



KENYA

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Policy Brief

Streamlining Land Use and Land Tenure to Protect Critical Ecologically Significant Areas (CESA) in Large Infrastructure Projects

Policy Brief Key Messages;

- CESA within the LAPSET area are vulnerable to the poor and haphazard land use and land tenure systems in Lamu.
- Sustainable land use and land tenure systems can enhance protection of CESA within the LAPSET Project area in Lamu.
- National and county governments need to develop and implement policies that integrate and streamline CESA protection in the land use and land tenure laws and regulations.
- There is a need to prioritize full implementation of existing laws and policies such as the Lamu Spatial Plan to guarantee protection of CESA.

Purpose of the Policy Brief

- To highlight the linkage between sustainable land use and land tenure in protection of CESA.
- To propose interventions for streamlining land use and land tenure as a strategy for effective sustainable protection of CESA within large Infrastructure projects.
- To reiterate the urgency of enacting and prioritizing progressive laws and policies to streamline CESA protection

1. Introduction

1.1. State of land use in Lamu County.

Land tenure systems in Kenya fall into private/public, common/customary, public/state and open ownership (Eriksen et al, 1996; gok Wildlife Policy of 1996). In Lamu county, the size of arable land is 5,517 Km² and non-arable land is 649.7 Km² and 308 Km² is under water mass. A sizable number of people living in the peri-urban areas of the county practice subsistence small scale farming and livestock keeping. Land ownership is problematic as many of the farmers do not legally own the lands they cultivate. The County has two livelihood zones with varying economic diversities which are distinct in terms of ecology, infrastructural network and population distribution. The zones are; the rich agricultural and livestock zones in the mainland (mainly settlement schemes) and the fishing and marine zones (Islands) (Lamu CIDP 2019-2022).



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A large portion of land in the county remains unregistered. These include areas in Kiunga, Faza, parts of Hindi, Manda Island, Witu and Bahari. Most of these areas are ancestral land and the government is hastening the process of resettlement whose aim is to also conserve the Swahili villages in the county. A large portion of land set aside for ranch purposes still remains idle, under-stocked and some of it is not in use. (Lamu CIDP 2019-2022). The number of the households who have title deeds stand at 13,000. This therefore means that 42 percent of the entire households in the county have titles. Majority of the households in the county have no title deeds (Lamu CIDP 2019-2022).

Land tenure problems include failure of the government to undertake adjudication of community land rights over lands – which is key to determining an individual's personal interest over customary rights in land held in trust by the government. Further, patriarchal rules of administration of tenure rights are still operational, despite changes in the legal position. Stakeholders participation in administrative and governance systems on natural resources and land is still limited in terms of effectiveness. This study is a source of significant information for the benefit of the community in Lamu and other stakeholders with interests in land administration in the county.

2. Research Overview

2.1. State of Critical Ecologically Significant Areas (CESA)

Terrestrial and Marine ecosystems are the two major ecological components in Lamu (Lamu Spatial Plan, 2016). Major changes on the CESA have been as a result of the LAPSSET activities; key among them sedimentation on ocean waters around creeks and conversion of grasslands, moderate forests and open shrubs to built-up and farmlands (Siro, 2022). The key drivers to these changes have been identified as demand for food due to population influx, construction boom, dredging and land fragmentation to freehold private land (Siro, 2022).

2.2. Land use and land cover Status between 2015 and 2020 major changes

2.2.1. Land conversion to agriculture

There was a significant increase in agricultural land within the study area from approx. 6,000ha in 2015 to around 10,700ha in 2020. This change was noticeable albeit at different scales within the southern zones of the study area from Faza to Mpeketoni through Hindi villages where LAPSSET's primary footprint sits. Comparatively Faza and Mpeketoni regions registered higher agricultural activities over this period, moderate forest, moderate shrub lands and open grasslands were the most impacted by this conversion. (Siro, 2022)

2.2.2. Land conversion to built-up

Major land use/cover shifts to built-up occurred in the central parts of the study area largely impacting Hindi town towards the sea where the Lamu Port is situated. Key developments in this zone include major road constructions connecting Hindi town as a growth center and the LAPSSET primary components like the port and Manda airport; other changes relate to the incremental construction of human settlements and transportation infrastructure including Manda airport in Hindi and Lamu towns respectively. These changes directly correlate with LAPSSET developments which have attracted population influx around the LAPSSET project areas for a variety of direct and indirect economic and social development interests. (Siro, 2022)

2.2.3. Sediment filled/turbid waterbody

While comparing the 2020 and 2015 land use/cover maps, it became apparent that around 7,000ha covering the central lying creeks surrounding the Lamu island contain sand/silt deposits resulting in higher turbidity and subsequent shallow depths of the fringe waters. While this has been largely attributed to the large-scale dredging commissioned by LAPSSET, other land use conversions in the catchment areas like agriculture might imply high siltation rates. These changes have direct implications on livelihoods such as fishing where fishermen have been forced to migrate to other fishing grounds. (Siro, 2022).

2.2.4. Forest conversion to shrub lands and grasslands

This change is commonly observed in the North western parts of the study area. Majority of these changes have been influenced by the increased land demand in the areas resulting in land tenure conversions in the region where group ranches have been subdivided to freehold private lands resulting in land clearance paving way to human settlements. (Siro, 2022)



2.3. Policy Frameworks

The national land administration based on the existing 4 laws namely; The Land Act 2012, The Land Registration Act 2012, The National Land Commission Act 2012 and Community Land Act of 2016 have been found not to be effective in the specific county of Lamu (Hassan A., 2016). The county continues to witness arbitrary public land allocation to individuals and a thriving informal land market where successful sale is marked by the 'endorsement of local elders', some of them including government chiefs, that in some cases has elicited tension between communities (Hassan A., 2016).

3. Discussion of findings

3.1. Effects of land use on CESA

The different land ownership and uses complicate implementation of environmental safeguards because of the variety of agreements between landowners and project contractors especially on harvesting of sand. There is a contradiction in regulating private and public land use. LAPSSET activities affect even areas of fragile ecosystems. Mining marram for road construction largely impacted existing agricultural land leading to increased invasion of forested and other arable land.

The different land ownership and use regimes complicate implementation of environmental safeguards because of the varied construction material extraction agreements entered between landowners and project contractors. Whereas it is legally possible in public land, modalities of regulating private contracts entered by private land owners and contractors are difficult to regulate. As a result, material extraction especially borrow pit excavation and subsequent rehabilitation is often haphazard and poor respectively. This exposes fragile ecosystems and endangered species to destruction.

The expected rapid urbanization of the LAPSSET area due to its economic zoning will increase demand for land and intensify uses through settlement construction and agricultural production of food. These will put pressure on available land pushing human activity to pristine ecological zones including fragile ecosystems and sanctuaries for rare species. Furthermore, use of farm inputs including fertilizers and herbicides will likely cause soil and water pollution further disturbing the CESA. The Pollution will be exacerbated by poor urban planning and settlement management to avoid overcrowding and emergence of informal settlements.

4. Conclusions

1. Policies are being developed but no public consultations are done.
2. Land Use Plan is developed but not implemented due to lack of resources and also regulations for enforcement.
3. Lamu county spatial plan has not been fully implemented due to lack of political good will and lack of allocation of funds for implementation.
4. Land Use Plans and zoning plans are not adhered to in the county.
5. Titles for landing sites were irregularly allocated; this was done during the verification process after the presidential directive. Disparities in land ownership need to be corrected through robust land policies.
6. Harmonizing laws on land management, fisheries and wildlife management e.g. some fish landing sites have titles yet they are located in public beaches. Wildlife reserves are supposed to be managed by counties and some percentage of benefits should go to communities but this has not happened due to absence of county laws.
7. Lack of appropriate legal mechanism to govern Community Land.
8. Recommendations



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Pursuant to Article 42(a) of the Constitution the following measures should be put in place for protection of the environment.

- i. Proper land use planning and zoning regulations should be put in place. (Physical and Land use development plan).
- ii. NEMA should put in place adequate structures for monitoring and redressing environmental degradation as a result of the LAPSET project.
- iii. On the basis of Article 69(2) of the Constitution, a rapid oil spill response mechanism should be put in place by oil companies and the government which must be committed to mitigating and responding to distress due to oil spills.
- iv. Explore opportunity for coexistence approach to land user/land tenure for communities in/around fragile ecosystems as a model of sustainable management of CESA.
- v. The County needs a conservation plan based on field survey to more accurately map the habitats and wildlife of the area. The conservation plan will set out the most important areas of habitats for formal or informal protection and restoration. It should also set out how wildlife corridors, endangered and vulnerable hence the need for relevant environmental management policies to facilitate effective management of the industrial processes to mitigate impacts on CESA.



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