

**HISTORICAL LAND INJUSTICES IN KENYA: THE CASE OF LAMU
COUNTY 1963-2010**

**BY
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M.A PROJECT

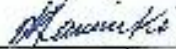
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DECLARATION

This is my original work and has not been presented for the award of degree in any other University



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DATE

This project has been submitted for examination with approval as the University Supervisor.



DR. AMATSIMBI MISIGO HERBERT

26/04/2022
DATE

DEDICATION

This document is dedicated to people of Lamu, also the millions of Kenyan squatters who having lost their single most important rightful inheritance and basis for living in the name of land, have persistently waged a struggle for the restoration of their land rights. Their resilience and courage are to be greatly admired, as they resist the prospect of their very annihilation. I also dedicate it to my mother Mrs. Muthoni .C. Mugo, for what is best in me I owe it to her.

ACKNOWLEDGEMENTS

May I first and foremost take this opportunity to thank the University, through the Department of History and Archaeology, for having granted me a scholarship to pursue my study. I would like to thank my supervisor Dr. H. Misigo – Amatsimbi without whom this project could not have been completed. His constant encouragement, correction and mentorship have seen me through with this work.

My gratitude goes to all academic staff members of the Department who endeavored to see me through with my studies. I particularly wish to thank Dr. George Gona, Prof. Wahome. E, Mr. Masika, Mr. George Odeny, Dr. Nyanhoga. B. and other members of academic staff for the time they took to assist me. Above all I am indebted to Dr. Amatsimbi for devoting his time to assist me. I offer my profound gratitude to him.

I wish to sincerely acknowledge the effort of my parents Mr. Mugo Cyprian and Leah Muthoni. My thanks also go to the rest of the family members and in particular, my brothers Njagi Mugo, Mithamo Day and my Sister Naomi Wanjiku for their encouragement during my studies.

ABSTRACT

The focus of this research is historical land injustice in Lamu, and the role of land as a determinant factor in the conflict. The research begins with an analysis of the people of Lamu and how they settled and placed claims over their ancestral lands. This provides a background to the understanding of the conflict and the role of land in it.

The study examined the conflict from 1963 to 2010. To understand the conflict, the study was guided by three objectives. The specific objectives include; to examine the nature and types of land conflict in the region, secondly, to determine the causes of land conflicts and finally to evaluate the impacts of the historical land injustices. The study was carried out among the Bajuni and the Swahili who live in Lamu Islands. The study drew attention to the symbolical identity of land to communities of Lamu and how it influenced their socio-economic aspects. The study is based on structural conflict theory. Structural conflict theorists emphasize the competing interests of groups as prime motivations of conflicts. The theory identifies the primary sources of conflict to be in the social, economic and political organization of society. The Theory is relevant to the research because Lamu land conflict is centred on competition for resources.

The study revealed several findings when considered in light of its objectives and conceptual framework. The study confirmed the persistence of land tenure insecurity driven by unrecognized customary claims to land. Customary claims to land and forest resources have not been recognized by the government, and there had been no land adjudication. A large section of the population lost their land. Furthermore, the conflict led to displacement of communities in favor of environmental conservation which led to creation of squatters and also the politicization of the land question.

LIST OF ACRONYMS

| | |
|----------------|---|
| CLO | Crown Lands Ordinance |
| GOK | Government of Kenya |
| NSC | National Steering Committee on Peace Building and Conflict Management |
| KWS | Kenya Wildlife Service |
| KPAP | Kenya Agricultural and Agribusiness Project |
| KLA | Kenya Lands Alliance |
| Africog | African Organization |
| TJRC | Truth Justice and Reconciliation Commission |
| ODM | Orange Democratic Movement |
| PNU | Party of National Unity |
| CIPEV | Commission of Inquiry into Post Election Violence |
| KNCHR | Kenya National Commission on Human Rights. |
| IPK | Islamic Party of Kenya |
| KANU | Kenya African National Union |

OPERATIONAL DEFINITIONS:

Shamba

A Swahili word meaning land that had trees and which was heritable, leasable or disposal in any way considered desirable to its owner.

Konde

A Swahili word meaning land that was held for temporary use from which there is no right to sell or inherit

Witemere

A kikuyu word meaning “cut for yourself”:- the Kikuyus identified unoccupied land and divided it among themselves.

Shifita

Bandits from Somalia

Wenyeji

A Swahili word meaning the indigenous people/belonging naturally to a place; natives.

Majimbo

A Swahili word meaning a constitution with a devolved government.

Land Tenure System

Is an institution i.e. rules invented by societies to regulate behavior. Rules of tenure define how property rights to land are to be allocated within societies. They define how access is granted to rights to use, control and transfer land, as well as associated responsibilities and restraints.

Squatter

A person who settles on land or occupies property without title, right, or payment of rent

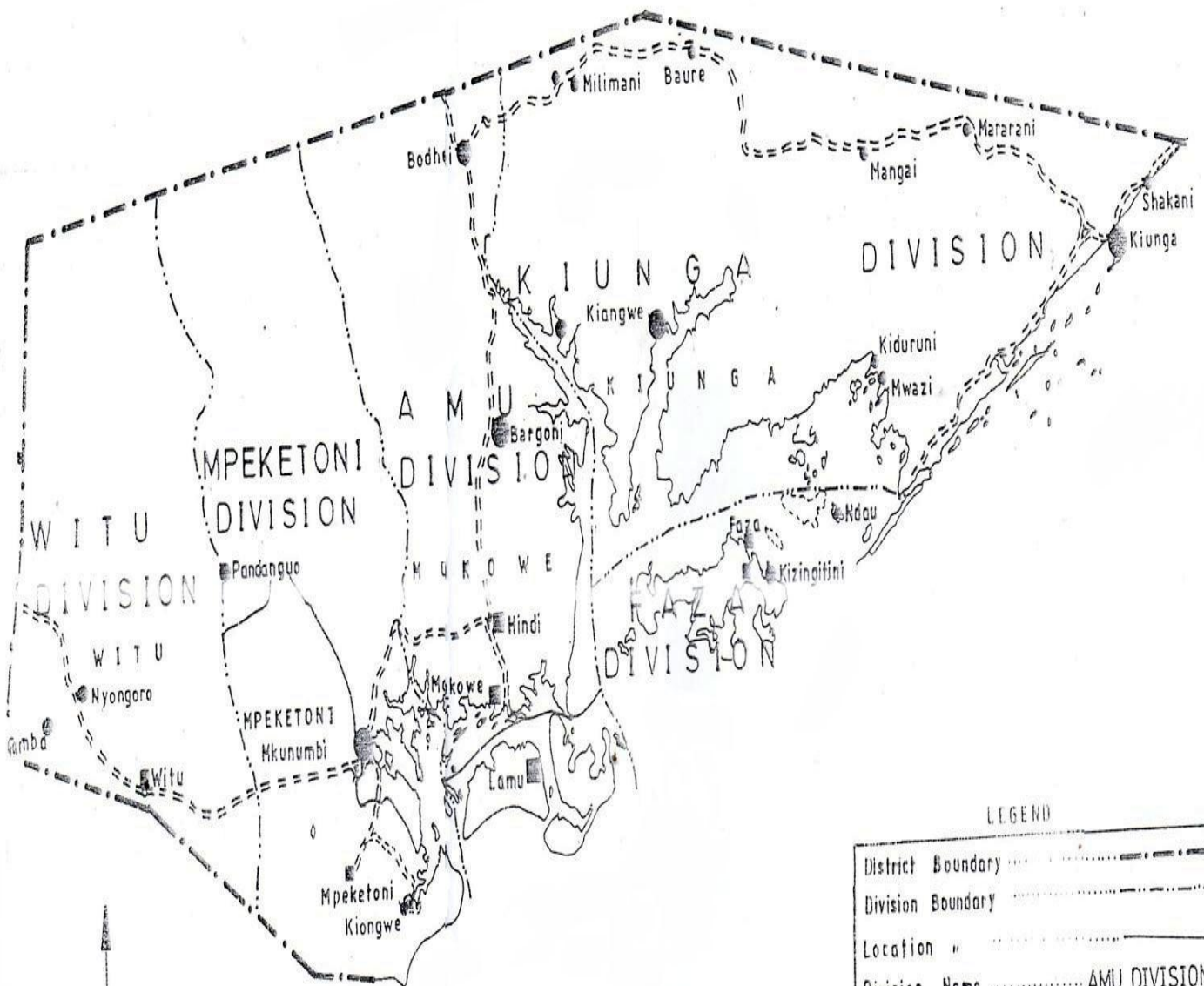
A person who settles on land under government regulation in order to acquire a title deed.

Letter of allotment

This is an offer for land or plot by the government or local authority to an applicant subject to a formal written acceptance of the conditions given and the payment of the charges prescribed.

MAP OF STUDY AREA.

The map on the next page shows the Lamu region and the five divisions where the study was conducted. The divisions include: Mpeketoni, Witu, Amu, Faza and Kiunga division.



LEGEND

| | |
|-----------------------|--------------------|
| District Boundary | |
| Division Boundary | |
| Location " | |
| Division Name | AMU DIVISION |
| Location " | KIUNGA |
| Urban Areas 4th Class | ■ LAMU |
| " " 5th " | ■ Mpektoni |
| " " 6th " | ● Kiunga |
| Villages or Huts | ● Pandanguo |

LOCATION OF LAMU

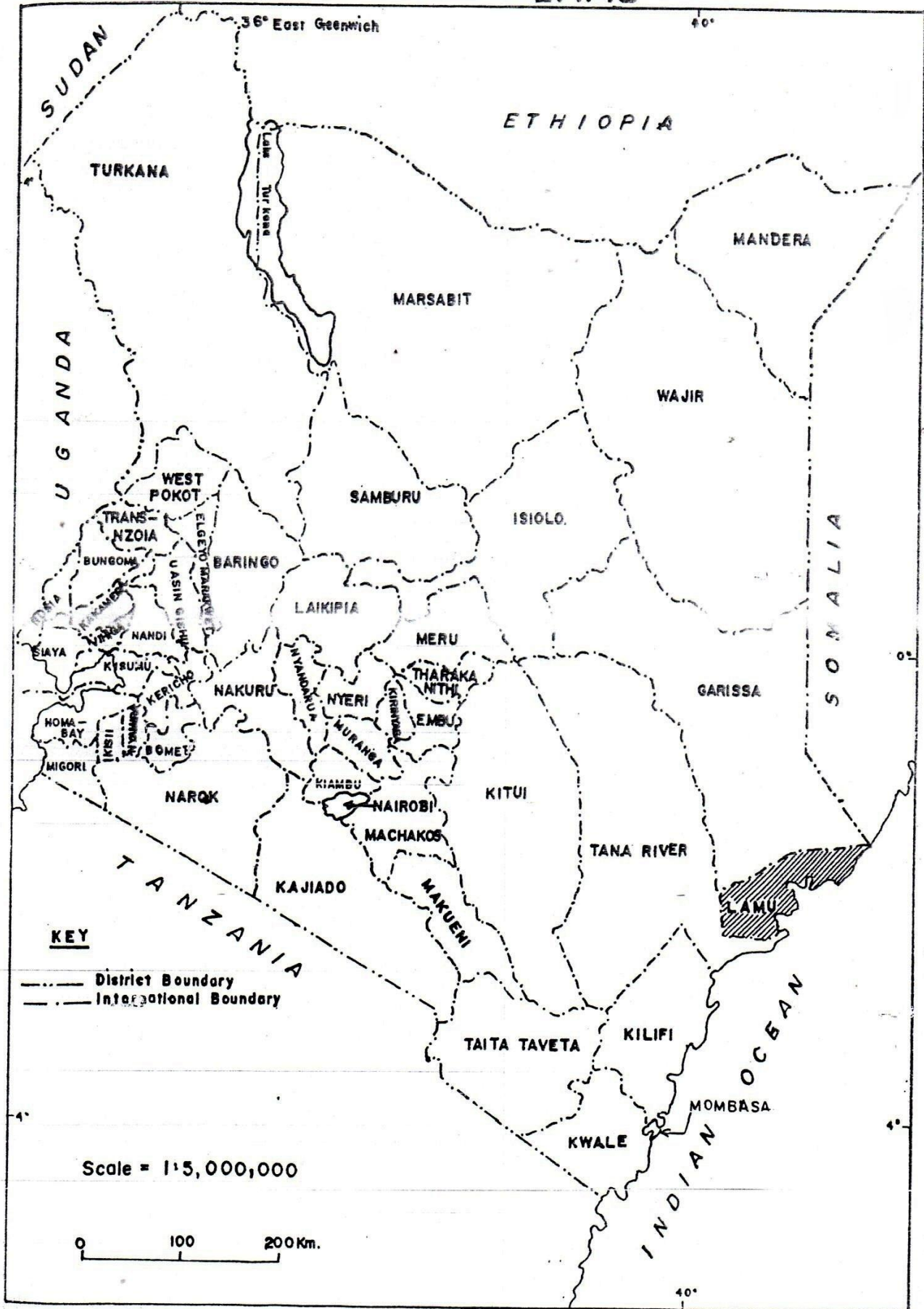


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CHAPTER ONE

1.0 INTRODUCTION

Owing to their strange historical and legal origins, land related issues within the coast region are normally very sensitive. In spite of this situation being a grave concern, no careful systematic consideration was taken by the inherent authority to find a resolution to the land problem. The introduction of foreign land laws interfered with the traditional African way of ownership. For instance the Land Titles Law of 1908 completely changed the aspect of how land was administered under African customary land tenure system. It led to unfairness; local communities were discriminated upon when it came to matters concerning land management.

Discrepancies in the 1908 Land Laws negatively impacted the way land was owned and utilized resulting to the coastal region having the single biggest number of people without land. The unwillingness on the part of the government to tackle the land issue had made the problem to evolve into present day squatters on government land. The tedious and slow adjudication process coupled with never ending schemes denied the people outright accessibility to their ancestral area.¹

All lands consisting of Lamu East and Lamu West fall under the Land Tenure Systems governed by the Land Act. The Land Act vested all powers regarding leasing, granting and disposing of these lands in the institution of the Presidency. The Act treated the State as a private land owner with powers granted to the President pertaining to issuing grants of land. As a result, Government Lands were routinely allocated through non-transparent means and illegally with little regard to indigenous people or local community. The Act failed to recognize the communal rights and interests over land in the region rendering them as squatters on government land, residing unlawfully or without authorization on government land. These minority communities continued to live in villages and shared

¹ G.O.K, *Ministry of Lands, National Land Policy, Articles 184-186*, Nairobi: Government Printers, 2007, p.39

resources from where they derived their livelihood but to which they had no security of tenure.²

Lamu land problem is much more complicated due to its unique history thus it cannot be generalized with related land cases in other parts of the country, by doing so you will only give a partial overview of the land issues in Lamu. Lamu in Coastal Kenya provided an insight into understanding issues of land at the Coast. Several factors account for the uniqueness of the phenomenon in Lamu.³

First and foremost, communal land classified as trust land in other regions remained under State control in Lamu. The legal status of land in Lamu County undermined the welfare and livelihood of the county's indigenous people. The state settlement schemes have acted as a mechanism of encouraging upcountry in-migration to Lamu at the expense of the local communities therefore generating conflict. This study therefore investigated the historical land injustices in Lamu County.⁴

1.1 Background to Lamu Historical Land Injustices.

The Lamu County is situated between Latitudes 1° 40' and 2° 3' South and Longitude 40° 15' East. The County formerly Lamu District covers an area of 6,4745sq km. the total length of coastline is 120 km² while the water mass is 398 km². The County borders Somalia in the North, Ijara District in North of Indian Ocean and Tana River County in the South East. Lamu is the only county in the country without Trust Land and that no adjudication had been done. The land mass throughout the county is government land with only pockets of private ranches. However, even these private ranches are owned by up-country people. This is similar to the settlement schemes that exist in the county. For instance the Government created the first settlement scheme namely Lake Kenyatta Settlement Scheme to settle landless people from upcountry mostly from Central Kenya.

² G.O.K, *Ministry of Lands, Proposed Community Land Rights Recognition Model (CLRR)*, Nairobi: Government Printers, 2008, p. 4

³ G.O.K, *Ministry of Lands, Proposed Community Land Rights Recognition Model (CLRR)*, Nairobi: Government Printers, 2008, p. 4

⁴ *Ibid*,p.4.

Other settlement schemes were over the years created namely; Mpeketoni Phase II, Hindi, Witu and Hongwe Settlement Schemes with a total of over 7,000 plots all settled by up country people. This became a recipe for conflict in the region. As per the government records the region had a demography of 101,539, Lamu west constituency having 82,698 people of which 42,600 are indigenous ethnic groups namely; Bajuni, Orma, and Boni who had resided in the region for decades and the remaining 40,000 are upcountry settlers who started flocking into the County from 1970's. Lamu East Constituency had a population of about 18,841 people mainly Bajunis and Boni. Hence 4 out of 10 people living in Lamu is an immigrant from or has origins from upcountry⁵

Main occupation of the indigenous Lamu people is fishing, peasant farming and pastoralism, with Boni being hunters- gatherers groups. The indigenous groups who had owned *shambas* (farms) and village plots for hundreds of years have never owned these lands in the current ownership system which is foreign. They are considered squatters while the settlers who were brought by the Government from 1970's all had title deeds for their *shambas* and plots. Efforts by the indigenous community leaders over the years to ask the government to also adjudicate plots outside the settlement schemes and issue title deeds to the indigenous communities remained futile as the government both past and present leadership had persistently refused to do so.⁶

The settlers who had been settled earlier and issued with title deeds had a tendency of inviting their kinsmen from upcountry who came and created what they called "*uitamere*" a Kikuyu word meaning *cut for yourself-the Kikuyus identified unoccupied land and divided it among themselves*, and the Government later surveyed, legalized their stay and issued them with title deeds while the indigenous community landowners witnessed helplessly. Although the indigenous community landowners who inherited this land from their forefathers, their land remained unsurveyed and had no title deeds. This left

⁵ Lamu Foundations, *Historical Land Injustices in Lamu, A Memorandum Presented To the Truth Justice and Reconciliation Commission (TJRC)* Nairobi: 2010, p. 8

⁶ *Ibid*, p.9

the indigenous communities at risk. The situation is even made worse with the presence of large Multi-national companies prospecting for land to put up sugar plantations. These lands are the only grazing areas for the indigenous communities. The communities are living in fear of being displaced.⁷

After independence, majority of the indigenous Lamu people were not aware of the vast area belonging to the authority and prevented from owning parcels of land in the area. Land was irregularly allocated by government officials to individuals as a gift for being loyal or in the basis of ethnicity. The allocations were done in total disregard to proper procedures such as public participation and the main culprits involved were officials from Government, down to the local people. The people involved in these irregularities were surveyors, Lamu county council chairmen, politicians, chiefs, and land commissioner.⁸

Land was a mechanism used in rewarding loyalists to maintain patronage system. Loopholes such as Contradictions and disconnections in the land tenure systems were highly exploited in allocating government areas to the elites working in the government sectors leaving the local communities vulnerable.⁹

However, it is crucial to consider that at the Coast and particularly the Strip which was under the reign of the Sultanate, grievances related to land had origins in pre-colonial situation. The Land issue here begun to take shape with the arrival of the Arabs, who later placed claims over these lands. With the availability of slaves the Arabs occupied the area and made their position of power successful and stronger. Consequently slavery was associated with eventual Arab establishment in the area. Later the colonialism compounded the situation by enacting laws that favored only the Arabs to register land as private property. Administration of legislation neglected the land rights of the indigenous.

⁷ Lamu Foundations, *Historical Land Injustices in Lamu, A Memorandum Presented To the Truth Justice and Reconciliation Commission (TJRC)* Nairobi: 2010, p. 8

⁸ Historical Land Injustices in Lamu, *Memorandum from SAVE LAMU Presented To Truth, Justice and Reconciliation Commission*, January 9, 2012, p. 2.

⁹ ACT, Ecopolicy Series No. 14, *Land, Conflict And Livelihoods In Great Lakes Region, Testing Policies To The Limit*, African Centre For Technology Studies (ACTS) Nairobi: 2004, p.8.

This created inequitable access to natural resources by indigenous people. The situation made them vulnerable and susceptible to the highest poverty levels experienced in Lamu.

A series of events dating from pre-colonial, colonial to post- colonial era had not helped but worsened the situation concerning land in Lamu. From being denied access to land during the colonial period and displaced during the 1968 bandit attacks, to present day government curtailing the on-going illegal allocation and procurement of land in the region. Therefore in such cases, lack of access to land interrupted peoples way of life which contributed to an increase in poverty levels. Karuti Kanyinga observed that poverty leads to frustrations and is in turn a potential for violence, which is held to make conflict more likely.

1.2 Statement of the Research Problem

Conflict over land resources is part of Lamu history. Although research and findings written on issues concerning land in Lamu, the root cause which normally revolves around the history is mostly neglected. The Land conflict in Lamu can be summarized as indigenous people trying very hard to fight against injustices of losing their ancestral land to both imperialism and subsequent ruling elites.

This situation has been aggravated by the lack of a comprehensive structure for managing land. Kenya has not had clearly defined land Laws some of which are incompatible this leaves important questions unanswered like; the underlying factors and the historicity of the conflict. The research tried to answer the above questions.

In contrast to many peoples believes in coast region, the emerging independent governments in their leadership made little efforts towards finding a solution to the problem. Instead of rectifying the problem, the leadership overlooked it in their approach. The approach involved the establishment of settlement schemes which created more problems. Establishment of schemes in Lamu mainland was a noble suggestion of resettling people and giving out areas for cultivation. Lamu inhabitants had views that the schemes were implemented without their participation, they were discriminated against.

The country's political history is in many ways interrelated with its land resources. Not only had been a common denominator in Kenya's imperial occupation and fighting for independence, but it had persisted in shaping Kenya's politics trajectory. Conflicts related to land are prevalent in Kenya, they continue to determine the political direction of the country since colonialism and also when the country nears its general elections.

The research therefore examined the changing aspect of land conflict in Lamu in the period between independence to the period when the country embraced the new constitution. This covers a length of time and is important in analyzing the problem of land in Lamu from colonialism to independence to the year 2010 when the new constitution was enacted and which addressed a new approach in solving the land question.

1.3 Objectives

The purpose of the study was to find out Lamu's historical to contemporary injustices and dispossessions. The study is cored on:-

- a) To evaluate causes of the problems in Lamu county.
- b) Examining the impacts of land problems in coastal region in particular Lamu.
- c) To examine the coping mechanisms

1.4 Justification of the Study

Historical land injustice is a phenomenon in the country since the colonial era. The land problem along the coast persisted because of various reasons. The process of adjudication and registration provided by the law rendered the coastal communities landless. This created squatters; people without rights to land. All these factors contributed to frequent land conflict in Lamu.

A case study derived from Lamu is informative and relevant to the ongoing debates on issues of land and conflict at the Coast. The research deals with the complexity of land problems in Lamu and it pays attention to issues of historical and contemporary land injustices whereas Lamu is the appropriate region.

Generalizing from what had been experienced in the country, for instance central, and Rift Valley parts, it gives only a partial picture of the land question and conflict complex. Lamu provides an appropriate entry point into this endeavor to understand land related conflicts at the coast. The study will, hopefully, provide relevant information on historical land injustices in Lamu region, apart from adding to our knowledge.

The study examined the historical land injustices in Lamu County covering the period between 1963 and 2010. In 1978 the Government of Kenya in collaboration with Germany invested a lot of money for the Settlement Scheme.¹⁰ Many immigrants were resettled. The indigenous people Bajuni who border the settlement scheme voiced their concern. Before anything was done to address their concern, bandits from Somalia running away from the *shifita* war created for them so much insecurity that they not only abandoned their mainland farms to take up new settlements on the Island of Lamu Archipelago, but also to wander far off coastal lands and towns as Mombasa. Hence for close to four decades, a large number of the Bajuni people were rendered landless squatters.

The land the Bajuni and Swahili left behind was instead allocated to the Kikuyus in Mpeketoni area and also politicians despite the government having declared the whole land in Lamu County to be Government land, according to the Kenya Gazette Notice No. 4056 of October 21, 1983.¹¹ This made Lamu prone to land injustices and conflict and a fertile ground for this research. This study focuses on the four composite villages that constituted Lamu area. The villages include; Mpeketoni, Shella, Lamu and Witu.¹²

1.5 Scope and Limitation

¹⁰ M, Mghanga, *Usipoziba Ufa Utajenga Ukuta, Land, Elections and Conflict in Kenya's Coast Province*. Heinrich Boll Stiftung, East and Horn of Africa. 2010, p.81.

¹¹ Land Question of The Bajuni People of Lamu; *Memorandum Presented To The Commission of Inquiry Into The Land Law System Of Kenya*, May 2000, p.12.

¹² M, Mghanga “*Usipoziba Ufa Utanjenga Ukuta*”: *Land, Elections and Conflict in Kenya's Coast Province*. Heinrich Boll Stiftung, East and Horn of Africa, 2010, p.81.

Several limitations were encountered in the process of accumulating data for this research. First, the study was conducted at a time when the squatters and the landless people were allocated land by President Uhuru Kenyatta. The study thus coincided with a period with a lot of emotions revolving around the issues concerning land. The respondents were suspicious and were unwilling to be interviewed. To counter this limitation I had to produce the permit from the Ministry of Education and also identification papers from the University of Nairobi to convince the respondents that I was a student carrying out a research.

The second limitation was that the locations at which the sampled surveys were conducted were far from each other. With no elaborate transport network, some areas had to be accessed by walking. This presented transport difficulties which made the research process quite laborious. To curb this, I employed the services of an assistant who helped in conducting research. Third, the shortage of funds, to counter this problem, I sourced some funds from a Non-Governmental Organization dealing with land in Mombasa.

1.6 Literature Review

Lamu land tenure issues that accompanied the changes that had historically characterized the Kenyan society over the years remained a crucial matter to date and yet there is scarcity of literature on the same. Since there was scarcity of literature that specifically focused on historical land injustices in Lamu, I approached the review from two perspectives. The first one is on Africa in general and the second part is on Kenya. The literature acted as a guide on issues of land tenure in Lamu.

1.6.1 Literature on Africa

According to Catherine Boone, land policy reforms remained challenging in African countries because of the political atmosphere. She argues that today's discussions of law reforms revolve around the context of conflict rather than land rights in African countries. Across the continent, population explosion, environmental stress due to climate change and mounting pressure on land and labor output fuels the processes that can promote the growing exclusivity of land rights. Pressure moving towards the direction of effective policy can provoke contestation and conflict because of the distributional implications of such changes.

In countries with poor government institutions for managing distributional conflict other than allocation by ethnic arithmetic and clientele this means that land law reforms may be prevented or paralyzed by distributional tensions or may itself be generative of political conflict.¹³

According to Chris Huggins, Koen Viassenroot and Judi Wakhungu in their work, the relationship between land conflicts is intuitive. Throughout history, land had been significant in war in the form of a prize. More recently however increased interest in conflict analysis revealed different complex relationships between control over land and land-based resources and conflict. This problem is compounded in many developing countries by challenging structure nature of land ownership which may include demographic pressure, gross inequalities between and within communities also inadequate land administration and different conceptions of land tenure according to different land use norms.¹⁴

1.6.2 Literature on Kenya

The magnitude of the problem of historical injustices had been clearly articulated in various forums established by the government, including the Presidential Commission of Inquiry into the Land Law System of Kenya and the Presidential Commission of Inquiry into illegal/irregular allocation of Public Land and the National Land Policy Formulation Process. This is in recognition of the fact that equitable access to land is an essential precursor for economic development and therefore a recipe for conflict if not dealt with well. Given the fact that in Kenya primary and secondary economic activities are agriculture, tourism, mining, pastoralism and agro-based manufacturing sector are all dependent on land.

According to Saad Yahya, the customs that evolved alongside the evolution of the sub ethnic communities of the coastal region, all land belonged to and was controlled by the community. Each individual community member had equal rights of access to land under

¹³ Catherine, B. (2009) *Conflict Over Property Rights In Land In Africa's Liberalized Political Economies*. Paper Presented at The Workshop in Political Theory and Policy Analysis, Indiana University. February 2009, Bloomington. p.4, On 7 February 2013.

¹⁴ ACTS (2004), *Land, Conflict and Livelihood In Great Lakes Region*, African Centre For Technology Studies, Ecopolicy Series No.14, Nairobi:2004, pp.1-2.

family control. The powers to control land were vested in chief and council of elders. All forms of land disagreements were settled through numerous traditional mechanisms on the basis of shared customary norms and rules. Individuals could cultivate part of the communal land but were entitled to the crops and improvements so long as there were in actual occupation. Under this traditional setup, strangers from neighboring communities were invited but never allowed to alienate land for their exclusive use. Under the communal land ownership, an individual wishing to access land would come and present his needs. Farming took the bigger share of land while the rest was allocated to communal grazing, burial, social and religious functions.

Reports on unlawful allocations of Land submitted by a Commission appointed in 2003 whose main mandate was to recommend legal and administrative steps to recover illegally occupied land and return it to its proper use, and lastly proceed with the necessary criminal investigations. The complete Ndung'u publication was released in July 2005.

The publication elaborated extensively on land misallocations and gave recommendations on the formulation of effective policies. Central to inquiry was recommendation to repossess all illegally allocated public land. The Commission arrived at this recommendation after a number of legal considerations namely land registration and the sanctity of a title, once public land is classified as private, it is then acknowledged through titling. The commission however argued that such unlawfully acquired land cannot be protected by the law.¹⁵

In regard to first registration in solving the problem of beneficiaries of land grabbing claiming protection as the first registered is provided by law. The commission argued that the government is the custodian of the land. In third party interests similarly owners of illegally acquired land will have no legal claim to the land even if they acted innocently

¹⁵ GOK, *Report of the Presidential Commission of Inquiry into Illegal/ Irregular Allocations of Public Land*, Government Printers, Nairobi: 2005, pp.9-11.

in acquiring the land. The recommendation included setting up a commission and a task force as further key institutions to facilitate the reforms.¹⁶

On historical claims, Kenya Lands Alliance Report of 2004 on addressing historical injustices, the report highlighted the injustices faced by communities. According to the report it has taken many years for the government to come up with a solution to solve this problem. The report recommended for a policy formulation to resolve the long standing grievances.¹⁷

According to Society for International Development Publication, it examined the beginning of land ownership and its dispossession in the independence period, how it had negatively affected the community and resulted into grievances. The publication gave recommendations on the way forward as stipulated in the Constitution of the country. The constitution working paper No.9 argued that any land that was acquired unlawfully that is without following the required procedure stipulated in the Laws of Kenya, should be repossessed and returned to its original owners and the National Land Commission should be involved in this endeavor and Lamu is a case in point.¹⁸

Kenya Human Rights Commission publication on historical injustices in Kenya, points out that land concerns included dispossessions, unlawful allocation of land otherwise referred as grabbing; irregular exploitation of land-based resources including oil and mining; evictions from land and destruction of forests and environmental degradation among others. The publication further argued that while land and land – based resources remained the single most important economic factor in Kenya, its management and maladministration led to massive human rights violations throughout history.¹⁹

¹⁶ *Ibid*

¹⁷ Kenya Lands Alliance: *The National Land Policy In Kenya: Addressing Historical Injustices: KLA*, Nairobi: 2004, pp.4-5.

¹⁸ Society for International Development (SID): *Public Land, Historical Land Injustices and The New Constitution: Constitution Working Paper No .9*, Regal Press, Nairobi: 2010, p. 3.

¹⁹ KHRC, “*Justice Delayed.....*”: *Historical Injustices In Kenya*, Nairobi: KHRC 2011, p. 5

Saad Yahya, in his study on land conflicts at the coast, argued that there is a link between resource control and distribution and the conflict in Coastal region. Among the resources in contention was land. At independence, the open land policy in the Coastal region gave people from other parts of the country an opportunity to invade the Kenyan Coast and alienated most of the land. In this process, Coastal people became landless and with little or no access to land.²⁰

According to Nyamanga, land is the primary resource required not only for practicing agriculture but also for establishing homes. It has always been a source of tension within and between communities. Nyamanga further argues that land tenure issues that accompanied the changes that had historically characterized the Kenyan society over the centuries, remained a crucial matter to date. As land problems became more complex, so is the need for a comprehensive land policy. Nyamanga argued that, Swahili and Bajuni of Lamu land problems emanated from pre- colonial times, but which worsened soon after independence eventually forcing the Bajuni people out of their ancestral land to becoming squatters all over East Africa²¹

Mwandawiro Mghanga provided an analysis touching on the 2007-2008 post-election disruptions and the associated challenges of land. The analysis observed that the phenomenon of post- elections disruptions in country interfered with the development of the nation and also the aspect of unity. He underscored the challenge of tribalism in country as a multi- cultural nation and also how negative ethnicity identified its manifestation in the society as a problem to national progress.²²

He demonstrated how negative ethnicity affected the ownership of land. He outlined the injustices facing the indigenous people. Despite demonstrating clearly on the land issues

²⁰ Saad Yahya, *“Who Owns The Kenyan Coastal”: The Climaxing of Land Conflicts of The Indian Ocean Seaboard*. Nairobi:EALB, 1998, p.16.

²¹ *Land Question of The Bajuni People: Memorandum From Members of The Bajuni Community Presented to The Commission of Inquiry Into The Land Law System of Kenya, May 2000*,pp.4-5.

²²M, Mghanga *“Usipoziba Ufa Utanjenga Ukuta”*: *Land, Elections and Conflict in Kenya’s Coast Province*. Heinrich Boll Stiftung, East and Horn of Africa, 2010, p.81.

affecting the population at the coast region, the state continued hampering land ownership an access.

According to Karuti Kanyinga land reforms had facilitated the disparagement of indigenous tenure system. They have created injustices in land acquisition which weakened the ancestral tenure system. He further argued that the evolution of tenure encouraged multiple ownership of land resulting into discrepancies in tenure systems.²³

1.7 Theoretical Framework

This study is based on structural conflict theory

a) Structural conflict theory

Structural conflict theorists emphasize the competing interests of groups as prime enablers of conflict. The theory identifies the root causes of conflict to be in the social, economic and political organization of a society and the nature of the strength of ties within and between communities. Structural conflict approach presents a wider range of underlying factors which may be the cause of internal conflicts. Economic and social factors are the major conflict determinants. However, political and institutional factors that include state structure are also considered.²⁴

The study adopted the Marxists Structural Conflict Theory. This starts with an analysis of material conditions, beginning with the essential economic activities required by human society to provide for material needs. The form of economic organization or mode of production is understood to be the foundation which creates or greatly influences the other social factors including social relations, political and legal systems. According to Marx's analysis, the emphasis of the necessity of the material conditions to form the basis of economic organization reverberates well with the alienation of land by the Sultan of

²³ K, Kanyinga, *Re-Distribution From Above : The Politics of Land Rights And Squatting In Coastal Kenya* N.A Uppsala :2000 p.22

²⁴ K, Kanyinga. *Re-Distribution From Above; The politics of Land Rights and Squatting in Coastal Kenya*, N.A Uppsala: 2000, p.22.

Zanzibar and later the imperial colonialist Post-colonial government, where a number of indigenous communities were considered as squatters in their ancestral lands.²⁵

The Structural Conflict Theory is relevant to the research because Lamu land conflict is centered on struggle for resources. The circumstances under which the labourers access land changed considerably and also the institutions regulating access to land. The latter became even less effective as the principle of private rights in land is institutionalized. Ownership and access to land are the most prevalent causes of conflict in Lamu region. Conflicts over land as a natural resource revolved around incompatible uses of land and its accessibility to it. Locals in Lamu argued that there are high levels of corruption and discrimination in the issuance of land titles by the State which determined land ownership, access and utilization. A significant number of Lamu people are regarded as squatters. Hence, the issue of land in Lamu is central to its history of conflict is an example of structural violence.²⁶

Land use and access conflicts involved the privatization of vast tracts of land some of which was formerly Public Land. In addition, the displacement of communities in favor of environmental conservation through protected marine and forest reserves in Lamu was a source of conflict. The Structural Conflict Theory also contends that political factors contribute to conflicts. The establishment of resettlement schemes in Lamu had more political bearing than economic. These schemes provided ground for inter-ethnic conflicts through disproportionate allocation of land to one ethnic community.

According to Structural Conflict Theory, the distribution of political power is determined by power over production. Capital discusses political power which the ruling class uses to make what is wrong looks acceptable and protect their property and consequent social relations. Class relations are political and in the mature capitalist society, the State's business is that of the middle class. Moreover, the intellectual basis of state rule, the ideas

²⁵ Collinicos Alex, *The Revolutionary ideas of Karl Marx*, Bloomsbury, London.1979, pp.31-32.

²⁶ GOK, Ministry of State for Provincial Administration and Internal Security, *National Conflict Mapping and Analysis, Peace and Conflict Trends in Kenya*, Nairobi: Government Printers: 2011, pp. 62-63.

justifying the use of state power and distribution, are those of the ruling elite. Class is therefore, a theoretical and formal relationship among individuals. According to Karl Marx, the force changing latent class membership into a struggle of classes is class interest. Out of similar class situations, individuals come to act the same. They develop a mutual dependence, a community and a shared interest. Individuals form classes to the extent that their interests engage them in a struggle with the opposite class.²⁷

The involvements of the state in controlling access to public land in Lamu had resulted to the deepening of the land question rather than its resolution. The State practice of privatizing public land according to political considerations created more people without rights to land and had generated disputes over ownership in Lamu region. Generally, historical injustices over land allocation continued to be a source of tension between different ethnic and socio-economic groups in Lamu.²⁸

Therefore, it can be concluded that conflicts involving land are principally a function of the disparity between supply and demand on the one hand, and the inequitable distribution of land as a result of inappropriate framework for land management. According to the theory, conflicts over land are a result of diverse competing needs by different land users for example squatters against land owners, private against public land users and commercial versus small holders. The struggles here explain the conflict in Lamu where the population is in constant competition for the scarce material condition that is land.²⁹

The Marxist Structural Conflict Theory is relevant to the study of land conflict in Lamu. This is because the conflict is focused on competition for resources between the owners of production and those who do not own the means of production such as the squatters. The theory suggest that the conflicts need to be addressed before the social structure

²⁷ R.J Rummel, *Understanding conflict and War: Volume 3*, Sage Publications, 1977, P.36.

²⁸ R.J Rummel, *Understanding conflict and War: Volume 3*, Sage Publications, 1977, P.36.

²⁹ *Ibid*

collapses as the increase in disparities between the classes pose a threat to political power.

1.8 Research Hypotheses

To make the process of data collection and interpretation easier, the study employed the following hypotheses:-

1. The problems of land in Lamu have negatively impacted on the socio- economic and political aspects.
2. Historical and contemporary land injustices and claims have significantly contributed to the problem associated with land in Lamu.

1.9 Research Methodology

The study used two types of sources. The first source consisted of books and papers. The study used books and papers from the university library, Kenya National Museums Library (KNML) in Nairobi, Kenya Lands Alliance Resource Centre in Nakuru, Swahili Cultural Centre (RESASI) in Mombasa and Fort Jesus Museums Resource Centre. To supplement the knowledge obtained from books and papers, interviews were used.

The study used government records and questionnaires given to respondents. Government records utilized in the research consisted annual reports. The archival materials are critical in providing the history on the land problem in Lamu. In field research I required permission from the local administration that enabled me to do the research. As I was in the field, I worked closely with the leaders of self-help youth groups (SAVE LAMU) and the elders. This enabled me counter suspicion from local people.

The structured questionnaires were given to properly interviewee. The purpose of the questionnaire was to seek generalized information from residents who had information in regard to land issues. The questionnaires were given to activists, committees dealing with various land matters and elders. Also people who were caught up in land related conflicts were considered.

Questionnaires were given to household in Mpeketoni Settlement Schemes. They were based on domestic questions for instance how the household had acquired land and the challenges encountered. The general information obtained through the former questionnaire was used to compliment information obtained through the first questionnaire. Snowballing was used as the method in acquiring information from respondents.³⁰

This method was preferred because respondents with information and having the knowledge of land were identified who introduced new respondents with similar information or more knowledge. Key informants were elders, leaders of self-help group, established people having considerable influence on public opinion and recognized by the people, they included sheikhs, local political leaders and certain farmers those in Mpeketoni Settlement Schemes.

The research used qualitative method to collect and analyze data. This enabled me to gather information from anyone with desired characteristics. Qualitative approach enabled me to decipher raw data to attain facts. This method of information analysis is important as it explores diverse issues underlying the subject under study. The method also gave the data collected meaning and subject data to critical scrutiny by qualifying the data.³¹

³⁰ Mugenda Olive, Mugenda, and Abel Gitau, *Research Methods*, Nairobi: Acts Press, 1999, p.51.

³¹ *Ibid*

CHAPTER TWO

HISTORICAL BACKGROUND OF LAMU COUNTY

2.0 Introduction

The section sets to analyze the historical perspective on tenure system in Lamu. The chapter includes the cultural heritage aspects of Lamu, its people and how they settled and placed claims over land.

2.1 Indigenous Land Tenure in Lamu

This chapter is a digression from the scope of the study but it's important because it will show how land tenure had evolved in Lamu for years. Tenure is the legal right to occupy land. It is related to members of community's occupation and land utilization. The evolution of land is intertwined with the changing circumstances in regard to human-land relations. The connections are active and react with customs and societal advancement. The evolution in the way people use land, major breakthrough in human innovations and political situations directly led to the development of land tenure system from simple structure to more advanced and diverse system.³²

2.2 Lamu Area

Lamu County is 6,166.7 km with a combined demography of 72,628.55, and 55,600 according to 1997 census, resides in the mainland parts of Lamu County, the remaining resides in towns like Mpeketoni, Witu, Kiunga among others. Lamu is an archipelago dominated by indigenous Bajuni ethnic group. The archipelago consists of Kiunga bordering Somali, Amu, Siyu among others. The communities living in Lamu are Bajuni, Arabs, Pokomo among others. Immigrants from inland parts of Kenya occupied the mainland mostly in the introduced settlement schemes. Another group is the Waboni residing in Mokoye. The Waboni are characterized by hunting small game and gathering

³² Ezigbalike, I.C, and G.L. Benwell, *Cadastral Reform , At What Cultural Cost to Developing Countries*, Melbourne, Australia, 1995, p.28.

honey and fruits often moving from one place to the other along the mainland from Mokoye to Kiunga.³³

Lamu town is centuries old, its inhabitants the Swahili and the Bajuni have a long history of urbanization in east Africa. It was listed as a heritage site by UNESCO. Sixty percent of Lamu economy relies on agriculture. The remaining is mostly tourism. There are high valued crops cultivated in mainland Lamu where the Islands depend on for their food supplies. Cultural tourism, fishing and trading are the main economic activities of the entire Islands.³⁴

Lamu is composed of different ethnic groups; a separation between two groups in terms of area and religion. The society is divided into Muslims and Christians³⁵ Lamu County has seven administrative areas; Amu, Mpeketoni, Faza, among others. The 1979 census gave the region entire population to be 42, 299. The population has been increasing with the following projections: 56, 783 in 1989, 80177 in 1991 and 86, 422 in 2001. The County has a rich heritage which was largely influenced by the Arabs.³⁶

Lamu region is covered with three major types of soils: red loam soil; sandy soils and rocky soils. The red loam soil has high fertility and is found mainly along the low lands of, Mpeketoni and some parts of Amu and Kiunga areas. These soils support food and cash crop such as Maize, beans, cassava, and cow peas. The sandy soil which has moderate fertility, one found in the area of Faza and they support the cultivation of coconut palms, maize and cassava, the rocky soils are found within the northern marginal parts of Witu and Kiunga areas and being very poor support only scanty grassland vegetation and livestock.³⁷

³³ *Ibid*,p.28.

³⁴ Government of Kenya (*hereafter GOK*) Ministry of planning and National Development, Lamu district development plan 1997-2002,*Nairobi.Government Printers 1997,p.8*

³⁵ Mwandawiro, Mghanga, *Usipoziba ufa, utajenga ukuta: Land, elections and conflicts in Kenya's Coast Province*. Heinrich Boll Stiftung, East and Horn of Africa, Nairobi: 2010, p. 23

³⁶ *Ibid*,p.32.

³⁷ GOK, Ministry of Planning and National Development, *Lamu District Planning Study 1998*, Volume 12, Nairobi: Government Printers, 1997, pp. 3-8.

The different Island of Lamu Archipelago varied ecologically, but none could support a dense urban population. Faza and Kizingitini areas have the vast demographic distribution of 32% inhabitants per sq. km, while Kiunga has the lowest density of 2.9 persons per square kilometer. Amu area has in regard to the 1999 government records estimated having highest inhabitants in the region. Whereas Lamu is generally unsuited to agriculture, supporting only limited tree crops such as coconut palms, Mangoes and Tamarind and has good drinking water. Pate which is almost double the size of Lamu or Manda has more arable land. Manda is mostly sand dunes and mangrove swamps. The Bajuni Island stretching up to the Coast of Kismayo is similarly limited agriculturally. Lamu Archipelago dwellers are divided between an urban population settled in the villages of the island and mainland.³⁸

2.3 Ethno-Geographical Distribution in Lamu County

The region comprises of different communities; Arabs, Boni and the Bajuni. The Arabs and the Bajuni occupied the Islands, while the Boni are to be found in the mainland. Apart from the three communities there is also the presence of immigrants for instance the Kikuyu and other upcountry communities settled at Lake Kenyatta starting from 1976.

2.4 Boni

Ethnic groups that have identified themselves as hunters and gatherers in Lamu area, include the Boni. According to the available estimates, hunters- gatherers in Kenya are less than 100,000 people³⁹. Although the available data on hunter- gatherer groups in Kenya is inconsistent, the Boni exist in relatively small numbers. The Boni people are found in the North – Eastern part of Lamu County. They are concentrated mainly in Witu, Hindi and Kiunga areas of the district/county. The community is located in the village of Bargoni (Hindi area) Milimani (Kiunga area) Jima (Witu area) and Bodhei. According to the 1989 census, their population represented as Boni- Sanye was estimated

³⁸ Government of Kenya (hereafter GOK), Ministry of Planning and National Development, *Lamu District Development Plan*, Government printers, 1997-2001, p.28.

³⁹ Kenya Lands Alliance, *Case Study on Forests: Hunters and Gatherers in Kenya*, Nairobi:KLA, 2011,p.5.

as 10,891 people. The information from the Lamu Provincial Administration indicates that there are 3,200 Boni people in the County. Most researchers have recorded a population range of at least 2000 and at most 5000 Boni people. The lack of disaggregated data on hunter – gatherer communities creates more uncertainty in identifying their exact population size and geographical location. However our major concern is to indicate that these people live in Lamu County⁴⁰

This community lives within the Witu and Boni forests. As hunters – gatherers, the community moved from one place to another and mainly in the thick forests which were significant sources for wild fruits, honey and wild meat. While gathering wild honey is a major activity among the Boni (takes four to ten days) they also depend on subsistence farming on land areas of between 0.5 to 2.5 acres. The Boni were forced by the administration to adapt as opposed to hunting and gathering. Today, most Boni people practice shifting cultivation by growing food crops such as maize and Cassava. Due to their communal lifestyle, the communities consume the harvest in “*Beree*” ceremony where members of the community visit each farm to harvest the produce. Any harvest left with the owners will hardly last 3 months, resulting in rampant food insecurity in the area. The Boni do not keep any livestock except poultry. It is evident that the Boni were historically hunters- gatherers, but have partially shifted from hunting and gathering and now practice a mix of hunting and gathering and other livelihood forms. A shift from pure hunting and gathering in Kenya is partly attributed to Colonial and Post- colonial policies that affected hunting and access to forests.⁴¹

2.5 The Bajuni of Lamu

The East African Coast has had long standing influence from the external world especially owing to the maritime trade that brought Arabs, Persian, Chinese and later Europeans who desired to partake of the wealth that the hinterland of Africa generated. With time some of the newcomers to the African continent chose to make Africa their

⁴⁰ Kenya Lands Alliance, *Case Study on Forests: Hunters and Gatherers in Kenya, Nairobi: KLA 2011*

⁴¹ *Ibid.*

permanent settlement. They intermarried with the natives and so was formed the Swahili nation, a mixed race of the Africans and the Arabs, of brown complexion, speaking various dialects of Kiswahili as their mother tongue.⁴²

The Swahili are people joined together by a common language, Kiswahili. Though of varied descent, inhabiting the coastal territory running from Ruvuma River to Warsheikh in Somali, where they established urban dwelling, practicing trade carrying out some agricultural activity, including some fishing. Although the Swahili people were for a long time regarded not as Africans, linguistic and Archaeological evidences show Swahili to be more African than Arab. What separated the Swahili culture from that of its neighbors was its differentiated international economy, its urban nature and its maritime links with distant cultures across the Indian Ocean. Though sea oriented the Swahili developed trade links with the Africans in the interior and some of them like the Bajuni established permanent villages on the mainland.⁴³

2.6 The 19th Century Swahili and Bajuni Land Tenure System

Most of the northern Swahili lands as well as all these lands belonging to the Bajuni form part of what is today Lamu. The Island centres; Lamu, Pate and Rasini controlled a vast region in the mainland with their areas farmed periodically. For many years the mainland domains controlled by the islanders decreased in area according to want and political circumstances. In the 1960s farming areas in the mainland belonging to the inhabitants of Pate reduced to negligible size when raiders from neighboring country forced farmers to cultivate within the island. Decades of not cultivating the area and abandoning did not imply that the area were unoccupied but rather remained the domains of the Island inhabitants.⁴⁴ Lamu therefore incorporated a large area to the western and southern parts of the Isle stretching from Ras Tenewi along Coastline to Mpeketoni, a village on the

⁴² Abungu, G.H.O, *Communities on River Tana, Kenya: An Archaeological Study of Relations Between the Tana Delta and the River Basin, 1700-1890*, Cambridge University Press, 1989,p.61.

⁴³ Nurse, D and Spear, T, *The Swahili: Reconstructing the History and Language of an African Society 800-1500*. Philadelphia. Pennsylvania University Press, 1985, p.89.

⁴⁴ Ylvisaker, Marguerite, *Lamu in the Nineteenth Century: Land, Trade and Politics*. Boston University: African Studies Centre, 1979, p. 35.

shores of Lake Kenyatta through to Pangoni and Milhoi and the northern side to Hindi, Jipe and Magogoni at the shore opposite Pate. Arabs controlled Kipini at mid-century; Lamu's influence extended to Kiunga. Some areas like Ukunga, a small inhabited area situated at the middle of Mpeketoni and Kipini, were under Pate in the mid-century.⁴⁵

Shela Island though closer to Lamu was vast and independent from the other Islands. Shela people farmed in Lamu and seemed to have dominated Mpeketoni and represented in Hindi. In the early nineteenth century Manda Island, the genesis of Shela people was abandoned. Being nearer to the other Islands, the inhabitants relied on Manda Island for their supply of building materials like coral stone and clay.⁴⁶

The people of Shela practiced farming inland, while the Bajuni people of Rasini occupied the coastline along Dondori and farmed in areas stretching inland into Boni forest. The inhabitants practiced subsistence farming.⁴⁷

Bajuni's small fishing and farming areas dotted the whole coastal shores from Mkokoni to Kiunga and into Somali. The activeness and expansiveness of these areas were often supported by the Cushitic people in the pastoralist regions lying adjacent to. Despite having links with Rasini, the Bajuni permanently resided on the coastal areas along the shores. In these particular sections, the majority of the people in the towns either Lamu, Pate or the other Islands were thought as *wenyeji* (hosts or owners) of the region. On the other hand *wageni* (guests or tenants) were people who had ties with the owners or due to economic reasons were allowed to farm on the host region. The title *Wageni* remained even though the guests cultivated the land in the area for decades.⁴⁸

Because of ways in which land utilization and cultivation was practiced on the mainland, there were no demarcations in inhabited areas. The Waboni gathered fruits from the forests also the availability of wild meat for living. The Waboni resided in forests and

⁴⁵ Hitches, *Lamu Chronicles*, London: Oxford Press, 1979, p.28.

⁴⁶ *Ibid*, p.28.

⁴⁷ Alice, Werner, *A Swahili History of Pate, JAS Vol. XIV*. London: Oxford Press, 1915, pp. 156-157.

⁴⁸ Firtzlergerald, *Travels*, London: Oxford University Press, 1979, p.435

bushes further north from Witu and beyond Dodori Creek⁴⁹. They were in constant communication with the Bajuni. The Lamu remote parts away from the coast were marked with different colored patches. Areas under agricultural activities covered a long way down the coast and were concentrated around several creeks. Because the inhabitants practiced rotational farming, abandoned fallow areas were often seen as bushes than farm fields due to lying idle for a long period.⁵⁰

2.7 Land Ownership

Swahili and Bajuni have two types of lands, *Shamba* and *Konde / Honde*. Land that had trees and which was heritable, leasable, saleable or disposable in any way considered desirable to its owner is known as *Shamba* (plural; *Mashamba*) which translates into farm, on the other hand, land that was held for temporary use from which there is no right to sell or inherit, is known as *Konde / Honde (Makonde / Mahonde)* land could be held individually or in group. Both males and females have right to land ownership. Anyone could acquire land by purchasing it from the owner. Any transactions were monitored and carefully recorded by the *Khadhi* (religious advisor). Land transactions before 1888 in Lamu, for example were recorded in hand written documents called *Khatt*.⁵¹

The traditional method of land acquisition and use in the coast for the past hundreds years ago was group tenure, in which a group of islanders would occupy an arable area, clear and burn the fields, leaving stumps and large trees such as Baobab and Tamarind as land marks. Agricultural activities followed a system of cultivation known as shifting cultivation. The plots were cultivated for two to three years and abandoned to regenerate as a new piece was invaded. Each new areas was inhabited by the cultivating groups for roughly six years and then the whole farming group will go to another area to clear and plant their crops.⁵²

⁴⁹ *Ibid*,p.435.

⁵⁰ Ylvisaker, Marguerite, *Land usage in the Hinterland of Lamu Archipelago 1865-1895*. Boston University: African Studies Centre, 1979, p.4.

⁵¹ Ghaidan, Usam (ed), *Lamu: A Study In Conservation*, Nairobi: EALB, 1976, p. 109.

⁵² Ylvisaker, Marguerite, *Land Usage in the Hinter Land of Lamu Archipelago 1865-1895*. Boston University: African Studies Centre, 1979, p.7.

On Pate and Siyu mainland throughout the Bajuni lands, agricultural pursuit was more formal. As at Hindi and other Lamu farming villages, the Bajuni farmers who wished to farm individually had their own plots. An individual cultivated his own parcels of land with the collective nature of farming in Bajuni lands; some sort of joint land tenure was honored. Nevertheless, individual ownership was respected as well.⁵³

The efficiency of agricultural systems in Lamu region depended on such factors as peace and flourishing trade, availability of cheap labour, rainfall and seasonal variation and good farming soil. Apart from this, political rivalries and colonialism ushered in new dimensions that worked negatively for the development of agriculture in Lamu area and raised the critical question of land ownership.⁵⁴

Most of the southern Swahili lands as well as those lands belonging to the Bajuni form part of what is today Lamu County.⁵⁵

2.8 Swahili Land Tenure

Lamu Archipelago dwellers are divided between an urban population settled in the main town and an agricultural population settled in the villages of the Island and mainland. Most of the town people however, migrated to the mainland seasonally to cultivate. Majority of the inhabitants, be they towns or villages constructed mud and wattle houses in which they lived and these contrasted with the elegant stone houses and mosques of elite that were the testimony to their riches and economic prosperity.⁵⁶

⁵³ Land Question of Bajuni People of Lamu District: *Memorandum from Members of the Bajuni Community, Presented to the Commission of Inquiry Into Land Law Systems of Kenya*, May 2000, <http://www.savelamu.org>, Accessed on... 8/06/13. p.13.

⁵⁴ Ylvisaker, Marguerite, *Land Usage in the Hinterland of Lamu Archipelago 1865-1895*. Boston University: African Studies Centre, 1979, p.7.

⁵⁵ *Oral interview*, Ali Salim, 10th June 2013, Makowe.

⁵⁶ *Oral interview*, Ahmed Kombo, 3rd June 2013, Lamu.

The Bajuni in areas near Pate occupied Eastern part within Siyu it included a series of Coast line homesteads. The Rasini inhabitants extensively farmed an area stretching inwards in villages like Mangai and Bola. The coastline along to Ras Kiamboni was referred to by the Bajuni as *Kariani*, meaning homesteads or outstations. This is the Bajuni's perception towards mainland enterprises.⁵⁷

It was the elite class that dominated commerce. Consequently, they retained their status through an elaborate system of social stratification, which ensured that the majority of the Archipelago's population remained farmers, craftsmen and fishermen. Whereas many of the inhabitants have tried to maintain their claims of descent from the Arab world, they are no different from the other African peoples.⁵⁸

From about 1865, the vast area of Lamu Archipelago came under various jurisdictions: Zanzibar, Britain and Germany. After Said Sayyid, the Sultan of Oman and Zanzibar, had been invited by the people of Lamu in 1812 to assist them in turning a joint Pate-Mazrui offensive, Lamu Island and the lands under cultivation by Lamu townsmen and neighbouring villages hence became subject to the Sultan's over lordship. Where upon more Omani Arabs immigrated to Lamu. Said Sayyid had sent governor and a garrison of troops.⁵⁹

The area of mainland that was subject to Lamu people included the area from Ukunga and Mpeketoni (a large village on the Southern shores of Lake Mkunguya- now Lake Kenyatta) to the shore at Ras Tenawi and on the west by a line roughly running from Pangani to Magogoni on shores. Other lands that were included under Lamu were areas of Manda Island, called Kwale and Kitai. Lamu people used these areas for farming and for obtaining building materials. In 1930's the inhabitants claimed this stretch of land

⁵⁷ *Oral interview*, Ali Salim, 10th June 2013, Makowe.

⁵⁸ *Oral interview*, Ahmed Abdallah, 3rd June 2013, Lamu.

⁵⁹ Ylvisaker, Marguerite, *Land Usage in the Hinterland of Lamu Archipelago 1865-1895*. Boston University: African Studies Centre, 1979, p.21.

stating that it was their ancestral land, which had been effectively occupied by their ancestors for centuries.⁶⁰

During the mid-19th century, Lamu's mainland plantations totaled over 240,000 hectares that were under cultivation with such ground crops as millet, Indian corn and rice. They also raised livestock on these lands as well as cultivating other crops such as Cassava, beans and vegetables. Thus, the Swahili possessed vast blocks of large cultivations and grazing lands on the mainland, whose productivity and extents were so squarely determined by the wealth of land owners and slave labour.⁶¹

2.9 Bajuni Land Tenure

Each of the three towns, Pate, Siyu and Faza on Pate Island, had large tracks of land on the mainland under their control. When Pate suffered serious political upheavals, the ruling family, the Nabahani, was deposed. The leader of the Nabahani family, Sultan Fumo, fled with thousands of followers to the mainland around 1840. Pate may have had longstanding commercial contacts with the people of the Tana Delta, so that when trouble struck, the rulers found it a safe place to take refuge. In 1865, Zanzibar pressure forced the Sultan to withdraw inland once more, to an area around Witu.⁶²

Pate's sphere traditionally encompassed the mainland areas facing the creeks of Mongoni, Mgini and Wanga, extending North and East as far as Ndununi. It must have been understood that the borderline for the mainland controlled and formed by Lamu and Pate, was at Magogoni. Although deposed the Nabahani Sultan, Ahmed, still believed he had overall control over the land in which he was now settled and the one at Siyu. So he leased out large tracks of land that traditionally belong to Siyu to the Germans by 1880.

⁶⁰ Kenya Land Commission, *Evidence And Memoranda*, Nairobi: Government Printers, 1934, Vol iii, 2610-2611.

⁶¹ Ghaidan, Usam, *Lamu: A Study of The Swahili Town*, Nairobi: East Africa Literature Bureau, 1976, p.3.

⁶² Ylvisaker, Marguerite, *Land Usage in the Hinterland of Lamu Archipelago 1865-1895*. Boston University: African Studies Centre, 1979, p.2.

That was not all; Sultan Ahmed also granted land on Manda Island to the Germans pointing out that this was their Sultan Ahmed and his Bajuni people of Pate ancestral land- inherited from their forefathers. Certain areas such as Ukunga around midway between Mpeketoni and Kipini also belonged to Pate and Siyu.⁶³

Siyu and Chundwa inhabitants (the Bajuni) used lands adjoining Pate's sphere East of Ankish in the area of Wange and Dadori creeks, the island boundary varying with the needs of each specific year. Sometimes there was an overlap, where Siyu people ended their cultivation, the people of Faza started off, with much of their cultivation work centered on the Coastal region around Ndao Bay. The Banjuni, who inhabit the Islands cultivated large areas of land on the mainland extending many miles up to Boni lands and forest areas including the farmland of Mangai and Bolaa. The entire Coast as far as Bur Gabo was under Bajuni ruler. The Bajuni lands for that matter extended extensively from Lamu to around Kismayo in Somalia.⁶⁴

Initially land usage and farming methods practiced were very accommodative. There were no strict borders set between areas demarcated for farming by the Bajuni and those areas where the semi-nomadic Boni and Dahalo inhabited. The Boni and Dahalo benefitted much from the wild fruits which were found in the forests covering north and northeast from Witu beyond Dondori creek besides the farming areas of the Bajuni. Constant dialogue helped cement their peaceful co-existence and settlement patterns which later disappeared due to mostly European disturbances and other factors, like the *Shifita* wars.⁶⁵

2.10 Colonial Rule

In about 1865, the vast area of Lamu Archipelago came under various jurisdictions: Zanzibar, Britain and Germany. After the Sultan of Oman had been invited by people of Lamu in the early part of the century to assist them in turning a joint Pate- Mazrui offensive, Lamu Island and the lands under cultivation by Lamu townsmen and

⁶³ *Ibid*, p.15.

⁶⁴ *Oral Interview*, Haji Hamisi, 6th June 2013, Mokowe.

⁶⁵ *Oral Interview*, Saleh Othman, 16th June 2013 Lamu.

neighboring villagers became subject to the Sultan's rule. Several Omani Arabs poured in thereafter. The Omani Arabs who came into Lamu remained town dwellers, yet some of their most influential rulers exploited the situation by acquiring expansive land both on the Islands and on the mainland.⁶⁶

When the European colonizing nations came to the scene, even the Sultan's lands came directly under them and there was competition over land everywhere, a competition that had to be resolved peacefully through commissions and agreements. Hence the Zanzibar commission of 1885-6, which was formed following persuasion made by the British to the Germans and the French to inspect the Coast, officially decided that the main islands and ports were in the Sultan's dominions. They also remarked that Mombasa was of crucial importance as the best commercial base for opening the interior. The Sultan had jurisdiction over all the Coastal land running roughly from Ruvuma River in the South to Warsheikh of Benadir Region, Somalia in the North.⁶⁷

The partition treaty of October 1886 affirmed this and apportioned land to the Sultan of Zanzibar and recognize his authority over Zanzibar, Mafia, Lamu as well as along the Coastal belt to about 16km from River Ruvuma in the South of Kipini in the North. The area between the rivers Ruvuma and Tana was split into German and British spheres of influence by a line which now marks the boundary between Kenya and Tanzania. Britain agreed to recognize the German possession of Witu and the corridor to the sea at Manda. Yet rivalries marked by claims and counter claims continued. This captures the changing fortunes in the East Africa and especially in the coast, where Colonial onslaught led to changes in land tenure and several legal apparatus were introduced to regulate land acquisition, ownership and development as Colonial structures were laid out.⁶⁸

⁶⁶ Ylvisaker, Marguerite, *Lamu in the Nineteenth Century: Land, Trade and Politics*. Boston University: African Studies Centre, 1979, p.22.

⁶⁷ Marsh Zoe and Kingsnorth, *A History of East Africa: An Introductory Survey*, Cambridge university press. 1972. pp. 94-96.

⁶⁸ *Oral Interview*, Mohammed Mbwana, 7th June 2013 Lamu

2.11 Arab and the East Coast of Africa

Arab occupation of the coastal region culminated into tenure reforms from customary to Islamic mode of tenure which is still practiced to date. The area where Islamic mode of land ownership is embraced remains restricted to the coastal belt including Lamu Archipelago. The Sultan occupied the area in 1834 and controlled it until the British entered the scene. The British and the Germans came into an agreement that the Sultans territory be stretched to the entire coastal belt including the Islands.⁶⁹

2.12 Lake Kenyatta Settlement Scheme

The earliest available information regarding the establishment of schemes is contained in a report on proposed Cotton Development Schemes written by the Cotton Lint and Seed Marketing Board in 1969 covering the period 1970-71. At the time, it had been noticed that cotton production in the province had gone down thereby affecting the cotton industry very adversely. Emphasis was therefore made to open up two large cotton schemes, one in Taveta and the other one in Lamu to supplement the small quantity of cotton produced by the peasant farmers. The encouragement in starting the latter schemes was prompted by the Galole cotton irrigation scheme which had proved a great success. The Mpeketoni area was deemed suitable for experimenting cotton production. It was situated in state land, making it easy for the Government to set it aside for the intended purpose. During his visit to Lamu, President Jomo Kenyatta officially launched the scheme on 29th January, 1971. Following the function, Lake Mkunguya was renamed Lake Kenyatta in honour of the President, and then Mpeketoni Cotton Development Project became known as the Lake Kenyatta Cotton Project⁷⁰.

By April 1971 only 400 acres had been cleared and planted with cotton instead of the expected 1000 acres. The initial target could not be immediately reached partly because of lack of adequate machinery. More problems were realized at the time of weeding owing to the fact that the local community was not willing to do casual labor in the

⁶⁹ Jackson, T, *The Laws of Kenya Publication*. Kenya Literature Bureau: Nairobi, ISBN 9966-44-221-9, p.56.

⁷⁰ Republic of Kenya, *Lake Kenyatta Harambee Settlement Scheme Lamu*: G.O.K., Nairobi: Government Printers. 1976, pp. 1-3.

scheme. Attempts were made to induce and recruit from Witu but again this effort was without much success. Arising from the labor shortage, the cotton crop thrived very poorly as from the 400 acre cotton block only 15, 231 kg per cotton seed was realized giving a very low average yield of 38 kg per acre.⁷¹

By July, 1971 there was enough evidence to prove that the cotton project would not materialize if it were only to depend on the unreliable local labor. The Provincial Commissioner, Coast region was therefore requested to organize interested potential settlers from all over the province with special preference and priority being given to those hailing from Lamu area and prepared them for settlement. The Provincial Commissioner immediately launched a campaign for the scheme appealing to the Coastal people to take up the challenge and accepts to be settled in the scheme so as to provide necessary labor force required to keep the cotton project viable. This was unfortunately met with very poor response if at all as very few people of Coastal origin showed any interest.⁷²

After experiencing the weeding problem for a second time and owing to the fact that the Coastal people did not show any keen interest to settle in the scheme, a decision was made to tap human labor from wherever it may be available in the country. An appeal was made to that effect and in October, 1972 a group of 50 families from Nairobi answered the call. These people who arrived in the scheme just in time for cotton picking were settled in 20 acre plot per family. A few of them however did not like the scheme on arrival and had therefore to leave on their own accord. In spite of that more settlers called in and by April 1973 about 125 settlers had been allocated with plots. Immediately after settlement, the Nairobi group increased the labor force to about 200 people. From 1973 onwards, the number of incoming migrants increased, and many more settlement schemes were opened.⁷³

⁷¹ *Ibid*, pp.1-3.

⁷² Republic of Kenya, *Lake Kenyatta Harambee Settlement Scheme Lamu*: G.O.K, Nairobi: Government Printers. 1976, pp. 1-3.

⁷³ *Ibid*, pp.1-3.

2.13 The Changing Tenure System.

Land ownership and management in coast region had been influenced by the evolving societal aspects or phenomenon within the region. The land policy of 1897, the inhabitants residing within the region were provided with short term leases which had duration of two decades. In 1902, the Coastal belt was categorized as unclaimed land hence alienated by the state under Crown Ordinance. However, with no legal procedure, it became problematic for the authority to differentiate land to be alienated and that of the Sultanate.⁷⁴

Preparation for claiming ownership to land by inhabitants within the coastal belt was allowed owing to the 1908 laws. Laws were enacted to examine and give a decision on the land rights within the region so that private land could be categorized differently. A court was set to specifically deal with land issues, its mandate entailed listening and deciding on land claims made by the community. The court comprised of a Recorder of titles, surveyor and administrative officers. The tasks of the Recorder of Titles consisted of carrying out surveys and mapping. The surveyor and administrative Officers only received the claims. The adjudication process was therefore solely the work of the Recorder of Titles⁷⁵

Any unclaimed land was possessed by the government, despite the fact that it was ancestral land belonging to the community. The tenure system in the strip became a combination of different conflicting land structures namely; private informal, customary and public. The confusion brought about by the complex structure resulted into injustices. This radical land tenure reform in the East African Coast became a major source of

⁷⁴ Government of Kenya, *Report on The Commission on Land Consolidation and Registration in Kenya* ;The Lawrance Mission Report. Nairobi: Government Printers,1966.p.22.

⁷⁵Okoth-Ogendo,H.W.O, *Report of the Select Committee on the Issue of Land Ownership Along the Ten-Mile Coastal Strip of Kenya*,Nairobi;1976,p.13.

political agitation as a result of conflicts between the indigenous communities and the authority in Kenya.⁷⁶

2.14 Lamu Land Problems

The vast area of Lamu Archipelago came under various jurisdictions; Zanzibar, Britain and Germany. When the European colonizing nations came to the scene, even the Sultans land came directly under them. They defined land that they found uninhabited Crown Land (that is public land) belonging to the Government and it was the authority of the Government that prevailed. Later all land came under the Crown. Several restrictions on land were therefore enforced on the natives who were put in the reserves and many people became squatters. Most of the land in Lamu County today is Government Land about 5,054sq.km and only 24% of the land about 1760sq.km is under free hold and leasehold. Whatever policies the Colonial government enacted seem to have been adopted wholesale by the independent Government of Kenya. From 1964 until about 1968, *Shifta* incursions forced the Bajuni people to abandon their mainland possessions at Shakani, Sideni, Mambore and Manda. Nevertheless, what did a final blow to the Swahili and Bajuni mainland farming and settlement came much later, that is soon after Kenya attained independence. This was *Shifta* (livestock bandits from Somali) menace, an outgrowth of boundary disputes between Kenya and Somali. They took refuge in Islands of the Lamu Archipelago and elsewhere that accommodated them such as Mombasa, Malindi, Ngomeni and Watamu. After the Arusha agreement in 1967, the *Shifta* cooled down a bit but was soon to pick up in the next decade. Indeed insecurity in the frontier zone is claimed by the local people to have worsened more in independent Kenya than the colonial times. Those Bajunis who emigrated were not able to repossess their land to date owing chiefly to this perpetual insecurity, and partly due to the uncertainty that the land is already inhabited by other people.⁷⁷

⁷⁶ *Ibid*,p.4.

⁷⁷ Okoth-Ogendo,H.W.O, *Report of the Select Committee on the Issue of Land Ownership Along the Ten-Mile Coastal Strip of Kenya*,Nairobi;1976,p.13.

Hence for close to four decades, a large number of the Bajuni people have remained landless squatters. Much of the Bajuni and Swahili lands have been instead allocated to the Kikuyu (Mpeketoni area) and powerful and influential politicians and foreign hoteliers despite the government having declared the whole land in Lamu district to be government land, according to the Kenya Gazette notice No. 4056 of October 21, 1963. Consequent upon this notice many Bajuni people filled in forms in anticipation to re-inhabit their ancestral lands but since that time the commissioner of lands issued no letters of allotment to the Bajunis who laid their claims instead he allotted the land to foreigners and companies.⁷⁸

2.15 Conclusion.

This chapter is mainly a historical background to understand the extent of the Bajuni ancestral land. The main aim was to review the relationships of the communities living in Lamu region. The chapter described how land tenure evolved in Lamu over the years and how it affected the changing human land relations and political circumstances. The chapter therefore reviewed the historical development of land tenure in Lamu and provided a basis for understanding the history of Lamu, its people and how they settled and placed claims over land. The main subject in the next chapter will be addressing the causes of historical land injustices in the region.

⁷⁸ *Ibid*,p.4

CHAPTER THREE

THE CAUSES OF HISTORICAL LAND INJUSTICES IN LAMU COUNTY

3.0 Introduction

This chapter seeks to address the causes of historical land injustices in Lamu County and takes into account the existing uncoordinated, non-transparent and inequitable public land management system. It also addresses the lack of coherent information system on land belonging to the people. The injustices have resulted in the growing of informal settlements also known as squatters, settlement schemes and many land grievances. These reasons are linked with the rising land value, demographic increase and environmental degradation which propagate social and political indifferences. This chapter will examine the diverse nature of land conflicts in Lamu.

3.1 Defining Historical Injustices

While land and land based resources remained the single most important economic factor in Kenya, its mismanagement and maladministration had led to massive human rights violations throughout history.⁷⁹

In order to outright resolve issues that make up historical land injustices we must start from the beginning. According to Sessional Paper on National Land Policy, historical injustice is defined as the injustices which date back to colonialism where tenure insecurity poor policy which led into dispossession. These grievances were unresolved

⁷⁹ Kenya Human Rights Commission, *A Report On Historical Injustices in Kenya*. Nairobi: KHRC 2011, p.11.

throughout. The examples of the injustices include unfair land division, registration laws, treaties or agreements between the British and the Sultan.⁸⁰

Even though the land problem is widespread and resilient, and which requires outright and all inclusive solution, some scholars disagree on the time-frame when to classify the problem as historic or not. Failure by the subsequent post-independence government to have comprehensive land policies has either prolonged the problem or offered a temporary solution. This had resulted into politicians using the grievances as a platform especially during general elections period.⁸¹

3.2 The Causes of Historical Land Injustices in Lamu County

The historical land injustices were caused by various factors. The causes ranged from land tenure insecurity, political and historical factors. The factors later manifested in the gradual failure in administrating land and delivery mechanisms, unfair allocation of land belonging to the people and the lack of community participation in running and controlling of its natural resources.⁸² This section will analyze the different causes of historical injustices in Lamu.

3.2.1 The Coming of Islam and Land Tenure System in the 18th century

The Coastal belt which was under Sultanate covers a vast area. Issues concerning land formed with Arabs settling in the region. They continued to trade especially in slaves' and their influence grew rapidly. This was not only restricted to trade but also the control of land. Their influence, numbers and subsequent inter-marriage brought in reforms in the land tenure structure which existed to date. Traditional method of land acquisition and use in Lamu was group tenure in which a group of Islanders would occupy an arable area on the mainland for agricultural activities.⁸³

⁸⁰ GOK, Ministry of Lands, *Sessional Paper No.3 of 2009: National Land Policy*, Nairobi: Government Printers, 2009,p.81.

⁸¹ Kenya Lands Alliance, *The National Land Policy In Kenya Paper No.2/04, Addressing Historical Injustices*, Nairobi: KLA 2004,p.5.

⁸² *Ibid*,p.5.

⁸³ K, Kanyinga. *Agrarian Reforms And Squatters In Coastal Kenya: Politics Of Land Rights And Social Domination*, Nordic African Research Institute, 1997, p.81.

During Arab rule at the Coast, the Muslims sharia law of land ownership and control was applied and practiced. Under this law, pasture, forest and water points were the properties of the community. However, for the rest of the land the law allowed a Muslim to occupy any piece of land provided that such land was not already in occupation. Under *sharia* law, land cleared of bush and cultivated became the property of the person who or whose slaves had performed these tasks. Although the person might leave the land for a time in case of shifting cultivation, no one took possession of it. Occupation was established by declaration or by a simple demarcation of the boundaries and such occupation carried with it the right of alienation. Ownership lapsed only with the expressed intention to abandon the land. A period of confusion in the application of this law occurred after the abolition of slavery which left large tracks of agricultural land uncultivated and bushy making it difficult to differentiate land that had been under cultivation from that which was abandoned.⁸⁴

The Arabs possessed vast blocks of cultivation on the mainland area of Lamu which was subject to Lamu indigenous people the Bajuni. The mainland area from Ukunga to Mpeketoni, had been effectively occupied by their ancestors before the arrival of the Arabs. In Lamu before the advent of Arab rule, there was a secure structure for the control of land ownership. Initially indigenous people of Lamu had a stable and secured structure for the control and ownership of land but this was made difficult by the arrival of the Arabs who introduced slavery and also private claims over land by the Sultan of Zanzibar and his subjects.⁸⁵

Arrival of British colonial rule deepened the land problem in the Coast. Colonial rule introduced legislations which encouraged only the Arabs to be land owners. By assuming this responsibility over the Coastal strip, the British government agreed to institutionalize the freehold system of land tenure. The introduction of new land legislations by the British colonial government not only gave the Arabs a comparative advantage over the indigenous people but also made it easier for them to register as private property owners.

⁸⁴ *Ibid.*

⁸⁵ Okoth, Ogendo. H.W.O, *Land Ownership Along The Ten-Mile Coastal Strip of Kenya*, African Centre of Technology Study, Nairobi: 1976, p.15.

One such legislation which worsened the land problem stated that any parcel of land which was unclaimed to be declared government land irrespective of whether it is inhabited by the communities, this gave rise to what is present day landlessness.⁸⁶

3.2.2 The Politics of Land

Politicization of land in Coast to serve interests of the ruling elite started a long time. First before Colonialism, the Islamic Feudalism under the dominant Arab state in Zanzibar laid claims of the entire land. The ancestral lands of the indigenous people; Mijikenda of Kilifi, Bajuni of Lamu and others were considered to be the property of the Sultanate. Their right to land ownership was not recognized.⁸⁷

When Kenya became a British protectorate, alienation of indigenous communities from their lands continued unabated. New land laws and reform introduced not only failed to acknowledge land rights of the indigenous but also to favoring the subjects of the Sultan mainly Arabs. After independence in 1963 the coastal strip's territorial autonomy ceased and it was incorporated into greater Kenya. As a sign of good will, two agreements were signed by the then Prime minister Jomo Kenyatta; one was with the Zanzibar Authority on October 1963, and the other was signed by Kenya's Prime Minister, colonial representative, Prime Minister of Zanzibar and the Sultan. Kenyatta's government agreed that the freehold titles to land owned by Arabs in the region would be recognized.⁸⁸

The signing of the two agreements by Kenyatta neutralized anxiety harbored by the Arabs in regard to their security in the country. The commitment by Prime Minister Jomo Kenyatta ignored the aspirations held by indigenous communities who thought that the ushering in of independence would address centuries of land disposition by Arabs. The agreements overlooked African traditional land tenure system.⁸⁹

⁸⁶ *Ibid.*

⁸⁷ K, Kanyinga. *Re-Distribution From Above: The Politics of Land Rights and Squatting In Coastal Kenya*, N.A. Uppsala, Nordiska press:2000, p.7.

⁸⁸ K,Kanyinga.*Re-Distribution From Above;The Politics of Land Rights in Coastal Kenya*,N.A. Uppsala,Nordiska Press,2000,p.7

⁸⁹ *Ibid*

After independence, the post-colonial government of Kenya attempted to resolve land problems at the Coast by initiating the establishment of settlement schemes. In the 1970s, the Kenya authority started distributing land to landless Kenyans who were dispossessed of their land by the colonial regime through the project Lake Kenyatta one and two settlement schemes. There were discrepancies in the manner which the schemes were initiated. Indigenous Bajuni the original owners of land were neither consulted nor paid for their lost land used to settle immigrants. Many other irregularities were committed for instance people who completed the allotment process were not given land as required. Furthermore, the 40:60 rule where immigrants were supposed to get 40% compared to the indigenous 60% was not adhered to.⁹⁰

The resettlement schemes of the 1970s did not address the grievances of the Bajuni community as the majority in regard to landlessness. Many of the people who were resettled came from the upcountry consisted mainly the Kikuyus; some used unscrupulous means such as bypassing the allocations procedure. To some extent the projects failed to eliminate the injustices committed to the people of Lamu.⁹¹

3.2.3. Insecurity of Land Tenure

Land tenure insecurity in Lamu is very high. All un-alienated land in this region falls under the government land tenure regime including the marine reserves and forest reserves. Land in Lamu is administered under the Government Lands Act. Given the highly centralized administration of these lands, government land in Lamu came under massive abuse as government officials' indiscriminately disposed-off land to those who were able to purchase these lands. The Government Lands Act elaborated procedures for the allocation of land that the Commissioner of Lands is required to follow including proper notification to the public of any land available for grant and also for the assessment of the applications made by the public. However, these procedures were rarely followed or by-passed by public officers in the Lands Commissioner's office in Lamu. The Commissioner of Lands allocated land in Lamu using procedures not

⁹⁰ Government of Kenya (*hereafter GOK*) Ministry of Planning and National Development, *Lamu District Development Plan 1997-2002*, Nairobi. Government Printers, 1997, p.8.

⁹¹ K, Kanyinga . *Re -Distribution From Above; The Politics Of Land Rights And Squatting In Coastal Kenya*, N.A Uppsala Nordiska Press: 2000, p. 69.

provided for in the Act. This threatened tenure security of the already marginalized local communities in Lamu.⁹²

Lands in Lamu were illegally alienated within and outside the marine reserves in Lamu region. These included illegal acquisition of plots along the beach and the Isles situated around Kiunga reserve in Lamu in the 1990s. These activities were in violations of the reserve status. Land transactions were made in government offices with no gazettelement or notification to the people. In Lamu, the marine reserve, fish landing sites, Coastal forests, mangrove forests and other sensitive ecosystems remained under threat because of increase encroachment by private developers who have been issued with title deeds. Ineffective and contradictory legislative framework coupled with overlapping land laws and weak enforcement mechanism had greatly contributed to the plunder of public land.⁹³

3.2.4 Problems of the Settlement Schemes.

The program of resettling the landless in Lamu mainland was a considerate idea with the good intention of settling the landless Kenyans and uplifting the economic status of the area through agricultural advancement. The local people felt left out because they were neither consulted when the idea of resettling immigrants to their land came in nor were they involved when it came to implementation of the program. There was no fully participation but also discrimination against the indigenous people. The Mpeketoni scheme was initiated in 1968. The Government with assistance from German co-operation allocated about 1.5 billion shillings for the settlement schemes. The post-independence governments' resettled immigrants mostly people from Mount Kenya. In 1980s, inhabitants occupying the schemes where ninety five percent of the settlers were of one ethnic group and were given title deeds during Moi's rule, while in the neighboring villages of Mkunumbi occupied by the indigenous Bajuni people were not given title deeds and therefore could not utilize their land fully.⁹⁴

⁹² USAID, *Coastal Conservation Programme*, Nairobi: 2009, p.26.

⁹³ USAID, *Coastal Conservation Programme*, Nairobi.2009,p.26

⁹⁴ M, Mghanga. "*Usipoziba Ufa Utajenga Ukuta*", *Elections, Land and Conflict in Kenya Coast Province*. Heinrich Boll Stiftung, East and Horn of Africa, Nairobi: 2010. p.81.

In 1997, Mpeketoni schemes were inhabited with 3,480 plots covering an area of 14,224 hectares and each immigrant was allocated 10 acres each. In the settlement schemes of Lake Kenyatta phase one and two, Hindi, Magogoni and Hongwe settlement schemes, ninety five percent of the occupants were people from central region of Kenya. The number of upcountry settlers constantly increased due to the in-migration. Another irregularity reported by residents of Lamu was that Chiefs, sub chiefs and other administrative officers colluded to sell community land to new comers. The majority of chiefs and scheme officers in the 1990s were immigrants and not locals from Lamu area. Contrary to the provision of the law, there were some situations whereby land was allocated irregularly by government administrative officers and unauthorized persons particularly the politicians.⁹⁵

The Hindi-Magogoni scheme is another settlement scheme located in Lamu mainland. This scheme was started in 1980s. In these schemes, there were many cases of individuals who occupied plots where the original owner's allocations were cancelled due to administrative malfunction or after bribes were paid to settlement schemes officers in order to reallocate the plots. In the case of these schemes, the number of indigenous allottees is low because in some cases the allottees sold the plots after they received letters of allocations. In other instances, the indigenous owner's allocations were prematurely revoked after they had paid ten per cent allocations fee. Most of these plots were re-allocated to civil servant and state elites, they remained in their possession although much of the land remained under forest cover or undeveloped. Many of the scheme plots had been allocated and reallocated many times, some even up to seven times. State settlement schemes acted as a mechanism of encouraging upcountry immigration. The unresolved grievances especially double allocation is still rife and it has remained a source of misunderstanding between the local population and the upcountry people. Due to the irregularities, allotment letters were cancelled several times since adjudication started in the 1980s.⁹⁶

⁹⁵ G. Paul. *Land Issues On The Kenyan Coast, A Summary Of Landlessness In Lamu*, Nairobi: 2000, p.1.

⁹⁶ *Ibid*, pp. 8-9.

3.2.5 Land Adjudication and Registration

The government of Kenya in its 1994-96 development plan, it noted that no specific implementation proposals on land were reflected on the previous subsequent plans questioning the seriousness and commitment in solving the land issue.⁹⁷

The process of land adjudication, demarcation and survey in Lamu, is slow. Even in areas where land had been demarcated and surveyed, few title deeds were issued. In Lamu west few title deeds were given out under the land adjudication and registration program in 1994-5. In regions where adjudication was conducted, there were land disputes between the indigenous people of Lamu and the administration. In regions where the government purported to have solved the issue of boundaries, the problem still persisted. This anomaly extended to neighboring Tana River County, the only other county where land long occupied by the indigenous inhabitants was not classified as Trust Land. Lack of knowledge over land rights is evident across all areas of Lamu County. This is attributed to weak land and administration mechanisms in Lamu especially the complicated and slow process of land titling and registration⁹⁸

3.2.6 The Problem of Absentee Landlords

During the transition to independence the Imperial government, Kenyatta Administration and the Sultan of Zanzibar entered into an agreement regarding the control of the Ten Mile strip. By this agreement, Kenyatta recognized the Sultan's private land rights and agreed to sign treaties to acknowledge such rights. One of the recommendations in the agreement stipulated that land titles possessed by Arabs be recognized. The signed treaty legally recognized their ownership.⁹⁹

The phenomenon in the Ten Mile strip and Lamu land occupation by Bajuni is under customary ownership. The agreement made things even more complex for most of the indigenous people like the Bajuni. The government did not adjudicate most of the land occupied by the local population thus the land remained under customary tenure and no

⁹⁷ GOK, *National Development Plan 1994-1996*, Nairobi: Government Printers, 1996, pp.10-11.

⁹⁸ M. Mghanga. *Usipoziba Ufa Utajenga Ukuta*, *Land, Elections and Conflict in Kenya Coast Province*. Heinrich Boll Stiftung, East and Horn of Africa, Nairobi: 2010. p.xi.

⁹⁹ Gordon, Wanyumba. *Land Tenure Issues In Kenya*, Nairobi: 2004, p.9.

individuals were allowed to own a title. Areas which had been adjudicated under the Land Titles Act were those occupied by the great grandsons of the Arab landowners. This anomaly created the concept of absentee landlords. The landless who believed had rights of ownership as they had lived in these localities for a long time, occupied the parcels of land in Lamu.¹⁰⁰

In Lamu Island, centuries old Arabic feudal land tenure system was practiced. Absentee landlords with ownership documents collected rent every month through their agents. The unfair feudal land ownership dating back to the Sultanate still continued to be practiced. The Island of Lamu for instance belonged to landlords with feudal genesis like Abdullah Sudi and the grandsons of the former Sultan of Zanzibar. With limited information and lack of proper evidence of ownership, the indigenous people of Lamu and those within the Ten Mile Coastal strip lost their land and continued to be landless and as tenants of the Arabs who claimed to their land without their consent.¹⁰¹

3.3 Types of Land Conflicts in Lamu County

Land loss and access remained the most dominating issue in Lamu society. The indigenous community problems range from land ownership, land designated for individuals, conflicts emanating from lack of access to conservation projects and conflicts over settlement schemes, conflicts between the land owners and squatters were present in Lamu as they were in other regions of the country. In this section various types of conflict in Lamu County will be analyzed.¹⁰²

3.3.1 Land Conflicts over Settlement Schemes

During the 1970's, Settlement schemes such as Lake Kenyatta in Mpeketoni Lamu mainland were established. Settlement schemes occupied about five percent of the land in Lamu. Four were established in early 1974-75 and the latest in 1997. The schemes were introduced to resettle people without land in Kenya. It was to be done under Settlement Act which required that 70% of the indigenous alongside 30% immigrants to be resettled.

¹⁰⁰ *Ibid.*

¹⁰¹ M. Mghanga. "*Usipoziba Ufa Utajenga Ukuta*", *Land, Elections and Conflict in Kenya Coast Province*. Heinrich Boll Stiftung, East and Horn of Africa, Nairobi: 2010. p.xi.

¹⁰² *Ibid.*

The proper procedure was not followed. However in practice there was no transparency around selection of scheme beneficiaries. The schemes were used mostly to resettle people coming from Central part of the country.¹⁰³

The proportion of the indigenous settled through these schemes was lower than that of the immigrants. This was contrary to the 60:40 ratio provided in the Settlement Schemes Act. When the scheme was designed, indigenous villagers from Mpeketoni area were not included in the scheme. The development of schemes was not extended to the indigenous Bajuni and Boni communities. The county land ownership patterns differed from division to division. 50.7% of Lamu residents were not the first allottees of the land. This percentage constituted both those that were born in Lamu and those that were from outside. This implied that land in Lamu changed hands over time. A significant number of the people of Lamu believed that settlement schemes created land problems. The explanation given for this observation was that settlement schemes instigated discrimination against locals in the allotment process, and that outsiders were often given higher priority during the allocation process.¹⁰⁴

Lamu residents had experienced conflicts involving land. The causes of these conflicts were land boundaries between immigrants and the indigenous people. The most affected area in Lamu region was Mokowe. The conflict that occurred in the area was as a result of double allocation of plots. Cases of double allocation were most rampant in Mokowe area of Lamu. Settlers in this area were mainly from the Kikuyu community who had formed committees' referred to as "*witemere*" in Kikuyu language. The colloquial term "*Witemere*" which is Kikuyu slang equivalent of "assign for yourself" or cut for yourself. The Kikuyu settlers in Mokowe area identified unoccupied land and divided it among themselves. Mokowe area is an extension of one of the settlement schemes characterized by lack of structure and control by the government. In Lamu it was evident that the system of national land administration was not working well. There was extensive

¹⁰³ LTPR Assessment: *USAID, Northern Rangeland / Coastal Conservation Programmes*. USAID Nairobi: 2011, p.26.

¹⁰⁴ Oral Interview , Mohammed, *Respondent From Lamu Island Interviewed on 09/08/2012*.

evidence of residents allocating themselves what technically public land at will was without following proper procedures.¹⁰⁵

In 1993, Lamu region experienced tension over a period of time. The tension was intense and disturbances broke out. The disturbances began as to mount against the District Commissioner, who according to the local residents frustrated their efforts to table their grievances. The people were not given audience by the Commissioner to present their grievances. The inhabitants wanted the issue of landlessness to be addressed by the government. The commissioner's refusing to hear their grievances and sending police to disperse their gathering fueled more severe riots. Government property were torched some completely destroyed. The skirmishes escalated creating fear to the government that it would spiral into other regions. The government opted for a more diplomatic engagement with the locals. The commissioner informed the Lamu inhabitants that the government would address the problem of land in Lamu.¹⁰⁶

Throughout 1997 there were many demonstrations by the indigenous people asking to be given their ancestral land which they claimed was allocated to the immigrants. Most of the conflicts were resolved through mediation by elders and also government officers and Lamu land office. The introduction of settlement schemes in Lamu was meant to bring about land reforms by providing land to the landless squatters. It can be argued that the people of Lamu cannot by all means be referred to as squatters due to the fact that they had settled on their land for generations. Communal land classified as Trust Land in other regions remained under state control in Lamu. When establishing these settlement schemes, the government had political and economic agenda in mind. The schemes would provide an opportunity to landless Kenyans to own land and practice agricultural production. These schemes were not tailored to settle the indigenous landless despite being there, instead settled upcountry people who were predominantly established farmers. Malpractices in the process of allotment further compounded the friction

¹⁰⁵ Oral Interview , Omar *Interviewed On 09/08/2012, Lamu.*

¹⁰⁶ Oral Interview , Mbwana *Interviewed On 09/08/2012, Lamu.*

between the new beneficiaries and the indigenous people, with locals accusing the administration.¹⁰⁷

3.3.2 Land Conflict over Infrastructure

A plan by the government of Kenya to construct a sea port in Magogoni Lamu County was met with a lot of opposition by the residents. The resistance is characterized by two interlinked concerns; the first being the proposed port will erase the cultural heritage of the area and secondly the port represents the continuation of land grabbing by the state which had not solved yet the initial problem of land adjudication. Even though building of the port being the biggest in East Africa is an economic viable venture in the area, indigenous people had unpleasant memories of displacement, dispossession and alienation. This magnified their fear and resentment towards the government and by allowing the project to proceed will complicate the unresolved land issues against them.¹⁰⁸

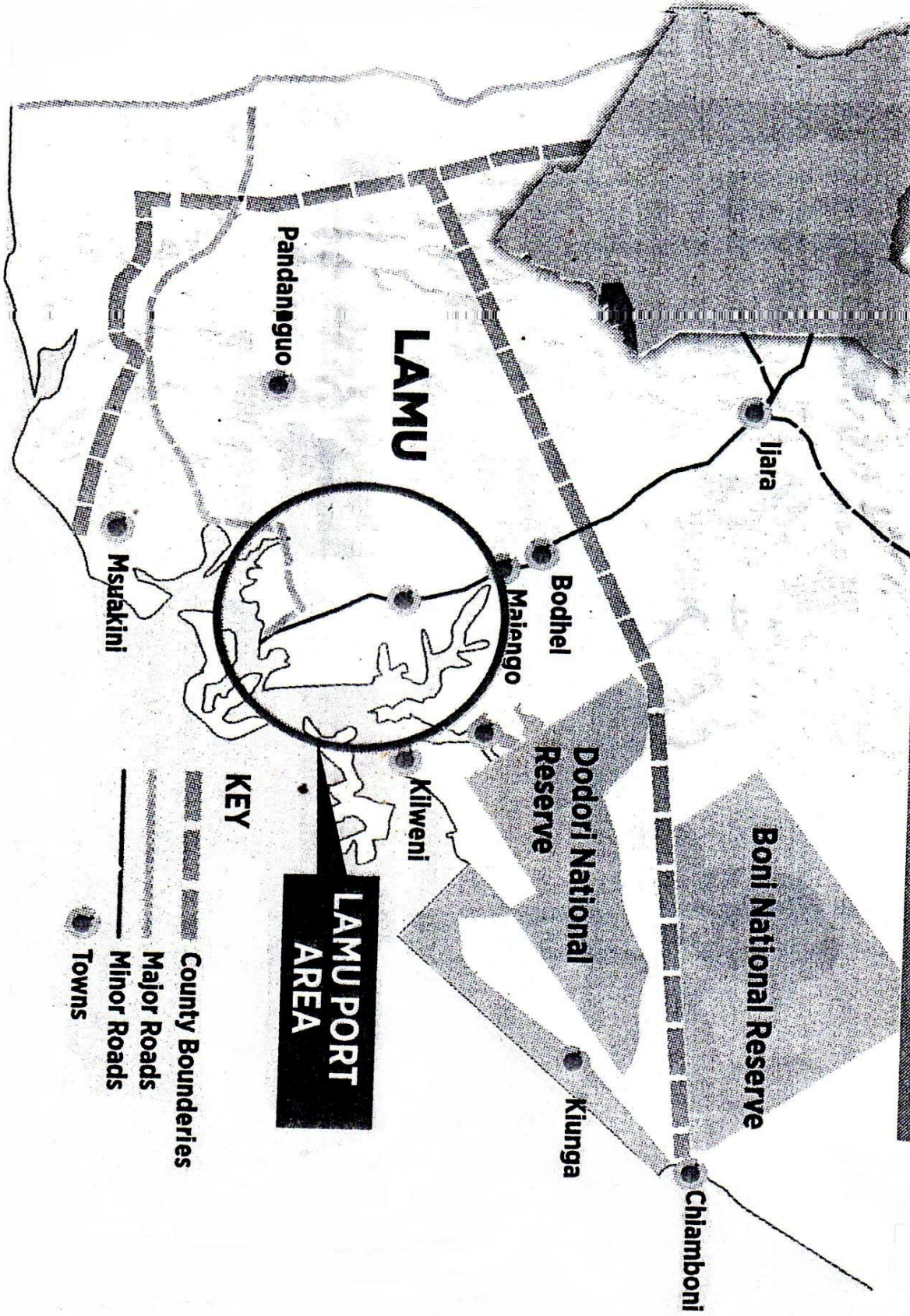
The construction of the port will link Kenya with Sudan and Ethiopia in the Southern region. The government describes the project in its strategic development plan. The proposed port will link Ethiopia, South Sudan with the East and the Northern frontiers of Kenya. Magogoni area in Lamu where the proposed port is to be constructed is part of the mainland subject to the 1999 court injunction obtained by a community based organization which halted land allotment in Lamu. Most of the land in Lamu is government owned although large portions in the mainland had been given to private individuals as ranches. In Lamu Island most of the town lies in land that is owned by one land owner. The Island mostly had tenants at will and the majority of landlords had written tenancy agreement with them.¹⁰⁹

¹⁰⁷ Oral Interview , *Omar Interviewed conducted On 10/08/2012, Lamu.*

¹⁰⁸ *Ibid.*

¹⁰⁹ M. Mghanga. “*Usipoziba Ufa Utajenga Ukuta*”, *Land , Elections and Conflict in Kenya Coast Province.* Heinrich Boll Stiftung, East and Horn of Africa, Nairobi: 2010. p.81.

DISPUTE AREA AROUND PROPOSED LAMU PORT



KEY

- County Boundaries
- Major Roads
- Minor Roads
- Towns

LAMU PORT AREA

During the 2007 election campaigns Kenya's Head of State President Kibaki declared that there was no Trust Land in Lamu. The existing land tenure system can be defined as a quasi-customary since most of the land had not been formally surveyed or adjudicated it remained communally owned. These communities entrusted their County council to oversee all the land rights on their communal land. The Kenyan government, without community consultation procured land. The government provided very little information on the project to the residents of Lamu. Misinformation on the side of the government and lack of public participation continued to create tension.¹¹⁰

In 2008 the feasibility study on the project was to be tabled and debated in parliament, instead the government proceeded and advertised tenders before the preliminary draft of the feasibility study was completed. These developments illustrated the political weakness of Lamu's indigenous communities as the proposed port threatened the foundations of their cultural survival. A similar situation emerged on the southern border of Lamu County, where the allocation of large blocks of Tana Delta and Lamu land to outside interests exterminated the customary tenure of local producers in addition to their access to vital natural resources and water. In scenarios where land was intended for development projects, no feasibility study was conducted in regard to the environment to assess the impacts of the project to the indigenous people or mitigate the effects. The government procured land without adequate consultation or compensation. For instance, people in Manda area were displaced when the government embarked on the project of expanding Manda airstrip.¹¹¹

3.3.3 Conflicts over Land Tenure

Land tenure insecurity is very high in Lamu. The Government of Kenya had not recognized customary claims to land and resources in the area, as a result vast land in Lamu is not adjudicated, surveyed and registered, with the exception of beach front plots allocated to influential elite. Several beach front plots were allocated in 2007, virtually under questionable circumstances. The buyers of these lands obtained ownership

¹¹⁰ USAID, Kenya Secure Project Tenure Assessment: *Dubious Deals In The Dunes: The Case of Mkokoni Lamu*, Nairobi: p.vi.

¹¹¹ *Ibid.*

documents such as allotment letters and titles from the government. Land allocation was conducted without survey or public notice both of which are required by the law.¹¹²

Closely linked to the use of land in Lamu, is access to land as a natural resource. Land accessibility is also a source of conflict. There had been other unresolved uses of resources involving hunter- gatherers of Lamu. The Boni people are hunter- gatherers who inhabit the Dodori forest in Lamu region and whose culture co- evolved with the East African Coastal forest. Like other hunters- gatherers in Kenya. Since independence the Boni people had been buffeted by historical forces outside their control. For local like the Boni the connection with land is not merely reduced to physical possession but a material and religious element. The question of national development and conservation importance as opposed to the rights of communities is a contentious issue. The displacement of the Boni community in favor of conserving the environment through gazzeted areas and reserves presented a source of conflict in Lamu. In 1997, the Kenyan Government banned hunting, the Boni's primary livelihood. Afterwards, the gazzettement of the Boni and Dodori national reserve resulted in their exclusion from traditional hunting and gathering lands and also their religious sites. Faced with shrinking hunting grounds, Boni community found themselves in conflict with the authority regarding utilization of their land for sustainment. The Boni community rejected government use of conservation as a tool to deprive them of their land. Conservation is an integral part of their culture and hence their right to co-exist with the forests.¹¹³

Land within Boni-Dodori corridor is government land. The Government of Kenya had not recognized customary claims to land or forest resources; there was no land adjudication in the area despite several attempts by the government. What this means in practice is that boundaries had not been surveyed and no title deeds were issued. As far as the people of Lamu are concerned, it is unclear whether their land falls under customary and traditional tenure or the government's legal and regulatory framework. Tenure insecurity had reduced the community access to resources, especially the forest resources

¹¹² *Ibid.*

¹¹³ USAID, Kenya Secure Project Tenure Assessment: *Dubious Deals In The Dunes: The Case of Mkokoni Lamu*, Nairobi: p.vi.

that are intrinsic to the Boni community livelihood and culture. The Boni encounter problems when they enter into the national reserves to access their food sources and medicinal herbs. There is dispute over the boundaries of the Dodori national reserve.¹¹⁴

The Boni villages are sandwiched between the Boni and Dodori reserves, which have large populations of herbivorous animals such as buffalo and hippopotamus. The Boni people are traditionally hunters and gatherers, although they relied on subsistence farming for much of their food. At certain seasons animals migrate outside the reserves and graze in the agricultural fields of the Boni people. At this time of the year, farmers are often forced to guard their crops and sometimes kill animals to prevent crop losses. The killing of animals escalated disputes between the Kenya Wildlife Services and the Boni people.¹¹⁵

3.3.4 Conflict between State Institution and the Community

Another key source of conflict in Lamu is between land utilization and accessibility. These mostly pity communities against state institutions where large chunks of land are declared gazetted to protect the biodiversity and conserve the environment. Once gazetted, public/ economic activities are excluded from these areas. Positive conservation a result normally comes where a community surrounding the protected area is fully involved, excluding them limits the accessibility of land for sustenance.¹¹⁶

One example is the protection of Boni and Dodori National Reserves in Lamu region. It is necessary to preserve the environment. Within the reserves, the Boni people established temporary fishing camps which caused conflict with the Kenya Wildlife Service. These fishermen setup camp at semi-permanent dams and springs during the July- August and January- February seasons. Their main catch is the lungfish endemic to the East African Coastal forest. The fish from the Boni forest are sold in towns such as Lamu, Malindi and Mombasa. During these seasons conflict between state authorities and residents of Boni forest escalated. By not creating awareness to the importance of

¹¹⁴ World Resources Institute. *Biodiversity and Protected Areas; Country Profile*, Available at [http:// earth trends. Wri.org/text/ biodiversity-protected/country profile-96.htm/](http://earth.trends.Wri.org/text/biodiversity-protected/country_profile-96.htm/).

¹¹⁵ *Ibid.*

¹¹⁶ Angelique Haugerud, *Land Tenure And Agrarian Change In Kenya*, University Press:2001, p.65.

protecting land resources such as forests, rivers, oceans through direct involvement of the Boni people and giving an alternative to meet their daily needs, the government solely denied them their right land use.¹¹⁷

3.4 Conclusion

Access to land is essential, because it is a means by which residents maintain local group affiliations. This is because land tends to be a form of identity to the community. These associations are very vital especially when used as the bargaining power with multinationals or government where resources such as oil are discovered. These groupings can also act as a source of economic empowerment by setting conditions for any multinational or state to operate on their land.¹¹⁸

This chapter has revealed that problems of land ownership and control in Lamu are linked to the pre-colonial era. The land question formed with the arrival of the Arabs which led to the eventual control of land. Colonial and post-colonial administrations played a big part in eroding land management rights from traditional institutions thereby instigating discrepancies in the accessibility, controlling and exploiting of resources and for that matter land.

According to the residents of Lamu, the historical injustices over land remained unresolved. Subsequent government after independence failed to tackle the problem in an outright manner. As a matter of fact most of the policies followed after independence either worsen the problem or gave a short term solution. The aftermath of this approach by the authority is the squatter problem in Lamu. Furthermore, the conflict was also caused by various factors ranging from resource considerations, land tenure insecurity and also political issues. This chapter examined on the nature and types of conflict and the factors which led to historical injustices over land in Lamu region. The impacts of historical land injustices in Lamu will therefore be the subject of discussion in the following chapter.

¹¹⁷ World Resources Institute. *Biodiversity And Protected Areas; Country Profile*, Available at http://earth.trends.Wri.org/text/biodiversity-protected/country_profile-96.htm/.

¹¹⁸ *Ibid.*

CHAPTER FOUR

THE IMPACTS OF HISTORICAL LAND INJUSTICES AND THE COPING MECHANISMS IN LAMU COUNTY 1963-2010

4.0 Introduction

The previous chapter recognized conflicts associated with land in Lamu County. Historical and political reasons were considered to be instigators of historical land injustices in Lamu. This chapter will focus on impacts of historical land injustices on communities residing in Lamu area. In examining the impacts of land injustices, the chapter will employ the Marxist theory. Marxists theorists argued that competition in society is the motivational factor of conflict. Structural factors in this chapter are viewed on a long term horizon.

4.1 The Impacts of Historical Land Injustices

The manifestation of these structural inadequacies in regard to planning, access as well as use of land affected many people in Lamu. Struggles over land in the context of multifaceted land problems not only persisted but also multiplied in the course of the history of Lamu region. The impacts of historical land injustices included; landlessness and squatter problems, absentee landlordism, the problem of settlement schemes, land tenure insecurity, dispossession and land grabbing.¹¹⁹

4.1.1 The Problem of Landlessness

The problem of landlessness is as a result of the previous regimes ineffective policies in dealing with issues concerning land. Communities in Lamu were dispossessed of their land due to the laws inherited from the outgoing governments. This culminated into landlessness. The manifestation of these inadequacies in planning, access as well as use of land affected many people in Lamu.¹²⁰

¹¹⁹ Kenya Lands Alliance, Paper No.2/04: *The National Land Policy In Kenya: Addressing Historical Injustices*, KLA, Nairobi :2004, p.15.

¹²⁰ GOK, Ministry of Lands, *Sessional Paper No.3 of 2009: National Land Policy*, Nairobi: Government Printers, 2009, p.81.

The widespread landlessness in Lamu is as a result of inadequacies in the area of planning and access to land created by the colonialists whereby private ownership of titles was introduced. Unclaimed land was categorized as Crown land. In 1963 there were large areas of Crown land within the strip where the Bajuni people of Lamu and the Mijikenda occupied. This resulted into landlessness; people were of their land which they occupied. The landless people evolved even though they were there before titles to the land were issued. The squatter problem in Lamu became worse by the fact that the inadequacies' were not rectified hence a growing population of indigenous inhabitants without land rights.¹²¹

According to Kenya Gazette Notice Number 4056 of October 21, 1983, the whole land in Lamu was declared Government Land. Consequent upon this notice, many Bajuni people regarded as squatters filled in forms in anticipation to re-inhabit their ancestral lands. But since that time the Commissioner of Lands issued no letters of allotment to the Bajuni who laid their claims, instead the Commissioner of Lands allotted much of land to foreign companies. These arbitrary allotments of land angered the Bajuni people and the provocation forced them to take the authority to court in 1994. High court issued an order on May 5th, 1999 to the Commissioner of Lands to declare Lamu region a land adjudication area and that no letters of allotment should be issued. Land in Lamu region is not regarded as community land in form of Trust Land but instead it belonged to the state making the inhabitants squatters in their own ancestral land. This phenomenon led to the aspect of squatterdom.¹²²

4.1.2 Insecure Tenure

Land tenure insecurity is vast in Lamu. All un-alienated land in Lamu is under state jurisdiction and it also encompasses the national reserves. The problem in Lamu displayed commonalities with other areas of Kenya where large tracts had been alienated

¹²¹ K, Kanyinga, *Re-Distribution From Above: The Politics of Land Rights And Squatting In Coastal Kenya*, N.A Uppsala:2000 p.22.

¹²² Land Question of The Bajuni People of Lamu District: A memorandum to The Commission of Inquiry Into The Land Law Systems of Kenya, Nairobi: 2002, p.12.

since independence, but in many ways unique. The mainland areas of Lamu were classified as Crown Land when the region became a British protectorate.¹²³

The people of Lamu, Faza and Siyu subsequently petitioned the Colonial Government to retain 80,000 acres of communal land holdings on the mainland, but this was rejected. The private owners of land were provided with allotment letters. Kenyan administration after independence disregarded many of these title deeds and other efforts to secure local land rights including the memorandum of understanding safeguarding Coastal people's position signed by Jomo Kenyatta at independence, suffered the same fate. This resulted in large scale displacement and disfranchisement of the indigenous population. Communal land classified as Trust Land in other regions remained under state control in Lamu. Large areas of Lamu that qualified as communal lands under the new constitution remained subject to informal settlements.¹²⁴

Apart from land tenure insecurity, there is also resource tenure insecurity. Customary rights of resource were unrecognized on state lands; the land policy did not obligate the state to address any query in regard to stewardship or utilization of these lands.¹²⁵ Lamu residents lost their customary rights to resources when the government included the Island in Kiunga a Marine National Reserve. Even though people were not forced to leave the Island, the gazettelement of the reserve did not include any provision for the communities living there. The reserves were gazetted in 1976 and also 1979 consecutively without considering the plight of the indigenous communities' mode of survival.¹²⁶

Various cases of injustices were experienced among the populations residing within the gazetted reserves. After the reserves were gazetted, the population within were mistreated by the forests officers in the name of conserving the environment. The

¹²³ P, Goldsmith: *Land Issues on The Kenyan Coast: Lamu Development Policy Management*, Nairobi: 2011, pp.3 – 4.

¹²⁴ *Ibid*

¹²⁵ Njonjo *et al*, 2002.

¹²⁶ Kenya Secure Project Tenure Assessment, KSPTA; *Land and Resource Tenure Issues*, USAID, Nairobi: 2010, p.9.

indigenous were infringed of their resources in gazzetted areas.¹²⁷ Furthermore, Lamu is the remaining island with fresh water in the entire Lamu Archipelago. The water catchment area consists of the seven miles stretch of beach with sand dunes. The Lamu sand dunes are a protected site within Lamu Island. In 2009, confirmed report from UNESCO indicated that substantial areas of the dunes were illegally allocated to influential private developers despite the fact that the area was gazzetted in 2002. This issue was highly contested by the local community. In 2002, the Lamu water catchment area was gazzetted by the Minister of Heritage in a gazette notice No .1933 of 2002 .In the same year, land grabbing cases along the water catchment areas were reported to the National Museums of Kenya. Despite the appeal by the National Museums of Kenya, alienation of the land continued.¹²⁸ In 2004, unauthorized development within the sand dune area was reported to UNESCO World Heritage Center, which prompted the center to write to the state requesting for clarification. This culminated into a series of high level Inter-governmental consultative meetings held at the world heritage site of Lamu and which resolved to adopt a road map for the future management and protection of the Lamu sand dunes. Following the recommendations, the Chief Lands Registrar instructed Lamu land registrar to restrict all the titles in the affected area. In 2009 a search conducted by the National Museums of Kenya revealed that several plots along the sand dunes were issued with title deeds despite the official protest on the illegal encroachment¹²⁹

4.1.3 Conflicts

Land issues like any resource contains a potential for conflict. Conditions in Lamu region with the revival of multiparty in 1992 provided a scenario for fomenting politically motivated ethnic violence. Lamu had disproportionately high rates of landlessness. During this period there was confirmed tension in Mpeketoni area, the earliest settlement schemes in Lamu County. The settlement schemes were perceived by the indigenous

¹²⁷ Historical Land Injustices In Lamu, SAVE LAMU, *A Memorandum Presented To The Truth, Justice And Reconciliation Commission*, TJRC, Nairobi: 2011, p.31.

¹²⁸ USAID, Development Policy Management: *Fraudulent Land Transactions in Protected and Ecologically Sensitive Areas*, USAID Research Report, Nairobi: 2011, p.3.

¹²⁹USAID, Development Policy Management: *Fraudulent Land Transactions in Protected and Ecologically Sensitive Areas*, USAID Research Report, Nairobi: 2011, p.3.

people as the epitome of historical land injustices. On 19th May 1992, violent disturbances broke out in Mombasa, Kenya's second largest city.¹³⁰ The unrest spread to Lamu. The chaos had begun as a peaceful demonstration; the protesters were demanding audience with the commissioner who they claimed disregarded the indigenous demands for land reforms in the area. The inhabitants wanted the issue of landlessness addressed by the government. The District Commissioner refusal to adhere to their claims and police disruptions of the demonstration ignited riots. Rioters shouted slogans and destroyed government property.¹³¹

In Lamu region, insecurity and civil strife are basically the general manifestations of the failure to initiate the requisite framework to deal with historical land injustices. In early January 1998, a handful of residents of the village of Mkokoni area in Lamu noticed surveyors setting up equipment on a stretch of undeveloped beach and associated sand dunes. Tensions in the community had been growing as outsiders acquired beach front property raising questions about corruption in land deals. The men rushed back to the village to alert the other inhabitants. Soon a crowd gathered, words were exchanged and tempers flared. The surveyors packed their gear and left. The confrontation at Mkokoni was a microcosm of the pervasive land tenure issues facing Lamu residents as conflict intensified between traditional indigenous users of land and land speculators and developers. In various cases, inhabitants who challenged illegal allocation of land were threatened and imprisoned. For instance, a person in one of the villages in Lamu area was incarcerated for demolishing demarcations of an area believed to be acquired illegally.¹³²

4.1.4 The Problem of Absentee Landlords

During the wind of change, colonialists signed a concession involving the Kenyan government and that of the Sultan in regard to the possession of the ten mile strip. By this agreement the Prime Minister Jomo Kenyatta recognized the Sultan private land rights. The land at the Coast was registered and adjudicated under the Sultan of Zanzibar. By this agreement, the Coastal indigenous people including the Bajuni of Lamu were turned

¹³⁰ The Star: *Lamu Leaders Differ Over Violence*, 2 July 2014, p.6.

¹³¹ *Ibid*, p.6.

¹³² *Oral interview, Omar Mohammed, Mkokoni resident interviewed on 12 May 2012.*

into tenants of the Arab land owners. The agreement acknowledged the land belonging to the sultanate. A few Arabs opted to return back to Oman but left their descendants as custodians of the land in the coastal region. The concession signed at the time recognized the land belonging to the Arabs. Lamu for instance belonged to grandsons and great grandsons of the Sultan of Zanzibar. The landlords' collected ground rent from the tenants at will, Hitherto, the government lacks a blueprint to solve the issue of landlessness in Lamu County.¹³³

4.1.5 Land Alienation

Given the highly centralized administration of land in Kenya, Lamu area came under massive abuse as government officials grabbed and illegally allocated land. The due process involved public participation in matters concerning land transactions. In Lamu region the procedure was considered. The land officers gave out land using illegal procedures not stipulated in the law. From 2002 to 2009, Lamu area experienced land grabbing and illegal allocation and alienation of land.¹³⁴

Local management of land and financial resources in Lamu was marked by inadequate capacity and transparency. Land and resource governance rests with the Council of Elders. Once highly regarded by the community, the Council had lost credibility as a result of the involvement of its members in dubious land transactions. In 2011 and 2012 lands in Lamu were illegally alienated within the Marine Reserves. This included land grabbing along the seashore and some Islands situated in the national reserves. There was information emanating from Lamu stipulating that government officers and Kenya Wildlife Services were colluding with investors along with local Chiefs in illegal land

¹³³ M, Mghanga. ``*Usipoziba Ufa Utajenga Ukuta*,''*Elections, Land And Conflict In Kenya's Coast Province*: Heinrich Boll Stiftung, East and Horn of Africa, 2010, p.81.

¹³⁵ Kenya Secure Project Tenure Assessment, *The Coveted Beaches: Land And Resource Tenure Issues on Kiwayu Island*, USAID, Nairobi: 2010, p.vii.

deals and in violation of the reserve status .The reserve eco-systems remained threatened by the invasion of illegal land owners.¹³⁵

4.1.6 Politicization of the land question

Strong link exist between land and politics. Since independence, the politicization of land acquisition became a norm in Kenya. Political parties in Kenya used land as an agenda to lure voters. In 2007 Lamu politicians raised concerns over land injustices. The land issues were frequently raised in political party public meetings since Kenya became a multiparty democracy.¹³⁶

During 2007 general elections, population of Lamu east majority of whom are the Bajuni voted for the Orange Democratic Movement (ODM) candidate Raila Odinga who received a total of 6,119 out of 9,172 votes casted, followed by Party of National Unity (PNU) candidate Kibaki with 2,825 votes. Lamu mainland demography consisted of immigrants comprising of Kikuyus as the majority, Kibaki took the lead with 12,910 votes casted out of sum of 22,987 and Raila of ODM followed with a total of 9,568 votes counted. While Lamu remained peaceful during the period 2007-2008 post-election violence, ethnicity played a role in influencing voters. The indigenous inclined themselves with ODM hoping for a change in land reforms. They did not vote for the Party of National Unity because they believed that the party would maintain marginalization. Land issues took a center stage in the political mobilization in Lamu.¹³⁷

4.1.7 Displacement

In 2009, the Government of Kenya came up with a plan to establish a LAPPSET project at Magogoni area of the County. Magogoni is part of the mainland area subject to the 1999 court injunction obtained by the Shungwaya Welfare Society a community based organization in Lamu. The Court injunction halted land allotment in Lamu County. The

¹³⁶ K, Kanyinga, Re-Distribution From Above: *The Politics of Land Rights And Squatting In Coastal Kenya*. N.A Uppsala :2000, p.118.

¹³⁷ Kenya Secure Project Tenure Assessment, *The Coveted Beaches: Land And Resource Tenure Issues on Kiwayu Island*, USAID, Nairobi: 2010, p.vii.

¹³⁷ M, Mghanga. ``*Usipoziba Ufa Utajenga Ukuta: "Elections, Land And Conflict In Kenya's Coast Province: Heinrich Boll Stiftung, East and Horn of Africa, 2010, p.81.*

proposed Port in Magogoni is the most controversial issue because the development would alienate the community from their land estimated to be 1,000 acres.¹³⁸

The initial construction phase of the Port led to displacement of the indigenous people. In total, the Ministry of Lands estimated more than 60,000 people representing more than half of the County's population would be displaced by the LAPSSET project. The project activities which had already taken place by 2010 included the construction of the Port offices, the power station, clearing and stripping for the access road, lengthening of the Manda airstrip and also the renovations on the Manda terminal building. Displacement is evident in the area.¹³⁹

The expansion of the Manda airstrip one of the projects components also encouraged the displacement of local population without compensating them. Indigenous communities complained that while the Government compensated people who owned land and possessed title deeds legally while ignoring the grievances the grievances of the landless majority to the land they had occupied. This was a clear violation of the Law. The Law provided for the due process to be followed in land acquisition and compensation by the government in cases where land had been taken. This is clearly stipulated and in the interest of the community.¹⁴⁰

4.2 Reformulating the Land Question in Lamu

Tenure system reforms in Lamu County experienced various forms of conflicts such as acquisition and boundaries which emanated from colonial policies and the present generations continued to experience its manifestations and impacts. In addressing land conflicts in Lamu, the Government of Kenya established ways to deal with the injustices. The Government adopted and implemented a progressive suggestion put forward by the Sessional Paper No. 3 of 2009 that recognized the problem and proposed for an effective

¹³⁸ Business Daily, Friday November 9, 2012, *Assess Impact of LAPSSET on Locals*, p.16.

¹³⁹ *Ibid.*

¹⁴⁰ M, Mghanga. ``*Usipoziba Ufa Utajenga Ukuta:*'' Land, Elections And Conflict in Kenya's Coast Province: Heinrich Boll Stiftung, East and Horn of Africa, 2010, p.81.

legal mechanism to offer a resolution. In the proposal, all allotted land should be well recorded and land certificates issued to the people of Lamu.¹⁴¹

4.3 Conclusion.

Chapter four had shown that the problem of historical land injustices in Lamu still remained unresolved since Kenya attained independence. The indigenous community had no rights to land and most are therefore considered as landless in their ancestral land. The community had a long standing attachment to their land and deserved to retain their cultural practices regarding land acquisition, usage and disposal. The injustices affected the Lamu community in a negative way. Next chapter will draw conclusion of the research.

¹⁴¹ Kenya Lands Alliance Paper No.2/04: *The National Land Policy In Kenya: Addressing Historical Injustices Nairobi*: 2004, p.15.

CHAPTER FIVE

5.0 CONCLUSION

The study examined historical land injustices in Lamu region, and how the injustices impacted on the indigenous populations of Lamu County. To fulfill the aims of the research, the research digressed and presented the geographical perspective of Lamu County, causes of the historical land injustices, the impacts and also the historical perspective of the land conflict. By so doing the research was intended to initiate a well-informed discourse of the land injustices and fill in the existing gaps concerning land in Lamu.

To achieve the objective of the study, the Structural conflict theory was applied. The theory presented the rationality and broader range of factors that motivated the historical land justices. The reasons were historical and socio-political advocated by the Marxists ideology. This theory also identified social cultural aspects of land conflict including; the cultural heritage of the community. Social conflict theory was applied, thus study therefore achieved its goals.

The research had shown that the physical geography of Lamu dictated the settlement pattern in the region under study, which in turn affects the economic aspects of the indigenous people. The area topography is very significant. It showed the extent of the ancestral land of the indigenous people of Lamu and also determined how these communities related and the general life in the region. The study indicated that before independence, the area was communally owned and occupied by the indigenous communities and used or cultivated depending on the seasons. The traditional method of land acquisition and use in Lamu was group tenure, in which a group of people would occupy an arable land or area, cleared and burned the fields, leaving stamps and large trees as land marks.

All Lamu islands depended on the resources of the adjacent mainland for their food supplies. Lamu immediate hinter land was unpopulated. Each town had its own area on the mainland where its inhabitants farmed. Most of these farms were only small holdings,

held by individual families. The mainland area that was subject to Lamu people included the area from Ukunga to Mpeketoni. This land had been affectively occupied by their ancestors for many years.

It is evident in the study that evolution of tenure systems relates to the changing dynamics of human aspects both political and historical. The vast area of Lamu archipelago came under various jurisdiction; Zanzibar, Britain and Germany. Along the coast particularly Lamu, problems of land ownership emanated during this period. The land problem formed when the Arabs settled in the region and controlled the trade in slaves. The consequence of this is slavery was linked with Arab control of the area. Some of the most influential Arab rulers exploited the situation by acquiring expansive land both on the Lamu Islands and on the mainland. The indigenous people of Lamu became subjects to the Sultan's rule.

When the European colonizing nations came to the scene, even the Sultan's land came directly under them and there was competition over land, a competition that had to be resolved peacefully through commissions and agreements. Land ownership and access was introduced in the strip through the introduction of land ordinance. The purpose for this was to categorize private ownership from government land. Any unclaimed area was considered government land despite being occupied by indigenous people. This led to disruption of tenure system. The Europeans officially decided that the Main Islands and ports were in the Sultan's dominion. The Sultan had jurisdiction over all the Coastal land running from Zanzibar to Lamu region. The thorough land reforms became the avenue of political agitation due to disagreement between the people and subsequent governments.

This study had shown that after independence land access and ownership were categorized into; Trust land, government or public land and private ownership. Post-colonial governments were unwilling to solve the injustices holistically. Land laws enacted by the post-colonial governments either increased the injustices or gave resolutions which were not effective to end the land problem.

This research reveals that the participation of the government in controlling access to land in Lamu had led to more injustices instead of providing a solution. Political

patronage led to individualizing land ownership which resulted into landlessness. The contention is that the customary concept of land ownership prevailed in Lamu despite efforts to obliterate it through registration. Claims to land were made on the basis of customary law.

Historical injustices in Lamu region are as a result of many factors which affected the land tenure system in the area. These factors led to tenure insecurity of indigenous people who used land for subsistence farming. These factors ranged from historical, political and economic factors. Historically, Arabs occupied the region and consolidated the control of land. Arrival of the British colonial rule contributed to the deepening of the problem. The colonialists introduced legislations that allowed the Sultan to own land. These legislations neglected communities under their customary tenure. By assuming this responsibility over the Coastal strip, the British government agreed to institutionalize the freehold system of land tenure. The landless in Lamu and the entire Coastal region evolved with the establishment of the protectorate.

Political factors ranged from land tenure insecurity to political patronage. Politicization of land in Lamu as a way of patronage to the elite started in pre-colonial period. Before colonialism, Islamic feudalism possessed the Coastal strip. Subsequent Sultans of Zanzibar regarded the indigenous communities as people without rights to land ownership. Large areas were apportioned to Arabs including ancestral land owned by the indigenous communities. The lands belonging to the Bajuni, Mijikenda became part of the Sultanate. The indigenous rights in regard to land were unrecognized by the dominant Sultan of Zanzibar.

The establishment of the British protectorate helped the Sultan to consolidate the land along the Coast. The firm establishment of colonialism culminated into injustices in land access. The British refused to recognize the land rights of the indigenous people. The political patronage persisted during the colonial era.

Successive governments embraced land laws enacted by the colonialists. The colonial government and the post-colonial had one thing in common; they established schemes to resettle people. In the 1970's the government distributed land to the landless through

schemes, the indigenous were not involved in the process, as there was no public participation conducted. Malpractices in allocation of plots in schemes in Lamu engendered hostilities between Bajuni community and the immigrants particularly Kikuyus from central region of Kenya. The study confirmed the persistence of land tenure insecurity driven by unrecognized customary claims to land by the government. Land grabbing as a way patronage, combined with tenure reforms had concentrated in freehold title registration in disregard to equality and justice propagated historical land injustices of the indigenous communities in Lamu who were dispossessed by the Sultan feudalism, Colonialism and Post-colonial governments. The study found out that land tenure insecurity was very high. Furthermore, un-alienated land in Lamu is considered government land including the marine and forest reserves. The indigenous lacked formal tenure rights over land.

This research examined historical land injustices and the negative impact on communities in Lamu at large. The communities had been denied access to their land for many years. Customary rights to resource utilization were unrecognized by the government and the rule of law gave president power to alienate government land. The study had shown that politicization of land had some positive impacts in Lamu. Politicians who used land as a narrative for campaigning secured more votes this was the case in 2007 general elections in Lamu.

In sum, the study on land injustices represents an attempt in understanding the land problem in Lamu County. The unwillingness by the authority to properly work on the problem had made the problem to escalate further. The authority should restore community's ownership to land that was illegally obtained.

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