



## **The Displacement and Dispossession of the Aweer (Boni) Community: The Kenya Government dilemma on the new Port of Lamu**

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# **The Displacement and Dispossession of the Aweer (Boni) Community: The Kenya Government dilemma on the new Port of Lamu**

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*The Aweer community, also referred to as Boni, is one of the indigenous communities in Lamu County, the site of the second sea port of Kenya whose implementation has been shrouded in secrecy and suspicion. The Lamu Port Project is a transport and infrastructure project in Kenya that when complete will be the country's second transport corridor. The project involves a port; a railway line; a road network; oil pipelines; oil refinery, three airports and three resort cities. The government objectives of the 'development' include improving livelihoods of over 15 million people in marginalized regions of the country. However, there are many issues of governance, land tenure and ownership, social equity, cross-border security, technical capacity, and management on the national level that needed to be sorted out before embarking on such an ambitious infrastructural plan facilitating foreign capital penetration.*

*The Boni are hunter-gatherers primarily living off the forest resources and are the smallest of the indigenous communities of Lamu whose number is currently estimated at less than 3,000 individuals. The Boni, whose lives and livelihoods are interwoven with the forest landscape of the Boni-Dodori ecosystem, stand in the frontline of the consequences of any environmental destruction that may result from the development of the new Port. It is estimated that over 70% of the land currently occupied by the Boni in Lamu county will be taken up by the new port. They have occupied customarily-held land for over one thousand years and have been considered "squatters" without legal standing to advance their social and economic aspirations. They have been denied resource rights in the gazetted reserves despite these rights being provided for by law. For example, community members that live and gather fruits and honey in Dodori National Reserve are harassed by the wildlife management officials and often arrested and prosecuted.*

*In the recent years, the entire region has been a prime target for irregular, illegal, and extra-legal acquisition of land by speculators targeting the proposed Lamu Port project area. It is alleged that at least 100,000 hectares of land in the area was in the hands of speculators. Besides, the development is likely to spur further massive land grabbing by corrupt elites and add fuel to the growing militancy over insecure land rights, insecurity, and economic disenfranchisement in Lamu. Rumours of allocations to state elites, high-ranking civil servants, and tycoons are rife. Large tracts of land in the Tana Delta and adjacent areas of Lamu district are also part of the stakes.*

*This paper is based on an on-going research that is aimed at establishing and documenting the extent of displacement of Lamu communities, particularly the minority Boni, by the development of the new Port of Lamu with a view to recommending policy measures that may contribute towards the amelioration of the problem.*

**Key words:** Lamu county, Boni / Awer community, hunters and gatherers, Lamu Port-Southern Sudan-Ethiopia Transport Corridor (LAPSSET).

## 1. Introduction

### 1.1 Introduction to Lamu County

Formerly known as Lamu district, Lamu county became a poor isolated island port during the colonial period, following the development of port of Mombasa at Kilindini. This situation continued under the independent Kenya Government, with the county currently being ranked as one of the poorest counties in the country. During the last five years there have been several attempts by international companies and countries to acquire large tracts of land in both the Tana River and Lamu counties. This is in addition to the smaller local rush for land in the two counties – especially in Lamu.

Lamu County is located in Kenya's Coast Province with a land area of 6,273 km<sup>2</sup>. The County covers a strip of north eastern coastal mainland and the Lamu Archipelago, which consists of numerous islands, which extend for about 100km south from the Somalia border. The most well-known of the islands is Lamu Island, which is the oldest existing settlement for the Swahili community. Lamu town is termed as "*the oldest and best-preserved Swahili settlement in East Africa*" but neighbouring islands also have numerous archaeological remnants of history dating as far back as the 14<sup>th</sup> Century. Thus the county is rich in both ecological and cultural diversity, which has allowed it to be recognized as a UNESCO World Heritage Site in 2001.

Lamu has a population of 101,539 (2009 census) and consists of four main indigenous communities: the Bajuni, Sanye, Aweer (Boni), and Orma. The Bajuni, who are the largest in population of the four groups, trace their origins to diverse groups, primarily Bantu and Arab descent. They mainly derive their livelihoods from fishing, farming, and more recently tourism-related activities. The Orma are pastoralists, while the Cushitic Sanye and Aweer are hunter-gatherers primarily living off the forest resources and limited farming. The Aweer are the smallest of the four groups in population. The Boni, who prefer to be called 'Aweer' because of the derogatory undertones carried in the name 'Boni', are hunters and gatherers whose livelihood is closely connected with the forest ecosystems.

### 1.2 The Proposed new Port of Lamu at Magogoni

On July the 23<sup>rd</sup> 2012, the President formally announced that the Port will be built and asked the different Government Ministries to start working on the process. According to the Daily Nation (23<sup>rd</sup> July, p.10 and 11) the Port complex will cost \$23 billion and has a time line starting late 2012 to about 2030. Its impact on the whole of Lamu County will be enormous. If the 'land rush' witnessed in the last three to four years in Lamu County is anything to go by, one would expect the rush for land to intensify once the port construction commences, and immigrants from the rest of the country will increase rapidly. According to the feasibility study carried out by the Japanese, about one million people are expected to come to Lamu to enable the Port complex to run properly once fully completed.

President Mwai Kibaki, former Ethiopian Prime Minister, the late Meles Zenawi and President Silva Kiir of South Sudan were in Lamu a few months ago to undertake the groundbreaking ceremony for the new Port and to show their desire to finally initiate a project that could prove to be a major boost to regional economies. Whilst this is good news for those who win the contracts and the politicians certain to take their cut of such monumental undertakings, there are grave misgivings particularly with regard to the environmental price to be paid and the

displacement and dispossession of the indigenous communities such as the Boni.

The **Lamu Port and Southern Sudan-Ethiopia Transport Corridor (LAPSSET)**, also known as The **Lamu corridor** is a transport and infrastructure project in Kenya that when complete will be the country's second transport corridor. Kenya's other transport corridor is the Mombasa port and Mombasa - Uganda transport corridor that passes through Nairobi and much of the Northern Rift. Once completed, the project will involve the following components:

- ✓ A port at Manda Bay (Magogoni)
- ✓ Standard gauge railway line to Juba (capital of South Sudan)
- ✓ Road network (to south Sudan and another to Ethiopia)
- ✓ Oil pipelines (Southern Sudan and Ethiopia)
- ✓ Oil refinery at Bargon
- ✓ Three international Airports (Lamu, Isiolo & Lokichogio)
- ✓ Three resort cities (Lamu, Isiolo and at the shores of Lake Turkana)

The project was initially conceived in 1975 but never took off due to various reasons. The project was later revived and included in Kenya's Vision 2030. LAPSSET cost was estimated at \$16 Billion in 2009. Recent estimates arrived after studies now put the cost of the project at between US \$ 22 Billion and US \$ 23 Billion.

The timeline of the project is not clear including when it started and when it should be finished. Some projects like the Isiolo-Merille road project began in 2007. At the peak of the project, between 2013 and 2018, it is expected that the Kenyan government will be spending about 6% of the country's Gross Domestic Product or 16% of its annual budget on the project. The project is in turn expected to contribute an additional 3% per annum increase in Kenya's GDP by 2020.

According to the government justification report, Lamu was selected for the project due to its almost perfect natural location. With a berthing depth of more than 18 metres (as opposed to Mombasa's 13 metres), Lamu's developers will have only a minimum of dredging to construct a port. Whilst Mombasa's narrow entry can only allow the access of one ship at a time, Lamu's wide harbour entrance will accommodate multiple ships approaching the port at the same time. When completed, the Lamu Port will have a quay length of 3,500m, 22 berths and capacity to handle 35m tons of cargo each year and join the handful of ports around the world that can handle Super Post-Panamax vessels.

When the idea of LAPSSET first came into the public domain, the issue of financing proved to be thorny. In 2008, the Qatari government had expressed its willingness to finance the entire project in exchange for a lease of 100,000 acres in the fertile Tana delta to grow food for its people. This drew sharp reactions and generated a controversy, with the Kenya government taking flak for ignoring the Tana Delta residents for decades and giving preference to Qataris. The deal finally collapsed when the Qataris pulled out in 2008. The Chinese saw the exit of the Qataris as a golden opportunity and Beijing's ambassador swiftly moved to discuss the project with the Kenya government with a view to taking the LAPSSET Corridor concept forward. In 2009, Kenya's Premier Raila Odinga visited China to lobby for the Lamu project. In early January 2010 President Mwai Kibaki met with the Chinese Foreign Minister Yang Jiechi in Nairobi on the Lamu Port issue. Progress was made and in May 2010 President Kibaki visited China for a second time and met with President Hu Jintao, finally sealing the LAPSSET multibillion-dollar financing deal.

### **1.2.1 Reasons for the new Port of Lamu**

The reasons given by the government for the development of the new Port at Magogoni in Lamu include, but not limited to:

- To develop Kenya's 2nd Transport & Economic Corridor,
- To reduce over-reliance on the only Corridor - (Northern Corridor),
- Improving livelihoods of over 15 million people in North Eastern, Eastern, Rift Valley and Coast regions,
- Facilitate trade and investment with South Sudan (over 4 million people) and Ethiopia (over 80 million people), and
- Promotion of regional socio-economic development along the transport corridor especially in the Northern, Eastern, North-Eastern and Coastal parts of Kenya.

The corridor's state-of-the-art infrastructure will transport crude oil from South Sudan to China, which buys more than 60% of South Sudan's crude production, and landlocked Ethiopia. Africa's newest nation, which seceded from Sudan in July 2011, came away with approximately three-quarters of the former country's reserves, although little in terms of oil infrastructure. What South Sudan lacks in refining and transport facilities Kenya is now eager to provide.

On the importance of the Port, President Kibaki had this to say during the groundbreaking ceremony, "*this project is expected to play a critical role in enhancing the economic livelihood of over 167 million people in our region*". According to News of 6<sup>th</sup> March, 2012, East Africa and the Horn have suffered for years due to a lack of investment in infrastructure. Regional ports and airports are operating at full capacity and existing road and rail links are utterly inadequate. Poorly maintained infrastructure has ensured that many of the Horn countries have received smaller amounts of inward investment when compared with other parts of Africa. However, little is known beyond these collaborative ventures regarding which individuals, companies and/or countries will be awarded (or already have been) the remaining port construction tenders by the Kenyan government.

The port site lies fifteen kilometres outside Lamu's 'old town' – a UNESCO World Heritage since 2001. Scholars hail Lamu's old town as being architecturally and culturally among East Africa's richest and best-preserved traditional Swahili settlements. In 2010, however, the Global Heritage Fund identified it as one of twelve globally-recognised sites that are 'on the verge' of irreparable loss and damage, particularly following the new Port of Lamu. Within ten years of the development of the massive infrastructure proposed, the mainland will have been converted into what the Kenyan government hopes will be a modern 'growth area' replete with oil refineries, high-speed railways, two international airports and several resort cities. If projects live up to artists' planning, the area will be East Africa's answer to Dubai, though distinguished from the Gulf's boomtown by a high tide of vice, chiefly prostitution and drugs. Residents of Lamu are finding it difficult to fathom that in a short time coral reefs prized for snorkelling and offering habitat to the endangered dugong, a manatee-like aquatic mammal, will be dynamited, the picturesque *dhows* displaced, and channels dredged to accommodate the daily passage of up to ten panamax container ships, the world's largest operating commercial vessels. In addition, there have been deep rooted fears that the new Port and the accompanying complex infrastructure may portend serious threat for the people of Lamu, and more so for the minority Aweer who stand to lose their traditional lands as well as their forest-based livelihood.

The supporters of the new port and those opposed to the development without following due process tend to be taking diametrically opposing positions. The champions of the port promise that construction of the port and the other infrastructure will guarantee jobs for thousands, if not millions, of impoverished Kenyans who are already being lured from other parts of the country. They brand the opponents of the port as enemies of development who are out to thwart realization of the African dream. The pro-port viewpoint may as well be summed up by the Lamu District Commissioner, a Mr. Stephen Ikua, who said: "*You can't eat the environment.*"

However, the government secrecy on the project, failure to include local leaders in decision-making processes, violations of national and local laws, and most contentiously, the use of legal loopholes to redefine the indigenous population as squatters has led to the creation of '**Save Lamu**', a local grassroots coalition of civil society organisations. According to a member of the 'Save Lamu' group, the people of Lamu are '*opposed to the 'secrecy' in which the project is being implemented, failure to implement an Environmental Impact Assessment (EIA) and lack of consultation with the Lamu people*'. Local concerns had fallen on deaf ears until community members filed a legal petition in the high court arguing that the Kenyan government had violated several sections of the new constitution with its initiation of LAPSSET project.

Despite tourist kidnappings in the Lamu area in September and October 2011, land prices around the proposed port continued to escalate as a result of speculation since inside information about the project was brought out in the public domain. A real estate agent in the know on the project remarked in 2010 that wealthy whites, local Swahili elites, and politicians were buying up land from the port site all the way up to Kiwayu, near the Somali border. Well-connected individuals allegedly got in early, grabbing up property to flip it to incoming speculators or sell to the government. Whipping up the frenzy of speculation naturally created a positive-feedback loop, driving up already escalating prices. A Lamu landowner residing in the upscale enclave of Shela reported on the condition of anonymity that an acquaintance takes 'phone orders' for land he has expropriated, and for which he has manufactured title deeds. "*Kenyan politicians have sold their soul and earth in the name of greed and profit,*" the anonymous source added.

#### *1.2.2: Highlights of major problems associated with the proposed port*

It may not be immediately apparent why the *Magogoni* port has become so contentious. But closer scrutiny of the project reveals serious problems across several interlinked domains, as described below:

- (i) Size:** The port is part of a massive infrastructural initiative called LAPSSET, an ambitious blueprint to construct a land bridge of roads, railways, and pipelines connecting Lamu to South Sudan and Ethiopia. The idea, is to open Africa's most inaccessible regions to capital investment, creating peace and prosperity in its wake. The large project approach to development in Africa is problematic. Since the infamous Tanzania Ground Nut Scheme of the 1950s, this mindset has produced numerous developmental wastes. Besides the financial resources wasted, the costs of such mega projects (*call them policy experiments*), at \$23 billion, include displaced communities, environmental degradation, and increased levels of state corruption on both beneficiary and donor sides of the fence. In the case of Kenya's Coast, even comparatively modest set-piece projects like the Ngomeni fish farming project, the Kilifi cashew nut factory, the Bura irrigation scheme, the Magarini settlement scheme, and a World Bank funded cold storage facility in Lamu all flopped in the past.
- (ii) The regional equation:** China has already provided a Ksh1.2 billion (\$1.33 million) upfront to the government of Kenya to get the LAPSSET ball rolling, and is expected to provide the rest of the needed funds. Landlocked South Sudan and Ethiopia are understandably keen on establishing alternative links to the Indian Ocean. China wants to insure access to future supplies of oil. But there is no guarantee that the quantity of oil and other commerce justifying the massive investment will materialize any time soon.
- (iii) Timing:** At a time when Kenya is struggling to restore order to its own house, it does not make sense to commission such a controversial new project. The scale and conceptualisation of the project places it on a collision course with major constitutional

reforms of critical importance for the situation in Lamu and across Kenya's Coast. The current situation in Kenya and the manner in which this initiative is being pursued suggests the alliance of politicians and speculators behind the port project are eager to make as much kill as possible out of the *Magogoni* project before the new Constitution takes full effect and before the term of current president ends in March 2012.

- (iv) **Ownership:** There is a queue of donors interested in funding the project and there should be enough work to keep almost everyone happy. In addition to the construction of road, railway, and pipeline, the construction of the port itself and its diverse components such as international airports, resort cities and oil refinery, among others, will generate all manner of build-operate-transfer tenders. Growing militancy over insecure land rights, insecurity, and economic disenfranchisement in Lamu are replacing decades of passive acquiescence.
- (v) **The process:** Hope over the new Constitution, especially the new land policy and its provisions for redressing historical injustices, is the main factor preventing an explosion of Coastal anger. Without public consultation on the process of the new project, the government proceeded to advertise tenders for the first three berths before the preliminary draft of the feasibility study was completed. Even senior officials of key state ministries in Lamu say they do not know what is going on. The current Minister of Transport responded to calls for more transparency by stating that the Lamu people will be informed of developments on *need-to-know* basis. This is aggravated by the disinformation campaign. A former Cabinet minister who visited the area claimed no one lives in the area of *Magogoni* except some wild animals.
- (vi) **Costs:** The current estimated cost of the project is equivalent to one-third of Kenya's GDP in 2010; the same escalating costs of commodities and services that are leaving many Kenyans gasping for air are sure to propel the real expenditures to a much higher level in due course. Under the current neo-liberal economic regime, we should expect to see much of this capital investment ending up in bank accounts abroad.

The document produced by the Japan Port Consultants mentions the need for mitigations due to habitat fragmentation, increased noise, vibration, and air pollution. It does not mention the local population and culture that will get displaced; although the document estimates the Lamu district population will increase to one million, it totally ignores issues of the local population, their maritime economy and the resultant displacement.

### ***1.3: Perceived consequences of the Port Development***

As a result of the LAPSET project, outsiders are pouring into Lamu district resulting in 18 per cent growth of the population over the past decade. Forests are being hacked down as new settlers use *quasi-legal* methods to acquire land. Rumours of allocations to state elites, high-ranking civil servants and tycoons are rife. Large tracts of land in the Tana Delta and adjacent areas of Lamu district are part of the stakes. Mounting local anger over the issues explains why legally established upcountry settlers on settlement schemes are fretting over a Rift Valley-style backlash from the communities of Lamu County.

The project has come under fire from locals who say they have not been consulted as required by the constitution. The deep fear harboured by the Lamu people on the impact of this project is understandable given the size and nature of the project, and the secrecy with which the whole process is being carried out. The fears revolve around the following:

- *Loss of land* – Most of the land is likely to be taken and owned by people from outside Lamu, displacing and dispossessing the local communities, especially the Boni forest dwellers,
- *Loss of economy* - Lamu's traditional maritime economy will be totally destroyed,
- *Environmental destruction* - The environment will be adversely affected,
- *Cultural erosion* - Lamu people will become a small minority and their culture will disappear,
- *Loss of power* - As a small minority they will lose their traditional power in Lamu County Government and institution,
- *Competition for local jobs* – The people in Lamu are less educated than those in the rest of the country due to past neglect by the government, hence likely to lose important jobs to outsiders who are more educated,
- *Increase in crime* - Crime will rise considerably as a result of the large number of up-country immigrants coming to work at the Lamu Port. The general peace which has existed in Lamu since the disappearance of the *Shifita*, will also disappear and will be replaced with crime, conflicts and tension.

From the foregoing, we note that the proposed development of the new port of Lamu is apparently exposing grievances of the local people and violation of their basic rights that have accumulated over the decades.

The spokesman of Lamu Environmental Protection and Conservation Group (LEPAC), a community based environmental conservation entity, Baddi, notes: '*Our heritage will be forever lost if this project is implemented without the due diligence required to protect cultural identities, environmental biodiversity, archaeological history and the basic rights of the local people*'. Despite these fears, there are many poor peasants and unemployed urban youths who, according to our survey, believe that the port might bring employment opportunities.

## **2. The Lamu County**

Lamu County is located in Kenya's Coast Province with a land area of 6,273 km<sup>2</sup>. The County covers a strip of north-eastern coastal mainland and the Lamu Archipelago, which consists of numerous islands, which extend about 100 km south from the Somalia border. The most well-known of the islands is Lamu Island, which is the oldest existing Swahili Settlement. Lamu is a region rich in both ecological and cultural diversity, which has allowed it to be recognized as a UNESCO World Heritage Site. Lamu is not only endowed with biodiversity on the mainland, but additionally has some of the richest marine ecology on the Kenyan coastline.

The County has two National reserves: Dodori, and Kiunga Marine. Covering 877 km<sup>2</sup>, Dodori is a breeding ground for the East Lamu Topi, and consists of a variety of mammals and birdlife including lions, elephant shrew, hippo, pelicans, and many more. It has the most varied species of mangrove forest in Kenya at Dodori Creek. Kiunga Marine Reserve consists of several islands rich with biodiversity including valuable coral reefs, sea grass, extensive mangrove forests, and the endangered sea turtles and dugongs. Kiwayu Island, which is part of the reserve, is deemed as having the most pristine beach in Kenya.

## **3. 'Marginalized Communities' in Kenyan constitution**

USAID and Kenya's Ministry of Lands have recently developed the Community Land Rights Recognition (CLRR) Model, which will secure the rights of the local Boni and Bajuni communities who have occupied customarily-held land for over one thousand years and have been considered 'squatters' without legal standing to advance their social and economic



aspirations. In addition, Lamu and the neighbouring areas have been prime targets for irregular, illegal, and extra-legal acquisition from speculators targeting the proposed Lamu Port project area. Developed based on provisions in Kenya's 2010 Constitution, as well as the 2009 National Land Policy, the CLRR's main goal is to provide a mechanism for the registration of community rights and interests to land in a systematic, transparent and cost-effective manner.

As a system of land tenure in Kenya, 'Community Land' is a new category introduced in the Constitution. This category strengthens the various provisions in the National Land Policy regarding the recognition of all modes of tenure, including customary and community land ownership. Almost all previous statutes on land were geared towards individualization of land with few provisions for recognizing communal rights and interests to land. Until these changes took effect, community land rights in Kenya have been held under the Group Ranch Representative Act, Trust Lands Act and Government Lands Act.

Over the last decade, the work of minority rights activists in Kenya has focused on mobilizing the voices of ethnic and cultural groups *'who think of themselves as possessing a distinct cultural identity ... and who evidence a desire to transmit this to succeeding generations [and] ... are defined by their real not imagined differences to the majority'*.

The Constitution accords protection to 'minorities', 'marginalized communities' and 'marginalized groups', and often uses these terms interchangeably. Article 260 of the Constitution, when describing marginalized communities and marginalized groups, does not define the term 'minority', perhaps because of the lack of an internationally accepted definition of the term. In seeking to identify these disadvantaged groups, the Constitution relies on objective rather than subjective criteria, in a manner quite consistent with international standards.

The Constitution defines a *marginalized community* as: a community which, by reason of its size or otherwise, has been unable to participate in public life in Kenya; an indigenous community that has retained and maintained a traditional livelihood based on a hunter or gatherer economy; nomadic or sedentary pastoralists; and groups which are geographically isolated. While some groups, such as Nubians, meet only one criterion of a marginalized community, others, such as the Boni, could fit into more than one. A *marginalized group*, in contrast, is defined so as to capture a very broad class of socially excluded persons: *'Who, because of laws or practices before, on, or after the effective date, were or are disadvantaged by discrimination on one or more of the grounds in Article 27 (4)', including race, sex, pregnancy, marital status, health status, ethnic or social origin, colour, age, disability, religion, conscience, belief, language or birth'*. Minority Rights Group's report of 2005 on Kenya exposed the country's existing complex ethnic and regional inequalities, and the resulting impact on the social and economic rights of minorities. Failure to address these equity concerns threatened the stability of the state, and was the main reason for the 2007 post-election debacle:

*'The common denominator among Kenya's excluded communities is poor access to resources and opportunities, insecurity of tenure and alienation from the state administration. Their weak voice in governance restricts their ability to address most of these issues and increases their vulnerability in the face of environmental, economic and political problems ... [they] suffer from low levels of income; and poor health and nutrition, literacy and educational performance, and physical infrastructure.'*

In general, some of the shared problems faced by minorities and marginalized communities, including those facing the Boni, that were gathered from preliminary discussions in Lamu county include:

- The lack of effective representation in parliament and participation in local decision-making;
- The dispossession of their ancestral land and resource rights in addition to distortion of their livelihoods to make way for the establishment of national parks, game reserves, forest areas and economic activities such as the LAPSSET,
- Poverty, inequality and limited access to social services as a result of historical marginalization.

While minorities in Kenya are increasingly recognized by the state from an identity perspective, this recognition has yet to translate into real respect. This treatment is clear from the limited level of participation of minorities in actual decision-making in relation to matters that affect them. Traditional governance structures have been systematically undermined over the years, leaving minorities to contend with dominant groups within formal decision-making bodies where they have limited or no representation. Without the opportunity to influence the formulation and implementation of public policy, and to be represented by people belonging to the same social, cultural and economic context as them, minorities have become increasingly alienated and socially vulnerable within the Kenyan state.

Most minorities and marginalized communities in Kenya – by virtue of their numbers – are unable to succeed in having a member of their own community win an elective office in Kenya’s majoritarian system of democracy. This difficulty is further compounded by deliberate attempts by the state to divide minorities between different administrative or electoral units, rendering them numerically inferior in whichever unit where they are present.

The exclusion faced by ethnic, linguistic and religious minorities in Kenya is both overt and covert. While law and policy are beginning to respond to the challenges facing minorities, social discrimination and discrimination in state practice remain endemic. The relationship between access to public services and proximity to government exerts pressure on minority groups to discard or hide their identity and take on the more dominant identity.

Kenya’s ambition is to become a newly industrialized, middle-income country ... by the year 2030. To achieve this goal, the Kenyan state has designated series of flagship programmes (known as *Vision 2030*), a number of them for areas occupied by minority and marginalized groups. The \$23 billion port project in Lamu, the LAPSSET, is one of the flagship projects of *Vision 2030*

Kenya’s 2010 Constitution protects the rights of minorities in three ways, namely:

- It makes substantive provision to address specific concerns of these communities,
- It mainstreams concerns of minorities into institutions of government including political parties, and
- It creates institutions and mechanisms that, if effectively implemented, could empower minorities and other groups, and safeguard their properties such as ancestral lands.

In a departure from previous Constitutions, the 2010 Constitution anchors land issues in Kenya on principles set out in the National Land Policy. These principles include the need for secure land rights and encourage communities to deploy ‘recognized local initiatives’ to resolve land disputes. These principles are consistent with the informal approach to disputes of indigenous groups, such as pastoralists and hunters and gatherers, which were previously subordinated by the constitutional and legal regime in Kenya. However, the 2010 Constitution is also clear that local initiatives for dispute resolution must comply with the Constitution, so that if such approaches promote discrimination, including in gender relations, they will be found to be incompatible with the Constitution, and hence invalid. These principles further embody

sensitivity to the gendered nature of land relations by calling for the elimination of gender discrimination in law, custom and practices related to land.

The 2010 Constitution also creates community tenure, defined to include land '*lawfully held as trust land by county governments*' and ancestral lands traditionally occupied by hunter-gatherer communities such as the Boni in Lamu. While creating community land is aimed at addressing the problems created by both the previous Trust Land Act and Group Ranch laws (especially among pastoralists), minorities must be vigilant to ensure that the enabling law, to be enacted by parliament (which is yet to be passed by parliament), does not take away from the gains intended by the Constitution.

#### **4. The Awe(e)r ( or Boni) Community**

The Boni, who call themselves Awer or Aweer, are found in Lamu county of Kenya and in Southern Somalia. Historically, they were said to occupy the land between the two rivers, the Tana in Kenya and Juba in Somalia; and they were the main inhabitants of the area before the arrival of the Bantu Somali and the Galla groups (Daniel Stiles, 1980), prior to their movement out of the deep forest in the 1960s to settle along the Mokowe-Bothai-Kiunga road where they occupy today. There are different sub-groups of the Awer and these tend to display minor dialectical differences – hence the evidence that each of these maintained a certain amount of social and territorial autonomy while they shared most of their culture.

The Awer (also written as *Aweer*) lives in lowland forest environment that receives medium amount of rainfall average of between 650 – 750 mm, but with high variability. Rains can be heavy sometimes but most villages tend to face serious water shortages, particularly during the dry season, when water is obtained from deep wells in low lying open areas. Harvey (1978) reported that many villages were abandoned during the dry season and their inhabitants split up to join relatives living in more favourable areas.

The Boni are found in nine villages in Lamu County where they are largely the only community, while they form a small minority in three other villages. The population of each village tend to vary from a low of sixty people to a high of about two hundred people. The total population of the Boni in Kenya was estimated at 9,150 (2009 population census) while the number of those in Somalia is unknown. The Awer people are hunters and gatherers and are known to have been great elephant hunters who supplied ivory to traders during the 19<sup>th</sup> century. Suggestion have been made in the literature that the word 'boni' derives from the southern Somali word 'bon' which referred to low caste people who lived by hunting wild game. As hunters and gatherers, the Awer live by hunting game meat and collecting fruits from plants and honey from forests.

The Awer are said to be among the most endangered communities in Kenyan coast. The other minorities found along the coast whose existence is also under threat just like that of the Awer include the Korey and the Sanye. Thus the Awer are under serious threat and facing extinction unless something urgent is done to preserve them and their culture through research and documentation of their language and way of life. It may be pointed out that domination by larger and more influential communities and their portrayal as backward and primitive people have been major contributory factors to this state of affairs. The viewing of the Awer as backward and primitive people have made some of them to deny their identity as a community and got assimilated into the lives and culture of more 'civilized' and 'sophisticated' communities.

With the new Lamu port being developed within their homeland, the Awer face eminent danger of being wiped out from the face of Kenyan map. The rush for land in areas inhabited by the Awer such as Bargoni, Mangai, Kiangwi and other Awer areas as a result of the new port, is likely to displace and dispossess many of the Awer from their ancestral home, while the remaining few may be assimilated into the cultures of the new communities that come into the area. Nonetheless, the Awer still do have rich and to a large extent, undiluted culture in spite of their interaction with the more dominant and influential communities in Lamu County such as the Swahili and the Bajuni. Most of the Awer are Muslims and have been able to harmonise their traditional culture with that of Islam.

The Awer had a rich and elaborate culture in which every member of the community had a role. Since their livelihood revolves around hunting and gathering, everyone who had a role in this was expected to start their career quite early in their life. For instance, young boys were taught how to hunt by first targeting small animals, reptiles or birds or even targeting a specific spot. Any boy would only graduate into a man upon killing particular wild animals such as a rhino, buffalo, lion or an enemy. On killing such an animal, he would cut the tail, stand on top of the carcass and wear the tail of the animal on his shoulder and start singing heroic song. Hunting is usually done during the day or when there is full moon at night, using poisoned arrows, bows and traps. There are three types of hunting by the Awer: as a proof of manhood where a lion, buffalo or rhino is killed; hunting for food where giraffes, antelopes and dik dik are killed, and hunting for trophies where elephants, hippos or rhinos are killed. When going out for gathering and harvesting honey as a major component of their livelihood, the Awer produce a special sound to call certain bird (*miris/teu*) which will guide them to where honey can be found. Honey is usually found in big trees such as mahogany and *neem* trees. The special bird will fly ahead of the men and will produce a special cry and sit on the tree where the honey is found. In addition to looking and gathering honey from the forest, the Awer also keep bee hives in strategic places for honey production. Each bee hive produces about 40 kilograms of honey.

The Awer mix honey with animal fat and meat and use it as food. Honey is also used as stew and eaten with maize meal (*ugali*), and it is commonly sold these days to earn them some money. Due to the restrictions placed on hunting and gathering fruits and honey from the forests by the state, a few Awer are now taking up farming to earn their livelihood.

The Awer has not been known to practice witchcraft but they made extensive use of herbs from plants to treat their sick. Only expert medicine men knew the name of the plants to be used for treatment and they would be paid a small fee in the form of honey. The medicine men picked the herbal plants from the forests, boiled them and gave the solution to the sick to drink. However, the Awer tend to take their sick to hospitals and health facilities these days, although the nearest health facility is more than 50 kilometres away.

The Awer community has the position of headmen which was purely based on age, and the eldest man would always assume that position. The Awer headman is usually the final authority on most decisions, although any party strongly dissatisfied with a particular decision, may appeal to civil authorities or Islamic officials for judgement. However, the headman often legitimizes what, in his considered opinion, is the will of the majority. The community elders also preside over cultural and religious ceremonies. The Awer, like many other hunting and

gathering communities, tends to lack political authority, and this has been attributed to the equalizing effect of the lack of any wealth/property and tendency to share whatever one got from hunting and/or gathering. There is no concept of ownership of property among the Awer, and most of the men do not own anything more than a bow, an arrow, an axe, a knife, some poison for hunting, and a calabash or honey bag for harvesting and storage of honey. The Awer women on the other hand own a basket, beads, a comb and some locally produced utensils.

Among the Awer, some chores were the preserve of either sex while others were done by both sexes. While the men were responsible for hunting wild game and harvesting honey, the married women were responsible for building their bee-hive type (*mndule*) houses. Weaving and making of baskets and mats were done both men and women.

The Awer (Boni) community has been the inhabitants of the Boni-Dodori forest for ages but that is set to change soon following the development of the new port of Lamu. The minority Boni group has been living in the forest, and all they know is forest life. "*Our ancestors used to sell ivory and meat. When explorers came to this part of the world and asked where they were sold, they were told 'Kiamboni'; that's how the name Boni came to be,*" said a headman, Cheka Mohammed. The Boni are largely found in the Boni-Dodori forest ecosystem, which is one of the most fragile ecosystems on the continent. So backward in terms of development is the area that the residents still hide in bushes when strangers approach.

The Boni forest straddles across the two districts of Lamu and Ijara and it is through this forest that the only road to Kiunga and the border with Somalia runs, and along which the current settlements of the Boni people are situated. After the '*shifita*' war of the 1960s, most of the Boni people, one of Kenya's last hunter-gather groups and possibly numbering less than 10,000 individuals, were relocated to makeshift camps along the government controlled Hindi-Kiunga road, where they still remain. The forest communities, whose lives and livelihoods are interwoven with the forest landscape of the Boni-Dodori ecosystem, stand in the frontline of the consequences of any environmental destruction that is likely to result from the development of the new port.

## **5. Impact of the LAPSSET on the Boni Community**

A leading organization in wildlife conservation has raised the alarm over the development of the Lamu port. Speaking during a media field trip organized by the World Wildlife Fund (WWF) at the Boni-Ndudori forest in Lamu, WWF country director Mohammed Awer noted that the wanton destruction of trees by land grabbers is alarming.

The area is mostly occupied by the Bajuni, Boni and Swahilis, who are the minority, and the Boni insist that their interests should be safeguarded. It is alleged that at least 100,000 acres of land in the area was in the hands of speculators who acquired the land fraudulently in order to make a kill from the new land rush caused by the new Lamu Port.

The key impacts of the development of Lamu Port may not be directly visible as yet, but the local communities, including the Boni, believe that they will suffer irreparably as a result of the project. Some of the key issues that they point out, *inter alia*, include the following:

- (a) About 80% of the designated land for port development and the other projects that are

- planned, lie within the Boni occupied forests – hence expect to suffer significant loss of land and displacement;
- (b) Loss of livelihood as a result of the destruction of the forests that have been the home of the Boni for generations;
  - (c) Erosion of the Boni culture and the loss of their cultural identity, and
  - (d) Possible outmigration by members from the Boni community to urban areas in search of survival, hence destruction of their traditional social systems and institutions.

## **6. Conclusion and Recommendations**

From the foregoing discussion of the eminent displacement and dispossession of the Awer community, directly to pave way for the new Port of Lamu, or indirectly by irregular land deals that will eject them from their homelands of hundreds of years, the following conclusion is drawn and recommendations made to avert the inevitable crisis:

- There is need to ensure that the rights and benefits of the indigenous communities are protected amidst the drastic population increase expected in the development of a new port;
- As is widely known, land tenure insecurity is linked inextricably to poverty and in Lamu the situation is extreme as many locals still depend on natural resources to sustain their livelihoods, including fishing, honey collection, game hunting, pastoralism, farming, and mangrove harvesting. Improper use of public land, land grabbing and unsustainable use of resources in Lamu has therefore led it to be one of the most under developed counties in Kenya;
- The ethnic tension that exists due to the inequality in land tenure between the indigenous community and immigrants could therefore potentially develop into full fledged conflict if not resolved immediately.
- There is need to provide a mechanism for benefit-sharing between the national government and county government and spell this out soon after the County government is in place after the 2013 general election.

The major issues of concern that arise from this preliminary study may be summarised as follows:

### *(a) Illegal/un-procedural Adjudication and appropriation of Government Land*

From the onset of independence, Lamu residents were unaware of the extent of Government Land (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 accentuating 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 Commissioners and the Commissioner of Lands.

In order to address this concern, it is recommended that the following be put in place as a matter of urgency:

- 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;
- Immediate operationalization of the already constituted National Land Commission that replaces the Commissioner of Lands, so as to prevent any more land abuses as in the past by the Commissioner of Lands and Ministry of Lands.

*(b) 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 '*Shifita*' war in the 1960s. These locals, who were in essence the first IDPs in independent Kenya were harassed, sexually assaulted, had their houses burnt 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.

In order to address this concern, the following is recommended:

- Former residents who abandoned their homes during the *Shifita* war be resettled or be given appropriate compensation. Compensation must take into account inflation rate from the time the violations took place,
- All future displacement and dispossession of communities, particularly the minorities, should be avoided. In the unavoidable eventuality of any displacement, it should be done humanely and adequately compensated.

*(c) 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. Some of those who received letters of allotment later had their lands illegally taken away from them despite them having paid all required fees to the Ministry of Lands. 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. From the figures available, it is estimated that the indigenous title ownership is between 15-20% of the total beneficiaries of these schemes.

In order to address this concern, it is recommended that the following be undertaken:

- No new settlement schemes be initiated nor should any un-alienated land be privatised, 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;
- 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.

*(d) 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, including those living in Boni forest reserve. This double standard of allowing external parties based on ethnicity, race, and financial 'hand outs' to have and own land but continual failure to recognize indigenous land rights, is a gross violation of the new constitution. At the same time, Boni (Awer) community members around the Boni and Dodori National Reserves have been denied resource rights in the gazetted reserves despite these rights being enshrined within the 2010 constitution. For example, the Boni community members that live and gather fruits and honey in Dodori National Reserve are often harassed by Kenya Wildlife Service (KWS) while government agencies have implemented state projects including fish ponds, and tree nurseries in the same Reserve.

In order to address this concern, it is recommended that the following be done :

- Communities' members who have had their lands gazetted as a Reserve must have their user rights officially recognized as per the National Land Policy (NLP) which obligates the government to facilitate benefit-sharing and a co- management process for the sustainable use of natural resources,
- All land titles on Kiwayu Island be revoked and 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 Kiunga Marine National Reserve.

*(e) Misuse of State power to gain land without consultation or compensation*

There have been reported cases where private individuals used their powers to obtain 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. 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, Rauf Rauf, who later sold it off to the government and private businessman Ali Punjani. It has now emerged that his same land is where the site for the proposed Lamu (Magogoni) port is being put up. Considering that most of the title deeds in the Hindi Magogoni settlement scheme were given to Kenyans from other parts of the country, Lamu locals do not stand to benefit equally in the proposed development.



In order to address this concern, it is recommended that:

- Individuals who have encroached on protected ecologically sensitive areas and those who have committed fraudulent land transactions should be immediately apprehended, their political or ethnic affiliation notwithstanding;
- 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 on the new port.

*(f) 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 jailed, 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.

In order to address this concern, it is recommended that the following be put in place:

- 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.

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, the National Land Commission, to start work soon, 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 and Land Act to govern the conversion of government land into community land has been significantly delayed through political manoeuvring and malicious court injunctions.

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.

We believe that foreign investment can proceed without antagonising local stakeholders on the Coast, as Australia's Base Titanium solution for the mining crisis in Kwale demonstrated. Among the other issues that could be raised, there are the many unknowns like rising sea levels and other effects of climate change that need to be addressed in the long-term planning. In the meantime, stakeholders, who are governments from the region, can advance the larger LAPSET objectives by upgrading the road network linking these states. Failure to recognize the dangers present in Lamu County and the neighbouring Tana could potentially catalyze widespread resistance and ignite violence.

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