



## **MEMORANDUM ON HISTORICAL LAND INJUSTICES IN LAMU**

**Presented to:**

The Truth Justice and Reconciliation Commission (TJRC)

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## **SUMMARY**

Prior to the new constitution, land in Lamu County was categorized as Government Land (GL). This nomenclature was greatly abused as the politically and financially elite were the only beneficiaries to access land, while the local indigenous populations were considered as “squatters” on their ancestral land.

It has been found that the land insecurity and inequitable access to natural resources lead to vulnerability and is one of the highest causes of poverty in Lamu. It therefore comes to no surprise that Lamu County remains one of the poorest counties in Kenya. Decades of “inherited” poverty has led to the disenfranchisement of the people. Having been denied access rights over their land since colonialism, and being forced out of their homes during the 1960s Shifta war, Lamu has reached a boiling point since the government has failed to address the historical injustices as well as failed to curtail on-going fraudulent land procurement in the region.

Although the new constitution and National Land Policy (2009) have finally acknowledged indigenous ownership of land and the importance of addressing historical injustices in the Coast Province, the delayed reforms and political blockade towards devolvement of power to manage our land and natural resources is highly discouraging. One such particular example of delay in reform is the failure of the Honourable President to sign the Indemnity Repeal Bill 2010 which will finally allow the people of Lamu to speak against the injustices carried out against us.

We therefore submit this memorandum in the hope that the Truth, Justice, and Reconciliation Commission (TJRC) will push for measures to address our concerns as well as hasten the reform process on the matter of land and natural resource rights in Lamu. Accompanied with this memorandum is a list of witnesses to the below-listed issues of concern who are willing to testify on the land and natural resource rights violations committed against the people of Lamu (Appendix A).

## **ISSUES OF CONCERN**

### **1. Illegal/un-procedural Adjudication of Government Land**

From the outset of independence, Lamu residents were unaware of the extent of GL and were precluded from obtaining land. Land was provided as gifts to individuals who were deemed loyal to the administration, or on the basis of ethnicity; thus advocating nepotism within the ranks of government. These allocations were done illegally as the individuals concerned failed to follow the proper procedures as was mandated by the Land Acquisition Act e.g. publicizing the distribution of the land. The people involved in these irregular allocations were surveyors, Physical Planning officers, Lamu County Council Chairmen, Members of Parliament, Chiefs, the District Commissioner and the Commissioner of Land.

### **2. Lack of Compensation for Displaced persons**

While the Kenyans displaced by the 2007 ethnic skirmishes are considered internally displaced (IDPs), little consideration has been given to the Lamu community members who were forced out of their farmlands in twelve villages including Shakani, Sendeni and Mvundeni by security forces during the Shifta war in the 1960s. These locals, who were in essence the first IDPs in independent Kenya were harassed, sexually assaulted, had their houses burned or torn down, forced to move into slums in Lamu or migrate to other areas of Kenya and Tanzania. To date, no form of redress has been made. Instead, their farms and lands were allocated to political elites.

### **3. Un-procedural Settlement Schemes**

To further exacerbate the problems being faced in Lamu County, during the 1970s, the Government of Kenya embarked on a policy of distributing land around Lamu to landless Kenyans through the Lake Kenyatta I Settlement Scheme and later the Lake Kenyatta II, Hindi Magogoni, Witu I (Lamu), Witu II (Hongwe), Kipungani, and Faza. These settlement schemes were established in a dubious manner as numerous land owners were not informed nor compensated for their land that was appropriated for resettlement (Appendix B). Some of those who received letters of allotment later had their lands illegally misappropriated from them

despite them having paid all fees due to the Ministry of Lands (Appendix C). The proportion of the indigenous community members settled through these settlement schemes was much lower than that of immigrants from other parts of the country, contrary to the 60:40 ratio required by law. Appendix D includes a list of the beneficiaries of the schemes and title deed owners in Lamu as of 2011. By looking through the data, we can estimate that the indigenous title ownership between 15-20%.

#### **4. Failure to Recognize Natural Resource Rights**

Alongside these historical injustices there were numerous land rights violations against indigenous communities living around and in gazetted National Reserves in Lamu County. Since the gazettelement of the Kiunga Marine National Reserve in 1979, Kenya Wildlife Services (KWS) has continually harassed locals who wish to develop their land despite them having lived on Kiwayu Island before the gazettelement of the reserve. Meanwhile, KWS allows foreign investors to develop large hotels on the Island while holding fraudulent title deeds issued by the Ministry of Land. This double standard of allowing external parties based on ethnicity, race, and financial “hand outs” to have land ownership but continual failure to recognize indigenous land rights is a gross violation of the new constitution. At the same time, Boni (Aweer) community members around the Boni and Dadori National Reserves have been denied resource rights in the gazetted reserves despite these rights being mandated by law. For example, community members that live and gather fruits and honey in Dadori National Reserve are harassed by KWS while government agencies have implemented state projects including fish ponds, and tree nurseries in the same Reserve.

#### **5. Misuse of State Power to Gain Land without Consultation or Compensation**

There have been reported cases where private individuals used their powers to procure land without adequate consultation or compensation. In cases where the land was intended for development projects, no efforts were made to assess the impacts of the projects or mitigate their effects. For example, fish landing sites and water catchment areas in Kiwayu, Shela, Mkokoni, Manda Island, Manda Toto, Tenewi and other coastal sites have been grabbed by renowned politicians to build hotels and homes on the beach front, despite the developments being a threat to local livelihoods. The government has also directly misused its powers to procure land under the pretence of public use without adequate compensation. This includes the procurement of land in the Magogoni area in the 1990s where locals were misinformed that the land was to be used for a Navy base, only to find out that the land was registered privately under a former senior Navy Officer, Raf Ruf, who later sold it off to the government and private businessman Ali Punjani. This same land is where locals have now learnt is the site for the proposed Lamu (Magogoni) port. Considering that title deeds in the Hindi Magogoni settlement scheme were given in majority to Kenyans from other parts of the country, Lamu locals do not stand to benefit equally in the proposed development. Our concern on the land violations related to the proposed Lamu port are particularly important at this time due to the rushed development of the Lamu Port-South Sudan-Ethiopia Transport (LAPSSET) Corridor which will cut across another significant proportion of our indigenous land.

#### **6. Intimidation by Organized Groups and Powerful Leaders**

In numerous cases, locals that challenge illegal allocation of land have been threatened, intimidated and imprisoned. In one well-known case, a gentleman from Mkokoni was imprisoned for tearing down the boundary walls of a property claimed to be registered illegally. He was intimidated by the provincial administration, and later died in custody. His cause of death remains unanswered to date. Community members have been historically threatened by political leaders, provincial administration, security officers, and business elite, to accept inadequate compensation, and keep silent on any injustices faced.

## **CONSTITUTIONAL DISPENSATION**

According to the new constitution, Land in the Coastal strip is no longer to be administered as government land. We also understand that as per Article 67 of the constitution, a National Land Commission is to be instituted which will “initiate investigations, on its own initiative or on a complaint, into present or historical land injustices, and recommend appropriate redress.” According to the National Land Policy (2009), this is to be carried out within one year of the appointment of the National Land Commission. However, the creation of

the National Land Commission Bill and Land Act to govern the conversion of government land into community land has been significantly delayed through political manoeuvring. We therefore hope that the Truth, Justice and Reconciliation Commission (TJRC) will take the necessary action to address these violations and push for land reforms in haste so as to prevent a repeat of human rights abuses that have been taking place in Lamu since independence.

## **WAY FORWARD**

We, the undersigned organisations, social movements, and concerned citizens of Lamu County, hereby submit this memorandum to the TJRC to present our case for the historical land injustices in Lamu, as well as draw your attention to the several urgent concerns that will exacerbate the issues if not addressed immediately. However, prior to any further discussions, we also wish for the TJRC to push for the Honourable President to sign the bill that repeals the Indemnity Act as soon as possible.

### **Illegal/un-procedural Adjudication of Government Land**

1. Freezing of land settlement, adjudication and land allocation until a committee is created to investigate and address all questionable historical land allocations and land rights abuses. Those who have failed or continue to fail to enforce it in the Ministry of Lands should be immediately apprehended.
2. Immediate fast tracking of the National Land Commission Bill into Law so as to prevent any more land abuses as in the past by the Land Commissioner and Ministry of Lands
3. The Land Reform Transformation Unit (LRTU) needs to be given autonomy and independence to be able to carry out law reforms that will address historical land injustices in Lamu.

### **Lack of Compensation for Displaced persons**

4. Former residents who abandoned their homes during the Shifta war be resettled or be given appropriate compensation. Compensation must take into account inflation rate from the time the violations took place.

### **Un-procedural Settlement Schemes**

5. No new settlement schemes be initiated nor should any un-alienated land be privatised or until a community land holding and governance entity identified by the community through a transparent and participative process is appointed to govern the administration of community lands.
6. Land owners whose titled land was used for settlement schemes or other government projects be adequately compensated. Compensation must take into account inflation rates from the date of appropriation.

### **Failure to Recognize Natural Resource Rights**

7. Communities members who have had their lands gazetted as a Reserve must have their user rights officially recognized as per the NLP which obligates the government to facilitate benefit-sharing and a co-management process for the sustainable use of natural resources.
8. All land titles on Kiwayu Island be revoked and terms of land ownership be developed between the people of Kiwayu Island and KWS to allow for locals to own and transact lands within the Kiunga Marine National Reserve.

### **Misuse of State Power to Gain Land without Consultation or Compensation**

9. Individuals who have encroached on protected ecologically sensitive areas and those who have committed fraudulent land transactions should be immediately apprehended despite their political or ethnic affiliation.

10. All pending land tenure issues highlighted above must be addressed, the local community should be consulted on the Lamu port, and an independent environmental impact assessment be carried out, prior to the commencement of any works.

#### **Intimidation by Organized Groups and Powerful Leaders**

11. Publicly known corrupt Ministry and government officers be immediately transferred out of Lamu County. These include, but are not limited to, members of the Provincial Administration, employees of the office of lands and settlement, security officials, and Lamu County Council officers.

#### **CONCLUSION**

For decades, we have lacked our right to land ownership and have been excluded from land management and development plans. Our lands, pristine beaches, ecologically sensitive areas, and livelihoods have been continually threatened contrary to our constitutional right. As a result of the loose land tenure rights and laws in Lamu, an overwhelming number of speculators have filed down to grab land and procure titles through fraudulent means, thus making history repeat itself once again. This has exposed Lamu to more injustice, which needs to be contained and investigated immediately. These contraventions have occurred openly and little has been done to halt the illegal acquisition of land, compensate the locals, or bring the culprits to book.

As has been witnessed, there have been several clashes between ethnic communities in Kenya primarily due to competition over access to land and related natural resources. It therefore follows that addressing historical land injustices in Lamu and improving land governance is essential for peace and development in the County.

While we recognize that the enactment of the new constitution was only the beginning of the reform process, we insist that the sensitive matter of land security in Lamu, and Kenya as a whole cannot be delayed any further! We therefore hope that the TJRC can move with great haste on the above recommendations so that history does not repeat itself.

Sincerely,



Abubakar El-Amudy, Chairperson  
Save Lamu

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#### Member Organisations of Save Lamu Include:

1. Faza Youth Action Group
2. Huduma Self-Help Group
3. Imams of Lamu
4. Lamu Council of Elder
5. Lamu Beach Management Unit
6. Lamu Environment & Conservation Network
7. Lamu Environmental Protection and Conservation
8. Lamu Marine Conservation Trust
9. Lamu Marine Forum
10. Lamu Youth Alliance
11. MUHURI, Lamu
12. Sauti ya Wanawake
13. Shungwaya Welfare Association
14. Wanaharakati Okoa Lamu

## **LIST OF APPENDICES**

- A List of witnesses and contacts
- B Mohamed Sheikh Mohamed Mpeketoni Land Case title deeds and correspondences  
28 October 1986 – 26 May 2000
- C Ali Mohamed Abubakar Land Case supporting documentation  
31 January 1997 – 14 May 2009
- D List of title deed owners in Lamu (Response to Parliamentary question by Sheikh Dor)  
15 February 2011