

**C – Reports and Studies on
Tenure in Lamu**

THE COVETED BEACHES: LAND & RESOURCE TENURE ISSUES ON KIWAYU ISLAND

KENYA SECURE PROJECT TENURE ASSESSMENT,
DECEMBER 3–7, 2009

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The author's views expressed in this publication do not necessarily reflect the views of the United States Agency for International Development or the United States Government.

EXECUTIVE SUMMARY

INTRODUCTION

Kiwayu is a hilly island with a dramatic beach, deep mangrove stands, and coral reefs that are among the richest in the Lamu Archipelago. The island is only 12 miles long and half a mile wide, yet it has deep significance for people in the Lamu Archipelago. Kiwayu's two villages are believed to have been founded only within the last century, but one informant called Kiwayu "the mother of these islands."

Kiwayu is the only permanently inhabited island in the Kiunga Marine National Reserve. The island's two villages, Cha-Nde and Cha-Ndani, have approximately 80 and 800 inhabitants respectively. Two high-end but simply constructed eco-resorts thrive on the island, and several campgrounds, most of which are owned by local Bajunis, accommodate visitors who travel by dhow or speedboat from Lamu. The World Wildlife Fund (WWF) has pioneered a successful project on Kiwayu, employing local women who use discarded rubber sandals that wash up with the tide to make cut-outs of fish and animals. The cut-outs are strung together to make handbags, lampshades, hair clips, necklaces, toys and curtains. These items are sold on Kiwayu Island, in the larger cities of Malindi and Mombasa, and as far afield as the U.S. and London. This project, which also operates on nearby Ndau, Mkokoni, and Chandani, helps protect sea turtle nesting grounds by clearing the beaches of flotsam that could be ingested by turtles.

It is no surprise, given Kiwayu's appeal, that 41 plots have been sold there, virtually all under questionable circumstances. But speculators and investors are not the only people who recognize the island's value. For captains and crews from Lamu, a trip to Kiwayu is the highest-end activity they can offer clients, as well as a place they visit on their own, after the tourist season ends.

SECURE PROJECT

The Securing Rights to Land and Natural Resources for Biodiversity and Livelihood in the North Coast (SECURE) Project¹ provides support to the Kenyan Ministry of Lands (MoL) and the Kenya Wildlife Service (KWS) to strengthen land and resource rights of indigenous coastal communities along the northeast coast of Kenya to improve livelihoods, promote sustainable natural resource management, and support biodiversity conservation. The SECURE Project area incorporates pristine coastal forest, the largest mangrove forests in Kenya, a number of vulnerable and endangered species, and a rich diversity of terrestrial and sea birds. The northeast coastal region of Kenya is home to three national reserves and one UNESCO biosphere reserve. The three national reserves are the Kiunga Marine National Reserve (2500 km²), the Boni National Reserve (1339 km²), and the Doodori National Reserve (877 km²). In 1980, UNESCO's Man in the Biosphere program recognized the importance of the KMNR and its surroundings by designating the 600km² Kiunga Biosphere Reserve, which opened a broader range of opportunities for scientific research and co-management.

The SECURE project is being implemented in four pilot communities, all of which are administratively located within Kenya's Lamu East District: Kiwayu Island; Kiunga; Mkokoni; and the village of Mangai, which is located within the Boni-Doodori Corridor. Kiwayu Island, the first pilot community studied by the SECURE team, is located within the boundaries of the Kiunga Marine National Reserve (KMNR). All other sites are in the vicinity of at least one of the three reserves.

¹ Administered by ARD, Inc. under the Property Rights and Resource (PRRG) Task Order for the Prosperity, Livelihoods, and Conserving Ecosystems (PLACE) Indefinite Quantity Contract.

THE KIWAYU TENURE ASSESSMENT

The SECURE project is using Participatory Rural Appraisal/Rapid Rural Appraisal (PRA/RRA) methods in the pilot sites to build awareness of tenure realities in the field in order to meet the project objectives. The key objectives of the PRA/RRA (or tenure assessment) are to understand and document the customary and statutory information on land and resource tenure regimes (including identification of the primary micro-ecological zones and tenure niches), identify land and resource-use patterns, gain knowledge of the formal and informal institutions of land and resource governance, identify key tenure and resource management issues, and develop strategies for improving land and resource governance, promoting sustainable resource use and enhancing local livelihoods in the pilot communities.

This first tenure assessment was carried out on Kiwayu Island from December 3–7, 2009 with an interdisciplinary team of government, civil society, village representatives, and project staff. Government agencies representatives included the Ministry of Land (MoL), KWS, Kenya Forest Service (KFS), and the Department of Fisheries (DoF). This assessment also served as a training ground for trainers. In particular, it was used to strengthen the skills of the team members to carry out PRA/RRAs in the other pilot sites. A follow-on visit to Kiwayu by selected team members in January 21–23, 2010 filled gaps from the original PRA/RRA.

MAJOR FINDINGS FROM THE KIWAYU TENURE ASSESSMENT

High Land Tenure Insecurity

Findings from the PRA/RRA confirm earlier indications that land tenure insecurity is very high for Kiwayu residents. Speculative pressures from the international tourism industry are bringing investors, developers, and speculators to Kiwayu and throughout the Lamu region, including other parts of KMNr. Beginning in the early 1990s, some residents have been on the losing side of ambiguous land deals with outside investors, and others suspect that their lands may have been already sold off to outsiders without their knowledge. Some islanders knowingly participated in suspect land deals that dispossessed certain households in both Cha-Nde and Cha-Ndani villages, and as a result, tensions in Kiwayu are high. Furthermore, the planned 1.23 trillion, 1,000-acre Lamu port development with its accompanying roads, international airport, refinery, pipeline, and railroads to Ethiopia and South Sudan are spurring land speculation by developers, real estate agents, hotel operators, and other investors. It is anticipated that their attention is likely to turn to Kiwayu. This intensification of development pressure will pose even greater risks to customary rights of local communities.

The government of Kenya has not yet recognized customary tenure regimes on Kiwayu. Kiwayu residents lost their customary rights to land and resources when the government included the island in Kiunga Marine National Reserve in 1979. Even though people were not forced to leave the island, the gazettelement of the reserve did not include any provision for the communities living there. The new Wildlife bill contains provisions designed to address that omission.

Resource Tenure Insecurity

Coastal and marine fisheries, an important source of income for most families, operate largely as an open access resource around Kiwayu. Freshwater use is unregulated, and shallow aquifers are threatened by growing demands from lodges and small hotels. Pressures on mangroves and coastal and marine resources are increasing with rising populations and increased fishing activity by Kiwayu and other villages.

On the more positive note, Kiwayu residents appear to be establishing common property resource management arrangements. For instance, new rules are being put in place to address increasing numbers of fisherman and to create greater exclusive use over important coastal fisheries south of the island. Similarly, in

collaboration with the DoF, newly formed Beach Management Units (BMUs) are providing greater controls over the coral reef off the west coast of Kiwayu.

Ambiguous Land Allocations

Speculative pressures originating from the international tourism industry are bringing developers, investors and speculators to Kiwayu and throughout the Lamu region, including other parts of KMNR. Beginning in the early 1990s, some residents have been on the losing side of ambiguous land deals with outside investors, and others are suspicious that their lands may have been already sold off to outsiders without their knowledge. Some islanders participated knowingly in suspect land deals that dispossessed certain households in the village, and as a result, tensions in Kiwayu are high.

Furthermore, the planned 1,000-acre Lamu port development with its subsequent roads, international airport, refinery, pipeline, and railroads to Ethiopia and South Sudan is spurring land speculation by developers, real estate agents, hotel operators, and other investors throughout the region. They are likely to turn their attention to Kiwayu. This poses even greater risks to customary rights of local communities.

Weak Land Administration And Resource Governance Institutions

Local management of land and financial resources is marked by inadequate capacity and transparency. Land and resource governance rests with the council of elders. Once highly regarded by the community, the council has lost credibility as a result of the involvement of its members in dubious land transactions. The Kiwayu Island Welfare Association and Shungwaya Welfare Association, both community-based organizations, are active on the island, but direct land and resource management is outside their purview. On the other hand, Kiwayu residents, in close collaboration with Department of Fisheries, appear to be establishing co-management arrangements especially as regards management of marine resources. Newly formed Beach Management Units (BMUs) are providing greater controls over the coral reefs on the west coast and east coast of Kiwayu. One of the mandates of the BMU is to put in new rules to address increasing numbers of fisherman and to create greater exclusive use over important coastal fisheries south of the island.

Limited Sources of Livelihoods and Income

Coastal and marine fisheries provide an important source of income for most families. Fishing is supplemented by limited subsistence farming activities on the mainland, near the village of Shango. Other commercial activities include boat-building and repair, mangrove-harvesting, shop-keeping and other forms of small trade. Many residents, particularly young men and women, are without jobs

Impacts of Climate Change

Kiwayu residents report that sea level rise linked to climate change is affecting the island. Flooding is occurring in lowland areas. Drought and temperature changes also have affected Kiwayu residents.

RECOMMENDATIONS

Findings from the tenure assessment have implications for land and resource rights formalization, for enhanced tenure security and local livelihoods, and for improved natural resource governance in Kiwayu. This report contains national, provincial, district, and local level recommendations:

1. **Defend The Status Of Kiwayu And Other Islands Within The Kiunga Marine National Reserve.** Kiwayu Island is one of 51 islands contained within the Kiunga Marine National Reserve and by law is a protected area managed by the Kenya Wildlife Service (KWS). Ideally, there should have been no allocation and issuance of titles in the island. In light of the land transactions that have taken place, KWS

should defend the status of Kiwayu as protected from development. KWS and Ministry of Land must work towards reversion of land to KWS.

2. **Pursue Agreement With KWS And Community To Formalize Customary Land Tenure Of Indigenous Residents In Existing Villages.** The new National Lands Policy (NLP) recognizes the rights of vulnerable communities to access land and land-based resources that were lost when national forests and reserves were gazetted. While the indigenous residents of Kiwayu were not displaced by KMNR gazettement, their access to land and land-based resources (as well as marine resources) were restricted. The National Land Policy (NLP) calls for the development of a legislative framework to secure those rights, provide restitution, and support management systems to support sustainability. In the interim, a legal agreement needs to be developed between KWS and MoL to allow for the formalization of land rights of the indigenous populations at Cha Nde and Cha Ndani villages on Kiwayu Island.
3. **Investigate Ambiguous Land Allocations On Kiwayu Island And Other Islands Within The KMNR.** In light of current laws and the new NLP, consultations with MoL-Nairobi and legal counsel are necessary to identify the options for rectifying alleged fraudulent and illegal land sales and leases on Kiwayu and other islands. This is a necessary step toward resolution of overlapping land and resource claims, and formalization of customary rights of the resident community.
4. **Enforce MoL Directives On Freeze Of Land Allocations/Settlements/Adjudications.** In November 2009, in response to a court order, MoL-Nairobi issued an internal order to freeze all land allocations in the coast province until critical tenure issues are resolved. This notice was never widely publicized or communicated to MoL officials working in Lamu districts (East or West) with appropriate direction on enforcement. The MoL should make this freeze order official and make it known to the public. At minimum, the ministry should cease all land settlement activities, including allocations, adjudications, and surveys, that are counterproductive to SECURE project activities in the four pilot communities (Kiwayu Island, Mkokoni, Kiunga, and the Boni-Dodori Corridor).
5. **Implement Land Tenure Formalization Process.** As one of its first steps following this assessment, MoL, in cooperation with the SECURE Project, should initiate a participatory land tenure formalization process on Kiwayu Island based on the principles laid forth in the new NLP. The specific land tenure formalization process used for Kiwayu Island, as well as the other SECURE project pilot communities, will be developed in close consultation with district-level MoL officials, MoL-Nairobi's Land Reform Transformation Unit (LRTU), and other appropriate MoL departments. The land tenure formalization process must include major steps from the current MoL process for formalizing customary rights: Acquisition of Land; Planning, Survey, and Demarcation; Allocation; and Documentation.
6. **Consider Impacts Of Climate Change On Resources, Land Use, And Livelihoods.** The SECURE team, MoL, and the local communities should integrate considerations of climate change into livelihood development strategies and land-use planning. Additional information should be obtained about the potential impacts of climate change in at-risk coastal communities. Storm surges and rising sea levels may affect coastal lands, islands, mangroves, coral reefs, and sea bed grasses. Information collected may also inform the development of relevant sections of the NLP.
7. **Facilitate information exchanges.**
 - *Conduct a public information and awareness campaign:* The Government of Kenya (GoK) has promulgated a new NLP that stresses the importance of respecting customary land rights. Given that the NLP calls for repeal of the Government Land Act and conversion of customary land rights to community tenure, it will have significant implications for Lamu East and West Districts. However, many within the government and the general public are unaware of those NLP provisions that provide security of customary tenure. These provisions and the manner in which the NLP will be implemented in the districts need to be publicized. The NLP should be widely communicated through the media as well

as via local level forums. Copies of the NLP should be made available to local authorities, civil society, and the private sector.

- Obtain title deeds map: The community of Kiwayu places a very high premium on learning about the true nature of both formal and informal land allocations. The first priority for the SECURE project should be to work with the MoL's Director of Surveys in Nairobi to obtain a map of all registered land transactions occurring on the island. The registry index map (RIM) will be critical also in land use planning, identification of overlapping land and resource claims, and dispute resolution. The RIM forms the basis for first registration, and will be critical in determining lands that have already been registered by the MoL. Copies of the RIM of officially recorded deeds should be presented to the community.
 - Strengthen communication between GoK authorities and local communities: The SECURE project has set up working groups at the national, district, and village levels with the intention of strengthening communication between the relevant GoK authorities and agencies, the pilot communities, and other stakeholders. The form and function of these groups needs to be defined with care in order to assure participation of all key stakeholders from the public, private, and civil society. In addition, the SECURE project should set up a strategy to ensure full communication with the villages participating in the four tenure assessments. Regular updates need to be provided to the villages of Cha Nde and Cha Ndani to inform them of the progress with project implementation. The villages are particularly concerned about receiving information on land titles and leases.
 - Conduct a study tour: The community of Kiwayu is trying to determine the best legal way to protect the island from definitive expropriation or sale of lands. The SECURE project may consider organizing study tours to other initiatives around the country involved in registering customary land rights, either through individualization or group/block titles. Such visits could significantly help the community to decide on the pros and cons of different rights registration options. Study tours would require much preparation by the SECURE staff and hosts, but if carried out with representatives of the other pilot sites, they could lead to informed debate following the return of the team.
 - Publicize land situation in Kiwayu: The tenure assessment team discussed with the community the possibilities of preparing a documentary on the land situation facing the communities of Kiwayu Island and/or other pilot sites. A short documentary based on the key findings of this tenure assessment could be a highly effective tool, not only in publicizing the difficult land situation found on islands of high interest for the tourism industry but also to inform the public of actions being undertaken to protect the rights of local communities. Film producers in Kenya certainly possess the technical skills to produce the film, but some outside technical assistance may be needed to help structure the message and content.
8. **Provide Training In Conflict Management And Resolution.** The village representatives of Kiwayu stressed the need for conflict resolution to resolve divisions within the community that have deepened as the result of development pressure. The SECURE Project has included such training in its work plan. The SECURE Project training would: provide information on land and resource rights of resident communities according to statutory law; 2) train personnel from relevant institutions in conflict mitigation, mediation, and resolution, and 3) develop specific curricula that builds upon existing conflict resolution mechanisms and institutions currently present on the island and described in this report.
9. **Strengthen village-level land governance and administration.** Promotion of good governance of village level institutions is viewed by the assessment team as a priority action. The village appears to have difficulty managing land and financial resources due to lack of transparency. The SECURE project also foresaw this need in all the pilot communities and has included relevant training in its work plan. SECURE should work with KWS, with support from the Shungwaya Welfare Association and the

Kibodo Trust, and other nongovernmental organizations if necessary, to provide training in more participatory and transparent governance and administration of village lands, including land transactions and allocations. Training should be provided also on transparency in utilization and governance of community funds.

10. **Establish and strengthen co-management institutions for natural resource governance.** While some institutions already exist, there is much need for strengthening governance of natural resources such as mangroves, fisheries, fresh water, and coastal resources in and around Kiwayu, and generally within and outside of the KMNR. SECURE should facilitate, with participation from KWS, DoF, Kibodo Trust, the World Wildlife Fund, and others if necessary, an effort to strengthen existing local and co-management institutions operating on Kiwayu Island, develop co-management plans through participatory approaches, and strengthen community rights to sustainable use of resources. This will go a long ways in improving resource governance and livelihoods of the resident communities.

DUBIOUS DEALS IN THE DUNES: THE CASE OF MKOKONI

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EXECUTIVE SUMMARY

INTRODUCTION

In early January 2010, a handful of residents of the village of Mkokoni in coastal Kenya noticed surveyors setting up equipment on a stretch of undeveloped beach and associated dunes. Tensions in the community had been growing as outsiders acquired prime beachfront property, raising questions about corruption and backroom deals.

The men rushed back to the village to spread the news. Soon a crowd gathered, words were exchanged, tempers flared. The surveyors packed up their gear and left. The beach regained a measure of peace – temporarily.

The confrontation at Mkokoni was a microcosm of the pervasive land tenure issues facing coastal residents of Kenya, as conflicts intensify between traditional users of land and outside land speculators and developers. The Securing Rights to Land and Natural Resources for Biodiversity and Livelihoods in the North Coast (SECURE) Project was designed as a pilot project in collaboration with USAID and the Government of Kenya (GoK) as the Ministry of Lands (MoL) seeks to implement its Land Reform Support Programme. The Programme is an initiative to strengthen the principles of the recently adopted National Land Policy (NLP) and to promote efficient, sustainable, and equitable land use. The overall aim is to resolve tensions over land tenure in Kenya, where land is intrinsic to both livelihood and identity. SECURE has two missions: securing land and resource rights of indigenous coastal communities, and supporting biodiversity conservation and sustainable natural resource management. The SECURE Project is completed in three stages: assessment, planning, and implementation. This report focuses on results of the SECURE team's assessment in Mkokoni, one of four pilot sites.

Mkokoni is a revealing case study of the land tenure situation in Kenya that spurred conception of the SECURE project. SECURE had already chosen Mkokoni as one of its four pilot project areas before the confrontation in early 2010; after local activists alerted SECURE to the community's concerns, SECURE staff decided to visit Mkokoni sooner than planned in hopes of defusing tensions that threatened to erupt into violence. The Mkokoni Participatory Rural Appraisal/Rapid Rural Appraisal (PRA/RRA) became the second assessment conducted by SECURE. An 18-member team carried out the assessment over a seven-day period, February 6–13, 2010. Carefully selected from the principal partners of the SECURE Project, the multi-disciplinary team was a rich mix of government, civil society, and project personnel, as well as community representatives.

The objectives of the Mkokoni PRA/RRA, in keeping with the SECURE project mandate, were to document and evaluate land and resource tenure realities in the Mkokoni community. The assessment consisted of: i) identifying and classifying the territorial spaces of the island of Mkokoni by micro-ecological zone and documenting their principal natural resources and resource uses; ii) identifying and describing institutions and rules, both formal and informal, governing the management of resources; iii) identifying and understanding key tenure and natural resource management issues on the lands used by the people of Mkokoni; and iv) developing recommendations that might be implemented by the community, civil society, and the GoK, leading to sustainable resource use, rural economic development, and a reduction in resource conflicts.

The assessment team collected mainly primary data. Their methods included semi-structured interviews, focused group discussions, ranking, and participatory exercises that included diagramming, mapping, problem analysis, ranking, and scoring. Key informants included village elders, women and youth leaders, religious leaders, provincial administration officials, Kenya government officials (MoL, Ministry of Fisheries

Development, Kenya Wildlife Service [KWS], and Kenya Forest Service [KFS]), and representatives from civil society organizations.

MAJOR FINDINGS

Land and Resource Tenure Insecurity

The Mkokoni PRA tenure assessment findings confirmed the continuation of land and resource tenure insecurity. The GoK has not yet recognized customary claims to land and resources in the area; as a result, very little land in Mkokoni has been adjudicated, surveyed, and registered, with the exception of beachfront plots allocated to influential elite. A recent spate of questionable land sales has increased tensions.

Questionable Land Transactions

Of the four SECURE Project pilot sites, Mkokoni faces the most development pressure. The majority of the Mkokoni's approximately five kilometers (km) of beach front already has been allocated, virtually all of it under questionable circumstances. The method seems to continue. More often than not, the buyer of these lands has obtained genuine ownership documents, such as letters of allotment and titles, from the MoL. However, land allocations have taken place without surveys or public notice, both of which are required by law. In some cases, titles seemed to have been backdated. Community members and local administration officials report that surveyors and land speculators continue to explore Mkokoni beaches in search of "unclaimed land."

Returnees from Abandoned Villages

The Shifita War (1963–1967) and the endemic banditry that trailed in its wake caused people to abandon their villages for villages, towns, and cities further from the Somali border, including Kizingitini, Kiwayu, Faza, Lamu, Malindi, and Mombasa. Some villages, such as Matironi and Ashuei, became abandoned or "ghost" villages within Mkokoni's boundaries. As a result of the prevailing peace and increased development, and perhaps speculative interest in coastal land, former residents of these abandoned villages (and those claiming to be their descendants) are starting to lay customary claims to land.

Safety and Security

Incursions by armed bandits from Somalia continue to be a problem in the Mkokoni area. Bandits have targeted local assets and foreign tourists staying at Kiwayu Safari Village (KSV) just outside Mkokoni. The absence of government security forces makes both community members and visitors vulnerable to crime.

Stalled-Out Community Conservation Initiatives

In recent years, several community members, with support from KSV, have proposed the establishment of a private conservation trust. The proposed Mkokoni Conservation Trust and Conservancy has not yet received significant support from the Mkokoni community.

Unclear Dodori National Reserve Boundaries

Currently, farm plots of Mkokoni villages and some Boni families extend close to the Dodori National Reserve boundaries. The SECURE Project's PRA informants disagreed about the location of Dodori National Reserve boundaries, and there were indications that this lack of clarity could be a trigger for conflict. There is a need to demarcate and survey the boundaries of the Reserve to prevent the establishment of new farm plots and to put in place co-management systems with local communities for long-term conservation in the Reserve.

RECOMMENDATIONS

Provide Legal Recognition to Customary Land Rights

After this assessment, the SECURE Project, working with the MoL district-level staff and receiving guidance and assistance from MoL Nairobi and other collaborators, should move forward with a land tenure formalization process. The first step toward securing the land and resource rights of Mkokoni residents is demarcating village boundaries, including settlement and farming areas.

Clearly Demarcate Dodori National Reserve Boundaries

To protect the landscape and biodiversity of the Dodori National Reserve better, it is recommended that KWS complete a boundary survey of the Reserve and clearly demarcate its boundaries, with particular attention to areas close human activity, such as the farms of the Mkokoni residents.

Investigate Questionable Land Allocations in Mkokoni

Consultations with the MoL-Nairobi and legal counsel are needed to determine options for rectifying the problem of alleged fraudulent and irregular land distribution (sales, or leases) in Mkokoni and along the Kiunga coast in light of current law and the new NLP. This will be a necessary step toward resolving overlapping land and resource claims and formalizing customary rights of the resident community. Shungwaya Welfare Association, a local community-based organization, has made attempts through the courts to stop questionable land transfers. Although the organization has won at least one court case, no concrete action has been taken by MoL to conform to the resulting court order. The MoL should take proper action to rectify this situation.

Enforce MoL Directives on Freeze of Land Allocations/Settlements/Adjudications

In November 2009, after substantial media coverage of questionable land transactions on the coast (and a decade after a court order in a case brought by Shungwaya required a freeze on land allocations), the Minister of Lands issued an internal order to freeze all land allocations in the Coast Province until critical tenure issues are resolved. This notice was apparently never enforced or publicized at the local level, particularly in Lamu East and West districts. The MoL should enforce this freeze and make it known to the public. At a minimum, the Ministry should cease all land settlement activities (including allocations, adjudications, and surveys) in the four SECURE Project pilot communities (Kiwayu Island, Mkokoni, Kiunga, and the Boni-Dodori Corridor [including the villages of Mangai, Basuba, Milimani, Kiangwe, and Mararani]) to assure that activities taking place are not counterproductive to the SECURE Project.

Assess Options for Addressing Claims of Former Residents of Abandoned Villages

With the proposed construction of the Lamu Port and increased development throughout the coast region, people (and their descendants) who abandoned the Mkokoni area during the Shifta War and its aftermath are laying claim to land. It is expected that more will return when the MoL land rights recognition process begins. It will be necessary to explore options to evaluate these claims.

Build Capacity of Village-level Institutions

Promotion of good governance of land and natural resources such as mangroves and fisheries by village-level institutions is a priority action. The team notes that lack of transparency and public participation has prevented the village from managing land and resources successfully. SECURE should provide training in participatory and transparent governance, including administration of village lands. Transparency in utilization and governance of community funds must also be a priority.

Establish and Strengthen Co-management Institutions for Natural Resource Governance

While some co-management institutions already exist, these institutions lack the capacity to manage sustainably natural resources in and around Mkokoni, in the Kiunga Marine National Reserve and in the larger area of the United Nations Educational, Scientific and Cultural Organization (UNESCO) Kiunga Biosphere Reserve. SECURE can jump-start the effort to improve management by developing co-management plans and strengthening community rights to sustainable resource use. At the community level, these efforts can be particularly effective at reducing crop damage from wildlife, and thus reduce human-wildlife conflict. In addition, SECURE can work with communities to assess the need for forming Community Forest Associations (CFAs) to achieve sustainable management of mangrove and other inland forest resources. Collaboration with the Mkokoni community, KWS, KFS, the Ministry of Fisheries Development, the World Wildlife Fund (WWF), and private investors will be critical to these efforts.

Build Consensus on Proposed Mkokoni Conservancy

SECURE, in collaboration with KWS, WWF, private investors, community residents, and other stakeholders should support further discussion of the proposed Mkokoni Conservancy. The coalition should help communities understand potential costs and benefits of the proposed conservancy that could affect the lives and businesses of all stakeholders. Consideration should be given to the conservancy as well as other options to enhance conservation while allowing for the pursuit of sustainable livelihoods. SECURE and its collaborators can help build consensus for the best course of action.

Conduct Training in Conflict Management and Resolution

In Mkokoni, the assessment team strongly recommends that a robust conflict resolution system be put in place. Training should target a range of community members, including the council of elders, women, youth, and men's groups, equipping the community with early warning mechanisms and appropriate means of mobilizing early responses. Formal systems should also be strengthened where traditional systems are inadequate.

Address Security Concerns

Insecurity is a critical factor influencing all aspects of life in this region and must be taken into account in development planning. The Provincial Administration should consider the placement of ordinary and administration police in Mkokoni. Improving security would pave the way for sustainable economic development and much-needed expansion of government services, including education and health care.

Explore Alternative Livelihood Opportunities

Increasing the range of livelihood alternatives to the community will be crucial in the long term to avoid dependency on natural resources vulnerable to depletion in a region with expanding population and other pressures. The appropriate agencies involved in economic development should seek to develop alternative livelihood opportunities that will provide less stress on natural resources.

Consider Impacts of Climate Change and Integrate Adaptation Measures

The SECURE team, MoL, and the local communities should integrate considerations of climate change into livelihood strategies and land-use planning. Particular attention should be focused on the impact climate change will have on land use and livelihoods. Appropriate adaptation measures should be put in place.

Raise Public Awareness

The new NLP stresses the importance of formal recognition of customary land rights. Given that the NLP calls for repealing the Government Land Act and conversion of customary land rights to community tenure, it will have significant implications for Lamu East and West districts. However, many within the government

and the general public are unaware of these provisions. There is a need to raise public awareness through sensitization, educational materials, the media, and other local-level forums about the NLP and the rights afforded to citizens, as well as about the process that the SECURE Project will utilize to secure land and resource rights for communities.

ENDANGERED FOREST, ENDANGERED PEOPLE: THE CASE OF THE BONI

KENYA SECURE PROJECT TENURE ASSESSMENT,
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EXECUTIVE SUMMARY

The Boni, or Aweer,¹ have been called the forgotten people of Kenya. Hunter-gatherers whose culture co-evolved with the East African Coastal Forest, they have emerged from obscurity only in the past few years, receiving media attention for their ability to find honey by communicating through whistling to birds, called black-throated honeyguides, that eat the wax and combs of bees. Like other hunter-gatherers in Kenya, since Kenyan independence (1963) the Boni have been buffeted by historical forces outside their control. During and after the Shifta War² (1963–1967) the Boni were forced into villages for security reasons. In 1977, Kenya banned hunting, the Boni's primary livelihood. Not long afterwards, the gazettement of the Boni and Dodori National Reserves resulted in their exclusion from traditional hunting, gathering, and religious sites. The precipitous drop in the Boni population reveals the profound connection between the people and the forest as their territory has been reduced. Since independence, their numbers have dropped dramatically, from an estimated 20,000 (this figure should be verified) people to just 3,500–4,000 according to the 1999 census data. Today, both the Boni culture and the Boni people are considered endangered.

THE BONI-DODORI TENURE ASSESSMENT

The Securing Rights to Land and Natural Resources for Biodiversity and Livelihoods in the North Coast (SECURE) Project supports the Kenyan Ministry of Lands (MoL) and the Kenya Wildlife Service (KWS) to strengthen land and resource rights of indigenous coastal communities along the northeast coast of Kenya, to improve livelihoods, promote sustainable natural resource management, and support biodiversity conservation. This northeast coastal region of Kenya is home to three National Reserves: the Kiunga Marine Reserve, the Boni National Reserve, and the Dodori National Reserve. The area incorporates pristine coastal forest, the largest remaining shoreline mangrove forests in Kenya, a number of endemic and endangered species, and a rich diversity of terrestrial birds, shorebirds, and sea birds. The SECURE Project will be implemented in four pilot sites in Kenya's Lamu East district.

The SECURE Project is using the Participatory Rural Appraisal/Rapid Rural Appraisal (PRA/RRA) methodology in the Boni-Dodori Corridor pilot site to conduct an assessment to understand and document customary and statutory land and resource tenure regimes. These regimes include identification of primary micro-ecological zones and tenure niches, land and resource use patterns, formal and informal institutions of land and resource tenure and governance, and key tenure and resource management issues. The overall goals are to develop strategies for improving land and resource governance and to promote sustainable resource use and livelihoods in pilot communities.

An interdisciplinary team of government, civil society, village representatives, and project staff carried out the tenure assessment in the Boni-Dodori Corridor from March 6–12, 2009. The government representatives included: the MoL, KWS, Kenya Forest Service (KFS), Arid Lands and Resource Management Programme (ALRMP), and the Department of Fisheries.

¹ The traditional name for the Boni is "Aweer." While some groups of hunter-gatherers in Kenya have reclaimed their traditional names, the majority of PRA assessment team informants still chose to be called Boni; in accordance with their stated preference, we are using the more familiar name in this report.

² The Shifta War broke out immediately after Kenyan independence, when ethnic Somalis in Kenya's Northern Frontier district attempted to secede and join the Republic of Somalia. The war ended in 1967, although armed bandits and poachers continued to cross the border into Kenya.

MAJOR FINDINGS

1. Land Tenure Insecurity

In addition to the Boni and Dodori National Reserves flanking the Corridor to the north and south, virtually all of the land within the Boni-Dodori Corridor is Government Land. The Government of Kenya (GoK) has not yet recognized customary claims to land or forest resources, and there has been no land adjudication in the area, despite several attempts by the government. What this means in practice is that boundaries have not been surveyed, titles have not been issued, and as far as many people are concerned, it is unclear whether land falls under customary and traditional governance or the government's legal and regulatory framework. Tenure insecurity has reduced the community's access to resources, especially the forest resources that are intrinsic to the Boni community's livelihood and culture. The Boni encounter problems when they "trespass" into the National Reserves to access their sacred groves, food sources, and medicinal herbs. To complicate matters further, there is dispute over the boundaries of the Dodori National Reserve.

2. Limited and/or Controlled Access to Natural Resources

The Boni are traditionally hunters and gatherers, although they now rely on subsistence farming for much of their food. The shift to agriculture has come at a high price, both to the Boni and the forest. As soil productivity has been lost, the area's 5–7-year cycle of shifting cultivation (slash and burn farming) has been reduced to 2–3 years, resulting in rapid, large-scale deforestation, with accompanying soil and nutrient loss, invasion by weeds and other species, and overall loss of biodiversity. In addition, the Boni have welcomed outsiders to the area. These recent arrivals also practice slash and burn farming techniques. The influx of non-Boni farmers has intensified destruction of the remaining fragments of forest in the Corridor.

3. Human-Wildlife Conflicts

The Boni villages are sandwiched between the Boni and Dodori Reserves, which have large populations of herbivorous animals, such as buffalo, hippopotamus, and topi. At certain seasons, these animals migrate outside the reserves and graze in the agricultural fields of the Boni people. Baboons are also notorious for crop raiding, especially during the dry season, a key period when crops mature. At this time of year, farmers are often forced to guard their crops 24-hours-a-day and sometimes kill animals to prevent crop losses.

4. Insecurity and Poaching

It is important to distinguish between the subsistence hunting still practiced by some Boni people and the large-scale commercial poaching that occurs in the region. Since the Shifta War of the 1960s, followed by the dissolution of Somalia's central government over the past 20 years, Boni-Dodori forests have experienced a spate of commercial poaching and banditry.

There are allegations by the community that poaching is still going on with bush-meat and ivory moving into Somali through the border town of Ras Kiamboni. Poachers kill animals in the Boni National Reserve and sell meat to traders in the local markets of southern Somalia. The Boni-Dodori forest is also a transit route for poachers en route to Tana River and Tsavo East National Park. The resurgence of the ivory trade has intensified poaching in the border area.

5. Lack of Essential Services

The Boni-Dodori Corridor lacks the most basic of social amenities: electricity and clean water. Health care is minimal. Schools are inadequately staffed and equipped.

Extremely poor roads make travel slow and difficult, particularly during the rainy season. Community members rely on four-wheel-drive vehicles and trucks owned by government agencies or private citizens. With only minimal medical care available, the area's poor transportation results in unnecessary mortality.

6. Illegal Fishing in the Reserves

Some Boni people have established temporary fishing camps inside the Boni National Reserve, which causes conflicts with KWS. These fishermen set up camp at semi-permanent dams and springs during the July–August and January–February seasons. Their main catch is the lungfish endemic to the East African Coastal Forest. The fish from the Boni forests are sold in towns such as Lamu, Malindi, and Mombasa. In Mangai village, mostly along the Mangai River, migrant communities fish for freshwater tilapia. Most of the fishing on the Mangai is subsistence level, but some of the fish are also sold in coastal villages, towns, and cities.

7. Illegal Commercial Harvesting of Indigenous Trees

The area's indigenous hardwoods attract poachers from outside the Boni community. Illegal cutting of indigenous hardwoods is driven by high demand in the construction trade and the boatbuilding industry. Furniture makers also value hardwoods. The most prized species include Mwangati (*Terminalia spinosa*); Muhuhu (*Brachyleona huillensis*); Mbambakofi (*Albizia quanzensis*); and Mpingo, or zebra wood (*Dalbergia melanoxylon*). Much of the poaching occurs in remote areas of the Boni-Lungi Forest (which is not yet gazetted) and the forests north of Dodori National Reserve. Much of the illegally harvested wood is taken to Lamu. This is a long-term problem that shows no sign of abating, partly because of inadequate enforcement.

8. Bush Fires Threatening Biodiversity

Bush fires are caused by Boni to disperse bees from honeycombs, livestock owners attempting to control pests and improve pastures, and by farmers clearing the land for shifting cultivation in the forests. Bush fires often spread across a large area, causing changes in vegetation regimes. During the PRA assessment, the team frequently saw bush fires, especially where shifting cultivation is carried out. Deep inside the reserves, wildfires have been reported in the dry season, mostly resulting from methods employed by the Boni to harvest natural honey.

9. Limited Scientific Information on Boni-Dodori Forest Ecosystems

Although the Boni-Dodori Corridor is located within the East African coastal forest, which Conservation International has recognized as one of the world's 25 biodiversity hotspots, the Corridor has received minimal study, which makes it difficult to develop constituencies for conservation. Sustainable development of the area, including ecotourism, is also limited by inadequate information.

RECOMMENDATIONS

Findings from the tenure assessment have implications for customary land and resource rights recognition, enhanced tenure security and local livelihoods, and improved natural resource governance in the Boni-Dodori Corridor. This report contains national, provincial, district, and local-level recommendations for the SECURE Project and other stakeholders to undertake.

I. Activities for the SECURE Project

1. Recognition of Customary Land and Resource Tenure

The tenure assessment of the Boni-Dodori Corridor confirmed the persistence of resource tenure insecurity and unrecognized customary claims to land. Resource tenure security remains an issue of primary importance to the Boni community, which relies on the forest for its livelihood and the continuation of its culture. Specific consideration should be given to existing customary rights as well as to securing communal rights to the forest, the community's lifeline. It is recommended that MoL recognize villages already in existence as an initial step.

During the customary land rights recognition process, the assessment team recommends that a land use plan be prepared through a consultative stakeholder planning process. The SECURE Project should work closely with the MoL, other ministries, the conservation community, and local-level stakeholders to launch this planning process. The land-use plan should become the basis for zoning land uses in the Boni-Dodori Corridor. Strict enforcement of zoning restrictions may help mitigate speculative resource pressures.

2. Establish and Implement Resource Co-Management Plans and Resource Governance Structures

To ensure the conservation of the forests and the restoration of degraded forest areas in and around Boni-Dodori Corridor (including the Boni-Lungi Forest and portions of the Dodori National Reserve), the assessment team recommends the GoK share responsibility for management of forests with the communities that inhabit them. The conservation of the forests in and around the Boni-Dodori Corridor requires adoption of a forest management model that will establish environmentally sustainable use while benefiting the local community. Many of the Boni community members oppose gazettement of the Boni-Lungi Forest as a national forest. The team recommends that efforts be made to gazette the forest with local/community management and control as provided for under the Forests Act of 2005. The SECURE Project will work with the Boni community to form Community Forest Associations (CFAs) as a means to ensure sustainable management of inland forest resources. The community should be fully involved in the management of the gazetted forests, so that their rights to continue to use the forest are ensured. As part of the conservation effort, recognition of customary conservation practices will be of paramount importance. Co-management can be strengthened by collective management and resource governance arrangements, robust conflict resolution mechanisms, and clearly defined resource rights. In addition, the SECURE Project should facilitate the establishment of community-based participatory resource governance institutions for governance of the Boni and the Dodori Reserves.

3. Explore Opportunities for Establishment of Community Conservancies

The Wildlife Act provides for opportunities for sustainable management of wildlife through community conservancies and/or community wildlife associations. In close consultation with KWS and other stakeholders, SECURE should facilitate the establishment of community-run and managed conservancies between Boni and Dodori National Reserves, and between Kiunga Marine and Dodori National Reserves. It is further proposed that each of the individual Boni villages explore the possibility of establishing its own conservancy. Successfully managed conservancies would contribute to reducing illegal and unsustainable logging that threatens the long-term survival of the Boni and the forest.

4. Build Capacity of Community Institutions in the Areas of Resource Management, Land Administration, and Alternative Conflict Resolution

Improving governance by village institutions is a priority. SECURE will facilitate training in participatory and transparent governance, in administration of village lands, and in resource management as well as in alternative conflict resolution mechanisms. This training should stress sustainable resource use and biodiversity conservation.

II. Activities for Other Stakeholders

1. Conduct a Comprehensive Biodiversity Survey of the Boni-Dodori Ecosystem to Assess its Health and Identify Threats

The Boni-Dodori Corridor is part of the East African Coastal Forest, identified as a biodiversity hotspot because of its high rates of biodiversity and endemism (species that exist nowhere else). Yet little is known about this part of the forest. The SECURE Project, with key stakeholders and partners, should initiate a comprehensive survey of biodiversity in the Boni-Dodori Corridor, including an assessment of the health of

the ecosystem. The outcome of the study is expected to inform decision makers trying to address threats better.

2. Conduct an Environmental Impact Assessment of Paving/Improvements to Hindi-Kiunga Road, Including Mitigation of Environmental, Cultural, and Social Impacts

The pavement and/or improvement of Hindi-Kiunga Road is expected to benefit people living in the Corridor by improving their access to markets for agricultural produce, and making it easier for them to reach hospitals and schools in Lamu, Malindi, and Mombasa. At the same time, better access to the Boni lands is likely to increase illegal timber harvesting, poaching, and wildlife mortality associated with road paving. Improvements to the road are likely to erode the Boni culture further. An Environmental Impact Assessment (EIA) study of road improvements should be conducted. The study should place special emphasis on devising effective measures to mitigate environmental, cultural, and social impacts.

3. Support Development of Alternative Livelihood Sources

Currently there are limited income-generating activities in the area. The main source of livelihood and income is the sale of agricultural produce and honey. As a result, the community depends on food aid, especially during the dry season. Additional sources of livelihood will reduce the risk of depletion by unsustainable resource use and population pressure. Development of alternative materials for wood carvers should be a priority. Muhuhu (*Brachystagia builliensis*); Mkongolo (*Combretum schumanii*); and Mpingo, also called African Blackwood or zebrawood (*Dalbergia melanoxylon*) from Boni National Reserve provide raw materials for the woodcarving industry, which is a vital element of the coastal tourism sector. Over-exploitation resulted in government controls on harvesting, but these controls have been ineffective. The woodcarving industry on the coast is a significant part of the economy, and there is a clear need to develop alternative materials for woodcarvers.

4. Address Safety and Security

Insecurity is a critical factor that influences all aspects of life in this region and must be taken into account in development planning. The area's proximity to the border of Somalia resulted in high levels of commercial poaching and banditry in the 1970s and 1980s and sporadic incidents continue to occur. Bandits operate with impunity because of the size and remoteness of the area as well as the lack of development and general inaccessibility. The nearest law enforcement authorities, including Kenya police and armed paramilitary rangers from KWS, are located in Kiunga town, more than 50 kilometers from the Boni villages. The area's insecurity has led to the limited availability of basic social services in the region. Government officers often cannot be persuaded to work in the area. There is a pressing need for the government to install a security outpost staffed by Administration Police or another appropriate agency in each of the five main Boni villages. With improved security, the quality of life can improve for the Boni.

5. Improve Essential Services

Improvement of the road network and introduction of essential social services such as schools, hospitals, and markets should be prioritized to improve the livelihoods and quality of life in the Boni-Dodori Corridor.

FROM SHIFTA TO SHIFTING: LAND TENURE AND RESOURCE GOVERNANCE IN KIUNGA

KENYA SECURE PROJECT TENURE ASSESSMENT,
APRIL 9–15, 2010

AUGUST 2010

DISCLAIMER

The author's views expressed in this publication do not necessarily reflect the views of the United States Agency for International Development or the United States Government.

EXECUTIVE SUMMARY

INTRODUCTION

The Shifta War (1963–1967) is remembered by people on the Kenyan coast as *Daba*, or when “time stopped,” according to a Kiunga elder interviewed by members of the Securing Rights to Land and Natural Resources for Biodiversity and Livelihoods in the North Coast (SECURE) Project team.¹ A sense of danger lingered in the area long after the official end of the war, with periodic incursions by armed bandits and poachers from the failed state of Somalia. As a result, the presence of the Kenyan government in the area has been disproportionately skewed to law enforcement. Even when compared to other parts of the Kenyan coast, Kiunga trails behind in basic necessities such as schools, roads, and health care.

Yet Kiunga is rich in natural resources. Kiunga is surrounded by three national reserves that protect the terrestrial and marine environments of internationally recognized ecological importance. Despite efforts of land management agencies, such as the Kenya Wildlife Service (KWS), to establish a positive working relationship with the Kiunga community, the area’s persistent poverty poses a threat to natural resources. This is particularly true in the fishing grounds that lie off the beach area in Kiunga. These waters, which are part of the Kiunga National Marine Reserve² (KMNR), are generally acknowledged to contain the finest fishing opportunities on the coast, so it is not surprising that fishing accounts for three-quarters of Kiunga’s jobs. Because Kiunga’s fishermen cannot afford large boats and modern fishing gear, they must fish close to shore; these reef areas are now becoming overfished.

Among the problems plaguing the fishing industry, the poor condition of the unpaved Hindi-Kiunga Road is the most easily addressed. The Road is the only link between Kiunga and the larger markets of Malindi and Mombasa. The length of time it takes to bring fish to market on this unpaved road results in losses of up to fifty percent. The Road’s poor condition causes non-economic hardships as well. During the rainy season, Kiunga can be cut off from the rest of the region for weeks or months. Because of Kiunga’s isolation and rudimentary health care, it is not uncommon for women to die in childbirth, and heart attacks or strokes in the elderly are more likely to be fatal.

In recent years, the land rush on the Kenyan coast has reached Kiunga. The questionable circumstances under which land has changed hands, and the accompanying outrage of local citizens, helped bring the United States Agency for International Development (USAID)-funded SECURE Project to Kiunga. The town’s location adjacent to the KMNR and its importance to the coast area also made it a priority. Kiunga consists of a town that incorporates three ethnic villages in addition to outlying settlements and farms. Kiunga’s population is approximately 4,000, making it the largest settlement of the four pilot sites chosen by the SECURE Project.

SECURE was designed as a pilot project in collaboration with USAID and the Government of Kenya, as Kenya seeks to implement its Ministry of Lands’ (MoL) Land Reform Support Programme (LRSP), an initiative to strengthen the principles of the Kenya draft National Land Policy and to promote efficient, sustainable, and equitable land use. The overall aim is to resolve historic tensions over land tenure in Kenya,

¹ The Shifta War broke out immediately after Kenyan independence in 1963, when ethnic Somalis in Kenya’s Northern Frontier District attempted to secede and join the Republic of Somalia. The war ended in 1967, although armed bandits and poachers continued to cross the border into Kenya.

² Kenya gazetted the 22,000-hectare KMNR in 1979. In 1980, UNESCO recognized the international importance of this ecosystem by designating the larger Kiunga Biosphere Reserve, covering 60,000 hectares.

where land is regarded as intrinsic to both livelihood and identity. SECURE's mission is to secure land and resource rights of indigenous coastal communities and support biodiversity conservation and sustainable natural resource management. The 18-month project began in September 1, 2009. The SECURE Project was completed in three stages: assessment, planning, and implementation. This report focuses on results of the SECURE team's tenure assessment in Kiunga, one of the four pilot sites.

MAJOR FINDINGS

1. Land and Resource Tenure Insecurity

The tenure assessment confirmed the persistence of resource tenure insecurity driven by unrecognized customary claims to land. Customary claims to land and forest resources have not been recognized by the government, and there has been no land adjudication and/or issuance of title deeds in the area, with the possible exception of beachfront plots allocated to influential elite.

2. Questionable Land Transactions

Kiunga residents expressed deep concern over suspected land sales on the beachfront and on Kiunga Island. Residents say that the government has allocated land to outsiders while ignoring their needs; their comments led the team to believe that a combination of outrage and feelings of powerlessness could lead to violence.

3. Out-Migration and Abandoned Villages

The Shifita War (1963–1967), and the endemic banditry that trailed in its wake, nearly extinguished Kiunga's agricultural and fishing sectors, denuding Kiunga Town's population and turning several surrounding settlements into "ghost towns." Now that the region has grown safer and the new National Land Policy holds out the promise of secure land tenure, people who migrated to places like Kiwayu, Ndau, Kizingitini, Faza, Lamu, Malindi, Watamu, and Mombasa are returning to Kiunga, hoping to establish land claims.

4. Unsustainable Exploitation of Fisheries

Both commercial and artisanal fishing have reached unsustainable levels in Kiunga. The increase in the number of fishing boats and the use of new gear to maximize catches has led to overfishing, particularly in the areas close to shore, which are easily accessed with small boats. Destructive fishing practices include commercial prawn trawling and the use of small-mesh nets, beach seines, and spear guns by artisanal fishers, both within the coral and seagrass beds of the KMNR and in areas outside the reserve boundaries. By its nature, bottom trawling is destructive to seagrass habitats and adversely affects biodiversity. The Participatory Rural Appraisal/Rapid Rural Appraisal (PRA/RRA) team did find a positive indicator. Fears of piracy in and around Somali waters have significantly reduced trawling, at least for the moment.

Additionally, Bajuni communities living near the KMNR use sea turtles, dugongs, whales, and dolphins for food and traditional medicines. Traditional uses include aphrodisiacs, charms to scare away evil spirits, ornaments, and jewelry. As resources dwindle and population grows, these traditions pose increasing threats to biodiversity.

5. Unregulated Mining

Mining of sand, soil, and coral rock used in construction is currently unregulated. Unregulated mining, particularly on Kiunga Island (Kiunga Mwini), has raised concerns about beach erosion, damage to reefs, and other environmental impacts.

6. Ineffective Enforcement of Regulations

Government agencies charged with enforcement of environmental laws and regulations in the Kiunga area are often ineffective. Both the Department of Fisheries and Kenya Forest Service (KFS) offices are

understaffed. Coordination among departments and agencies responsible for resource management has been poor to nonexistent. Agencies shift blame for lack of enforcement rather than working toward a solution.

7. Resource Use Conflicts

The Kiunga community now faces competition from people outside the community for marine resources. In the past, local fishermen have tried to accommodate the needs of migrant fishermen, but conflicts over resources are increasing as more migrants arrive, notably from Mbwajumwali, Muyabogi, Tchundwa, Faza, and Kizingitini villages.

RECOMMENDATIONS

Findings from the tenure assessment have implications for customary land and resource rights recognition, enhanced tenure security and local livelihoods, and improved natural resource governance in Kiunga. This report contains national, provincial, district, and local-level recommendations.

I. Activities for the SECURE Project

1. Provide Legal Recognition to Customary Land Rights

Customary claims to land in Kiunga must be adjudicated and legally recognized. Resource tenure insecurity and unrecognized customary claims to land are linked to poverty and unsustainable resource use. Resource tenure security remains an issue of primary importance to the diverse communities within Kiunga, including Bajuni, Boni, and the Somali people. Specific consideration should be given to individual and communal rights.

2. Assess Options for Addressing Claims of Former Residents of Abandoned Villages

Because of the proposed construction of the Lamu Port and increased development throughout the coast region, people who abandoned the area during the Shifta War and its aftermath, along with their descendants, are laying claim to land in the area. More are expected to return to Kiunga and lay claim to land when the MoL land rights formalization process begins. It will be necessary to explore options to evaluate these claims. One option may be for the MoL to set aside land (land banking) to ensure availability of land for verifiable returnees and to provide for future growth of the community.

3. Build Local Capacity in Resource Management, Land Administration, and Alternative Conflict Resolution

Local-level resource governance institutions have little capacity to manage natural resources such as mangroves, forest resources, and fisheries. The team noted that lack of transparency and public participation has prevented the village from managing land and resources successfully. The assessment team recommends training for community-based institutions on resource management, land administration, and alternative conflict-management and dispute-resolution mechanisms. Training should be provided to the appropriate local community and government institutions, including KWS. The formal systems for resolving conflict should be strengthened so that the public will gain confidence in the systems' integrity and effectiveness.

II. Activities for Other Stakeholders

1. Investigate Ambiguous Land Allocations

The land rush in coastal Kenya is spurring a number of questionable land allocations and sales; these allocations threaten to deprive community members of the chance to claim ancestral lands. Both community members and local staff of the nongovernmental organization (NGO) Kibodo Trust informed the PRA/RRA assessment team of a number of land allocations in the Kiunga area, particularly on Kiunga

Island. SECURE should engage in consultations with the MoL to determine options for rectifying allegedly fraudulent and illegal land transactions in light of current laws and the new National Land Policy.

2. Regulate Mining of Sand, Soil, and Coral Rock

As Kiunga continues to grow, it will be increasingly necessary to regulate the mining of soil, sand, and coral rock used for construction. Efforts should be made to help local-level governments to develop appropriate regulatory mechanisms.

3. Develop Alternative Livelihood Opportunities

There is a need to develop programs that increase the range of livelihood alternatives to the community, with the goal of avoiding dependency on a single source that might be depleted by unsustainable use and population pressure.

4. Consider Impacts of Climate Change and Integrate Adaptation Measures

The SECURE team, MoL, and the local communities should integrate considerations of climate change into livelihood strategies and land-use planning, where possible. Particular attention should be focused on the impact climate change will have on land use and livelihoods. Appropriate adaptation measures should be put in place.

**SETTLEMENT SCHEMES IN LAMU
DISTRICT**

Preliminary Research Report 2011
By
Development Policy Management Forum

SETTLEMENT SCHEMES IN LAMU DISTRICT

BACKGROUND.

Lamu County is one of the six counties of Coast province. It borders the Indian Ocean to the south, Tana Delta District to the southwest, Ijara District to the North and the republic of Somalia to the Northeast. The District has a land surface area of 6471.7 square kilometers. This includes the mainland and over 65 islands which form the Lamu Archipelago. The total length of the coast line is 130 km while the water mass is 308 Km² (DDP 2008-2012).

According to the 2009 population census, Lamu has a total population of 101,539 people with 53,045 (51.5%) being male and 48,494 (48.5 %) female. The population density of Lamu was estimated at 16 persons per square kilometer. According to the census Lamu district is estimated to have 22,184 households with the average family size being 4.6. Lamu East constituency was estimated to have 3,562 households and a density of 8 people per square kilometer while Lamu East holds a population of 18,622 households and a population density of 21 people per square kilometer (DDP 2008-2012).

Administratively, the district is divided into 7 divisions, 23 locations and 38 sub locations. See the table below.

Division	Land Area(sq Km)	No. Locations	No. of sublocations
Amu	102.4	4	6
Hindi	1804.9	2	4
Mpeketoni	1360.7	6	10
Witu	123.7	2	4
Faza	74.8	4	6
Kizingitini	18.1	3	4
Kiunga	1570.1	2	4
Total	6474.7	23	38

Source: District Development Plan (2008-2012)

Settlement patterns and socioeconomic activities

Settlement patterns in Lamu vary from Division to Division and are determined by many factors. Some of these factors include access to economic activities in agriculture, livestock keeping, fishing and trade. Other factors include government settlement scheme programs and security concerns. Lamu county has 959,000 hectares which is 69.8 % of the total land area of agricultural land with the average farm size being 4 hectares. Of the total farmland, 6.5 % is rented or leased and 4.5% is free.

This county has three major soil types; red loam soils, sandy soils, and rocky soils. The soils in most of the county range from moderate to low fertility though there are some small pockets of high fertility. The red loam soils that have high fertility are found along the lowlands of Witu, Mpeketoni and some small areas in Amu and Kiunga. These soils support maize, beans, cassava and cowpeas which are the food crops for most of the residents. The sandy soils have moderate fertility, and are found within Amu and Faza Divisions. These soils support coconut, maize and cassava farming.

Lamu county can be divided into two livelihood zones, namely the rich agricultural and livestock zones, in the mainland (mainly settlement schemes), and the fishing and marine zones (the islands) both with varying economic diversities (DDP: 2008-2012).

Approximately 60% of the Lamu population depends on agriculture. Perennial tree crops and cereals are the major income earners accounting for 79% of the total crop earnings. Animals kept include goats, cattle, sheep, and poultry. Apiculture (Bee keeping) is also practiced.

The county land use and ownership patterns differ from division to Division. Mpeketoni, Hindi and part of Witu are settlement areas where land owners have individual parcels of land and some even title deeds. There are four settlement schemes which cover an area of 33,965 hectares and are inhabited by 67 % of the county population. Most of the Land in Lamu is still un-alienated government land. Un-alienated government land is land which is not for the time being leased to any other person or in respect of which the commissioner has not issued any letter of allotment. Un-alienated government lands are vested in the government and over which no private title has been issued. Such parcels of Land do not belong to individuals or bodies corporate in their private capacities.

Projected population Densities by constituency and division.

Constituency	Division	Area Km ²	1999		2008		2010		2012	
			Pop.	Density	Pop	Density	Pop	Density	Pop	Density
Lamu West	Amu	102.4	17,310	169	23,734	232	25,026	244	26,156	255
	Hindi	1,804.9	7,072	4	9,697	5	10,224	6	10,686	6
	Mpeketoni	1,360.7	25,530	19	35,005	26	36,910	27	38,577	28
	Witu	1,235.7	5,980	5	8,199	7	8,646	7	9,036	7
Lamu East	Kizingitini	18.1	6,010	332	8,240	455	8,689	480	9,081	501
	Faza	74.8	7,474	100	10,248	137	10,806	144	11,293	150
	Kiunga	1,570.1	3,310	2	4,538	3	4,785	3	5,002	3
	Total	6,166.7	72,686	12	99,662	16	105,087	17	51,0983	18
								1		

Source: DDP (2008-2011)

The county has various categories of land which include government land, both alienated (forests and national reserves) and un-alienated which measure 5,054 square kilometers, and freehold /leasehold land (townships and settlement schemes) measuring 1,760 square kilometers. It is estimated that only 24% of the land in Lamu is under freehold or lease hold, the rest is government land.

Sixty seven percent (67%) of the district's population is settled on the four settlement schemes. A large part of the Lamu County is still government land. Most unregistered areas are in Kunga (mainland), Faza and Kizingitini (islands) divisions (DDP 2008-2012).

Another large portion of the district land is set aside for ranching purposes. The district has 14 ranches, 12 of which are in Witu and Hindi Divisions. These ranches take up over 119,704 hectares of land.

Irregular allocation of land has been a major problem in the district resulting to unplanned settlements especially in Lamu town and the islands which in some cases involve people invading private land(DDP: 2008-2012).

The district has 5 settlement schemes:

Lake Kenyatta settlement scheme phase i 14,224 ha.

Lake Kenyatta settlement scheme phase ii 3,000 ha.

Hongwe 2,041ha.

Hindi Magogoni 7,700 ha.

Witu phase I	7,000 ha.
Total hectares	33,965

The Hongwe settlement scheme has been officially named as Lake Kenyatta settlement scheme phase iii. Settlers on this settlement scheme are mainly from the Kikuyu community who have formed *Witemere* committees. *Witemere* is a Kikuyu word meaning "cut for yourself". They identify unoccupied land and divide it among themselves. It is an extension of Lake Kenyatta phase ii and as the name suggests, it is characterized by lack of structures and control by the government.

Findings

The following statistics were produced from data collected in a survey through random sampling on the following Lamu mainland areas;

Name of area	No. Questionnaires
Hindi	100
Kiunga	98
Mokowe	104
Witu	89
Mpeketoni	92
Total	483

Forty seven point eight percent (47.8%) of Lamu residents are on community land 28.8% on settlement schemes while 22.2% are on government land. Both community land and government land can legally be classified as government land since there is no trust land in Lamu. The only land that be classified as private is that on the settlement schemes.

Fifty eight point two percent (58.2%) of Lamu residents were born in Lamu while 41.6% were born outside of Lamu. Of those that come from outside Lamu, 15.1% are from the coast province while 26.1% are from upcountry. A further, 0.6 % was from elsewhere in the country, mostly the North eastern province.

The land allocation process.

According to the findings of our research, it was discovered that land allocation in most cases does not follow the laid down structures and procedures. For example, for settlement schemes, one is supposed to start developing their piece of land within three months after receiving the letter of allotment. Residents claim that the letters are delayed and are only received after two months have elapsed since allotment. This leaves the owner with only one month to start some activity on the piece of land failure to which she/he risks the repossession of the land.

Another irregularity that was reported by residents was that chiefs, sub chiefs and other administrative officers collude to sell community land to newcomers. All one has to do is to give the chief or the headman as little as KES 3,000 or any agreed amount and they will be shown a place to settle. The argument they use is that "this is government land and I'm a government officer". See the case below.

Mr. Bashir Wachu got his farm in Mokowe -Boreiman through the chief and headmen in 1989 after paying KES 3000. He was recently ordered to vacate this land because the speculated Lamu port will be located there. Wachu felt hopeless and had to purchase another piece of land for KES 20,000 from the chief through the headman in Boreiman and start life afresh with his family.

The case of Mr Wachu is one of many similar cases in Mokowe. Mr Wachu feels that although he does not have a title deed, he should be recognized as the legal owner of this piece of land due to the fact that he has been living on it and cultivating for all those years and according to him he went through the "authorities" to acquire this land.

DPMF learnt from the participants of a previously held workshop that during the land demarcation process, people who have been living in an area are allocated a different piece of land possibly in a different location. In most cases the occupant may have stayed in the farm for years even planted tree crops only to be moved to another place to start afresh. A good case is that of Farida Abdullahi of Mokowe division.

Farida was born in Mokowe. After completing her studies at secondary level, she got herself a farm at Safarisi which she cultivated for 3 years. After surveying was done in this area, she learnt that her plot had been allocated to someone from upcountry. She was in turn allocated a different plot. She had to move to her newly allocated plot and start afresh.

The following are the findings of the research on the issue of land allotment:

Fifty point seven percent (50.7%) of Lamu residents are not the first allottees of the land they are settled on. This percentage constitutes both those that were born in Lamu and those that are from outside of lamu. Of these 21.7% inherited while 16.6 % bought and 9.7 % allocated themselves. The above statistics imply that land in Lamu has changed hands quite a bit.

Those who claimed to be first allottees accounted for 47.6% of the total land owners. Of these, only 17.4% said that they had been allocated their piece of land by the land office. The rest said that they had been allotted their land by either the assistant chief or the chief or both. Others cited the Elders and the headmen or a combination of the elders and assistant chief or elders and chief. Still others cited committees and a minority said that they had acquired their land through the DC. The statistics below show how amorphous, perhaps chaotic, the land allocation process has become in Lamu district.

If first allottee, who allotted you this land? (Lamu combined)

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	-1	8	1.7	1.7	1.7
	99	245	50.7	50.7	52.4
	Asst. chief	56	11.6	11.6	64.0
	by elders	19	3.9	3.9	67.9
	chief	36	7.5	7.5	75.4
	Chief and elders	5	1.0	1.0	76.4
	chief and headman	3	.6	.6	77.0
	committee	1	.2	.2	77.2
	DC	2	.4	.4	77.6
	Elders and ass chief	2	.4	.4	78.1
	Government	51	10.6	10.6	88.6
	headman	22	4.6	4.6	93.2
	Land office	33	6.8	6.8	100.0
	Total	483	100.0	100.0	

Statistics show which provincial administrative officers are most powerful in different divisions for example, in Hindi the chief seems to be most influential for it is reported that 17 % of the land owners got their land through the chief alone. See tables below:

If first allottee who allotted you this land? (Mpeketoni)

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	99	56	60.9	60.9	60.9
	Chief and elders	4	4.3	4.3	65.2
	DC	2	2.2	2.2	67.4
	Land office	30	32.6	32.6	100.0
	Total	92	100.0	100.0	

99 implies that this question is not applicable to the number of respondents shown in the frequency. This applies to all the other statistics.

Mpeketoni is the only division where the DC is mentioned as having facilitated the ownership of land. Majority seem to have got their land through the land office. This is because Mpeketoni is home to 3 settlement schemes and so it was imperative that the land office be involved.

If first allottee who allotted you this land? (Witu)

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	-1	8	9.0	9.0	9.0
	99	32	36.0	36.0	44.9
	Elders	4	4.5	4.5	49.4
	Government	45	50.6	50.6	100.0
	Total	89	100.0	100.0	

If first allottee, who allotted you this land? (Kiunga)

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid		2	2.0	2.0	2.0
	99	20	20.4	20.4	22.4
	Asst. chief by elders	56	57.1	57.1	79.6
	chief	13	13.3	13.3	92.9
	Chief and elders	1	1.0	1.0	93.9
	Elders and ass chief	1	1.0	1.0	94.9
	headman	2	2.0	2.0	96.9
		3	3.1	3.1	100.0
	Total	98	100.0	100.0	

The assistant chief in Kiunga seems to be most influential having facilitated 57.1% of all land ownerships in the division followed by the elders with 13.3%. This could be because there are no settlement schemes in Kiunga and therefore the traditional land tenure system is used to ensure everyone in the community has land.

If first allottee, who allotted you this land? (Mokowe)

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	99	68	65.4	65.4	65.4
	by elders	2	1.9	1.9	67.3
	chief	18	17.3	17.3	84.6
	chief and headman	1	1.0	1.0	85.6
	committee	1	1.0	1.0	86.5
	headman	14	13.5	13.5	100.0
	Total	104	100.0	100.0	

For the Mokowe statistics given above, one reads confusion in the allotment process. There is no clear picture as to who is responsible for. The officers seem to be sometimes separately and some times jointly involved in the land allocation process at their own convenience.

If first allottee, who allotted you this land? (Hindi)

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	99	68	68.0	68.0	68.0
	chief	17	17.0	17.0	85.0
	chief and headman	2	2.0	2.0	87.0
	Government	5	5.0	5.0	92.0
	headman	5	5.0	5.0	97.0
	Land office	3	3.0	3.0	100.0
	Total	100	100.0	100.0	

Ownership Documents

Of the total number of Lamu mainland land owners, only 25.5% have title deeds, while a majority 74.5% does not have title deeds. A further 5.2% have letters of allotment. Majority of the residents gave the following reasons for not having title deeds:

a) Squatting on their land (17.2%), b) squatting on government land (18%). Others said that the c) process is too long while a few more cited d) government discrimination and e) lack of a land office in their area as yet other reasons they did not have title deeds.

A majority 81.3 % of those on settlement schemes have title deeds while only 18.7% do not. This is a big contrast to the statistics gathered on those on community and government land. Only a minority 3% of those on community land in Lamu mainland had title deeds while 0.9% of those on government land have title deeds. Of those on settlement schemes, 58.3% are from outside Lamu while 41.7% are residents of Lamu by birth. 41.7 of those from outside Lamu are from upcountry while 17.3 % are from other districts in the coast province.

Asked how long it takes to acquire a title deed, a majority (51.3%) did not know. A further 9.1% of people in Lamu said that it takes very long for one to acquire a title deed while others said that it takes more than 5 years (8.5%) while still others thought that it depends on ones financial status (14.1%). This latter observation implies corruption instances. The fact that respondents did not know how long it takes to acquire a title deed could imply that they had not tried to acquire the document. This in turn implies that majority of Lamu people do not value the ownership of documents as they do issues of access and control. That perhaps if the government did not establish settlement schemes in Lamu, may be the prevailing land problems would be resolved in more traditional ways rather than attaching a lot of importance to ownership documents

Land Problems and Conflicts.

A majority 51.8 % of Lamu residents perceive the land problem to be a very serious issue while 19.3 % think that the land problem can not be resolved, and another 2.5 % think that the land problem is a threat to peace. Among the problems identified are, lack of title deeds (32.7 %), land grabbing (27.1%), illegal sale of community land by administrative officers (9.5%), and favoritism towards "outsiders" and the rich when it comes to land administration issues (6.2%).

A significant 43% of the people of Lamu do not think that settlement schemes have helped address land problems. The explanation given for this observation is that settlement schemes have brought discrimination against locals in the allotment process (20.5%) and that outsiders are often given higher priority during the allocation process (17.2%). As a result of these problems, there is obvious animosity between the local and "outsiders".

Twenty one point five percent (21.5%) of those interviewed thought that settlement schemes have solved the land problems in Lamu to some extent while 14.9% thought that it was to a large extent that settlement schemes had helped solve land problems in Lamu. They cited ease of title deed acquisition as one of their explanations. Other explanations given were improved infrastructure and minimized boundary disputes.

A majority 55.1 % of Lamu residents said that they had experienced violent conflicts involving land. Some of the causes of these conflicts were land boundaries (19.3%), new comers versus older settlers (31.9 %), family disputes on inheritance (0.2 %) among others. Most of the conflicts were resolved through mediation by elders (28.2%), by government officers and land office (15.9 %). a further 5.2% was resolved by the use of police force and 2.1 % by the use of peace committees. Ten point six percent of the cases are pending.

Most of the conflicts that took place between older settlers and newcomers were as a result of double allocation. Cases of double allocation are most rampant in Mokowe Division.

Women and youth

Women

Seventeen point two percent (17.2%) of the Lamu household are female headed. According to the Government of Kenya data portal, 67.7% of the people of Lamu are in monogamous marriages while 8.1% are in polygamous marriages. A further 0.5 % is separated, 6.6% widowed, 6.3% have never married and 10.8% are divorced. It should be noted that the marital status statistics cover Lamu islands and mainland.

Women also constitute 17 % of all legal land owners in Lamu. Forty three percent point nine (43.9%) of the female legal land owners were the first allottees of the pieces of land they own.

The rest had acquired their land through buying (12.2%), inheritance (34.1%) and 7.3% had allocated themselves land.

Of the female legal land owners, 36% had received no formal education at all, 40.2 % had received primary education while only 20.7 % had received secondary education.

Sixty five point nine percent (65.9), of the female legal land owners were born in Lamu. Of those born outside Lamu, 12.2 % were from the coast province while 20.7% were from upcountry. A minority 1.2 % was from north eastern Kenya.

Youth

The official government age category of youth is between 18 and 35 years. However, for the majority of people a youth is one who lies between the age bracket of 18 and 25 but the government stretches it to 18-35 yrs. This is because the urbanites tend to spend longer time schooling while majority of their rural counterparts do not pursue education to advanced levels and tend start families and other responsibilities earlier. A 35-year old is therefore too old in rural standards to be classified as youth.

In Lamu, only 23% of the legal land owners are between the age 18 and 35 years. Of these, only 1.9 % is between the ages 18 and 25 years. The rest are between 26-35 years. Of the total legal land owners falling under the youth category of 18-35, only 18.2% are female while 79.8 are male. Thirty two point three percent (32.3%) of the youth legal land owners were the first allottees of their land. The rest of them acquired their land though buying (27.3%), inheritance (28.3%), and 7.1 % allocated themselves.

Of the total youth legal land owners only 50.5 % were born in Lamu. Eighteen point two percent (18.2%) are from the coast province while 30.3 % are from upcountry. A minority 2% is from north eastern Kenya.

The table below summarizes women and youth in land ownership in Lamu.

Settlement scheme	Average age of legal owner (In years)	% Gender of legal owner			Youth (18-35yrs)		
		% Male	%	% Co-	% of total	% Male	%

			Female	owned	Div. Pop.	youth	Female youth
Mokowe	45	71.2	22.1	6.7	17.9	66.7	26.7
Kiunga	51.7	82.7	17.3	0	9.2	66.7	33.3
Hindi	37.1	93	7	0	47.1	91.5	8.5
Witu	45.9	80.9	16.9	0	16.8	71.4	21.4
Mpeketoni	52.6	69.6	30.4	0	16.9	71.4	28.6

Conclusion

Land problems in Lamu are made more complex than in other districts in Kenya by the fact that most of the land in Lamu is government un-alienated land. For the people of Lamu, this situation spells uncertainty. They may have access to land but deep down they know that the land they have occupied for generations is not theirs.

The introduction of settlement schemes in Lamu district was meant to bring about land reform by providing land to the landless squatters. It can be argued that the people of Lamu cannot by all means be referred to as squatters due to the fact that they have settled on their land for generations. Rather, it would be proper to argue that proper demarcation should be done to ensure the people of lamu legally own their land.

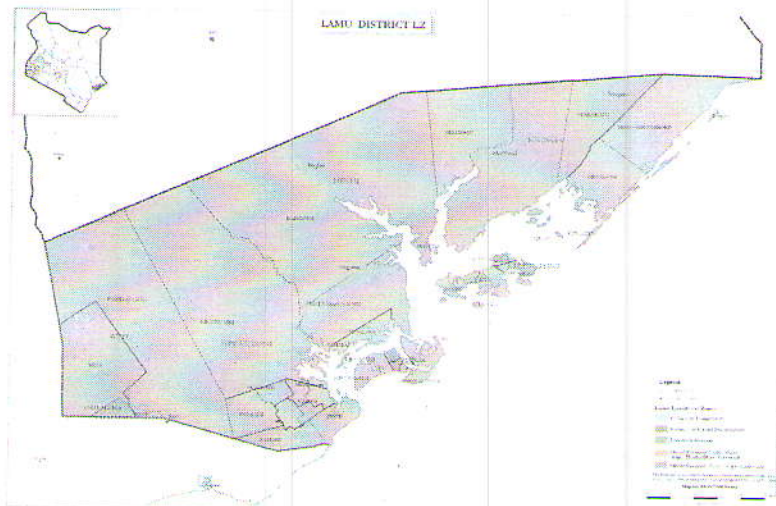
The introduction of settlement schemes in Lamu have come as an eye opener about the importance of having ownership documents for the land one occupies. Majority of those interviewed said that they had no idea how long it takes to acquire a title deed. This implies that they may never have tried applying. One of the reasons could have been that they did not think that a title deed was such an important document, or that they had been intimidated by stories of those who had tried to apply and failed. Whatever the case may be, the people of Lamu need to be sensitized about their needs and rights towards the government both as citizens of Kenya and as human beings. They need civic education to enable them make informed decisions when it comes to voting for their representatives in parliament, so that as they vote, they can vote for people who will dutifully push their agenda. This training and sensitization will give them confidence to consistently voice their grievances.

Structures in the ministry of lands need to be streamlined and corruption fought at all levels for this is the only way the justice will prevail in Lamu.

A Summary of Land Issues in Lamu

Based on research on land issues on the Kenya coast
undertaken by the
Development Policy Management Forum

• Lamu District Map -



By

Paul Goldsmith, Ph.D.

Once described by the head of the Coast Development Authority as the "crown jewel" of Kenya's coastal tourist sector, Lamu's designation as a World Heritage Site is supposed to conserve its unique environment and society. But the insecure status of the districts land is threatening the very foundation of the indigenous population and culture.

Land, as elsewhere in Kenya and Africa, is the most basic foundation of community, economy, and social identity: insecure land and natural resource tenure are at the root of Lamu's predicament. Lamu's land insecurity originated with widespread collapse following the destruction of the Witu Sultanate and imposition of British rule in 1895. Cultivated land returned to bush, leading the British governor Hardinge to obtain a 'fatwa' from the Sultan in Zanzibar sanctioning the take-over of coastal land as a public utility.

Pre-existing Land Legislation

In 1902, the Registration of Documents Act (RDA, Cap 285) was enacted to facilitate registration of documents relating to private land in the area. In 1908 it became necessary to adjudicate land in the 10-mile strip in order to separate private property from Gov. land and. The Land Ordinance of 1908 subsequently designated that unused land reverts to property of the Crown; the Land Titles Act, Cap 282 of 1908 was passed for this purpose.

The land problem in Lamu displays commonalities with other areas of Kenya where large tracts have been alienated since independence, but is in many ways unique. The mainland areas of the district were classified as crown land when the region became a British Protectorate. The people of Lamu, Faza, and Siyu subsequently petitioned to retain 80,000 acres of communal land holdings on the mainland, but this was rejected in 1919.

Those individuals who successfully claimed their land rights were issued with a freehold certificate of ownership or certificate of mortgage. Title deeds issued for the RDA lands did not create new rights to land but only confirmed the existing ownership.¹ The Kenyan administration has disregarded many of these deeds and other efforts to secure local land rights, including the MOU safeguarding coastal peoples position signed by Jomo Kenyatta at independence, have suffered the same fate. The MOU was never honored in letter or spirit. There was no *force majeure* behind it; after the brief Mwambao campaign for coastal autonomy fizzled out, the Kenya African Democratic Union's (KADU) majimbo regionalism also faltered after KANU and KADU merged shortly after *Uhuru* in 1963.

The Swahili 'minority' appeared resigned to the fundamental shift in power relations; or as the author of a British commission remarked, if "the Swahili are understandably proud of the way their culture has assimilated other

¹ Today, most of these titles have been converted to either the Registered Lands Act (Cap 300 of 1963) or into the Registration of Titles Act, (Cap 281, of 1919), but they cover only a small minority of the district's land.

invaders in the past...conquering the Arab conquerors of precolonial times, their reaction to the challenge of Kenyan independence" was "uncertain" in comparison.²

A combination of coastal passivity and state hegemony contributed to the 'invasion' scenario coming to pass. In Lamu, the Swahili malaise resulted in large-scale displacement and disenfranchisement of the indigenous population at the same time new settlers from outside the coast benefited from state support. The District is unique in respect to this process and the situation has spawned a number of problems with important ramifications for the region's long-term security and development.

Failure to Extend Trust Lands Act and Economic Insecurity

The Trust Lands Act, which entrusts the management of communal lands to district councils is the seventh chapter of Kenya's Constitution. Extension of this Act to the large swaths of Lamu's 'Crown Land', coupled with provision of basic security would have empowered the indigenous economy after independence and built upon the District's historical prosperity. With a modicum of support Kenya's treasury would now be reaping revenues from Africa's most sophisticated maritime sector, fecund farmland, and ecotourism showcasing Lamu's impressive seascapes, biodiversity, and urban culture.

This anomaly extends to neighboring Tana River District, the only other Kenyan district where land long occupied by their indigenous inhabitants was not classified as Trust Land. The problem in Lamu is compounded by chronic insecurity—and the behavior of state security forces has only aggravated the dilemma.

The problem began when *shifita* bandits forced the abandonment on thriving mainland settlements from Mkokoni to Kiunga following independence. During the following decades many of the internally displaced resettled in areas like Manda, Mgogoni, and Manda Toto only to be evicted again.

The 1980s saw Lamu rebound. Remittances flowed in from abroad, the dhow trade revived, locals working in Saudi Arabia and the Gulf states returned to build houses. The indigenous mangrove trade spiked, the market for fish improved, and tourism sustained the revival of woodcarving and other traditional crafts. The boom proved temporary. The 1980s economic revival subsequently faltered as highwaymen attacking transport on the Malindi-Mokowe road exacted a high toll on local commerce.

Indigenous settlements continued to suffer the effects of insecurity despite the full complement of Kenya security forces based in the District: Kiunga hosts bases for the Kenya police, Army, Navy, the paramilitary General Security Unit,

² The same point is made by Donal Cruse O'Brien in "Coping With the Christians: The Muslim Predicament in Kenya," in *Religion and Politics in East Africa*, eds. Holger Berne Hansen and Michael Twaddle (1995). London: James Currey: 203.

and the Kenya Wildlife Service. But in 1994 the town experienced eight separate attacks by Somali raiders. The government security forces appeared to practice a policy of not getting involved. The attackers routinely passed the camps housing the army, police, and the KWS *en route* to the town's commercial center. During one raid, security personnel actually fired flares into the sky signaling their location to insure that the bandits, who kept the town's unarmed civilians under siege until morning, did not attack their compounds by mistake.

The failure to provide physical and resource security combined with administrative bias to instead set in motion forces responsible for the District's endemic socioeconomic vulnerability, capital flight and out-migration. Twinned forces of administrative bias and neglect insured that instead of creating a socially stable bulwark against the endemic cross-border insecurity, indigenous communities continued to suffer from structural poverty and chronic insecurity.

The legal status of land in Lamu District has undermined the welfare and livelihoods of the district's indigenous Swahili to a degree that is problematic even by the standards of Kenya's other minority communities and marginalized areas. Communities are finding themselves disenfranchised as allocation of communal lands to outsiders both Kenyan and foreign continues; plans to develop a modern port at Magogoni has sparked a renewed scramble to acquire the same land featuring in the 1919 petition.

Several factors account for the uniqueness of the phenomenon in Lamu:

- communal land classified as Trust Land in other regions remains under state control in Lamu;
- development of the indigenous economic sector has suffered from chronic insecurity, poor infrastructure, and other constraints imposed from above;
- prejudicial attitudes within the Provincial Administration and civil service have acted to deny local communities their basic rights as citizens of Kenya; and,
- state settlement schemes have acted as a mechanism encouraging upcountry in-migration at the same time the factors listed above sustain a high rate of local out-migration.

Insecure indigenous land and resource tenure contributes to the perceptions disenfranchisement of other Kenyans and prospective investors that Lamu is an 'open house'. Large areas of the District that qualify as communal lands under the new Constitution remain subject to informal settlement. The cumulative effect of this syndrome, state support for a new port and transport hub at Magogoni, and other large-scale capital investments are now threatening the cradle land of Swahili language and literature with cultural extinction.

The Magogoni Port

Magogoni is part of the mainland area subject to the 1999 court injunction, obtained by the Shungwaya Welfare Society, which halted land allotment in Lamu District. But during the 2007 election campaigns Kenya's Head of State declared "there is no Trust Land in Lamu."

The proposed port at Magogoni is the most controversial issue. Originally proposed several decades ago, the original plan has morphed into something far murkier. All of this is fueling the acquisition of land in Magogoni and on the Lamu mainland. Five prominent politicians are behind a gambit to control the Lamu County Council to this end that erupted in a violent confrontation that was filmed by a national media outlet and screened on the evening news in 2010.³

In the meantime, politically connected individuals have managed to frustrate the Shungwaya court injunction through forged letters backdating their allotments. A September 2, 2009 court hearing on this issue has been postponed until October—veteran court watchers expect other postponements will follow. In the meantime, the combination of local out-migration and influx of upcountry settlers will soon overturn indigenous parliamentary representation in the Lamu East constituency.

Lamu District's population has grown 17.8 per cent since the year 2000, and this figure does not factor for the out-migration of local people.

Hope that the new Constitution, especially the new land policy and its provisions for redressing historical injustices, is the main factor preventing an explosion of pent-up anger. But the state has provided meager information on the port affair and there has been even less public discussion. According to the Hansard, the feasibility study was to be tabled and debated in Parliament.

This has not occurred. Instead the government proceeded to advertise tenders for the first three berths before the preliminary draft of the feasibility study was completed. Even ranking officials of key state ministries in Lamu report they do not know what is going on.

These developments illustrate the political weakness of Lamu's indigenous communities as the proposed port in Magogoni and the prospects offshore oil threaten the foundations of their cultural survival. A similar situation has emerged on the southern border of Lamu District, where the allocation of large blocks of Tana Delta and Lamu land to outside interests is exterminating the customary tenure of local producers in addition to their access to vital natural resources and water.

³ A large area allocated a senior military officer during the Moi era is being advertised for sale on the Internet. The Engarani Ranch is being marketed as a 4,000+ hectare "wildlife paradise" fronting the ocean. The web page has numerous misspelling; the asking price is Euro 1.3m, and the agent is retired civil servant from Lamu District—who is reportedly fronting for an Asian tycoon in Mombasa.

The specter of the radical Islamists entrenched in southern Somalia lurks behind the argument that commercial development based on the principle of eminent domain is the most practical means for exploiting this underdeveloped region. Objective assessment of these projects, however, indicates their implementation will lead to the wholesale replacement of indigenous Muslims with upcountry Kenyans unless there are specific measures to balance the equation.

Problem of the Settlement Schemes

The Mpeketoni scheme was initiated in 1968 to resettle landless people in Central Province. According to reports, the government rounded up unemployed and landless Gikuyu in Nairobi and other towns and loaded them onto lorries. They were transported to Lamu and given plots, tools, and food rations. Those who chose to remain experienced harsh conditions during the first years but persisted with assistance from the governments of Kenya and Germany.

Explanations for the Lake Kenyatta settlement scheme's success include:

- the settlers had nowhere to go they had to work hard to survive or perish;
- the government assisted the settlers with building materials and food;
- beginning in 1980 the German assisted GTZ settlement programme assisted the project by funding the road network, water, provision of farm inputs, community mobilization, extension services, and training, and provision of employment to the settlers; and,
- The settlers received title deeds that and this allowed them to seek credit and invest in off-farm enterprises.

Local farmers in areas outside the scheme have suffered in contrast, and remain vulnerable to chronic insecurity, invasions of elephants and other wild animals, and continue to occupy land with no formal tenure security.

In June 1997 the Mpeketoni scheme was fully occupied with 3,480 settlement plots covering an area of 14,224 hectares, and settler's allocation average 10 acres. In the settlement schemes of Lake Kenyatta Phase I and II, Hindi Magogoni and Hongwe 95 per cent of the occupants are people from Central Province. Apart from the allocations local people have also sold land to people from outside.

The land area of Mpeketoni Division of the District covers 1,429 sq km and 39 kilometers of coastline. A major side effect of the schemes is that the 2nd generation, i.e. the sons of the first settlers are now 25 – 30 years of age, and are settling themselves whenever an opportunity occurs. The numbers of upcountry settlers is constantly increasing due to the in-migration of relatives and friends of the original settlers.

The majority of allocations for Lake Kenyatta phase II were given to the indigenous population (80 per cent), but there is no development in this land

due to lack of assistance from the government or GTZ. It is assumed that the reason for this is because most of the allottees are locals, and the comparative neglect of the locals who are poor is part of the reason they started to sell their plots.

The majority of Chiefs and Councilors in this division are now people from outside the District. The non-indigenous settlers and their friends now occupy about 50,000 acres outside the settlement areas, and this is a source of major tension for the indigenous people of Witu Division and Mkunumbi Location.

The Hindi-Magogoni scheme was started in 1980; Witu Phase I began in 1989; Witu II in 1993. The average plot size on schemes is 4.0 ha. Speculation was a problematic factor in Hindi due to plans to develop naval base and oil pipeline, and together with repossessing and reallocating plots help explain the 50 per cent occupancy rate.

There are many cases of individuals occupying plots where original owners allocations were cancelled due to administrative malfeasance, or after bribes were paid to settlement scheme officers to reallocate the plots to others.

In the case of this scheme, the number of indigenous allottees is low because in some cases the allottees sold the plots after receiving letters of allocation. In other instances, the indigenous owners allocations were prematurely revoked after paying 10 per cent allocation fee. Most of these plots were reallocated to civil servants and state elites; they remain in their possession although much of the land remains under forest cover or undeveloped. Many of the scheme plots have been allocated and reallocated up to 6 or 7 times, indicating that even though Hindi is a state-assisted scheme, development of farms is problematic for most settlers.

The local inhabitants, most of whom are Boni residing on the land since time immemorial consequently end up cultivating bush plots on state land outside the scheme in order to survive.⁴ Kiongoni, Simanzari, Kawthara, Kibiboni, Ndeu are settlements within the schemes that were formerly occupied by these people, mainly Boni. Hindi town was their trading center. Now there are approximately 700 local farmers in informal settlements on the borders of the scheme (see annex of Boni settlements). Hindi Prison is located on land formerly settled by Bajun and Swahili owners.

The Impact on Local Communities

Research conducted on the status of land in Lamu by the Development Management Policy Forum reflects two basic premises: 1) Lamu's land problem and its impact on local economy and social welfare transcend issues of land and resource tenure elsewhere in Kenya, and; 2) the perception that Lamu is ripe for development by outsiders is fallacious; rather, the Lamu

⁴ The informant noted that many of the scheme plots have been allocated and reallocated up to 6/7 times, indicating that even though Hindi is a state-assisted scheme, development of farms is problematic for most settlers.

mainland and archipelago were already prosperous when Kenya became independent.

Negative developments over the past decades notwithstanding, Lamu remains faithful to the Swahili 'open society' model of development. Despite all the problems, Lamu people have not resorted to militant opposition, and culturally remain committed to the open society model. This may be changing as their grievances fail to receive proper recognition on the ground.

A former councilor from Witu explained the various dimensions of the land problem and the negative impact of state schemes.

He noted that the local people were not sensitized enough about the Settlement Schemes. He also said the local people relaxed in developing the settlement knowing that the land was their own. He blamed the settlement officers for being corrupt: they pressurized the local people to develop the settlement plots or they will be repossessed, they had a short time to settle or somebody else will be settled and the settlement officer will benefit financially.

The Witu people sold about 50 plots through this method of repossession. He also complained that the ratio of settling people, i.e. 60 per cent local and 40 per cent from outside the District, was not followed. The people from upcountry have the pleasure of owning and settling on the land with the help of the same settlement officers who benefit through either repossession or through second allocation to squatters on the vacant plots. This is a common practice in Hindi and the Lake Kenyatta schemes.

He concluded by noting that the majority of the settlement officers are people from outside the Lamu District – as such they have been trying to help their friends and relatives to acquire the land.

Not surprisingly, the administration of state schemes has combined with other factors to reinforce indigenous communities' perception they are not legitimate citizens of the Republic Kenya. This crisis of citizenship explains why Lamu people are joining inhabitants of other coastal counties in support of the Mombasa Republican Council, a non-violent social movement that is using the courts to challenge historical agreements leading to the incorporation of the ten-mile strip protectorate into Kenya.