governments to put in place mechanisms that facilitate access to forests, establishment of facilitative infrastructure such as purchase and training of the fisher-folk in operating bigger fishing vessels, cooling plants, canning factories to support existing cottage industries and provide alternative livelihood options for the

affected communities.

10. Organization at local and national levels of indigenous communities and groups that have not done so that they can immediately start addressing the challenges they face.
11. Legal aid clinics to inform persons affected or likely to be affected by the LAPSSET project of their fundamental rights more so the right to approach the Court and encouragement of lawyers to undertake pro bono cases to aid victims of the compelling stories of human rights violations.
12. Engaging of international and regional financial institutions, multi-lateral development banks and development partners involved in the LAPSSET Project to establish and enforce viable grievance redress mechanisms (agency dealing with community complaints) that is legitimate, accessible, predictable, rights compatible, equitable, transparent and to provide necessary social infrastructure before the commencement of any project.
13. Participatory establishment and raising awareness of mitigation & regeneration measures on environmental management, cultural heritage preservation and monitoring plans.
14. Documentation and awareness raising of traditional maritime and natural resource conservation knowledge and expertise.
15. Enactment of the Eviction and Resettlement Guidelines Bill 2012 to provide for protection and redress against unlawful and inhuman eviction; and the refinement and enactment of The Community Land Bill so as to provide the legal framework for the use, transfer and management of Lamu County's community land in line with the Constitution.
16. Development of a policy document that would impose strict penalties on multinational corporations that do not comply with the framework on environmental conservation including forfeiture of licenses and establishment of compensatory measures such as an insurance fund where destruction of the environment can be

charged and insured against

17. Addressing of recurrent and intensifying conflict which requires genuine consultation and participation of Indigenous Peoples through structures that are truly representative of their needs and aspirations.
18. Where necessary targeted international support through the Africa Court on Human and Peoples Rights , International law commission and other international organisations to compliment local efforts for securing and protecting human rights.
19. Advocate for mainstreaming of the management of marine ecosystems, coastal forests and mangroves into land use planning.
20. Advocacy for a multi-Sectoral approach in managing marine ecosystems, coastal and mangrove forest areas to guide and regulate the multiple activities that will be carried out in these habitats.
21. Development and implementation of site specific management plans for affected marine ecosystems terrestrial forests and mangroves;
22. Undertaking of initiatives aimed at the restoration of degraded marine ecosystems, coastal terrestrial forests and mangroves.
23. Strengthening of the County Government enforcement of by-laws for regulating environmental degradation and waste management
24. Advocacy against the complete closure of Mkanda channel.
25. Advocacy for LAPSSET tendering processes to be in line with Public Procurement Oversight Authority regulations to facilitate competitive bidding, bar ring fencing to avoid long winded litigation.

PUBLIC INTEREST LITIGATION:

1. Facilitating access to information regarding the LAPSSET Project by compelling the dissemination of the ESIA, The Port Feasibility study, The Land survey report to the affected communities and Kenyan citizenry in simplified versions translated into local languages.
2. Fast-tracking and sharing of the Resettlement Action Plan (RAP) so that residents who have been forced and those who will be forced to abandon their homes due to the various components of the LAPSSET project can be resettle in a timely manner and be given appropriate compensation.
3. Demarcation of all land in Lamu including the definition and awareness raising of the extent of Government Land (GL) in the county.
4. Freezing of all compensation efforts until the National Land Commission investigates and addresses all questionable land allocations and land rights abuses followed by demarcation and the production of a beneficiary list prepared by community members living in the various affected areas or non partisan organizations.
5. Proper identification and assessment of the cumulative indirect impacts and full negative impacts of all the areas impacted by LAPSSET plus a detailed description of mitigation measures with clear responsibilities and timelines vide an Environmental Impact Assessment (EIA), Strategic Environmental Assessment (SEA), archaeological assessment and Heritage Impact Assessment.
6. Extension of tenure, participatory re- constitution of members, funding and development of participation framework for the LAPSSET steering committee.
7. Filing of suits against individuals and corporations who have or

will encroach ecologically sensitive areas, deny the indigenous communities land user rights or have misuse of state powers to gain land without consultation or compensation committing fraudulent land transactions.

8. Ensuring the protection of national fishing zones by gazetting fisheries resources from decimation by indiscriminate industrial and shipping activities. Government support to indigenous fisherpersons to adjust to more stringent fishing methods when forced to relocate from the more sheltered fishing zones to the open sea.
9. Setting minimum standard for public engagement in so far as the LAPSSET project is concerned.
10. Compelling NEMA not to issue licenses where requisite steps in impact assessments have been skipped and to put in place adequate structures for monitoring and redressing environmental degradation and for holding violators to account.

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A well at the junction on the way to LAPSSET and LAMU