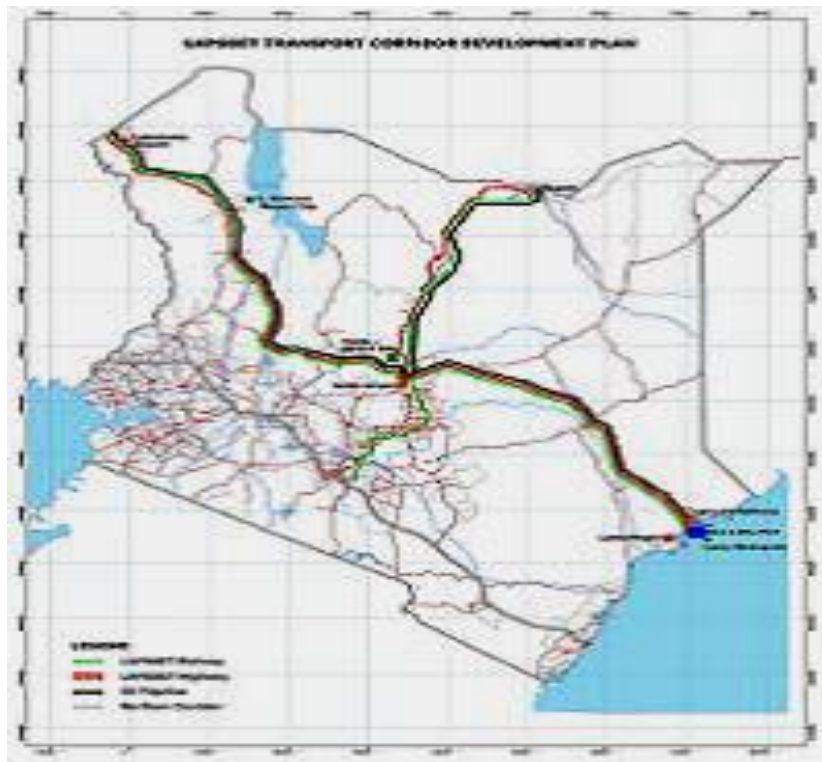


LAMU PORT-SOUTH SUDAN-ETHIOPIA TRANSPORT CORRIDOR (LAPSSET) AND INDIGENOUS PEOPLES IN KENYA



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International Working Group on Indigenous Affairs

This report explores the potential impacts of an infrastructure project on Indigenous peoples in Kenya as observed by a member of the United Nations Permanent Forum on Indigenous Issues. It outlines some of the potential threats faced Indigenous Peoples and provides some recommendations to address the challenges. Views and opinions expressed in the report are not necessarily those of the author or IWGIA.

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Executive Summary

The LAPSSET Corridor project, a major infrastructure development project that will run from Kenya to South Sudan and Ethiopia, will impact, positively or negatively, on the lives of more than 100 million people in the three countries. Indigenous peoples will potentially suffer the most negative impacts as a result of their having been historically marginalized economically, socially and politically. The recent discovery of oil in Turkana¹ will add to the suffering of the Turkana peoples.

The project's potential negative impacts on Indigenous Peoples include loss of land, territories and resources, increased conflicts, alteration of traditional livelihoods systems and the collapse cultures and traditions among others.

The Indigenous peoples found along the LAPSSET transport corridor include the Awer and Sanye hunter gatherers, the Orma, Wardei, Samburi, Borana and Turkana pastoralist and pastoral-fisher communities that include the Elmolo. These communities are some of the most excluded from the socio-economic and political fabric of Kenya and are least equipped to respond to the new set of challenges that the LAPSSET transport corridor portends.

Indigenous Peoples through their civil society organizations and other representative structures have voiced serious concerns regarding the potential negative consequences of the project. Many non-governmental organizations have also consistently voiced similar concerns and some are taking steps to address them.

The Government of Kenya has initiated a series of steps to address some of the concerns. These include attempts at addressing land tenure issues, constituting conflict management committees at various levels and committing to training of communities to prepare them to be part of the implementation process. But rampant corruption and policies that disfavor Indigenous Peoples may stand in the way of any efforts to safeguard the rights of Indigenous Peoples.

The government efforts may also be too little too late especially since the communities are not organized enough to immediately start addressing the challenges they face. This necessitates the urgent need for Indigenous Peoples to get organized both at the national and local levels. Civic education to raise awareness and enable Indigenous communities to make informed choices and livelihood improvement opportunities supported and up scaled to build and strengthen Indigenous Peoples ability to respond to challenges. Issues of recurrent, intensifying conflicts must also be urgently addressed. This cannot be achieved with genuine consultation and participation of Indigenous Peoples through structures that are truly representative of their needs and aspirations. Targeted international support will be critical to compliment the efforts by Indigenous Peoples and the government.

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Introduction

To catapult African countries into middle level economies by 2030, infrastructure development is considered to be the key to pillar that will facilitate trade, regional and economic integration and interconnectivity between countries. In pursuit of this noble objective, a Great Equatorial Land Bridge was conceived to link the Indian and Atlantic oceans along the equator.

The Great Equatorial Land Bridge will cut across the middle of Africa by high speed road and rail network, a fiber optic cable and an oil pipeline starting from Lamu at the Indian Ocean in Kenya through Juba in South Sudan, Bangui in Central Africa Republic and finally link with the Atlantic Ocean in Cameroon, through Yaoundé and Doula. Ethiopia will also be linked to the bridge via a similar road, rail and fiber optic corridor that will branch out from Isiolo, Kenya and run to Addis Ababa. A major port, oil refinery and airport will be constructed in Lamu, Kenya. Two other airports, an oil refinery and three resort cities will be developed in Kenya alone. This project is envisaged to be the largest infrastructure project ever undertaken in Africa.

The project will definitely touch many lives in many different ways along its 4200 Kilometers. Over 100 million people's livelihoods, cultures and rights will be impacted by the project in Kenya, Ethiopia and South Sudan. While many expect positive impacts, Indigenous Peoples have already started raising concerns regarding their collective and individual rights that are or will be infringed by the project.

In response to these concerns, a member of the United Nations Permanent Forum on Indigenous Issues undertook an unofficial mission with the support of the International Working Group on Indigenous Affairs (IWGIA), to explore the situation of Indigenous Peoples along the LAPSSET corridor in Kenya.

Indigenous Peoples and civil society organizations raised a number of issues that ranged from unresolved land tenure issues, increased conflicts, potential disintegration of communities and cultures and lack of effective structures of engagements in the LAPSSET corridor project.

Government responses outline the various steps it is taking or intending to take to address the issues raised by the communities. This include addressing land tenure uncertainties by issuing title deeds, attempting to stem corruption by cancelling illegally acquired titles, addressing conflict situations and creating opportunities for capacity building and income generation. The underlying tone in the GOK responses is the lack of definite structures of engagement with Indigenous communities to address issues raised.

This report provides some recommendations that include the need for further clarification of land tenure issues on the basis of communities' aspirations and not government assumptions, the need to organize Indigenous Peoples at the national and county levels as a means of enabling constructive engagement with the governments and the urgency for civic education

on Indigenous Peoples rights as enshrined in the constitution and other national and international instruments including the UN Declaration on the Rights of Indigenous Peoples.

Objective of the study

The objective of the mission was to ascertain the potential impacts the LAPSSET corridor project on indigenous peoples and explore avenues of mitigating negative impacts while maximizing benefits that may come with the positive impacts.

Methodology

Several methods were used to gather information for the study. This included literature review of numerous documents created by the government, civil society organizations and the media, extensive face to face and email based interviews with key stakeholders that included government officials, NGO's and community representatives in Nairobi and through field visits to Isiolo, Garissa, Garsen and Lamu - counties through which the LAPSSET Corridor project will pass. Gender considerations constituted a key component of the data collection process. The data was then collated and synthesized into this report.

The LAPSSET corridor Project

The Lamu Port – South Sudan – Ethiopia Transport and economic development (LAPSSET) corridor is a multi-billion dollar flagship project under the Kenya Vision 2030 National Development Policy blue print. The project comprises 7 major components – a port in Lamu, an oil pipeline from Juba, South Sudan to Lamu, Oil refineries in Lamu and Isiolo, a railway link to South Sudan and Ethiopia, three resort cities and airports at Lamu, Isiolo and Lokichogio and a High Grand Falls along the River Tana for Hydropower generation. The LAPSSET Corridor will link South Sudan and Ethiopia, both landlocked countries, with the Indian Ocean through Lamu, Kenya.

Kenya's strategic objectives:

Kenya aims at achieving several strategic objectives through the LAPSSET Corridor project. This include:-

- enhancing Kenya's position as a gateway and transport hub to the East African Sub-region and the broader Great Lakes Region by facilitating trade and regional economic integration through a reliable access rail, road and fibre optic network to the sea for Northern/Eastern parts of Kenya, South Sudan and Ethiopia and interconnectivity with the Atlantic through Central Africa republic and Cameroon.
- reduce Kenya's over-reliance on the Northern Corridor and

- improve livelihoods for over 15 million people in North Eastern, Eastern, Rift Valley and Coast regions of the country. An additional 85 million people in South Sudan and Ethiopia will also be impacted by the project.

Various components of the project are at various stages of implementation. The construction of the Port in Lamu was launched on 2nd March, 2012 by the Presidents of Kenya and South Sudan and the Prime Minister of Ethiopia with the view of having three berths operational in 18 months; the proposed airport in Isiolo is complete and is scheduled to commence operations by mid 2012 and the road linking Isiolo with the Moyale in the Ethiopian border is also almost complete. Sites for the construction of the proposed hydra dam development in the Tana River has been identified and feasibility studies undertaken, locations for proposed additional airports in Lamu and Turkana and the proposed resort cities in Lamu, Isiolo and Turkana have been identified and large scale irrigation sites in the Tana Delta are being developed. The construction of the oil pipeline from South Sudan to Lamu has also commenced.

Indigenous Peoples in the Kenyan Context

While there is no universal definition of “indigeneity” or “indigenous peoples”, there is universal understanding of which communities constitute Indigenous Peoples². The understanding is rooted in the criteria provided by the ILO 169³ and the Martinez Cobbo report⁴ that provided criteria for identifying Indigenous Peoples. On numerous occasions, the African Commission on Human and Peoples Rights has also advised and ruled on the issue of indentifying Indigenous Peoples in Africa.⁵ Self identification as Indigenous Peoples, recognition of others as such, Land and natural resources based livelihoods systems, strong cultural roots and a history of marginalization are the underlying criteria for identifying Indigenous Peoples in Africa.

Even though Kenya abstained from voting for the adoption of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP)⁶, Kenya’s new constitution⁷ recognizes Indigenous Peoples within the framework of marginalization. The constitution not only provides for the recognition, protection and safeguarding the rights of marginalized communities in the social, political and economic life of Kenya, but also provides for affirmative action⁸ aimed at improving the situation of marginalized/indigenous communities to be at par with mainstream communities.

The interpretation clause of the constitution, defines marginalized communities as;

- (a) a community that, because of its relatively small population or for any other reason, has been unable to fully participate in the integrated social and economic life of Kenya as a whole;*

- (b) a traditional community that, out of a need or desire to preserve its unique culture and identity from assimilation, has remained outside the integrated social and economic life of Kenya as a whole;*
- (c) an indigenous community that has retained and maintained a traditional lifestyle and livelihood based on a hunter or gatherer economy; or*
- (d) pastoral persons and communities, whether they are—
 - (i) nomadic; or*
 - (ii) a settled community that, because of its relative geographic isolation, has experienced only marginal participation in the integrated social and economic life of Kenya as a whole;**

On the basis of this clear constitutional language and the African commission opinions and rulings on the subject, pastoralist, hunter gatherers and minority fisher communities can be identified as Indigenous Peoples in Kenya. Pastoralists are found in most arid and semi arid parts of Kenya and include communities like the Maasai, Samburu, Borana, Rendile, and Turkana among others, while hunter gatherers are found in and around forests and include the Ogiek of Mau and Mt. Elgon forests, the Sengwer of Cherangany forest, the Yiaku of Mukogodo forest and the Awer of Boni forest. Minority fisher communities include the Elmolo and Iljemp.

These communities have self identified as indigenous peoples in numerous national and international forums, are identified as such by many communities, still pursue their traditional lifestyles by choice or where they are not, it is as a result of discriminatory national laws and policies. Explicit evidence of marginalization – lack of basic infrastructure like good roads, hospitals and good schools is the rule rather than the exception in their territories. The Kenya National Cohesion and Integration Commission report on public servants⁹ also clearly captures the exclusion of Indigenous Peoples in Kenya’s social, political and economic life.

Indigenous Peoples and the LAPSSET corridor Project

The LAPSSET corridor will cut across many Indigenous Peoples territories for most of its course. These include the territories of the Awer, Orma, Somali, Borana, Rendile, Samburu and Turkana among others. The LAPSSET corridor is expected to bring numerous socio-economic benefits in terms of mainly infrastructural developments. However, it also portends multiple risks for Indigenous Peoples. Indigenous Peoples have mixed feelings regarding the corridor. While some see great opportunities, majority are worried of the long term impacts of the project, on their rights, cultures and livelihoods.

The next few pages provide a bird's eye view of some the issues of concern to indigenous peoples along the LAPSSET corridor. The examination is desegregated by counties to provide a more reasonable reflection of the realities on the ground. While it may have been appropriate to visit each and every Indigenous community along the LAPSSET corridor, resource and time constraints could not make this possible. It is hoped that this report will trigger urgent engagement of Indigenous Peoples in the LAPSSET corridor project processes.

Indigenous Peoples and the LAPSSET corridor in Lamu County

Lamu County is located in north eastern coastal area of Kenya, towards the border with Somalia. It is divided into 7 administrative units and has a population of 101 000 people.¹⁰ Lamu County is politically demarcated into Lamu East and Lamu west constituencies. The 14th century Arab stone town that constitutes the largest Island and Swahili village in the Lamu archipelago is a UNESCO World Heritage Site because of its cultural properties.¹¹

Besides the oil prospecting that is being undertaken in the Lamu archipelago,¹² Lamu is the launch pad of the LASSPET corridor project. It will host a three tier port, an oil refinery, an international airport, an international convention centre, a cultural/technology city and an amusement park. Numerous bus terminals and other key infrastructure developments like roads, power plants and water supply will also be undertaken.

The construction of the port was launched on 2nd March, 2012 by the Presidents of Kenya and South Sudan and the Prime Minister of Ethiopia. At the time of the mission, preparatory activities towards the official launch of the project had been undertaken. This included road construction and clearing of the port site among others. Fast start projects that had already been allocated funding include the drilling of 10 boreholes that will supply 1.2 million litres of water daily for Lamu residents and the proposed port and installation of diesel power plant to generate one mega watt of power. China has also started connecting Lamu and Garsen districts to the national electricity grid.¹³

Indigenous communities in Lamu

Numerous communities are found in and around Lamu. They include but not limited to the Bajun, Sanye, Orma, Awer, Kore Maasai, Mji Kenda, Pokomo, Somali and Kikuyu among others. The Bajun constitute the majority with a population estimated at 25 000 and are a traditional fisher and agricultural community living along the Lamu coastline and Islands. The Orma pastoralist are estimated to be around 7 000 and occupy most parts of Lamu District's grasslands while the Awer (sometimes referred to as a Boni¹⁴) are hunter-gatherers and are found in Boni forest and estimated to be 2 500. The Sanye, also hunter gatherers and closely

related to the Awer are estimated to be 500. The Mji Kenda, Pokomo and Somali are generally businessmen who have migrated to Lamu by virtue their being from neighbouring districts while the Kore Maasai are thought to be around 200 and migrated into Lamu around the 17th century as a result of Maasai inter-clan conflicts in the Rift Valley. The Kikuyu constitute a significant population in and around Mpeketoni division. They are recent immigrants brought to the area in the 1970's by the first post-independence government of Kenya under President Jomo Kenyatta.

The context within which the term 'indigenous' is issued in Lamu is rather contentious. Some civil society organizations identify all communities that have been found in the area for a long time as "indigenous". This includes the Bajuns, Orma, Awer, Sanye, Swahili and Kore Maasai among many others. This context of "indigeneity" is in relation to migrant communities, including investors of both African and non-African descent, who have settled in the area in the recent past. Some civil society groups sometimes only identify the pastoralist and hunter



gatherer communities as Indigenous Peoples. The communities that have lived in the area for a long time also have strong cultural traditions that they still practice for the last 300 – 400 years. Their livelihoods systems are also closely attached to the land and the coastal region has always been left out in national developments efforts.

Communities like the Awer (Boni) claim to have always been in the area and the pastoralist Orma are thought to have migrated into the area in 17th or 18th century. The Bajun are believed to be a result of Arab and Indian intermarriages with the local Bantu communities during the 14th century inter-

continental trade. The Bajun's have generally dominated the economic, social and political landscape of Lamu.

Recognizing the differing opinions on indigeneity in Lamu and understanding "self identification" as a first criterion of "indigeneity, this mission will not attempt to demarcate this issue.

Issues of concern regarding the LAPSSET corridor project in Lamu

The communities and civil society organizations in and around Lamu are not opposed to the LAPSSET corridor project including the development of a port in Lamu. Many welcome the potential infrastructural developments like roads, electricity, hospitals among others that will improve the living standards of the people in the area. However, they concerned about a number of issues mostly around their rights to land, health and access to information and the

speed with which the project is being driven without addressing these basic concerns. Some of the issues include¹⁵:-

- **Lack of Environmental Impact Assessment** – Lamu is endowed with rich biodiversity including the richest marine ecology on the Kenyan coastline. Numerous wildlife and coral reefs are found around Manda bay, the proposed site for the port. Mangrove forests, rich breeding grounds for fish, line the shoreline. No environmental impacts assessment has been done to establish how this rich ecosystem will be impacted by the port and attendant developments. The civil society groups also fear that their constitutional rights to a clean and healthy environment¹⁶ will be interfered with by the developments. Articles 42 and 69 (1) (E) mandates the state to protect genetic resources and biological diversity, while Article 69 (1) (f) mandates the state to establish systems of environmental impact assessment, environmental audit and monitoring of the environment. Only a feasibility study has been done so far¹⁷.

Deforestation is also increasing in the ancestral territories of the Awer in and around the Boni Dondori forest reserve as a result of the LAPSET corridor. This is not only negatively impacting on the cultures and traditions of the hunter and gather Awer community but is also threatening the wildlife in the Boni-Dondori game reserve.¹⁸ The deforestation is being accelerated through illegal logging activities by immigrant communities clearing land for settlement, agriculture and charcoal production which had been made a highly profitable activity by the Al Shabab militia which in the recent past bartered a sack of charcoal for a sack of sugar.¹⁹

- **Lack of consultation and participation of the local community** – though the government has carried out a number of sensitization meetings and established a committee comprising community members to represent the interests of the communities in the design and implementation of the project. Article 69 (1) (d) of the constitution directs that the state *shall encourage* public participation in the management, protection and conservation of the environment. Lack of full and effective consultation and participation raises questions of free, prior and informed consent (FPIC) enshrined in the UNDRIP. Save Lamu acknowledges the GOK efforts to sensitize communities. However, a few sensitization meetings do not ensure full and effective participation of Indigenous peoples in matters that affect their lives. The government appointed committee is also not representative of the true aspirations of the communities.
- **Lack of access to information** – Access to information is a key ingredient in consultation and participation leading to the realization of FPIC in any project. Under Article 35 (1) (a)

and (b) of Kenya's constitution, every citizen has the right to information held by the state and to the information held by another person and required for the exercise or protection of any right or fundamental freedom. Article 35 (3) also obliges the state to publish and publicize any information affecting the nation.²⁰ Civil society organizations acknowledges that there has been provision of information. However they feel that this has been restricted to the provincial administration and select community leaders.

- **Potential social impacts including threats to traditional livelihoods** – the feasibility study undertaken by the Japanese company predicts that the population of Lamu will increase by over 1.25 million people over the period of the construction of the port. This will be about 12 times the current population of Lamu. The increasing population will socially and culturally impact on the indigenous peoples of Lamu. Further, the port, rail and road developments and the accompanying land tenure subdivision may alter pastoralist, hunter gatherer and fisher community lifestyles without equipping the communities with skills to manage the change.
- **Threat to World Heritage site (WHS)**– the old Swahili town that comprises Lamu Island was declared a UNESCO world heritage site on the basis of its cultural and not natural values. The WHS is located 10 km away from Manda bay, the port development site. While it might seem that the WHS is not under threat, the expected rapid population increase will increase the demand for modern housing and offices in and around

Lamu,²¹ eventually altering the cultural values of the World Heritage Site.

The mission is also aware of the separatist movement – the Mombasa Republican Council - that is advocating for the cessation of the wider coast region from Kenya.

- **Lack of clear benefit sharing mechanisms** - despite job opportunities being touted as some of the most immediate benefits that could come with the port, there is a risk of excluding Indigenous Peoples due to their low literacy rates and lack of political connections. Their fears are based on previous experiences in employment by both NGO's and government whereby project leaders have often tended to employ people from their own communities rather than the locals.

- **Failure to recognize individual and community land rights** is a historical problem along the Kenyan coast. Most of coastal Kenya is a Trust land. The lucrative beach fronts have

been titled allotted to powerful individuals in government at the expense of the local communities.

- **The area political leaders** strongly support the development of the port but are divided over its ownership and management. Lamu has two members of parliament for Lamu East and Lamu West respectfully. Both strongly support the development of the port and criticize the concerns raised by civil society and community representatives. They allege that local tourism industry that is dominated by private foreign interest is financing the civil society groups so that Lamu remains an undisturbed attraction for foreign tourists. Councillors at the Lamu county council support the project but they have differences over ownership and revenue distribution. While the central government argues that the port development site is public land that will be managed by the central government through the yet to be established National Land commission, a section of the councilors insists that the site should be public land managed by the Lamu county government. The management structure that will be agreed upon will determine revenue allocation among the two arms of government.

Government responses

At various meetings including at the launch of the project on 2nd March 2012, government officials including the President, Prime minister and ministers from line ministries have outlined some of the steps that are or will undertaken to address issues of concern to the communities in Lamu. This include:-

- **Addressing land tenure issues as a priority-** the government insists that it has and will be taking urgent steps to address the perennial land tenure problem in and around Lamu. Prior to the launch of the port, the Cabinet Committee on Infrastructure ordered the recovery of the land that was set aside for the Lamu port but had been dubiously acquired by tycoons in and around Manda island.²² The decision resulted in the cancellation of thousands of title deeds issued on the 500 acres. Some of the revoked titles were issued on ecologically sensitive lands including sand dunes. The Minister for Lands also warned that his Ministry would also revoke title deeds issued to ranches meant for animal and salt extraction projects and have remained idle for years. The land's ministry would then give back such land to the Lamu county government for other public use in consultation with area residents. The lands ministry has also warned senior government officials against trying to benefit from the list of squatters to be issued with titles on troubled Ras Kitau settlement scheme in Lamu West district and directed that the list of beneficiaries will be made public. Swahili settlement schemes will also be established in Mokowe and Hindi and another settlement scheme in

Mpeketoni where 6000 title deeds will be issued to indigenous communities. The Minister has also cautioned residents against selling their lands once they were issued with title deeds. As a follow up, the Prime Minister issued 1 200 title deeds to squatters in Siu Island and promised that residents of Faza, Chundwa and Pate will be issued with title deeds soon. The President assured that anyone whose land will be affected by the development of the port will be compensated²³.

“Every Kenyan has an inalienable right to life and this right cannot be taken away by anyone....I repeat... Every Kenyan has an inalienable right to life and this right cannot be taken away by anyone!”

President Kibaki during the Launch of the Lamu port

- **Environmental impact assessment** – the president has assured that an Environmental Impact Assessment (EIA) will be done to ensure that the project has minimal impact on the environment. He directed that EIA should commence quickly as the project rolls out.
- **Benefit sharing and Poverty reduction** – The government, through the Prime Minister, is of the view that the development of the port would open up massive job opportunities and bring investments. This will address the issue of benefit sharing and reduction of poverty among the people of Lamu. And to equip communities with the necessary technical capacities that will enable them to be the first beneficiaries of the job opportunities that will come with the port, the President directed that a technical training institution be immediately established to train 1 000 local youth on port and related industry operations. Various line ministries, including, tourism, livestock and fisheries, agriculture among others are at various stages of developing programs focusing on Lamu.
- **Constitutional rights awareness program through the recently launched Government of Kenya’s Kenya National Integrated Civic Education Program (K-NICE)²⁴** aimed at sensitizing citizens on the provisions of Kenya’s Constitution 2010 is also underway. It is expected that Lamu will also be a beneficiary. The government is seeking civil society organizations that will carry out the civic education program throughout the country.
- **Establishment of various focus group committees** – A coordinating secretariat, based at the Prime Minister’s office oversees the implementation of the LAPSET corridor project. A committee to represent communities in Lamu has also been constituted. Further, a committee to resolve the port ownership tussle between the national and local government was also constituted in early March.

LAPSSET Corridor and Indigenous Peoples outside Lamu County

- **Tana River and Garissa Counties**

Other than the road and rail infrastructural developments, there are no plans for major development projects like airports and cities in Tana River and Garissa counties. Indigenous communities found in these counties include the Orma, Wardei, Munyoyaya and Somali pastoralist and the Awer and Sanye hunter gatherers. Other communities found around Tana River include the Pokomo, an agricultural community though numerous other immigrant communities like the Kamba and the Meru have migrated into most of the towns in Tana and Garisa districts to do business.

Traditionally, there has been conflict over land use between the pastoralists and the Pokomo. But the frequency and intensity of the conflicts is on the rise as a result of changed perspectives on the value of land should the LAPSSET corridor project be implemented. And despite the numerous efforts to address the growing tensions, the MP for Galole, Mr. Dhadho Godhana feels that the government does not have the will to end insecurity in Tana River district and has urged his constituents to ignore peace meetings that are being organized.²⁵

The Sanye, the most marginalized community in the area are found in small pockets in most parts of Tana River district. This mission visited one such village 3 km outside Hola town and interacted with Sanye community members. Lack of clear land tenure, limited livelihoods options, exclusion from Tana River's political space, low literacy levels among other challenges is driving poverty, high population growth rate, prostitution and HIV/AIDs among the Sanye. The Sanye have lost their hunter gather identity and have no civil society organization. The government occasionally distributes relief food and a couple of NGO's²⁶ have constructed water collection points. The only clear step undertaken so far by the government to address the plight of the Sanye, is to allocate them the current land they live on as a safeguard against the pastoralist and agricultural communities expansionism. However, the Sanye have not been given title to the land. While the pastoralist and agricultural communities in both Tana River and Garisa counties are very organized economically, socially and socially, the Sanye have no organized structures that will enable them to participate in the socio-economic life of Tana River. And like the pastoralist communities in Tana River, the Sanye are also unaware of the constitutional protections that protect such marginalized groups.

The Awer in Garisa are found in Ijara and are sedentarizing in and around Bodhai but are still mostly spread out to the Boni forest, a gazetted national reserve. They have no civil society organization though they are still organizing around traditional structures led by elders. They have no presence in the civil service and have only had one councilor nominated to the Garissa county council in the past. They have no title over the lands they are found in Ijara.

Isiolo County

Isiolo county has a population of 143 294 peoples of which 73 694 are male and 69 600 are females.²⁷ The inhabitants of Isiolo comprise mainly the Borana, Samburu, Turkana, Somali and Meru. Other communities from other parts of Kenya will be found in the towns and markets in the county. The Borana, Samburu, Turkana and Somali can be considered to be the indigenous communities found in Isiolo County. All these communities are pastoralists and have self identified as “indigenous” in various national and international forums.

The land distribution system in Isiolo is still largely centralized with 96% of the total land area registered as a Trust Land under the Isiolo County Council. The remaining 4% is held by individuals as allotments in urban centers.

With an airport already operational, a proposed resort city in Kipsing Gap, oil refinery, a technology centre and junction where the LAPSSSET corridor project will branch out to wards South Sudan and Ethiopia respectively, Indigenous Peoples in Isiolo will be greatly impacted by the LAPSSSET Corridor project.

Unclear land tenure is major issue. With 96% of the land being held in trust by the Isiolo county council for no particular community, multiple and overlapping land claims by the Indigenous communities will exacerbate conflict. The area in and around Isiolo has historically witnessed numerous conflicts between the different pastoralist communities and with neighbouring agricultural communities over pasture and water especially in the dry seasons when pastoralists migrate to the farming communities areas. But in the last few months, the conflicts have escalated and intensified with the reasons shifting to territorial claims. This is attributed to the LASSPET corridor’s airport, tourist resort and communication hub to be developed in Isiolo.

The airport’s location between the Isiolo and Meru counties²⁸ has increased demand for land in and around the airport area between communities from the two counties. While a 50-50 revenue sharing agreement has been put in place, each County wants the lion’s share in the land to reap attendant benefits.

The identification of Kipsing Gap as the proposed location for a resort city has increased conflicts between the Samburu, Dorobo and Borana communities. The Samburu and Dorobo consider Oldonyiro division as their ancestral territory and consequently, consider themselves the sole beneficiaries of the proposed city. The Borana position is that since Kipsing Gap is still a Trust Land, it belongs to all communities in the county. Kipsing Gap has remained deserted after the resident Samburu and Dorobo communities were evicted in a major conflict in 1996. The Borana also argue that the area has always been a common grazing ground for all pastoralists groups in and around Isiolo and that the 5000 acres that comprise the Gap were gazetted in 1990 as a livestock holding ground to serve an intended abattoir. To the Borana

therefore, everyone in the county is entitled to compensation if the government or investors will compensate for the purchase of the Kipsing Gap to build the resort city. However, the Samburu cite a court ruling in 2001 that squashed the gazette notice and directed that Kipsing Gap remains a Trust land. To the Samburu, the Borana have no historical connection with Kipsing Gap as their ancestral territory is 300 Km away. Their position is that any rights-based compensation from the development of the resort city should be on the basis of the pre-1996 situation.²⁹This complex situation complicates governments efforts to compensate for lands that will be taken to create the resort city as it is not certain how, when and which community should be compensated.

The government informs and negotiates on the LASSPET corridor project through the Isiolo County Council. This raises serious issues of effective consultations with all communities especially since the political balance is heavily tilted in favour of the Borana in the County. Out of the 24 councilors in Isiolo County Council, 17 are Borana, while are 3 Turkana, Samburu's are 2 and 2 Somali. And it is alleged that the Somali councilors always side with the Borana councilors as the communities share similar cultures and religion. The Borana also have a larger percentage of professionals and are very connected to the central government in Nairobi as opposed to the Samburu, Dorobo and Turkana in Isiolo.

³⁰There is a feeling among these two communities that the central government is always biased in favour of the Borana when addressing issues in Isiolo County. This is also contributing to the high proliferation of small arms among all communities.

Indigenous Peoples in Marsabit, Moyale and Samburu counties experience the same challenges that include unclear land tenure, increasing conflicts, urbanizing environments, threats to culture and traditions among others

While the Borana dominate the political, social and economic life of Isiolo, they feel threatened by the expanding Samburu population that is increasingly becoming informed. The increasing Turkana influence in Central division and the migrating Meru community from the South are also serious causes of concern for the Borana. The Samburu have, for example, been advocating for the creation of Kipsing Ward in Kipsing gap while the Borana are opposed to this.

No Environmental and Social Impacts Assessment have been done on any aspects of the project in Isiolo County.

The Samburu and Borana are organized in various ways including having strong civil society organizations. The Dorobo and Turkana are the list organized in the county.

Turkana County

Turkana County is located in northern western Kenya and comprises three parliamentary constituencies namely Turkana North, Turkana Central and Turkana South. The county has a population of 855,399 and is predominantly occupied by the Turkana and Elmolo communities. Both are pastoralist but also engage in fishing in Lake Turkana.

Indigenous Peoples in Turkana face multiple threats. This include loss of lands, territories and resources from oil exploration, clean development mechanism (CDM) projects and infrastructural developments that include an airport, resort city and oil pipeline, road and rail networks that will come with the LAPSSSET corridor project.

The land tenure situation is similar to that of the other counties with the bulk of the land being held in Trust by the Turkana County Council on behalf of the communities. Loss of land is currently in form large tracks of land being carved into blocks and leased or sold to oil companies for oil exploration often without the consent of the indigenous communities. In one such block, Ngamia-1, oil has also recently been discovered by a British oil rig, Tullow.³¹ Ngamia-1 is in Lokichar, and comprises of 3.1 million hectares leased out to Tullow. There are reports the lease was done without the consent of the indigenous community or the Turkana county council. Reports indicate that a law firm belonging to a sitting cabinet minister, who is not even from Turkana, sold the land for almost Kshs. 800 million thus exemplifying how the business of acquiring oil exploration blocks in Turkana has been invaded by influence peddlers and well-connected middlemen, including Cabinet ministers.³²

The clean development mechanisms project in Turkana and Marsabit include large scale wind energy projects like the Lake Turkana Wind Power project, the largest wind power project in Africa.³³

The discovery of oil in Turkana will affect the implementation status of the LAPSSSET Corridor project. While the initial focus was Kenya providing the needed infrastructure to transport South Sudan's oil to the Indian Ocean, the new focus will be on Kenya's oil. This new development might lead to instability in the area.

Construction projects that are part of the LAPSSSET corridor project are yet to be initiated in Turkana. However, the government has constituted a multi stakeholder committee³⁴ to look at the rights, legalities, community interests as well as environmental issues³⁵.

Recent important developments

Kenya adopted a new constitution in August 2010. The new constitution has a number of provisions that address issues that touch on the rights of indigenous peoples in Kenya. Key

among the provisions include the new system of devolved governance that gives indigenous peoples a leading role in running their affairs at the local/county levels. To operationalize the devolved system of governance, a Devolved Government Bill, 2011³⁶ has just been signed into law and the Commission on Revenue Allocation (CRA)³⁷, established to distribute a proposed Kshs 200 billion budgetary allocation to county governments, has promised sharing the revenue among counties on the basis of population (60%), poverty levels (12%), size (6%) and equally (20%). However, this has been heavily criticized as it entrenches marginalization. Under the CRA proposal, the richest densely populated counties will continue receiving the bulk of government support while, Lamu, Tana River, Isiolo – the LAPSSSET Corridor counties – will receive the least revenue.³⁸ The sectors targeted for improvement are water, education, health services, energy, and rural access roads.

The constitution also provides for the recognition of culture and traditional livelihood systems, environmental rights and safeguards, a bill of rights that guarantees Indigenous Peoples collective rights including rights to lands and protections for minorities among others.

The new constitution has also restructured land ownership systems in Kenya, designating three types of land ownership into three categories that will be public, community and private lands. A national land commission is in the process of being established to manage all public land. Current Trust lands held by local authorities on behalf of communities will convert to community lands one registered as such with the national land commission. The land bill, land registration bill and the national land commission bill are at advanced stages of being enacted into law. These bills have just been signed into law by the President.

A newly established independent electoral and boundaries commission is also finalizing a review of electoral boundaries to make them more representative and responsive to local needs and is finalizing implementation of election laws to ensure it responds to the needs of marginalized and minority groups among others issues.

The constitution also provides for an equalization fund meant for marginalized communities' areas to bring them at par, basic infrastructure wise, with the rest of the country. Several ongoing programs including the Women Enterprise Development Fund and Youth Enterprise Development Fund should be used by Indigenous Peoples to drive the process of Indigenous enterprises as this is currently not fully happening.

Besides a law aimed at operationalizing the devolved system of governance, numerous other laws aimed at addressing constitutional issues are in the pipeline. These include but not limited to laws that will address issues of citizenship and culture among others.

Recommendations

Besides the recommendations specific to Indigenous Peoples organizations in Lamu, the mission recommends that the Government of Kenya and Indigenous Peoples organizations should initiate urgent actions that will;

- I. Enable constructive, focused engagement with Indigenous Peoples to recognize, respect and protect their rights along the LAPSSET corridor while ensuring and enabling structures that will ensure their full and effective participation in all processes related to the LAPSSET corridor project, recognizing and respecting Indigenous Peoples rights to free, prior and informed consent over their lands, territories and resources.
- II. Clarify and resolve land tenure issues concerning Indigenous Peoples along the LAPSSET corridor, recognizing and respecting Indigenous Peoples ancestral claims to territories on the basis of the continued impact of the doctrine of discovery and their right to redress under Article 28 of the UN Declaration on the Rights of Indigenous Peoples.
- III. Institute reliable, lasting conflict prevention and management systems that build on ongoing peace initiatives between Indigenous Peoples and with neighbouring communities along the LAPSSET corridor.
- IV. Recognize, promote and support Indigenous Peoples livelihood systems while enabling opportunities to engage in modern economic practice, for those who wish, but ensuring development with culture and identity.
- V. Undertake environmental and social impacts assessments of all components of the LAPSSET corridor project and designing strategies to mitigate negative impacts on Indigenous Peoples cultures and traditions and the environments that make the cultures possible.
- VI. Ensure Indigenous Peoples access to information and training on Kenya Constitution 2010 and other laws that are or will affect them.
- VII. Indigenous Peoples organizations should urgently lobby UN agencies with particular focus on UNESCO including the World Heritage Committee, World Health Organization, UNDP, UNEP, FAO, IFAD, UNPF and UN WOMEN among others, for support and partnerships in addressing issues that touch on their mandated areas.

- VIII. Indigenous Peoples organizations should also identify LAPSSET corridor project funders and ensure that they mainstream safeguards for Indigenous Peoples rights and interests.
- IX. Support partners should enhance targeted support that will enable a collective voice for Indigenous Peoples organizations along the LAPSSET Corridor while strengthening their participation at the county level and learning from Indigenous Peoples experiences locally and internationally.

Recommendations focusing on Lamu County³⁹

Understanding that the LAPSSET corridor project will not be stopped in order to address the issues raised by the Indigenous Peoples organizations, the mission recommends that the organizations quickly mobilize to secure as much benefits as possible for Indigenous Peoples to stem further loss that may be occasioned by the project. Some urgent specific steps would include;

1. To urgently strengthen the existing coordination and cooperation structures to include strong representation of the Awer, Sanye and Orma communities found in the interior of Lamu County and establish networking with other Indigenous Peoples along the LAPSSET corridor.
2. Lobby the government to reconstitute the committee that represents communities in order to make it more representative and accountable.
3. Urgently follow up with the Ministry of Lands at both the county level and in Nairobi to:-
 - Ascertain the criteria that will be used to determine which group ranches titles may be cancelled and how these lands will be reallocated.
 - Closely monitor the proposed list of squatters that is being developed for purposes of settlement to ensure the authenticity of the list to ensure that non-locals are not included as beneficiaries.
 - Closely monitor to ensure that non locals are not settled in Mokowe and Hindi settlement schemes among others.
4. Carry out civic education and awareness programs to inform the Indigenous Populations throughout Lamu County of their constitutional rights. It would be important to be part of the Ministry of Justice's Kenya National Constitution Awareness Program among others.

5. Strengthen and develop viable livelihood programs for Indigenous Peoples as a safeguard against selling land.
6. Commission Independent Environmental and Social Impact Assessments to inform on the potential impacts of the LAPSET corridor project on both people and the environment.
7. Strengthen collaboration with other civil society and mandated UN agencies, paying particular attention to UNESCO World Heritage Committee to investigate any possible threats that a 10 fold increase in the population of Lamu will have on the World Heritage Site that was declared as such because of its cultural properties.
8. For territories that have already been lost, Indigenous Peoples should deeply dialogue on the basis Article 28 and 31 of UNDRIP. Participating in the 11th session of the UN Permanent Forum on Indigenous Issues would be critical to stimulate this discussion in coastal Kenya, especially against the separatist endeavors of the Mombasa Republican Council.

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- ¹ British firm discovers oil in Kenya, Daily Telegraph;
<http://www.telegraph.co.uk/news/worldnews/africaandindianocean/kenya/9167381/British-firm-discovers-oil-in-Kenya.html>
- ² <http://harvardhrj.com/2011/07/balancing-rights-or-building-rights/>
- ³ Convention No 169, International Labour Organization; <http://www.ilo.org/ilolex/cgi-lex/convde.pl?C169>
- ⁴ social.un.org/index/IndigenousPeoples/.../MartinezCoboStudy.aspx
- ⁵ *Report of the African Commission's Working Group of Experts on Indigenous Populations /Communities*;
<http://pro169.org/res/materials/en/identification/ACHPR%20Report%20on%20indigenous%20populations-communities.pdf>
- ⁶ UNGA Resolution No 61/295, *United Nations Declaration on the Rights of Indigenous Peoples, 2007* ;
http://www.un.org/esa/socdev/unpfii/documents/DRIPS_en.pdf
- ⁷ Kenya Constitution 2010; www.parliament.go.ke/index.php?option=com_docman
- ⁹ Towards national cohesion and unity in Kenya: ethnic diversity and audit of the civil service; Volume 1, National Cohesion and Integration Commission,
<http://www.cohesion.or.ke/images/downloads/ethnic%20diversity%20of%20the%20civil%20service.pdf>
- ¹⁰ Kenya National Census report, 2009 <http://www.knbs.or.ke/Census%20Results/KNBS%20Brochure.pdf>
- ¹¹ <http://whc.unesco.org/en/list/1055>
- ¹² <http://www.kenyaengineer.co.ke/news/2-news/200-deep-water-drilling-for-oil-at-lamu-takes-shape>
- ¹³ Lamu gets 220 kv power line; <http://in2east africa.net/lamu-gets-220kv-power-line/>
- ¹⁴ Boni is a derogatory Somali word for poor people. They used it to refer to the Awer as the Awer had no cattle.
- ¹⁵ Please refer to Save Lamu Press Statement on the Launching Ceremony of the Lamu Port Project dated March 1, 2012 and their petition letter to the Prime Minister dated February 21, 2012. The list reflects the order of priority in the two documents.
- ¹⁶ Kenya's Constitution 2010, Article 42 and 69 (1) (E) respectively
- ¹⁷ Conducted by Japanese Port Consultants Ltd; <http://www.nigrizia.it/public/PDF%20e%20DOCUMENTI/lapsset-executive-summary.pdf>
- ¹⁸ http://wwf.panda.org/who_we_are/wwf_offices/eastern_southern_africa/index.cfm?uProjectID=KE0873
- ¹⁹ Interviews with small scale charcoal producers in Ijara district
- ²⁰ The Freedom of Information Bill, 2008 was revised on January 10th, 2012 to align it with the constitution. It is currently undergoing internal review and stakeholder consultations. For more, please visit <http://cickkenya.org/sites/default/files/bills/Freedom%20of%20Information%20Bill%20Revised%2010%20th%20Jan%2C2012%20%281%29.pdf>
- ²¹ This is already being experienced in Mombasa, Kenya.
- ²² *Tycoons lose out in port venture*, Daily Nation, Wednesday, February 22, 2012 page 3
- ²³ President of Kenya speech at the launch of the port
- ²⁴ http://www.justice.go.ke/index.php?option=com_content&task=view&id=211&Itemid=43
- ²⁵ "MP tells constituents to skip peace meetings" Daily Nation, Monday April 16, 2012 page 16.
- ²⁶ German Agro-Action
- ²⁷ <http://www.knbs.or.ke/docs/PresentationbyMinisterforPlanningrevised.pdf>
- ²⁸ Isiolo Airport Construction begins, Construction Business Review, 20th March, 2011;
<http://www.constructionkenya.com/1931/isiolo-airport-construction-begins/>
- ²⁹ Interviews with Samburu councilors and Civil Society Organizations e.g. SWEEDO.
- ³⁰ Interviews with local leaders in Isiolo.
- ³¹ British firm discovers oil in Kenya, Daily Telegraph;
<http://www.telegraph.co.uk/news/worldnews/africaandindianocean/kenya/9167381/British-firm-discovers-oil-in-Kenya.html>
- ³² Minister firm sold oil block for 800 million; <http://friendsoflaketurkana.org/index.php/lake-turkana/communities/itemlist/tag/Turkana%20Oil>
- ³³ <http://ltwp.co.ke/component/content/article/4-news/71-work-on-turkana-wind-farm-to-begin>

³⁴ Friends of Lake Turkana (FOLT), a community Trust working for Turkana peoples (<http://www.friendsoflaketurkana.org/>) land rights is part of the committee.

³⁵ FoLT are reviewing the EIA which they got from Tullow as one of the duties they were assigned as part of the committee.

³⁶ http://www.kecosce.org/downloads/Devolved_Government_Bill2011.pdf

³⁷ <http://www.tisa.or.ke/reforms-update/constitution-implementation-scorecard/revenue-allocation/>

³⁸ Billions share out to counties; Daily Nation, Friday April 27, 2012

³⁹ Lamu was the mission's focus therefore the need for focused recommendations.