

MEMORANDUM FOR THE PARLIAMENTARY COMMITTEE ON LANDS AND NATURAL RESOURCES

From the Lamu Community

20 August 2011

SUBJECT: Resolution of Historical and Existing Land Rights Violations in Lamu County

We, the undersigned organisations, social movements, and concerned citizens of Lamu County, hereby submit this memorandum to the Parliamentary Committee on Lands and Natural Resources to draw your attention to the several urgent and unaddressed concerns, especially in light of the new National Land Policy (NLP) 2010 and the upcoming Lamu Port.

Background

Prior to the new constitution, land in Lamu County has been 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. Although the new constitution and NLP have finally acknowledged indigenous ownership of land, the government has greatly failed in addressing the historical injustices that have occurred thus far, as well as failed to curtail on-going fraudulent land procurement in the region.

From the outset of independence Lamu residents were unaware of the extent of GL and were precluded from obtaining land. Lands were provided as gifts to individuals who were deemed loyal to the then current administration (Appendix A), or on the basis of ethnicity; thus advocating for nepotism within the ranks of government. These allocations were done illegally as the individuals concerned failed to follow the proper procedures as was then mandated by law i.e. 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.

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 the Lamu area to landless Kenyans through the Lake Kenyatta Settlement Scheme. 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, as evidenced with supportive documentation from one such afflicted local, Mr. Mohamed Sheikh Alwaily (Appendix A2), and the proportion of the indigenous community members settled was much lower than immigrants, contrary to what is required by law. 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 A3). While the new settlers were considered internally displaced (IDPs), little consideration was given to the 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 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 despite the Indemnity Act being repealed by Parliament in 2010.

More recently, a closed-door plan of a settlement scheme, known as the Swahili Settlement Scheme, was initiated. In this scheme, the Lamu county Council proposed that land was to be given out through a ballot system in which 70 per cent of the beneficiaries would be locals. Using the same corrupt system as previous settlement schemes, we discovered that less than 30 per cent of the beneficiaries were locals thus calling for the community to appeal with a memorandum to the Ministry of Lands. Our investigation informs us that this scheme has been specifically orchestrated to once again provide land to the wealthy, while the needy continue to remain landless.

Alongside these historical injustices there are numerous on-going violations to our natural resources taking place. Plots in gazetted water towers and catchment areas, such as the Shela sand dunes where wells for the

town are located, have been encroached by numerous individuals and companies laying claims to ownership of the land (Appendix B1-4). Additionally, reclaimed lands in the Wiyoni area of Lamu Island created from dredging operations and meant for public utility as agreed upon in District Development Committee meetings in 2000 have also been contravened whereby private investors have already begun developing the area and squatters are encroaching the lands with support from the provincial administration (Appendix B5-B7). Contrary to the Ministry of Lands' claims to have revoked all titles on the Shela water catchment area (Appendix B8), when you look at the titles that have been revoked compared to the full beneficiaries list (Appendix B3 & 4), the process is clearly not complete. Similarly, their claims to be addressing the concerns on Wiyoni encroachment are invalid as the settlement in the area has grown significantly.

While hotel owners on Kiwayu Island who have irregular/fraudulent title deeds on the land have developed resorts on the island, locals are prevented from having even minor development by KWS on the basis of the Island being in a National Reserve. Fish landing sites have additionally been grabbed and thus threatened livelihoods and biodiversity in the area. Recently, investigations show that the District Commissioner (DC), Lamu East, is incorporating a behind-door settlement scheme on Kiwayu that lacks transparency and due process. Some individuals have also acquired thousands of acres of land in the name of 'Ranches' and have succeeded to acquire titles (Appendix B9), but some have illegally subdivided and sold the land later to outside parties. Our lands and pristine beaches in these ecologically sensitive areas, including the islands of Manda Toto, Ndau-Pate and Tenewi are therefore threatened by foreign investors who follow irregular processes to procure their titles from the Ministry of Lands.

Protected areas and land belonging to indigenous owners are sold worldwide without their knowledge for exorbitant prices (Appendix B10), while the locals remain disenfranchised with the land adjudication process being riddled with bureaucracy and corruption. Land adjudication is very expensive for the average Lamu resident; titles take a very long time to process, and those that do usually end up in the wrong hands through fraudulent means. These contraventions have occurred openly. Little has been done to halt the illegal acquisition of land, compensate the afflicted, or to hold the culprits of these activities accountable to the legal process.

We have noted that land insecurity is highly related to natural resource management. For example we have witnessed continual degradation of Boni and Witu Forest as the area is invaded by recent immigrants under the false pretence of being squatters so as to benefit from the existing settlement scheme program. Detailed research on the relation between land tenure issues in Lamu and natural resource management has been well documented for the Kiunga Marine and Dodori Reserve environs (Appendix C1-4). Research on other settlement and land issues in Lamu has also been well researched and documented by others (Appendix C5-6).

This double standard of allowing external parties based on ethnicity, race, and financial "hand downs" to have land ownership but continual failure to recognize indigenous land rights is a gross violation to the new constitution. Demographic estimates place the indigenous title ownership between 15-20% (Appendix D). The non-indigenous include both Kenyans and foreigners. It has been found that most locals sold land due to the high poverty levels and expensive land adjudication process that led the impoverished owners to relinquish their lands. While some of the original owners may have sold their lands to non-indigenous community members, it has raised eyebrows that one ethnic community in particular are the great majority.

In an attempt to address some of the land issues, a civil suit was filed by Said Khalif and Omar Lali as representatives of Shungwaya Welfare Association. A court order halting new letters of allotment or title documents pending determination of the case was delivered by the High Court in 1999 (Appendix E). Despite this, only a verbal directive was given by the Hon. James Orengo and thereby officers from the Ministry and investors continued to defy this order by illegally backdating their title deeds to dates prior to the injunction. Also, investigations show that IDPs from the 2007 post-election violence are being settled into Lamu County. There are a number of eyewitness accounts of individuals from Central Province recently migrating to Lamu and illegally occupying land. This situation is causing ethnic tensions in the region since indigenous populations remain insecure on ancestral lands and immigrant populations are flooding in and are shown areas to occupy with the assistance of chiefs and headmen in the areas.

Our above concerns are particularly important at this time due to the development of the Lamu Port-South Sudan-Ethiopia Transport (LAPSSET) Corridor which will cut across a significant proportion of our indigenous land as clearly indicated in the attached maps and affect us significantly (Appendix F). Without our right to land ownership recognized, Lamu people will be excluded from most benefits, have reduced power in negotiations and fail to be involved in the development plans being made for our farm and forest areas. Already, an overwhelming number of speculators have filed down to Lamu to grab land and procure titles through hasty and fraudulent means. This has opened up Lamu to more violations of land tenure rights, which needs to be contained and investigated as soon as possible.

We understand that as per section 21(1) of the NLP, within one year of the appointment of the Land Commission the Cabinet Secretary is to “make rules for the conduct of investigations into historical land injustices as provided for in Article 67(2)(e) of the Constitution.” Furthermore, we are aware that a pilot project through the Land Reform Transformation Unit (LRTU) of the Ministry of Lands is in place in nine select villages in Lamu East to test a model, called the Community Land Rights Recognition model, which will recognize and register community lands as afforded in the Constitution and NLP, that former Government land along the Coastal region to community land (Appendix G). We have been informed that this piloting will then inform the development of the Community Land Act. While we appreciate the recognition of the historical injustices leading to the conversion of GL into Community Land, and the plan by the LRTU to create a new process of community ownership, existing land rights abuses are rampant and need to be addressed immediately to prevent the perpetual cycle of human rights violations as has been taking place in Lamu since independence.

Recommendations

In order to address both immediate and historical issues of concern, we hereby demand that:

1. The court injunction on freezing land allocations be official documented and publicized to all Ministry officials and general public. The directive MUST be enforced to freeze settlements, adjudications and land allocations until a committee is created to investigate and address all questionable land allocations and land rights abuses both in the past and present. Those who have failed or continue to fail to enforce it in the Ministry should be immediately apprehended
2. An independent committee formed to investigate irregular land allocations. This committee should include not only government officials but also local representatives who are not implicated in any of the land tenure cases and who are selected by the local community through a transparent and participative process
3. The approval of the new Land Act recognizing community lands should be hastened.
4. No new settlement schemes be initiated nor should any un-alienated land be privatised or transferred into the hands of the local authority 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
5. All unalienated land be registered as a block belonging to indigenous communities which will then be subject to local laws of land allocation that will be formalized by the community land entity as allowed for by the NLP
6. Individuals encroaching on protected and ecologically sensitive areas, and those who have committed fraudulent land transactions should be immediately apprehended despite their political or ethnic affiliation
7. Titles in gazetted and protected areas such as the Shela sand dunes, National Reserves, and protected forests to be immediately revoked and violators apprehended
8. 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 of alienation

9. Former land owners of areas that have been converted to settlement schemes be adequately compensated for their land. Compensation must take into account inflation rates from the time of appropriation
10. Communities members who have had their lands gazetted as a Reserve 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 and boundary truthing be done on conflicting Reserve boundaries
11. Terms of land ownership be developed between the people of Kiwayu Island and Kenya Wildlife Service to allow for locals to own and transact lands within the reserve without threatening biodiversity. Contrary to previous activities, there should not be any double standard in the interpretation of the gazette notice of the reserve whereby only foreigners are allowed to invest and develop
12. 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, and Lamu County Council.
13. More awareness is raised and education is provided to all villages in Lamu County on the NLP including land rights and land adjudication process so as to build their capacity to enable them to make informed decisions in land transactions
14. All pending land tenure issues highlighted above be addressed prior to the commencement of construction of the Lamu port

Final Considerations

Lamu community members and groups have written dozens of memorandums concerning the problems of land tenure over the years, some of which have been included in Appendix H. We have additionally had several written correspondences (Appendix I) and held several meetings on the same matter. One particular meeting in 2006, we were able to reach an agreement with the provincial administration and the Ministry of Lands to address some of the above concerns (Appendix J). Unfortunately little if any action has been taken to date. Several decades down the line, it is very disheartening that the same matter is being discussed with little if any action being taken by the concerned authorities. Based on this, it is very obvious that organized forces are geared to violate our land rights and further disenfranchise us politically, socially and economically. Meanwhile, higher forces are fostering ethnic imbalances and nepotism by giving greater government facilitated support to recent immigrants and foreign nationals than indigenous communities.

So while we appreciate the visit by the committee we write this memorandum with exhaustive hearts tired of the continual disregard to our demands and concerns by our leaders, representatives, and government. We however have the hope that similarly to how the TJRC heard our concerns to repeal the Indemnity Act in 2010, the Parliamentary Committee on Lands and Natural Resources will act promptly to the above concerns and speedily address the sensitive land issues in Lamu so as to acknowledge that we are in fact Kenyans and thereby reinstate our right to acquire and own property before the tipping point is reached for peace and stability in the area.

Copy to:

Hon. James Orengo, Minister of Lands and Natural Resources
Hon. Kenneth Marende, Speaker of the National Assembly of Kenya
Hon. Farah Maalim, Deputy Speaker of the National Assembly of Kenya
Hon. Shakila Abdalla, Nominated Member of Parliament
Hon. Abu M. Chiaba, Member of Parliament, Lamu East
Hon. Fahim Y. Twaha, Member of Parliament, Lamu West

APPENDICES

LIST OF APPENDICES

#	Date	Title	Description	From/To
A – Case studies of improper land allocations				
A/1	1994	Application for a plot at Bawaya, Lamu	letter	Hon. Abu M Chiaba/Commissioner of Lands
A/2	28 October 1986 – 26 May 2000	Mohamed Sheikh Mohamed Case study	Land titles and correspondences	Various
A/3	31 January 1997 – 14 May 2009	Ali Mohamed Abubakar Case study	Supporting documentation	Various
B - Fraudulent Land Transactions in Protected and Ecologically Sensitive Areas				
B/1	2009/10??	Shella Sand dunes and Ras Kitau	Informative document	National Museums of Kenya
B/2	2005	Lamu beach and sand dunes plot allocation	Letter	The District Land Registrar
B/3	2010	Gazette notice no. 5560	Revocation of land titles	District Land Registrar
B/4	Unknown	Beneficiaries of plots at Shela Water catchment Area	List (some are not revoked yet)	N/A
B/5	18 August 2000	Minutes of a meeting held at the District commissioner's office in Lamu District	DDC Minutes Meeting	
B/6	15 July 2002	Appeal for registration of reclaimed land in Lamu Town	Letter	Lamu Council of Elders/The Commissioner Ministry of Land and Settlement
B/7	7 June 2007	Land issue in Lamu	Summary of letters and memorandums	Amu Council of Elders/District Physical Planning Officer
B/8	12 June 2007	Land issues in Lamu	Reply to memorandum presented to the D.C. during the District Physical Planning Liaison Committee Meeting of Tuesday 7 th June 2007	Amu Council of Elders/Ministry of Lands
B/9	Unknown	List of ranches and land that has been illegally allocated to individuals in Lamu District	List	
B/10	Unknown	Protected lands for sale in Lamu	Advertisement	Hass Consultant
C – Reports and studies on Tenure in Lamu				
C/1	3-7 December 2009	The coveted beaches: land & resource tenure issues of Kiwayu island	Participatory Risk Assessment (PRA)	Kenya Secure Project
C/2	7-13 February 2010	Dubious deals in the dunes: the case of Mkokoni	Participatory Risk Assessment (PRA)	Kenya Secure Project

C/3	6-12 March 2010	Endangered forest, endangered people: the case of the Boni	Participatory Risk Assessment (PRA)	Kenya Secure Project
C/4	9-15 April 2010	From Shifta to shifting: land tenure and resource governance in Kiunga	Participatory Risk Assessment (PRA)	Kenya Secure Project
C/5	2011	Settlement Schemes in Lamu District	Preliminary Research Report	Development Policy Management Forum
C/6	2011	A summary of land issues in Lamu, based on research on land issues on the Kenya coast undertaken by the Development Policy Management Forum	Research Report	Paul Goldsmith, Ph.D.
D - List of Title Deed Owners in Lamu				
D	15 February 2011	Response to Parliamentary question by Sheikh Dor	Land owners in Lamu County and people issued with title deeds	Hon. Sheikh Mohammad Dor/Ministry of Lands
E – Court Order from High Court of Kenya				
E	25 February 1999	Court Order	Civil Suit no. 622 of 1996	High Court at Mombasa, The commissioner of Lands & The Attorney General
F – Relation between Lamu Land Issues and Port Development				
F/1	2010	Lamu Port Area Map	Map	
F/2	2010	Infrastructure of LAPSET project	Map	
F/3	15 February 2011	Warisha kuhusu athari za Bandari ilokusudiwa ya Lamu County na matatizo ambayo hayaeleweki	Declaration	Shungwaya Welfare Association
F/4	October 2010	The Land Issue and the Lamu Port Project: Their Impact on Lamu People and Wapwani	Opinion document	Abdalla Bujra and Paul Goldsmith
G - Proposed Community and Land Rights Recognition Model				
G	2010	Community Land Rights Recognition Model	A proposed model for the recognition and registration of community rights to land based resources	Land Resource Transformation Unit (Ministry of Lands) & Kenya SECURE
H - Memorandums and Declarations				
H/1	1 March 2000	Land issue in Lamu District	Memorandum	Amu Council of Elders/The Joint Secretaries Commission of Inquiry

#	Date	Title	Description	From/To
H/2	20 June 2000	Land issue in Lamu District	Memorandum	Amu Council of Elders/The Joint Secretaries Commission of Inquiry
H/3	2004	Memorandum	Memorandum during President's visit to Lamu i.e. Water catchment area among others	Amu Council of Elders/H.E. President Mwai Kibaki
H/4	27 July 2008	Memorandum	Memorandum on land issue in Lamu District i.e. Freehold titles, Lake Kenyatta settlement scheme, land grabbing, internally displaced people	Amu Council of Elders/James Orengo, Minister for Land
H/5	25-26 March 2009	Fort Zahidi Mngumi Declaration	Recommendations and resolutions of a consultative meeting held at Lamu Fort	Lamu Community/Hon Ali Makwere
H/6	28 July 2009	Lamu Land Convention – The Sunsail declaration	To sensitize and educate people on their land rights and land administration and management procedure	MUHURI, Usalama Grou Anti Drugs Lamu, Kikozi, Hidabo, CIPK-Lamu, Wanaharakati Okoa Lamu
H/7	4 February 2010	Memorandum by Lamu Foundation	Highlighting historical injustices	Lamu Foundation/T.J.R.C.
H/8	2 December 2010	Statement for press conference	IDPs, Lamu people	Coast People's Forum
H/9	11 July 2011	Memorandum concerning Lamu community objection over plots adjudication and allocation along Safirisi in Hindi division, Lamu County	Memorandum	Lamu Civil Society Forum
I - Correspondences				
I/1	7 May 2001	Saving the life of Lamu Island	Letter	Amu Council of Elders/H.E. President Daniel Torotich Arap Moi
I/2	12 May 2011	Land Issues in Lamu	Letter on Land allocations, land trespassing, land squatting	Save Lamu/Hon. Minister James Orengo
I/3	8 June 2011	Land Issues in Lamu	Reply to Save Lamu letter on Embargo on land transactions, land squatting from 12 May 2011	Hon. Minister James Orengo/Save Lamu
J – Minutes from leaders meeting				
J	4 May 2006	Record of proceedings of the leaders' meeting on land issues of Lamu District	Land issues of Lamu District	N/A