# TABLE OF CONTENTS

<table>
<thead>
<tr>
<th>PART</th>
<th>TITLE</th>
<th>PAGE</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>EXECUTIVE SUMMARY</td>
<td>3</td>
</tr>
<tr>
<td>I:</td>
<td>CONCEPTUALISING RESETTLEMENT</td>
<td>6</td>
</tr>
<tr>
<td>II:</td>
<td>HISTORICISING THE KENYAN RESETTLEMENT EXPERIENCE</td>
<td>12</td>
</tr>
<tr>
<td>III:</td>
<td>CASE STUDIES</td>
<td>14</td>
</tr>
<tr>
<td>IV:</td>
<td>DFDR &amp; THE OLD CONSTITUTION, NEW CONSTITUTION &amp; COMMUNITY LAND BILL</td>
<td>21</td>
</tr>
<tr>
<td>V:</td>
<td>LAPSSET – CURRENT ISSUES &amp; FUTURE IMPACTS</td>
<td>27</td>
</tr>
<tr>
<td>VI:</td>
<td>CONCLUSION AND RECOMMENDATIONS FOR FURTHER RESEARCH</td>
<td>34</td>
</tr>
</tbody>
</table>

## ANNEXURES

<table>
<thead>
<tr>
<th>PART</th>
<th>TITLE</th>
<th>PAGE</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>FINAL TERMS OF REFERENCE</td>
<td>35</td>
</tr>
<tr>
<td>2.</td>
<td>ANNOTATED BIBLIOGRAPHY</td>
<td>38</td>
</tr>
<tr>
<td>3.</td>
<td>ADDITIONAL CASE STUDY MATERIALS</td>
<td>51</td>
</tr>
<tr>
<td>4.</td>
<td>COMMUNITY LAND BILL LEGAL ANALYSIS</td>
<td>57</td>
</tr>
<tr>
<td>5.</td>
<td>RECOMMENDATIONS FOR FURTHER RESEARCH</td>
<td>61</td>
</tr>
</tbody>
</table>
Executive Summary

1. Objectives

Development forced displacement and resettlement (DFDR) has been a prominent and divisive feature of Kenya’s colonial and post-colonial history. This report has been compiled in response to two significant events relating to DFDR; the initiation of Kenya’s largest ever development project, Lamu Port-South Sudan-Ethiopia Transport Corridor (LAPSSET), and the promulgation of a new Constitution in 2010. The new Constitution has been heralded as a landmark event, strengthening community land rights and paving the way for those rights to be formally managed under the Community Land Bill (CLB). The primarily objective of this report is to understand what risks communities face from LAPSSET DFDR and whether they can benefit from this new legal framework.

1.2 Other Outcomes & Methodology

Achieving the primary objectives entails a number of complementary outputs. Historical DFDR is reviewed, highlighting salient social impacts and causes, allowing us to examine the extent to which new legislation may mitigate those impacts. The report then reviews literature relating to the resettlement aspects of LAPSSET. Lamu County’s LAPSSET experience provides a lens to view how DFDR has been handled under the new Constitution and to identify key trends. Isiolo and Turkana, key upcoming LAPSSET areas, are then investigated and pressing potential issues are highlighted. An annotated bibliography provides access to sources with additional commentary, and key literature gaps are highlighted throughout the report. Finally, analysis from each section informs recommendations for further investigation that the RVI may wish to pursue.

2 Key Findings

2.1 Resettlement Background

Systematic studies on worldwide DFDR reveal that social impacts are similar across space and time. For many project-affected persons (PAPs) these impacts are totalising, impacting on every aspect of their lives. The most pressing negative impacts are landlessness and broken livelihoods, themselves catalysts of many other deleterious impacts. Poor outcomes are largely caused by narrow conceptions of resettlement by governments and projects. This leads to inadequate and inappropriate compensation, and non-recognition of many people and impacts, institutionalised by weak legal protections. Resulting destitution
is shouldered most heavily by vulnerable groups, and often spill over to host communities. Both internationally and government financed projects have failed. Relative success is historically predicated on participation of affected communities, treating these groups as project partners, and focusing on livelihood restoration.

## 2.2 Kenyan Resettlement History and Case Studies

Resettlement in Kenya evolved from nationalist aspirations to reengineer colonial land injustices, to environmental conservation concerns, and finally project-development for economic growth and modernisation. Our case studies reveal that DFDR outcomes were suboptimal irrespective of who funded projects. Key impacts included loss of livelihoods (particularly Kiambere), conflict (Kwale and Chebyuk), and landlessness in all cases. Prominent causes of failure were lack of PAP participation, inadequate compensation, inappropriate resettlement sites, local and national corruption leading to land misallocation, and legal vacuums meaning only legal title-holders received compensation.

Recurring themes include the absence of DFDR-monitoring, lack of accessible formal grievance mechanisms, and the impact of the wider political contexts on how governments undertake DFDR. Kwale demonstrates how an increasingly globalised era witnessed the emergence of NGO and legal activism to pressurise authorities into implementing better safeguards.

## 2.3 Legislative Review

Assessing the CLB reveals that it is unlikely to benefit LAPSSET PAPs. Key provisions allowing compulsory acquisition are ambiguous and are open to abuse, and marginalised communities (pastoralists and fisher-folk) are inadequately protected. Furthermore, the courts appear unwilling to uphold the general community land protections under the new Constitution until the CLB is enacted. The development of the draft Bill has been marked by delay and a lack of meaningful consultation, meaning its deficiencies are likely to go uncorrected.

The Internally Displaced Persons (IDP) Act provides for comprehensive protection for those displaced by development projects, but it has not been implemented to date, perhaps due to a lack of government capacity, or political will, or a combination of both. Thus we find that prospective legislation is inadequate to resolve negative DFDR impacts, and the safeguards that are currently legally available are not being implemented.
2.4 LAPSSET ANALYSIS

The exact path of the LAPSSET corridor is unknown, so it is impossible to pinpoint the precise communities affected. What is known is that Lamu, Turkana and Isiolo counties will be ‘hubs’ for the pipeline, hosting a number of major developments.

Lamu reveals two broad concerns relating to project implementation and political issues. The former includes a lack of consultation, massive influx and speculation driving up prices, inadequate compensation, and insecure property rights. The latter relates to local political corruption, weak institutions and growing geopolitical tensions. However, the active engagement of NGOs and legal activism indicate that DFDR concerns are increasingly being heard.

LAPSSET construction is yet to commence in Turkana, but recent operations by Tullow Oil indicate that locals are effectively highlighting concerns over benefit-sharing through protest activities. Turkana residents have been urged by the President to consider equity shares in the LAPSSET pipeline as a form of compensation, a novel proposal requiring greater consideration.

Isiolo has already experienced speculation and soaring land prices, and political and community conflict on a number of levels, illustrating the multi-layered nature of possible impacts.

3. RECOMMENDATIONS

The report reveals that many unresolved issues may impact how DFDR manifests in relation to LAPSSET. Recommendations on future research to address evidence gaps are detailed in the annex and identified at relevant points throughout the report.

Recommendations include further research to:

- Investigate barriers to implementing and enacting post-2010 land reforms.
- Understand how PAPs and local NGOs can organise, channel grievances, know their rights and monitor DFDR implementation within the current legal framework.
- Obtain key documents such as resettlement action plans for Lamu and Isiolo.
- Identify how Tullow Oil is managing compensation and community engagement in Turkana.
- Examine the capacity and political willingness of county governments to effectively manage unregistered community land on behalf of communities.
- Consider the circumstances under which in-kind compensation is being offered, the nature of such compensation and what can be done to increase appropriate instances of in-kind compensation, including the use of equity shares.
Part I: Conceptualising resettlement

1.1 Justifications and hopes for projects

DFDR is a highly contentious issue with over 15 million people displaced annually, purportedly in the public interest. Development projects assume many forms, including dams, irrigation schemes, agribusiness, mining, and urban rejuvenation initiatives. Such projects claim a vital role in a country’s economic development, often citing benefits to local populations and describing PAPs as ‘beneficiaries’. Local residents often articulate hopes for jobs, trade and increased public service investment (e.g. Praxides, 2014), yet studies show a majority of projects result in destitution for PAPs. Indeed DFDR is considered to be a ‘totalising’ phenomenon, impacting every aspect of PAPs’ lives (Oliver-Smith, 2009a). Given that PAPs and their communities experience remarkably similar impacts across space and time (Scudder, 2009), it is vital to draw lessons on the nature and impacts of DFDR from global experiences.

1.2 Power and powerlessness

DFDR is above all about power (Button, 2009). For PAPs, displacement is the ultimate expression of powerlessness, whilst for the state, it is an assertion of its monopoly on violence and ability to define ‘public interest’. States may have various motives for undertaking large-scale projects; for example to visually showcase a political party’s achievements, or extend state control over territory, populations, resources and markets (Clark, 2009). Superstition, cultural heterogeneity, subsistence farming and informal economic activity generate government anxieties about populations and territory remaining beyond state control, and posing a threat to the state itself (Herbst, 2000). Development projects are one tool to assimilate regions and populations into the nation state, and many bureaucrats see ‘uprooting ancient communities as a process of modernising’ (Appa & Patel, 1996). In this sense, DFDR is emblematic of broader historical ‘enlightenment’ campaigns to nation-build, making it as much a political as an economic event.
1.3 IMPLICATIONS OF DFDR CONCEPTUALISATION

Understanding governmental anxieties, ambitions and notions of power broadens our comprehension of the nature of DFDR. It reveals how states often narrowly conceptualise DFDR and view local communities as obstacles to be overcome (Oliver-Smith, 2009b). Through this prism, resettlement is often seen as a one-off-event, and socio-cultural impacts are either ignored or deemed necessary for assimilating marginal groups. When DFDR is viewed this way, the framework for compensation is severely limited. Furthermore, states and agents often shun local community participation and decision-making through institutionalised discrimination (Clark, 2009). Local rights are subsumed by national prerogatives, revealing a clear conflict of interest: governments are responsible for both DFDR and the protection of PAPs. DFDR usually induces deprivation and conflict where appropriate grievance redress mechanisms (GRMs) do not exist. In most cases impacted communities go unnoticed, unable to rely on national or international legal frameworks, nor successfully mount collective actions of resistance.

1.4 SOCIAL IMPACTS OF RESETTLEMENT

1.4.1 Traditional analysis

DFDR has potential for material and social enhancement, offering opportunities to reshape social order, enhance safety nets and make communities more resistant to uncertainty (Button, 2009). Yet this is rarely the case. It is out of the scope of this study to list all DFDR impacts but it is worth noting two dominant complementary analytical frameworks that elucidate on their variety. Cernea’s Impoverishment Risks and Reconstruction model provides an eight-point categorisation in which landlessness, joblessness, homelessness, marginalisation, increased morbidity, food insecurity, loss of access to common property and social disarticulation are interlinking forms of impoverishment (Cernea, 2009). Anthropologists Scudder and Olson use a four-stage model of the evolving physiological, psychological, and
sociocultural stresses and responses experienced by PAPs (Scudder, 2009). In both models, modes of rehabilitation are similar to those in conflict and natural disaster displacement, with PAPs as development ‘refugees’ (McDowell, 1996).

1.4.2 Failure to identify full impacts

The primary problem of DFDR is the failure to recognise the full breadth of who is impacted. In most cases PAPs are considered to be only those physically resettled and often only those with legal tenure. Populations such as migratory pastoralists and long-term ‘squatters’ are often precluded from compensation and summarily evicted (Koenig, 2009). This narrow recognition also ignores those indirectly yet significantly impacted (Appa & Patel, 1996). Surrounding communities often form intricate economic and social links with residents living on expropriated land, and displacement can sever these links, destroying crucial support networks. The acquisition of communal natural resources can also be devastating as medicinal plants, animals and timber form key components of indigenous health, food and livelihoods (IFC, 2012). For host communities, the arrival of PAPs results in competition for limited resources and services, causing conflict particularly amongst different ethnicities (Scudder, 1996).

1.4.3 Inadequate compensation

Compensation takes many forms including land-for-land, in-kind, or monetary – all usually inadequate or inappropriate. Insufficient monetary compensation means comparable land cannot be bought and the cash is often consumed to meet immediate needs (Thangaraj, 1996). Plots provided under land-for-land are usually too small to accommodate natural growth or provide natural resources needed for livelihoods such as fishing or grazing, or are unfertile or unsuitable to local productive practices, leading to soil degradation (Lassailly-Jacob, 1996). Thus PAPs often become indebted tenants to host communities and are unable to grow sufficient food or re-establish old land-based livelihoods. DFDR can destroy traditional markets and disrupt access to transport routes (Johnston, 2009). Overcrowding, loss of income, and malnutrition result in deteriorating wellbeing, whilst psychological traumas arise from grieving for lost land and anxieties over uncertain futures (Kedia, 2009).

1.4.4 Vulnerable groups & influx

Vulnerable people often shoulder most DFDR impacts. Social disarticulation not only dissipates traditional authority structures and sense of identity, but also destroys mutual support networks that the vulnerable depend on. For pastoralists, an inability to secure compensation or alternative land often causes increased conflict with farmers over land and water. Forced contact with other peoples in the context of instability can lead to detrimental coping mechanisms such as alcoholism, domestic abuse and suicide (Scudder, 2009). Compensation is often paid only to men, leaving women particularly vulnerable. Skilled or educated economic migrants enticed by work often out-compete locals for jobs and trading opportunities, and influx can also cause fiscal inflation further impoverishing locals. Young male migrants can increase crime, and introduce sexually transmitted diseases and other new pathogens. Where
migrants are of a different ethnicity and resources and job opportunities are limited, conflict can quickly arise (Lassailly-Jacob, 1996).

1.5 CAUSES OF DFDR PROBLEMS

1.5.1 Inadequate legal systems

As this section has shown, DFDR failure is primarily a conceptual failure, often upheld and mirrored by inadequate legal systems that fail to protect PAPs. Many PAPs are unrecognised, and weak or non-existent requirements for environmental, social and health impact assessments mean that many impacts are overlooked, particularly livelihood impacts.

Compensation is typically determined according to the practices of individual government agencies, with scant legislative guidance, often only the requirement of ‘fair and prompt compensation’. Valuation teams regularly value assets based on market prices less depreciation, preventing effective replacement; furthermore, assets such as tree yields, fallow land, and natural resources are often ignored (Tamondong-Helin, 1996). Typically there is no legal provision for in-kind compensation and livelihood support. Legal GRMs that do exist are often inaccessible, cumbersome, and costly particularly for illiterate PAPs. In sum, DFDR regularly operates within a legal and policy vacuum (Rew, 1996).

1.5.2 Poor planning

Partly as a consequence of legal voids, DFDR planning is regularly inadequate. The ability to identify who and how people are impacted is limited by a lack of baseline and socioeconomic studies (Oliver-Smith, 2009a). A limited understanding of impacts and narrow conceptualisation of DFDR generally results in inadequate financing for even basic resettlement costs (Cernea, 2009), and influx management plans and social planning are often absent. In cases where land-compensation is offered, lack of resettlement site scoping has resulted in PAPs being moved to inhospitable locations unconducive to farming, grazing, fishing or other livelihoods. Lack of scoping can also strain limited resources used by other communities, leading to conflict. In many cases, poor project planning and the erroneous belief that land is unused has often led to over-acquisition (Appa & Patel, 1996) or ‘land-grabbing’.

1.5.3 Poor implementation

Even in rare cases where legal frameworks are robust, DFDR often fails due to lack of government capacity and commitment, as well as corruption. National machinations over development projects, divergent political affiliations to local populations and national patrons, and media coverage make DFDR politically risky (Rew, 1996). Unsurprisingly, government agents often shun responsibility for resettlement, leading to lack of coordination. In most cases, local administrations are simply under-resourced and under-trained (particularly in conflict-management and participatory skills) to carry out resettlement effectively (ibid). Furthermore, large disbursements for compensation can lead to loss of funds, corruption,
or speculation by local officials whereby land earmarked for resettlement is instead sold for to outsiders for profit (Scudder, 1996). Devolution may not necessarily alleviate problems given that local administrations are often part of the problem, and central government oversight is often insufficient.

### 1.5.4 Lack of participation

Administrators regularly avoid incorporating PAPs into decision-making processes, meaning that grievances, challenges and solutions are not properly articulated, and even the most well-intentioned resettlement plans fail to mitigate negative impacts. This is particularly so in in countries with poor human rights records. Even when legislation or norms require consultation, participation is often tokenistic and used to rubber-stamp predesigned agendas (De Wett, 2009). PAPs are regularly disadvantaged by a lack of capacity and thus bargaining power. Often illiterate, lacking project information and an understanding of their legal rights as well as being marginalised or dispersed can reinforce administrators’ ability to evade PAPs’ participation or use it as ‘a new form of tyranny’ (Hickey & Mohan, 2004). Lack of capacity and genuine participation undermines PAPs’ ability to use GRMs and engage in local resistance and bargaining, both of which are necessary tools to mitigate DFDR impacts.

### 1.6 ‘SUCCESSFUL’ RESETTLEMENTS AND KEY LESSONS

Although DFDR impacts worldwide tend to be overwhelmingly negative, there are instances of DFDR that have generated positive outcomes for PAPs.

#### 1.6.1 China

Despite widespread condemnation of Chinese government-led resettlement, China is now regularly referenced as one of the most innovative actors in ‘developmental resettlement’ (Cernea, 2009). Chinese land valuations incorporate labour costs (e.g. of tending trees and crops grown on the land) and inputs (e.g. fertiliser) as well as market value, increasing compensation levels. Procedures have been tightened to limit unnecessary land acquisition. A countrywide post-resettlement fund has been created to ensure local investment to help increase living standards and strengthen livelihoods. Each individual resettled is eligible to annual payments for up to 20 years following resettlement. The key principles underscoring these improvements are conceptualising PAPs as project partners, viewing resettlement as an on-going process, and focusing on livelihood restoration.

#### 1.6.2 Zambia

The initial phase of the World Bank (WB)-sponsored Kariba Project is cited as a rare success, resettling over 57,000 people in the 1950s. A 1974 field study showed that DFDR had helped improve living standards of PAPs (Scudder, 2009). Resettlement sites were carefully chosen to allow a continuation of traditional agricultural and foraging practices. Conflict was avoided since host populations were ethnically similar to PAPs and natural resources were sufficient. Community participation in resettlement
planning led to government initiatives to remove the tsetse fly from resettlement areas, allowing oxen to be used to increase agricultural productivity. PAPs were given priority access to inshore fisheries and supported to establish small-scale irrigation, and credit facilities, schools and health clinics were provided (Scudder, 2009). Political willingness to engage with PAPs and provide livelihood rehabilitation opportunities was crucial to adequately mitigate DFDR impacts.

1.7 CONCLUSION

DFDR causes a multitude of impacts stemming from landlessness and loss of livelihoods. Influx, eligibility, lost natural resources and integration issues are recurring themes, and conflict and destitution are typical outcomes. Key causal factors include insufficient planning, limited government capacity and corruption. An adequate legal system is a necessary safeguard but it must be reinforced by active participation of PAPs in the DFDR process so as to ensure its implementation. This requires PAPs’ capacity to effectively organise themselves through adequate knowledge of their rights and access to the legal system. Finally, given the frequency of conflict due to failed integration, understanding local ethnic, demographic and historical conflicts, natural resource use and land capacity is crucial to predict and mitigate potential conflict arising from DFDR.
This section situates DFDR within the Kenyan experience, historicising resettlement practices since the 1960s. Since independence, the Government of Kenya (GoK) has been involved in resettlement projects of different nature across the country. There are at least three broad drivers of Kenyan resettlement: political, developmental and environmental.

### Part II: Historicising the Kenyan resettlement experience

#### 2.1 Drivers and Challenges of Early Resettlement

##### 2.1.1 Early independence: political drivers

The first resettlement projects of early Kenyan independence were driven by the political imperative of providing ‘land to the landless’. Kenya African National Union (KANU), the major party at independence, successfully mobilised the population on the promise of readdressing the injustices of colonialism, especially the extensive displacement of indigenous populations from fertile lands into ‘native reserves,’ particularly in the Rift Valley (Harbeson, 1971). The ‘White Highlands’ (1960) and the ‘Million Acres’ (1961) schemes were the first major settlement programmes initiated by the colonial administration with full participation of the KANU. Both projects aimed to transfer land from European settlers to as many landless Kenyan families as possible, irrespective of ethnicity, and to utilise agriculturally underdeveloped land. Under British pressure, the transfer occurred through the purchase of ‘white’ land by Kenyan peasants, supported by government loans. It was argued that individual land ownership would provide security of tenure and foster agricultural productivity (Musembi & Kameri-Mbote, 2013).

##### 2.1.2 Early independence: resettlement outcomes

In both schemes, political corruption, ethnic favouritism and the introduction of individual land titles were serious obstacles. High levels of discretion over land allocations meant beneficiaries were mainly individuals from the political elite or members of the Mau Mau insurgency linked to the KANU party. The ideological split within the KANU party, which led to the establishment of the opposition Kenya People’s Union encouraged clientelism in the form of ethnic favouritism. Indeed the Mau Mau, mainly of Kikuyu ethnicity, was given 45% of the land under the Million Acre Scheme. The introduction of a land market heavily disrupted pre-colonial systems of communal land tenure. The establishment of individual titles was conditional on the full and immediate repayment of the government loan used to purchase the land. These
strict conditions enabled the GoK to summarily dismiss new settlers from their holdings without court proceedings, and contributed to continued land insecurity (Harbeson, 1971).

2.1.3 Post-1960s: development & environmental drivers

By the 1970s settlement schemes were increasingly replaced by DFDR through a growing emphasis on economic development and nation building. This led to a proliferation of infrastructure developments such as roads and hydropower dams, natural resource exploitation, coastal touristic infrastructure and environmental conservation projects such as the establishment of national parks on Mt. Elgon and in the Rift Valley (IDMC, 2014b). These projects have usually involved high levels of state expenditure and have often been supported by external funding, including foreign governments as well as financial institutions such as the WB and the Commonwealth Development Corporation. This shift in rationale also led to resettlement schemes increasingly occurring outside the Rift Valley such as in Maasai areas (south of Nairobi), in the coastal region and in Kwale, Lamu and Tana River Districts (Hornsby, 2012).

2.1.4 Post-1960s: resettlement outcomes – ethnic tensions

Despite the apparent shift in rationale for resettlement, many of the challenges confronted in the earlier period resurfaced. Lack of transparency in land allocation (IDMC, 2014b) meant that land redistribution of high value areas was determined by political connections with the President and political elites (Hornsby, 2012). Ethnic favouritism characterised many resettlement projects leading to the emergence of ethnic-dominated ‘islands’ where the influx of individuals of different ethnicities caused unintended tensions and conflict at the community level. Other such projects include Magarini Complex, Lake Kenyatta Settlement, and projects south of Nairobi (in Maasai areas) as well as the case studies analysed below, in particular in Chebyuk. Lack of adequate resettlement planning, characterised by weak or non-existent resettlement action plans (RAPs), has also led to many other negative social and environmental impacts that have been denounced in recent reports, including the Njonjo Commission Report, the Ndung’u Commission Report and the Waki Report (Manji, 2014).

2.2 Summary of early Kenyan resettlement experience

It is clear that early resettlement suffered from lack of adequate checks and balances to safeguard against arbitrary land allocations based on clientelism. Combined with lack of planning, particularly in the form of scoping new sites and identifying communities already in resettlement areas, DFDR has left a legacy of conflict and local tensions. Furthermore, poorly implemented changes to land tenure in the form of private ownership led to indebtedness and landlessness. These experiences highlight the need for a legislative framework to adequately protect rights, and ensure that due process is followed and well-planned. The old Constitution and relevant land laws were clearly wanting in this respect, the specifics of which are reviewed in later sections of this report.
Part III: Case studies

CASE STUDY 1: CHEBYUK (OR CHEPYUK) SETTLEMENT SCHEME

This government-initiated settlement scheme was intended to restore land ownership to historically disenfranchised groups; instead it was stalled by ethno-political favouritism and corruption and the intended beneficiaries remain excluded from secure land tenure.

3.1 BACKGROUND

This settlement scheme consists of three phases: 1971 to 1979; 1979 to 1993 and 1993 to the present day. The project developed in Chebyuk, Western Kenya, and expanded to Chepkurkur and Korng’otuny. It was designed to resettle 460 household (3,800 people) over 9,200 acres (TJRC, 2013). By the third phase, the government enlarged the scheme to resettle 1,732 households over 8,556 additional acres.

The GoK initiated this scheme to compensate the local indigenous population, the Mosop, for colonial displacement from the fertile slopes of Mt. Elgon to an inhospitable reserve in the highlands. This makes Chebyuk different from typical resettlement schemes, as it involved moving people onto land rather than displacing them from it. However, as the project proceeded, subsequent phases developed additional objectives including establishing a national park on Mt. Elgon in 2000, addressing increased demand for land, and compensating for inefficiencies of Phase I (Médard, 2008b).
The stakeholders involved in the project are the central government, local administrators, chiefs and members of the parliament. PAPs have changed over time beyond the Mosop, as demands for land shifted between regional ethnic subgroups (Mosop, Soy, Bok).

The majority of the population living in the area belongs to the Saboat, a Kalenjin sub-group (HRW, 2008) consisting of two major factions relevant to the analysis: the Mosop from Chepkitale, and the Soy from the lowlands (Lynch, 2011). There is evidence that ethnic ‘fluidity’ was employed to access land entitlements.

The scheme started in the context of early independence, an era was marked by strong state commitment to development and compensation for colonial injustices, especially in access to land.

### 3.2 RESETTLEMENT PROCESS

All three phases lack adequate preparatory work by the government including the failure to clearly identify PAPs and to change the area status from protected national park into available settlement land (TJRC, 2013; Lynch, 2011).

Preparation for phase one was characterised by influx of landless people from neighbouring areas in search of land, by a lack of consideration of pre-existing illegal settlements in Chebyuk (HRW, 2008), and by the inclusion of people other than the Mosop as PAPs by the local administration. Phase two preparation consisted of the annulment of phase one land allocations and the further inclusion of non-Mosop, both as PAPs and in exercising responsibility over land allocation. In phase three, previous allocations were again annulled and the area covered by the scheme was expanded.

Implementation of the scheme was marked by frequent reversals, legal ambiguity concerning the allocation of governmental land, corruption, political favouritism and sometimes conflict. After phase one, the government adopted a supposedly neutral balloting system for allocating land, yet it was employed inconsistently and with limited benefits for Mosop families.

Recurrent problems throughout the scheme indicate the absence of effective monitoring and GRMs. Each new phase was a result of direct appeals from the intended beneficiaries to the President—the response was intended to correct the problems of the previous phase, but instead launched a cycle of repetitions.

### 3.3 PROJECT IMPACTS

The mismanagement of the Chebyuk settlement scheme had several adverse impacts for PAPs. The most striking was the eruption of inter-communal violence related to land ownership which occurred in phase three in Chepkurkur between the Bok and the Mosop (TJRC, 2013, Médard, 2008a) as the enlargement of the scheme did not take existing settlements into consideration. Furthermore the lack of legalisation and secure land tenure, combined with an increase in population contributed to food insecurity and
instability of livelihoods. Lastly, persistent influx of landless people further exacerbated conflict over entitlement and land access.

3.4 ANALYSIS

3.4.1 Eligibility

Failure to adequately identify beneficiaries led to the paradox that some Mosop families are still waiting to receive land while non-intended beneficiaries have received land.

3.4.2 Insecure tenure

Government failure to establish a legal framework for land ownership, particularly on government-owned land, and its frequent annulment of previous allocations has been a constant feature of the scheme. As a result, many PAPs still remain effectively landless.

3.4.3 Local corruption

Central government failed to prevent the use of discretionary powers by local political actors throughout the scheme, due in part to personal connections between the President and local MPs. These relations allowed favouritism in land redistribution resulting in intra-communal conflict, disenfranchisement from the central government and increased inequality.

3.4.4 Lack of a grievance redress mechanism

All three phases have been characterised by the lack of GRMs. As a result, the intended beneficiaries appealed directly to the President. The recourse to presidential appeals, and the response of scrapping allotments without community consultation indicate that the communities’ grievances were not adequately addressed.

CASE STUDY 2: KIAMBERE HYDROELECTRIC DAM

This WB-funded hydroelectric dam project significantly damaged the livelihoods of thousands after DFDR occurred in violation of the Bank’s resettlement policies.

3.5 BACKGROUND

Construction for the hydroelectric dam commenced in 1985, displacing an estimated 737 households of 6,500 people. The dam was situated in a valley of fertile farming land, where livelihoods centred on agriculture and livestock. Some PAPs
were also traders, charcoal burners, and wage employees. No information exists as to whether pastoralists were directly displaced, however it is likely that pastoralists downstream of the dam would have been affected by changes to freshwater flows and flood patterns (IUCN, 2003).

WB policy-based lending and structural adjustment programmes restricted project financing, leading to GoK desire to reduce its heavy reliance on oil imports by securing alternative energy sources. Some claim that in its fervour to commence the project, the GoK misled the Bank by minimising DFDR issues until after the loan documents had been signed (Horta, 1994).

3.6 RESETTLEMENT PROCESS

The WB claims to have been unaware of the project DFDR issues until after resettlement had commenced (WB, 1993). According to a former WB employee, “there was no resettlement plan, no timetables and no evaluation of the adequacy of compensation.” (Horta, 1994). This was particularly negligent given that previous WB hydroelectric projects in the Tana River’s upper and lower basins had involved population displacement (Mburugu, 1994).

In accordance with GoK policy, self-identified PAPs were offered cash to purchase replacement land (Mburugu, 1994). Cash-only compensation violated existing WB guidelines (WB, 1993).

3.7 PROJECT IMPACTS

PAP livelihoods were severely impacted. A survey of resettlement impacts was undertaken post resettlement, comparing living standards of PAPs with living standards of host residents in relocation areas. It showed that PAPs averaged a loss of half their land, more than a third of their livestock and had reduced access to pasture, wood and water. Cash compensation was inadequate for buying land in the more densely populated resettlement area where land was scarce. (WB, 1993). A 1994 WB DFDR report concludes that families displaced by the dam lost 82% of their money-equivalent income (including crops grown for household consumption). A priest from the area said that, "people here were just told that they had to leave; no alternatives were given to them. They continue to suffer" (Horta, 1994).

3.8 ANALYSIS

The most salient issues in Kiambere were the failure to identify and profile the affected population, inadequacy of cash-only compensation, and failure to consider integration and resource strain issues on host communities. This case emphasises that the involvement of IFIs in DFDR does not guarantee that PAPs will be adequately protected, nor will rigorous resettlement policies if the capacity and will for implementation of those policies are absent.

3.8.1 Failure to identify PAPs

The planning phase failed to properly identify affected populations. The original project appraisal estimated that the project would impact only 1,000 people, of which an unspecified number of people
might have to be resettled. This fundamental error of measurement had enormous implications for the rest of the resettlement process.

3.8.2 Cash compensation

As DFDR is a totalising phenomenon, it follows that cash-only compensation will be inadequate to redress the multidimensional impacts of DFDR. The fact that only 14% of PAPs used their compensation to purchase replacement land illustrates the fact that replacement land was not available at an affordable price and compensation instead went to consumption to meet immediate needs (Mburugu, 1994).

3.8.3 Integration

Unlike in Chebyuk, there is no evidence of inter-communal violence between PAPs and resettlement area residents. Nonetheless, the fact that PAPs were on average older, less educated and had a higher child dependency burden than residents in resettlement areas put them at a distinct disadvantage in accessing wage employment and reactivating their livelihoods. This case shows that violence is not the only integration-related issue in DFDR that can cause severe disruption and dislocation to project affected communities.

CASE STUDY 3: KWALE DISTRICT TITANIUM MINING

This was the first large-scale social displacement from an extractive project in Kenya. It resulted in a long and contested battle between PAPs, civil society and the mining company.

3.9 BACKGROUND

The discovery of titanium deposits in the mid-1990s by international mining company Tiomin Resources culminated in DFDR occurring in the late 2000s. 450 households of 3,000 individuals were displaced from 1,661 hectares of land in Mauma and Nguluku villages. PAPs were officially resettled to Mrima-Bwiti but many were excluded and independently relocated to other areas (Nw’eno, 1997). PAPs were predominantly agriculturalists relying heavily on coconut palm trees (Abuya, 2013).

A district resettlement and compensation committee, chaired by the Kwale District Commissioner, was established to propose compensation amounts to be paid by Tiomin. The project aimed to extract and
export titanium from Kwale until deposits were depleted, then return land to the original owners. However, critics argued that strip-mining would significantly degrade land leaving it unsuitable to sustain livelihoods.

3.10 Political and Socio-Economic Context

When inhabitants originally settled in Kwale, some land was legally owned by a defunct sugar factory but no clear demarcations existed. This rendered many residents without, or with faulty, land titles. The legal framework at the time ascribed all mineral rights to the GoK and individuals without land titles were considered squatters (Ayuba, 2013).

Economic constraints following post-structural adjustment programme reforms generated governmental anxieties to generate new income, and a strong desire to ensure the project went ahead. The titanium mine was expected to provide $225 million to the GoK in the form of royalties and direct taxation (Base Titanium Ltd, 2015a).

3.11 Resettlement Process

Although Tiomin did commission an environmental impact assessment (EIA), it was heavily criticised for omitting or downplaying negative project impacts (Ojiambo, 2002). A RAP was only developed following pressure from civil society, publication of a parallel EIA revealing the shortcomings of the original assessment, initiation of legal proceedings, and appealing directly to Tiomin’s financial backers (Ibid).

Tiomin and the GoK differentiated between PAPs who had legal land title and those who did not, despite ancestral claims to land (Ojiambo 2002). These ‘squatters’ were offered less for their land, which ultimately created internal division between PAPs. Consequently a united front was short-lived in their legal opposition to Tiomin after the company offered an out-of-court settlement to title-holders. When Base Titanium purchased Tiomin Resources’ mining rights in 2010, Base included ‘squatters’ in its compensation scheme (Kayumba 2014).

Compensation offered to recognised PAPs included lease of their original land, resettlement in Mrima-Bwiti, cash compensation as well as building schools and dispensaries (Kayumba, 2014). These concessions were achieved after consistent civil society action. However many PAPs expressed dissatisfaction with the compensation process, citing that their assets and land were undervalued (Abuya, 2013). In 2011, Base Titanium carried out post-resettlement and monitoring audit report. There is no evidence that Tiomin carried out any monitoring activities.

3.12 Project Impacts

Independent reports from academia and civil society organisations reveal widespread dissatisfaction, inadequate economic compensation, social and economic damage, and heightened vulnerability of PAPs (Abuya, 2013; Kayumba, 2014). New social service construction was inadequate to service the needs of
PAPs (Kayumba, 2014). Some of those who did not agree to resettlement were reportedly violently evicted and their houses razed (MiningWatch Canada, 2007).

3.13 ANALYSIS

3.13.1 Lack of local consultation

The resettlement process was characterised by a consistent exclusion of affected communities. The original EIA was carried out without meaningful consultation and there was no attempt to incorporate PAPs’ values or input into proposed compensation. Eviction and razing of homes is indicative of a serious failure to engage the community and disregard of PAPs’ rights.

3.13.2 ‘Squatters’

Prioritising PAPs with titles to land created serious tensions in the community. This decision shows the inadequacy of the legal framework that allowed customary rights to land to be ignored. Although PAPs without titles were offered compensation, demonstrating that resistance can generate results, many felt that their offers were lower as a result of their status as ‘squatters.’

3.13.3 Grievance redress mechanisms

Although they were largely excluded from the consultative planning stages of the project, local residents and networks of NGOs pursued litigation, negotiation, and advocacy in the absence of an accessible GRM. In this way they were able to negotiate an expansion of the compensation package, and bring their issues to a worldwide audience.
Part IV: DFDR & the old Constitution, New Constitution & Community Land Bill

4.1 Land Tenure and Communal Rights under the Old Constitution

To understand the significance of the new Constitution for LAPSSET, it is necessary to provide a brief account of land tenure and communal land rights under the old Constitution. The transition from colonialism to independence emphasised individual ownership rights over land with high agricultural potential, intended to increase productivity. ‘Low potential’ land was left under customary tenure (Boye & Kaarhus, 2011).

Communities were to manage their land under the Trust Land Act (1938), which enabled occupation, use and inheritance of what was referred to as ‘trust land’ (Otieno, 2013). The Act did not provide communities with legal property rights; title in the land instead vested in local authorities and county councils. Despite a rigorous legal process on paper designed to protect communities against uncompensated expropriation, in many cases this was disregarded and trust land was disposed of illegally by government officials (Odote, 2013).

The coexistence of competing systems of tenure and government policy privileging individual land rights over communal tenure led to ‘defensive subdivision’—individual titling of community land in order to prevent encroachment (ibid). This erosion of group rights significantly reduced communities’ control over their historical lands, subjecting livelihoods, particularly of pastoralist groups, to increasing insecurity.

4.2 The 2010 Constitution

Chapter 1 of the 2010 Constitution was intended to address the issues outlined above. The 2010 Constitution sets out general principles of equitable, sustainable, productive and efficient use of land. It
establishes ‘community land’ as a new form of land tenure alongside private and public land, and in contrast to the Trust Land Act, community land vests directly in and is held by communities.

4.3 THE COMMUNITY LAND BILL

Drafting of the CLB commenced in 2011 but it is yet to be enacted, although it is constitutionally required to be enacted by 27 August 2015. Once enacted it will repeal the Trust Land Act. The CLB is intended to operationalize the general constitutional protections of community land rights, by providing the legal framework for the use, registration, transfer and management of community land. Under the CLB, all community land in Kenya is owned directly by communities.

The CLB sets out the process for the demarcation and registration of parcels of community land, and the management of those parcels by community land committees selected by the community. Unregistered community land is held by the county government in trust for the community. The CLB does not stipulate how a community substantiates its claim over a parcel of land (for instance, there is no requirement of a minimum period of residence), but a claim for registration can be challenged by someone disputing a community’s entitlement to certain land.

The CLB touches on key issues relevant to LAPSSET: the compulsory acquisition of community land and the rights of pastoralists and fisher-folk. These issues do not appear to be adequately addressed to mitigate the harms of DFDR. The broad concerns with the CLB are outlined below.

4.3.1 Compulsory acquisition

Two sections in the CLB relate to compulsory acquisition of community land. Section 7(2) relates to the acquisition of rights over community land (e.g. rights of occupation, or a right of way), and section 34(e) relates to acquisition of community land itself. As noted above, a section to similar effect in the Trust Land Act (section 13) has been historically used by government as a tool for dispossession of communities (Musembi & Kameri-Mbote 2013). As such these acquisition provisions warrant close examination.

Section 7(2) provides:

No right on community land may be expropriated or confiscated save by law in the public interest and consideration of payment in full, of just compensation to the person or persons.

Section 34(e) of provides:

Where community land is compulsorily acquired, it shall only be in the interest of defence, public safety, public order, public morality, public health or land use planning and subject to prompt payment in full of just compensation to the community.
4.3.2 Key concerns

- The nature of compensation is unspecified. The use of the word ‘payment’ implies that cash compensation would be sufficient. As seen from the case studies, cash alone is inadequate for PAPs to re-establish their lives elsewhere.

- There is no obligation to provide relocation assistance in identifying replacement land or other services to PAPs.

- There is no procedure for community notification, consultation, or appeal of the acquisition decision, nor is there a process for determining or appealing compensation (the Trust Land Act was in fact more rigorous in this regard, see sections 7 – 13).

- Both provisions fail to stipulate who is obliged to provide compensation, specifically which level of government is responsible and whether there are obligations on corporate actors. This could result in a lack of accountability and delays in the provision of compensation.

- ‘Land use planning’ as grounds for compulsory acquisition (the most relevant ground for LAPSSET) is unclear, undefined, and not required to be in the public interest.

- Under section 34(e) compensation is to be paid to ‘the community’. It is unclear whether compensation should be paid to individual PAPs, households, or the community land committee (if there is one), or how a committee should distribute compensation amongst PAPs.

4.3.3 Compulsory acquisition and LAPSSET

In summary, sections 7(2) and 34(e) raise a number of concerns relating to the nature of compensation, in particular who pays, on what grounds, who receives compensation, how they are identified, following what procedure, and how decisions about acquisition and compensation can be challenged. This is troubling in the light of on-going LAPSSET land acquisitions and the fact that unregistered community land is to be held in trust by county governments on behalf of communities (section 14(4)). The equivalent provision under the Trust Land Act was subject to widespread abuse in the past. Devolution to the counties does not necessarily provide protection against corruption and abuse of process, which can and does occur at any level of government.

4.3.4 Rights of pastoralists

The community land management framework under the CLB requires demarcation and registration of specific, identified parcels of land. This imposes ‘territorial fixity’ that impedes mobility, a crucial aspect of pastoralist livelihoods and sustainable livestock production in arid and semi-arid areas (Musembi & Kameri-Mbote, 2013).
There are various provisions in the CLB allowing for pastoralists to be granted rights of way across community land and access to water on community land (sections 34, 44 and 45(1)) but in all cases these rights are at the discretion of community land owners, or able to be overridden by the CLB or any other Act. Overall, the Bill does not adequately protect the land rights of pastoralists or recognise the importance of mobility to their livelihoods.

4.3.5 Rights of fisher-folk

Community land in the CLB is defined as including ‘fish landing sites’, but it provides no protection in relation to fishing waters. Mangroves, wetlands, public lakes, rivers, streams, reservoirs, lakes, beaches and fisheries are all excluded from the definition of community land. This means that traditional fishing waters are not entitled to the same rights and protections as community land, cannot be managed by community land committees, nor compensated-for if compulsorily acquired.

4.4 PROBLEMS WITH THE LEGISLATIVE PROCESS

In addition to the content of the draft CLB, the process and procedure surrounding it has been problematic. Despite drafting commencing nearly five years ago, the CLB was not tabled in the Senate until late 2013, and without any public consultation despite a Constitutional obligation to facilitate public participation and involvement in the legislative process (Article 118).

A senate committee was established to seek public and stakeholder views on the CLB, and to re-table it after incorporating those views. The recent experience of other land reform laws does not give cause for optimism that the CLB will be subjected to genuine consultation, rigorous review and debate. In 2012 Parliament enacted The Land Act, The Land Registration Act, and The National Land Commission (NLC) Act, which it was required to do within 18 months of the promulgation of the Constitution (Schedule 5). In order to meet this deadline, there was almost no parliamentary debate or discussion of the draft laws, at best tokenistic public consultation and almost no adjustment made to the original drafts (Manji, 2012). Although there has been a much more generous timeframe (five years) within which to enact the CLB, the fact that it still has not been resubmitted to Cabinet ahead of the deadline in August suggests that the process of finalising the CLB will again be rushed.

The recent consultative process also appears to be inadequate, the only public hearing that appears to have been held was publicised at such short notice that no representatives of LAPSSET-affected communities were able to travel to Nairobi to attend (Natural Justice, 2014).

Some attribute the delays in the passage of the CLB to in-fighting between the Land, Housing & Urban Development Cabinet and the NLC on jurisdictional issues. Others suggest the delay by the Lands Minister to submit the Bill for Cabinet approval is part of a deliberate effort to frustrate land reforms (Ayodo, 2014).
4.5 **Implementation Issues**

Once the CLB is enacted, recent experience of other land reforming legislation suggests that it is unlikely to be meaningfully implemented.

The Prevention, Protection and Assistance to Internally Displaced Persons and Affected Communities Act 2012 (the IDP Act) came into force on 18 January 2013. It provides for a comprehensive rights-based response to internal displacement, setting out principles of prevention, protection and assistance that impose broad positive obligations on the government and others, including corporate actors, in relation to internally displaced persons (IDPs). The IDP Act requires that where people are to be displaced by development projects their full and informed consent must first be sought, and public hearings on the project planning held (section 22).

The IDP Act was positively received by international civil society, being described as a ‘significant milestone’ (Article 19, 2013 and Brookings Institution, 2013), however there have been no steps towards the implementation of the IDP Act since its enactment (Brookings Institution, 2013). The Internal Displacement Monitoring Centre 2014 report on Kenya’s pastoralist communities noted that ‘the legal and policy framework to protect internally displaced pastoralists is in place, but in practice ignorance and disregard for displaced pastoralists’ rights continues unabated’ (2014b, p.15).

Implementation of land laws is a broader issue identified by the Kenya Human Rights Commission, which found there is ‘…a lack of awareness of the existing frameworks on sustainable development by key stakeholders as well as the host community and a failure by the government to domesticate, harmonise, enact and implement some of these frameworks’ (2014, p.20).

Finally, it appears as though the courts are unwilling to uphold community land rights under the Constitution until the CLB is enacted, with the Environment & Land Court noting in *Joseph Letuya & 21 others v Attorney General & 5 others* (ELC Civil Suit No. 821 of 2012) that ‘whether the Ogiek have property rights to the land under Article 63 of the Constitution is yet to be determined, because the Community Land Act has not yet been enacted by Parliament. Until then, the issue of property rights is a determination for the NLC to make.’
4.6 CONCLUSION

It appears unlikely that the CLB will benefit LAPSSET PAPs. The compulsory acquisition provisions are ambiguous, provide inadequate protection and are open to abuse, and rights of pastoralists and fisher-folk are not properly addressed.

The reasons for the delay in passing the Bill are unclear, and a pessimistic interpretation could suggest political motivations to hold off enactment in light of potential complications to LAPSSET. Further, the courts appear unwilling to uphold communities’ constitutional land rights until the CLB is enacted.

The IDP Act on paper would provide comprehensive protection for those displaced by development projects, but it has not to date been implemented. This may be due to a lack of government capacity, or a political unwillingness to interfere with on-going development projects such as LAPSSET, or a combination of both.
PART V: LAPSSET – CURRENT ISSUES & FUTURE IMPACTS

5. INTRODUCTION TO LAPSSET

LAPSSET will link Kenya, Ethiopia and South Sudan, costing approximately US$24.5 billion establishing an oil refinery, pipeline, road, standard gauge railway, airports, resort cities, and 32-berth port in Lamu. The exact path of the corridor is unknown, so it is impossible to pinpoint the precise communities affected. What is known is that Lamu, Turkana and Isiolo will be ‘hubs’ for the pipeline, hosting a number of major developments.

It must be emphasised that LAPSSET’s DFDR impacts in these regions will not necessarily be identical to impacts elsewhere. Impacts will broadly be of two types depending on the nature of the infrastructure. Linear components like the railway, road and pipeline can segment property, disrupt market access, and displace nomadic pastoralists by cutting off access to water and pasture. Nodal components like the port, resorts, refinery and airports have different effects including displacement, influx, and speculation. Furthermore, LAPSSET will cut across a variety of communities with different relationships to the land, the state and each other. This must be borne in mind when considering the broader applicability of the types of issues outlined below.
5.1 Lamu Port

The port is essential for importing material for the other LAPSSET components, so it is high priority for policymakers and construction is underway. The port provides a useful lens; construction is on-going so information is available on impacts and political dynamics, and unlike other components which may not be completed given the aspirational nature of this mega-project, the port is a reality.

The issues outlined below in relation to Lamu are of two broad types: concerns surrounding the project implementation – a lack of consultation, influx, speculation, compensation, and property rights – and broader political issues – local politics and devolution, the geopolitical status of Lamu County and weakness of newly established institutions.

5.1.1 Implementation concerns

Mitigation of the port’s impacts on local livelihoods and environment are at the heart of local campaigns in Lamu. Civil society and residents are concerned that they will be excluded, displaced and inadequately compensated for their land (Save Lamu, 2013; Sena, 2012; KHRC, 2014; Machuhi, 2014). Many also fear they will not benefit from the economic advantages that the project is expected to bring (KHRC, 2014). The manner in which the project has been implemented to date justifies these fears.

The President approved construction of the port before community consultation or impact assessment was carried out. Consultation that did occur was exclusionary and characterised by significant information asymmetries, for example with meetings closed to the public, held at short notice with limited information provided, and key reports were provided in English only. The 2011 impact assessment failed to recognise all affected communities including pastoralists and hunter-gatherers. It also did not recognise communal land, only individual land title-holders, in violation of these groups’ constitutional rights (Save Lamu, 2013).

The rise in speculation and soaring land prices (Marete, 2015), the anticipated influx of outsiders (according to the feasibility study, Lamu’s population is expected to expand from 101,000 to 1.25 million), and the privileging of individual landholders have culminated in a dynamic of exclusion and disenfranchisement at the expense of the most marginalised communities in Lamu.
5.1.2 Compensation and titling

Government and media discourse surrounding mitigation has largely revolved around cash compensation to individual title deed-holders. Relatively little attention has been paid to communities and community land. Despite the fact that many PAPs do not hold title to their land and instead have ancestral claims (Sena, 2012), the nature of compensation at this stage has centred on the holding of legal title (Japan Port Consultants, 2011). Although this situation may change with the passage of the CLB, problems with the Bill’s contents and likely implementation as outlined in paragraph 4.3 above mean that compensation issues are likely to remain a concern.

Compensation has at times resulted from direct negotiation between landowners and government, for instance farmers in Kililana agreed to compensation and resettlement assistance through negotiations after instituting court proceedings (Save Lamu, 2013). It is notable that those who were most able to voice their dissatisfaction (through organising and obtaining legal advice) were able to have their claims heard and addressed; it is unlikely that marginalised communities will have recourse to similar measures.

5.1.3 Local politics and devolution

Other key issues likely to impact outcomes for PAPs are local politics, the geopolitical status of Lamu County, and the weakness of new institutions.

Accusations of corruption in compensation proceedings have resulted in calls for the resignation of Lamu’s Governor Timamy (Sanga, 2015). Allegations state that key land plots and disproportionate compensation is accruing to politically well-connected individuals and absentee landowners. In the context of on-going devolutionary processes, LAPSSET raises the stakes and the likelihood of conflict between interests of local political actors, central political actors and local communities.

5.1.4 Geopolitics

The coastal region has been historically marginalised in Kenya, and Lamu County continues to receive comparatively low national budget allocations (Praxides, 2015), sustaining a historical mistrust of central government (Laheř, 2011). In addition, Lamu’s recent experiences as a middle-ground in the fight between Kenyan Defence Forces and Al-Shabaab will impact development of the port which is seen by some observers as a potential prize for both parties, reflecting dynamics similar to those in the Niger Delta, where a resource-rich region was exploited for revenue but did not receive significant benefits (Meagher, 2013; Weru, 2013). This can impact the project by creating a division that pits multinational companies and national government against communities.

5.1.5 Institutional weaknesses

The compensation process has revealed weaknesses in the working relationship between the newly established NLC and central ministries, exacerbated by the fact that tasks and jurisdictions are not clearly demarcated. For instance, the LAPSSET Corridor Development Agency (LCDA) is under the office
of the President (LCDA Profile, 2015). The LCDA is tasked with coordinating LAPSET’s many components, which cross county lines and international borders. Its location within the President’s office protects it from political pressures and goes against the grain of devolution – sacrificing participatory measures and local consultation for a top-down, centralised approach. In other instances, tensions between NLC Commissioner Muhamad Swazuri and Land Cabinet Secretary Charity Ngilu over their respective mandates are well-documented, resulting in intervention by the President to have the two bodies actively resolve their inability to coordinate (Chai, 2014; Oruko, 2015; Muraya, 2015). Such jurisdictional disputes are likely to further complicate the compensation and resettlement process for PAPs.

5.2 TURKANA

LAPSET construction is yet to commence in Turkana, but current developments in oil extraction provide a relevant frame of analysis for the types of issues likely to remain in play upon commencement of LAPSET activities.

Turkana is Kenya’s second largest county, bordering Uganda, South Sudan and Ethiopia. The majority of its population are pastoralists who are widely dispersed and seasonally mobile according to the availability of grazing grounds and water sources. Turkana has been marginalised by colonial and postcolonial governments, and the poverty rate is 94.3% (Mkutu Agade, 2014). It is marked by high insecurity, stemming from violent conflicts between pastoral groups over water, pasture and livestock. One in three men are estimated to possess small arms, proliferated from recent conflict in South Sudan, Uganda and Somalia (ibid).

Turkana’s challenges include cross-border security, inter-ethnic resource-based conflict, small arms proliferation and low state penetration (Fong, 2015); salient concerns not only in Turkana but in many parts of the corridor. A recent transformative event in Turkana has been the discovery of commercially exploitable quantities of oil by the Tullow Oil Company, which has justified the extension of the LAPSET pipeline into Northeast Kenya despite war in South Sudan. The analysis below considers the effectiveness of community engagement with Tullow and prospects for effective benefit sharing of oil revenues – both of which have relevance for LAPSET.
5.2.1 Tullow Oil and DFDR

Tullow announced Kenya’s first oil discovery in March 2012, and has since struck vast oil reserves estimated at US$25 billion. Displacement to make way for exploration and drilling is reported to have already occurred, although no information is available about how this has taken place. There are reports of resettlement with no or inadequate compensation by Tullow, and concerns over the question of who is to be compensated given that most of Turkana is community land (Johannes et al 2014). Tullow emphasises that its drilling activities are not likely to cause significant displacement as the drilling rig is ‘the size of a plate deeply sunk into the ground’ (Ng’asike, 2013), although online searches return results of Tullow job advertisements for ‘land access and resettlement’ roles based in Turkana (e.g. Kenyan Jobs Blogspot, 2014). Aside from these advertisements there is no information about resettlement plans available publicly on Tullow’s website. On the ground research into the nature and extent of resettlement by or on behalf of Tullow would be valuable as it could foreshadow some of the likely LAPSSET DFDR issues in Turkana.

5.2.2 Community protest

Rather than focusing on issues of displacement and compensation as in Lamu, most media coverage of community dissatisfaction with Tullow centres on the perceived lack of direct community benefit, particularly jobs, from Tullow’s operations (see e.g. Akumu, 2014; Kavanagh, 2014; Hatcher 2014). Tullow has shown some willingness to respond to community concerns. In October 2014 it suspended operations after local MPs organised residents to protest discrimination against locals in employment and tender awards. In response, Tullow committed in a memorandum of understanding to immediately double its social investments to Ksh340 million annually and offer more training scholarships to enable locals take up high-skilled jobs (Omondi, 2013).

This outcome can be viewed as a positive one for the influence of community protest and the responsiveness of Tullow. However it must also be viewed in the context of a fraught security situation with high arms proliferation, accusations of violence on the part of protesters and investor skittishness at the then recent attacks on the WestGate Mall in Nairobi (Reuters, 2013). Whether Tullow was acting out of responsiveness to community voice or reflexivity to the threat of violence is uncertain. What is certain is that benefit-sharing of oil exploration and infrastructure construction is a contentious and volatile issue in Turkana and is likely to remain so as LAPSSET approaches.

5.2.3 Benefit sharing through equity stakes

In mid-2014, President Kenyatta urged Turkana residents to consider converting their land into equity stakes in the LAPSSET pipeline, rather than receiving an upfront payment of compensation in exchange for relinquishing their land. This was the first time that the GoK had openly promoted the use of equity shares in the pipeline as compensation for PAPs. The idea is unprecedented in Kenya and there is currently no legal framework to guide such a proposal.
Kenyatta’s statement was reported in the local media at the time (Business Daily Africa, 2014; Omondi, 2014), but we could locate no subsequent information on whether such a scheme is being seriously developed. As Land Development & Governance Institute chairman noted (Business Daily Africa, 2014), this is an innovative proposal deserving serious thought, and further research on the feasibility of such a scheme, including a comparative assessment of similar schemes in other countries (see Cernea, 2009) would be warranted. One immediate concern is that equity stakes should be complementary measures and not a substitute for upfront compensation.

5.3 Isiolo

Isiolo is the node of the LAPSET corridor where all the branches of the project will meet, due to its central location vis-à-vis Lamu, Nairobi and neighbouring countries (Ethiopia, South Sudan and Uganda). Envisaged infrastructure includes a railway, roads, oil pipelines, a resort city and enlargement of the existing airport. This is intended to transform the isolated county into a trade artery and tourist destination (Kenya Vision 2030, Versi & Kubakuru, 2014). Given its geographic centrality to LAPSET, Isiolo is likely to be one of the areas most impacted by the establishment of the corridor.

Previously marking the border of the Northern District with Somalia, Isiolo County belongs to the former Eastern Province of Kenya. Like Turkana it is semi-arid and characterised by high numbers of nomadic pastoralists and intra-communal conflict caused by competition for natural resources and cattle raiding. Violence, military occupation, drought and underdevelopment have been prominent features of Isiolo, contributing to the erosion of state legitimacy in the county (Hornsby, 2012).

An examination of recent events in Isiolo draws out issues of political and communal conflict and tension at various levels, concerns about land-grabbing and influx, and the status of community land and its management by county government.

5.3.1 Political and community conflict

Isiolo has witnessed several episodes of conflict usually involving pastoralist communities clashing over natural resources. LAPSET has fostered the emergence of new dimensions of conflict at different levels: among counties, between local and central government in Nairobi, among communities and between locals against ‘foreigners’.
Tensions between counties have emerged over the economic benefits stemming from infrastructural development, intensified by the new constitutional power of counties to raise territorial revenues. Isiolo and Nyambene County have competed over airport development and associated revenues (Kiarie, 2012), and disputes have emerged between Isiolo and Meru County over the determination of county boundaries and location of the resort city and abattoir (Abdi & Kwama, 2014). These disputes have been aggravated by the appointment of Meru native Francis Muthaura as LAPSSET Project Authority Chairman and fears that he will use his role to deviate local development to his county.

Local mistrust in central government has been exacerbated by Isiolo’s Governor Doyo, who publicly argues that indigenous communities are likely to suffer negative LAPSSET impacts given the historical socio-economic and political marginalisation of the county (Salesa, 2015). Intra-communal violence has also erupted at the local level, with allegations that politicians and private businesses are fostering intra-communal tensions to restrict communities’ access to grazing lands relevant to LAPSSET developments (TV Kiss, 2012).

5.3.2 Land-grabbing and land prices

The incorporation of Isiolo into LAPSSET has witnessed a striking rise in land prices. Price per acre has jumped from less than USD$2500 to more than $1 million (Versi & Kabukuru, 2014), associated with land-grabbing. Former ministers, secretaries and diplomats under the Kibaki government have been accused of speculation and land-grabbing in Isiolo and Meru (Abdi & Kwama, 2014). These events are particularly concerning as inflows of ‘strangers’ (Versi & Kabukuru, 2014), land-grabbing and landlessness are likely to further exacerbate violence and resource conflict among local communities (Kiarie, 2012) and turn the resettlement process into a political tool.

5.3.3 Status of land

70% of land in Isiolo County was trust land (Boye & Khaarus, 2011) that was converted into community land under the new Constitution (Article 63(2)(d)(iii)). Under the CLB, unregistered community land is to be held in trust by the county government, and until the CLB is passed, community land is not to be ‘disposed of or otherwise used’ (Article 63(4)). As such, the licencing of land and compensation of PAPs is to occur at the newly established county level, but as yet is unguided by any legal framework and technically not lawfully allowed to occur. RVI might wish to investigate the current process and measures being developed at county level for the management of unregistered community land, the capacity of county level governments, and the extent to which Article 63(2)(d)(iii) is actually being complied with in Isiolo and elsewhere.
Part VI: Conclusion and recommendations for further research

Recommendations for further research provided in annexure 5.

A failure to conceptualise, plan for and mitigate the totalising impacts of DFDR, combined with mismanagement, corruption and political disregard for community land rights have marked DFDR in Kenya up to the present day.

Yet the comprehensive IDP Act and instances of community collective action represent latent seeds of change in the Kenyan DFDR story, and warrant closer examination to determine the full extent of their transformative potential in the face of LAPSSET.

The high profile nature of LAPSSET sheds light on DFDR issues. LAPSSET’s sluggish rollout provides breathing space for NGOs, civil society organisations and communities to influence the impact of this transformative project.
ANNEXURE 1

FINAL TERMS OF REFERENCE

DELIVERABLES

• 8000-10,000 word report completed by 27th April 2015
• 1 hour presentation and Q & A
• Review of general resettlement impacts on local communities (project affected peoples)
• 3 Kenyan resettlement case studies assessed in the context of the old Constitution
• Assessment of the potential and limitations of the new Kenyan Constitution as an instrument to mitigate identified resettlement impacts in the 3 case studies
• Assessment of current and potential resettlement impacts of LAPSSET (including literary review)
• Analysis of how the new Constitution can effectively mitigate these impacts
• Determining remaining challenges to LAPSSET resettlements not addressed by the Constitution
• Identification of evidence gaps: areas to investigate to help inform on potential hazards and opportunities of resettlement

1.0 PRELIMINARY REPORT FRAMEWORK

1.1 Resettlement Overview

• General impacts of resettlement (socio-economic-environmental-political impacts) and general causal explanations
• Identification of international best practices as mitigation measures

1.2 Kenyan Resettlement Process Overview

• Overview of resettlements in Kenya (industry types, locations, size, investors, implementers, purpose)
• Historicize resettlement in Kenya (previous resettlement schemes, impact of colonial legacy and ethnic groups' aspirations)
• Review land tenure and communal rights under old Constitution and assess their implications for project affected persons (PAPs), their rights, and compensation

2.0 CASE STUDIES

2.1 Project Reviews

• Project aims, size, location, stakeholders involved, funding, political climate, and socio-economic local context
Preparatory work that was undertaken for resettlement including ESIA, resettlement action plan, baseline studies, consultations (with who, by whom, how, etc).

How resettlement schemes were implemented and monitored?

How projects have been monitored (pre-resettlement and post resettlement):

By whom, how often, where has it been reported, how have people reacted?

What avenue/barriers have there been for local populations to get their voices heard?

What were the project impacts on the local communities: which changes in local dynamics? New losers/winners? Or increasing power of certain communities?

2.2 Resettlement Impact Assessment

Explain why problems / successes arose (especially relating to land tenure, government capacity, politics, conflict, etc)

Identify factors that determine different types of impacts to create an interpretative framework to be used in assessing LAPSET.

2.3 The New Constitution: theoretical impacts on case studies

Review the new Constitution and Community Land Bill: assess how they could have mitigated the problems identified in the case studies

3.0 LAPSET

3.1 Background Review

Project description: size, location, stakeholders, likely resettlements, PAP description, etc)

Plans and measures to Date: preparatory resettlement work

Politics, conflict, challenges and controversies surrounding project

Literary review of problems/ successes relating to resettlement to date

3.2 Resettlement Impact Assessment

Determine the extent to which current identified resettlement negative impacts are a consequence of the limitations of the new Constitution, and how much are a consequence of failures of it being adhered to/enforced?

Identify limitations of the new Constitution regarding land resettlement: resettlement problems in the case studies that would not have been resolved despite new safeguards

Identify other potential problems or opportunities that may arise in the future: using the analytical framework constructed in section two (case studies) juxtaposed on the proposed LAPSET plans and realities on the ground

Identify evidence gaps - between our asserted problems/opportunities and what has been reported/assessed – than need further on-the-ground investigation
4.0 LAPSSSET RESETTLEMENT CHALLENGES AND EVIDENCE GAPS

- Summary of likely problems / opportunities that will arise from LAPSSSET
- Grey areas that need further investigation (include as general thread throughout report, include in case studies)
ANNEXURE 2 – ANNOTATED BIBLIOGRAPHY

Bibliography


• Constitution of Kenya, 1963


• Internal Displacement Monitoring Centre. 2014b. ‘Kenya: Too early to turn the page on IDPs, more work is needed.’ 3 June. Accessed 20 February 2015. Available at: http://www.internal-displacement.org/sub-saharan-africa/kenya/2014/kenya-too-early-to-turn-the-page-on-idps-more-work-is-needed


• The Community Land Bill (CLB). 2013.


# Annotated Bibliography: (Part 1) Conceptualising Resettlement

<table>
<thead>
<tr>
<th>In-text reference</th>
<th>Full reference</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Appa &amp; Patel, 1996</strong></td>
<td>Appa, G. &amp; Patel, G. 1996. Unrecognized, Unnecessary and Unjust Displacement – Case Studies from Gujarat, India. In: McDowell, C. (Ed.). Understanding Impoverishment: The Consequences of Development-Induced Displacement. Oxford: Berghahn Books, pp. 139-150.</td>
<td>Article investigates resettlement case studies in India to highlight that in many resettlements those economically impacted by projects are not recognised. It asserts that projects and governments misconceive much land to be vacant leading to over-acquisition, and view resettlement as purely a financial loss ignoring livelihood impacts. The article ultimately calls for improved legislation that considers natural resource losses and institutionalises the need for PAP participation.</td>
</tr>
<tr>
<td><strong>Button, 2009</strong></td>
<td>Button, G. 2009. Family Resemblance between Disasters and Development-Forced Displacement: Hurricane Katrina as a Comparative Case Study. In: Oliver-Smith, A. (Ed.). Development &amp; Dispossession: The Crisis of Forced Displacement and Resettlement. New Mexico: School for Advanced Research Press, pp. 255-274.</td>
<td>Compares DFDR to displacement caused by natural disasters (Hurricane Katrina). Draws parallels in PAP responses and rehabilitation experiences. Stresses displacement can be a development opportunity but the political nature of DFDR often prevents this from happening. Human rights abuses are construed as central problems with DFDR (housing, food security, and so forth). The challenge is to get international accords, safeguards and covenants recognised and enforced. Sets out key requirements for success (participation, planning, institutional capacity, financing, political will, respect and a host of other factors).</td>
</tr>
<tr>
<td><strong>Clark, 2009</strong></td>
<td>Clark, D. 2009. Power to the People: Moving towards a Rights-Respecting Resettlement Framework. In: Oliver-Smith, A. (Ed.). Development &amp; Dispossession: The Crisis of Forced Displacement and Resettlement. New Mexico: School for Advanced Research Press, pp. 181-200.</td>
<td>The chapter argues that despite increasing international norms and conventions, there is no international law governing DFDR. DFDR leads to destitution because administrators operate with institutional impunity (given lack of legal safeguards and discrimination). Institutions lack capacity and adequate implementation bodies and political will is often missing (given preference to ensure projects go ahead and regular disdain for local peoples). Calls for independent monitoring of DFDR and the institutionalisation of the principle of free and informed prior consent.</td>
</tr>
<tr>
<td>Author(s)</td>
<td>Title and Source</td>
<td>Summary</td>
</tr>
<tr>
<td>-----------</td>
<td>------------------</td>
<td>---------</td>
</tr>
<tr>
<td>De Wett, C.</td>
<td>2009. Does Development Displace Ethics? The Challenge of Forced Resettlement. In: Oliver-Smith, A. (Ed.). <em>Development &amp; Dispossession: The Crisis of Forced Displacement and Resettlement</em>. New Mexico: School for Advanced Research Press, pp. 77-96.</td>
<td>Explores the ethics of DFDR. Conceptualises DFDR as stemming from power asymmetries, with PAPs being victims, and it being a process of accelerated socioeconomic change and conflict. Highlights a few 'success' stories but stresses external circumstances created this outcome and usually DFDR fails local people. Stresses laws as important safeguards but warns that bureaucratic incompetence or corruption often prevents implementation. Cautions that participation can be manipulated. Stipulates that projects regulated by international best practice are better and that effective resistance capability of PAPs is important. However, warns that successful outcomes are not guaranteed.</td>
</tr>
<tr>
<td>Hickey, S. and Mohan, G.</td>
<td>2004. Participation: from tyranny to transformation. New York: Zed Book Ltd.</td>
<td>Book analyses participation and how it can be used to manipulate local populations and gain appearance of local buy-in or ownership, or how it can be used as a genuine tool of collaborative decision making.</td>
</tr>
<tr>
<td>Johnston, B.</td>
<td>2009. Development Disaster, Reparations, and the Right to Remedy: The Case of the Chixoy Dam, Guatemala. In: Oliver-Smith, A. (Ed.). <em>Development &amp; Dispossession: The Crisis of Forced Displacement and Resettlement</em>. New Mexico: School for Advanced Research</td>
<td>Article warns that resettlements often do not even meet minimum requirements, even when they are IFI sponsored. Rights can be abused at every stage (planning or IFI sponsored and operation). Looks at constraints on mounting effective resistance to gain better provisions. Constraints include poor PAP capacity, language barriers, illiteracy,</td>
</tr>
<tr>
<td>---</td>
<td>---</td>
<td></td>
</tr>
</tbody>
</table>

**limited external support, and so forth. Resistance also confronts vested political interests who have developed rents from projects. Resistors are categorised by governments as criminals or rebels. Lists various DFDR impacts on PAPs such as loss of natural resources, disruption of transport routes and loss of livelihoods.**

**Explores physical and mental health impacts of DFDR. Key health problems are caused by overcrowding, influx of migrants, project construction waste deposits, food insecurity, loss of traditional lifestyle and land, inability to adapt to new environments, loss of natural resources, soil infertility on new lands, waterborne diseases in resettlement sites of different temperature, contact with hosts, and so on. Calls for DFDR to be accompanied by adequate ESHIAs.**

**Highlights that many PAPs are often not recognised for compensation. This is the case for those without formal land tenure (often classified as illegal squatters or pastoralists) and those not physically but economically displaced. These groups are especially vulnerable as are usually less able to form effective resistance to DFDR given lack of legal backing and given that they are often dispersed geographically.**

**Reviews Dam resettlement in Africa and issues relating to land. Stresses land is usually owned and not empty as assumed by many administrators, leading to tensions with host communities when PAPs are displaced. Shows how administrators typically do not recognise PAP lands, particularly fallow land or natural resources used for many day-to-day requirements including medicine, food, and livelihoods. Thus even land replacement is often too small. Describes tensions with host communities due to increased competition for scarce resources and lack of compensation.**
<table>
<thead>
<tr>
<th>Author(s)</th>
<th>Title</th>
<th>Year</th>
<th>Summary</th>
</tr>
</thead>
<tbody>
<tr>
<td>Oliver-Smith, 2009b</td>
<td>Oliver-Smith, A. 2009b. Evicted from Eden: Conservation and the Displacement of Indigenous and Traditional Peoples. In: Oliver-Smith, A. (Ed.). Development &amp; Dispossession: The Crisis of Forced Displacement and Resettlement. New Mexico: School for Advanced Research Press, pp. 141-162.</td>
<td></td>
<td>Identifies alternative reasons driving governments to undertake projects and DFDR such as population control, land acquisition or assimilationist pretentions. Looks specifically at conservation induced displacement of indigenous peoples. Shows that global norms of environmental protection are often at odds with human right needs, or at least abused and used as pretext by governments to displace indigenous communities.</td>
</tr>
<tr>
<td>Author</td>
<td>Title</td>
<td>Page Numbers</td>
<td>Summary</td>
</tr>
<tr>
<td>---------------------------------------------</td>
<td>------------------------------------------------------------------------</td>
<td>---------------</td>
<td>--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>Asia of Resettlement Practice. In: McDowell, C (Ed.). Understanding Impoverishment: The Consequences of Development-Induced Displacement. Oxford: Berghahn Books, pp. 201-222.</td>
<td></td>
<td></td>
<td>packages (e.g. PAPs unable to replace land lost). Lack of responsibility stems from the highly politicised nature of projects (national and local vested interests) and the limited amount of rents that can be extracted from DFDR. Calls for DFDR process to be outsourced to an independent and professional body that is skilled in community conflict resolution and ethnographic studies.</td>
</tr>
<tr>
<td>Scudder, T. 1996. Development-Induced Impoverishment, Resistance &amp; River-Basin Development. In: McDowell, C (Ed.). Understanding Impoverishment: The Consequences of Development-Induced Displacement. Oxford: Berghahn Books, pp. 49-76.</td>
<td></td>
<td>52</td>
<td>Looks at the causes (e.g. search for jobs and speculation) &amp; impacts of influx of migrants (e.g. on health, crime and livelihoods) where they become the main beneficiaries of projects. Asserts that projects will usually only handle DFDR well if local populations can mount organised and strong resistance, the government is receptive and an impartial judiciary system is accessible.</td>
</tr>
<tr>
<td><strong>In-text reference</strong></td>
<td><strong>Full reference</strong></td>
<td><strong>Description</strong></td>
<td></td>
</tr>
<tr>
<td>-----------------------</td>
<td>-------------------</td>
<td>----------------</td>
<td></td>
</tr>
</tbody>
</table>

**(Part 2) Kenya Resettlement Overview**

<table>
<thead>
<tr>
<th><strong>In-text reference</strong></th>
<th><strong>Full reference</strong></th>
<th><strong>Description</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td>Hornsby, 2012</td>
<td>Hornsby, C. 2012. Kenya: A History Since Independence. London: IB Tauris.</td>
<td>One of the most comprehensive analysis of the Kenyan history since independence, covering nearly 50 years (1963-2011) in 1000 pages. Offers a great insight on a series of crucial issues in Kenya such as politics (clientelism, corruption, transition to democracy), ethnicity, land, the debate between centralisation and decentralisation as well as the use of violence by the state recurring to a wide range of literature.</td>
</tr>
<tr>
<td>IDMC, 2014</td>
<td>Internal Displacement Monitoring Centre. 2014. ‘Kenya: Too early to turn the page on IDPs, more work is</td>
<td>Short report on internal displacement in Kenya, covering various forms of displacement (e.g. caused by conflict, natural disaster, development</td>
</tr>
</tbody>
</table>

| Manji, 2014 | Manji, A. 2014. The Politics of Land Reform in Kenya 2012. *African studies review*, 57(01): 115-130. | Article critiquing the post-2010 Constitution land reform process in Kenya resulting in the enactment of the Land Act, Land Registration Act and National Land Commission Act. Argues that the constitutional and political gravity of this legislation was undermined by undue rush, a lack of genuine legislator engagement and a severe deficiency in citizen engagement/community consultation. As such the resulting laws are considered by the author to be a ‘deeply disappointing outcome of a decade’s struggle over land policy.’ |
| Musembi & Kameri-Mbote, 2013 | Nyamu Musembi, C. & Kameri-Mbote, P. 2013. Mobility, Marginality and Tenure Transformation in Kenya: Explorations of Community Property Rights in Law and Practice. *Nomadic Peoples*, 17(1): 5-32. | Article focussing on the potential for the New Constitution to substantiate communal tenure through the case study of the Ogiek community. The authors argue that the long neglect for community land rights dates back to the legal system adopted at independence and focussed on private ownership and agricultural interests. Further, they show how community entitlement and access to land will not necessarily be easy to obtain as the new constitution fails to provide a clear definition of community as well as specific community structures for the management of communal land. |

**(Part 3) Chebyuk Case Study**

<table>
<thead>
<tr>
<th>In-text reference</th>
<th>Full reference</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Reference</td>
<td>Description</td>
<td></td>
</tr>
<tr>
<td>-----------------------------------------------</td>
<td>---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------</td>
<td></td>
</tr>
<tr>
<td>York: Human Rights Watch. Accessed 21 February 2015. Available at: <a href="http://www.hrw.org/reports/2008/07/27/all-men-have-gone-0">http://www.hrw.org/reports/2008/07/27/all-men-have-gone-0</a></td>
<td>recommendations to both fronts and to foreign governments (UK and the US) asking for an open enquire on the responsibilities of gross violations of human rights of the local populations. A following vital investigation of these events will be later conducted by the Truth and Justice Reconciliation Commission. The report is based on interviews to an extensive array of people involved in the conflict.</td>
<td></td>
</tr>
<tr>
<td>Lynch, G. 2011. The Wars of Who Belongs Where: The Unstable Politics of Autochthony on Kenya’s Mt Elgon. Ethnopolitics: Formerly Global Review of Ethnopolitics, 10(3-4):391-410.</td>
<td>the paper delves into the “politics of belonging” on the Mt. Elgon to analyse how ethnic affiliation becomes a qualification to entitlement to land. Drawing from interviews, she shows that ethnic violence on the Mt. Elgon has been caused by the language of politicians who have increasingly exploited the feelings of belonging to oppose communities for their own gain. This has been an especially salient aspect of Kenyan politics since the reintroduction of multi-party elections (1991).</td>
<td></td>
</tr>
<tr>
<td>Médard, C. 2008a. ‘Indigenous’ land claims in Kenya: A case study of Chebyuk, Mount Elgon District. In: Anseeuw, W. &amp; Alden, C. (eds.) 2010. Land in Africa: Conflicts, Politics and Change. HSRC Press: Cape Town, pp. 19-36.</td>
<td>The chapter provides an insight on the process of land allocation in Chebyuk and the role played by the Kenyan government in these events. Médard takes a significant focus on the ethnic dimension underpinning local communities’ claims over land on the Mt. Elgon. Her argument is that President Kenyatta first and President Moi then have been directly controlling the process of land transfer in favour of their ethnic communities in order to secure themselves a strong constituency. However, the involvement of local officials supported of discretionary powers has increased the population vulnerability vis-à-vis secure land tenure.</td>
<td></td>
</tr>
<tr>
<td>Médard, C. 2008b. Elected leaders, militias and prophets: Violence in Mount Elgon (2006-2008). In: Institut Francais de Recherche en Afrique (IFRA) (ed.) 2008. The General Elections in Kenya, 2007. Les Chaiers</td>
<td>Based on her sound research on Kenya, Médard attempts to explain the connection between SLDF militia in Mount Elgon and the political landscape of the 2007 elections, in which a member of the SLDF was nominated MP for the Orange Democratic Movement (ODM). She argues that the government mismanagement of land allocation in Chebyuk has</td>
<td></td>
</tr>
</tbody>
</table>

decreased state legitimacy on the Mt. Elgon, thus making local actors increasingly powerful. The new connection between SLD and the ODM would thus be the result of the State’s attempt to retain some legitimacy in the area.


The TJRC Report is probably the most meaningful work done on Kenya. Commissioned in 2008 following the outbreaks of PEV in 2007/2008, it investigates the “gross violation of human rights and [the] historical injustices” (p. vii) in Kenya from independence to 2008 as a pre-requisite for national reconciliation. Volumes IIb and IIc might be particular useful to RVI, the first covering the relationship between land and conflict, the second looking at vulnerable people, among which indigenous communities. Weaknesses of the source: political pressures suffered by the Commission.

### (Part 3) Kiambere Case Study

<table>
<thead>
<tr>
<th>In-text reference</th>
<th>Full reference</th>
<th>Description</th>
</tr>
</thead>
</table>
### World Bank, 1993


Contains candid quotes from Bank officials including head sociologist M. Cernea.

World Bank internal project completion report for the Kiambere Dam project, covering a range of issues including project implementation, sustainability, financial performance, borrower and bank performance and lessons learned. Notes resettlement and environmental issues not adequately dealt with, resettlement occurred without Bank knowledge and contrary to Bank policy.

### Mburugu, 1994


Paper by Kenyan sociologist who conducted the post-resettlement survey of the Kiambere dam project on behalf of the World Bank. Outlines the findings of that survey on the highly detrimental impacts of the project on PAP livelihoods. Main source for the Kiambere Dam case study.

### World Bank DFDR report, 1994


In-depth review of the Bank’s entire resettlement portfolio, encompassing all projects entailing resettlement active between 1986 and 1993 in all sectors, including Kiambere Dam Project.

---

### (Part 3) Kwale Case Study

<table>
<thead>
<tr>
<th>In-text reference</th>
<th>Full reference</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Source</td>
<td>Description</td>
<td></td>
</tr>
<tr>
<td>--------</td>
<td>-------------</td>
<td></td>
</tr>
<tr>
<td>Ltd, 2015a</td>
<td>Available at: <a href="http://basetitanium.com/kwale-project/project-economic-contribution">http://basetitanium.com/kwale-project/project-economic-contribution</a> Sands Project from the Base Titanium website.</td>
<td></td>
</tr>
<tr>
<td>MiningWatch Canada, 2007</td>
<td>MiningWatch Canada. 2007. “Kwale Dispatch: Investigating Tiomin Resources’ Criminal Activities in Kenya.” MiningWatch Canada. August 7. Accessed 16 April 2015. Available at: <a href="http://www.miningwatch.ca/kwale-dispatch-investigating-tiomin-resources-criminal-activities-kenya">http://www.miningwatch.ca/kwale-dispatch-investigating-tiomin-resources-criminal-activities-kenya</a> A field dispatch about Tiomin’s activities in Kenya detailing Tiomin’s acquisition of land in Kwale. MiningWatch Canada is a civil society organisation based in Canada where Tiomin is headquartered. According to their website, “MiningWatch Canada is a direct response to industry and government failures to protect the public and the environment from destructive mining practices and to deliver on their sustainability rhetoric. With technical and strategic expertise from across Canada, MiningWatch Canada carries out and/or supports the monitoring, analysis and advocacy necessary to affect the behaviour of industry and public decision-makers.”</td>
<td></td>
</tr>
<tr>
<td>Ng’weno, 1997</td>
<td>Ng’weno, B. 1997. “Inheriting Desputes: The Digo Negotiation of Meaning and Power through Land.” African Economic History, no. 25: 59–77. This article seeks to contextualise disputes over Digo property in Kwale District, noting that disputes tended to erupt over inheritance rather than boundaries and settlements. The author concludes that inheritance as a social practice was a result of Digo resistance to and ambivalence towards various forms of power; furthermore, inheritance disputes</td>
<td></td>
</tr>
</tbody>
</table>
questioned “what it meant to be Digo” (74) at a given point in time.

This is a paper presented at the Institute of Development Studies, University of Sussex. The author was active in the struggle against Tiomin in Kwale as an employee of ActionAid Kenya. He includes a background of the Kenyan economy, Tiomin, and how the campaign began. The report then examines in detail the various strategies used by the anti-Tiomin campaign and concludes with lessons learned. The paper predates many important outcomes of the deal, including the resettlement of farmers and the entrance of Base Titanium.

(Part 4) Constitutional section

<table>
<thead>
<tr>
<th>In-text reference</th>
<th>Full reference</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Boye &amp; Kaarhus, 2011</td>
<td>Boye, S. R. &amp; Kaarhus, R. 2011. Competing Claims and Contested Boundaries: Legitimising Land Rights in Isiolo District, Northern Kenya. Africa Spectrum, 46(2):99-124.</td>
<td>Article investigating competing claims over land rights in Isiolo District and explaining clashes occurred in the district in 2011. Through focus groups, the researchers find that the 5 main ethnic groups (Somali, Turkana, Borana, Sambaru and Meru) hold different claims on land (from ownership to its use). They argue that these claims, risen from the inability of the old constitution to appropriately regulate for the use of Trust Land, could potentially be addressed by the New constitution. In order to do so, local institutions must be strengthened as to provide a viable tool to address competing claims.</td>
</tr>
<tr>
<td>Stiftung, Kenya.</td>
<td>land, key issues necessary for a Community Land Bill to encompass, and a comparative analysis of community land governance in selected jurisdictions.</td>
<td></td>
</tr>
<tr>
<td><strong>Constitution</strong></td>
<td><strong>1963.</strong></td>
<td></td>
</tr>
<tr>
<td>------------------</td>
<td>-----------</td>
<td></td>
</tr>
<tr>
<td><strong>The Community</strong> <strong>Land Bill</strong></td>
<td>Not yet commenced.</td>
<td></td>
</tr>
<tr>
<td>The Community Land Bill (CLB). 2013.</td>
<td>Long title: An Act of Parliament to give effect to Article 63 (5) of the Constitution; to provide for the recognition, protection, management and administration of community land; to establish and define the powers of Community Land Boards and management committees, to provide for the powers of county governments in relation to unregistered community land and for connected matters.</td>
<td></td>
</tr>
<tr>
<td><strong>The Trust Land Act</strong></td>
<td>Commenced March 1939, now largely repealed and will be fully repealed by the Community Land Bill. Provides for the management (including expropriation) of ‘trust land’, now known as community land per the 2010 Constitution.</td>
<td></td>
</tr>
<tr>
<td>The Prevention, Protection and Assistance to Internally Displaced Persons and Affected Communities Act. 2012.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Article critiquing the post-2010 Constitution land reform process in Kenya resulting in the enactment of the Land Act, Land Registration Act and National Land Commission Act. Argues that the constitutional and political gravity of this legislation was undermined by undue rush, a lack of genuine legislator engagement and a severe deficiency in citizen</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Author</td>
<td>Title</td>
<td>Description</td>
</tr>
<tr>
<td>--------------</td>
<td>-----------------------------------------------------------------------</td>
<td>----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td><strong>Ayodo, 2014</strong></td>
<td>Ayodo, H. 2014. ‘Eviction agony as two key land Bills delayed.’ The Standard 10 April. Accessed 17 December 2014. Available at: <a href="http://www.standardmedia.co.ke/lifestyle/article/2000109033/eviction-agony-as-two-keys-land-bills-delayed">http://www.standardmedia.co.ke/lifestyle/article/2000109033/eviction-agony-as-two-keys-land-bills-delayed</a></td>
<td>Newspaper article describing the Community Land Bill and Evictions &amp; Resettlement Bill as ‘gathering dust on government shelves even as the people they were supposed to help live in fear of possible illegal evictions,’ speculating on possible reasons for the delays and noting the possible LAPSSET implications.</td>
</tr>
<tr>
<td>Year</td>
<td>Source</td>
<td>Description</td>
</tr>
<tr>
<td>------</td>
<td>--------</td>
<td>-------------</td>
</tr>
<tr>
<td>2013</td>
<td><em>Internal Displacement Monitoring Centre, 2014a</em></td>
<td>Study focusing on northern Kenyan pastoralists, arguing that their internal displacement is a reality that has to be understood within a broader discourse about mobility and its multi-causality. Discusses processes and options for improving protection and assistance for those affected. Pastoralists’ internal displacement is presented as a process of impoverishment and decreasing resilience, which leads to the disenfranchisement of rights, marginalisation and neglect. Argues it is as much a human rights as a humanitarian and development concern that requires a holistic approach.</td>
</tr>
<tr>
<td>2014a</td>
<td><em>Internal Displacement Monitoring Centre, 2014a</em></td>
<td>Short report on internal displacement in Kenya, covering various forms of displacement (e.g. caused by conflict, natural disaster, development projects), particular impacts on pastoralists, displacement patterns and figures in Kenya. Notes Kenya’s recent steps to put in place a legal framework to protect IDPs but more steps need to be taken to implement that framework.</td>
</tr>
<tr>
<td>2014</td>
<td><em>Kenyan Human Rights Commission, 2014</em></td>
<td>KHRC position paper on the impact of LAPSSET developments in Lamu on the Aweer and fisher-folk, following a series of fact-finding missions between March 2011 and April 2014. Raises concerns that the manner in which LAPSSET is being administered will relegate host communities further into poverty and invisibility, and offers recommendations on how to urgently mitigate against this outcome.</td>
</tr>
</tbody>
</table>
## (Part 5) LAPSSET Background and Lamu

<table>
<thead>
<tr>
<th>In-text reference</th>
<th>Full reference</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Japan Port Consultants, 2011</td>
<td>Japan Port Consultants. 2011. LAPSSET Corridor and New Lamu Port Feasibility Study and Master Plans Report.</td>
<td>This is the original feasibility study commissioned for the construction of Lamu Port. Referred to throughout discussion of the preparatory work for Lamu Port, it is indicative of the early-planning stages’ treatment of resettlement and compensation as secondary.</td>
</tr>
<tr>
<td>Kenya Human Rights Commission, 2014</td>
<td>Kenya Human Rights Commission. 2014. Forgotten in the Scramble for Lamu: A Position Paper On the LAPPSET Project in the Case of the Aweer and the Fisherfolk.</td>
<td>“This position paper therefore seeks to establish international legal and policy framework for best standards and practice in the implementation of the LAPSSET Project. It raises concerns on the Project being administered in a manner that will relegate host communities further into the periphery of poverty and invisibility and offers recommendations on how to urgently mitigate against this adverse yet imminent outcome. This publication offers recommendations on how the various stakeholders may engage towards achieving the state of respect for human rights and environmental justice in implementing colossal development projects.” Pp.1-2.</td>
</tr>
<tr>
<td>Laher, 2011a</td>
<td>Laher, R. 2011. “Lamu District at the Crossroads: A Narrative of Chronic Trauma and Community Resistance.” Africa Insight. 40 (4): 81–92.</td>
<td>This article analyses the development of Lamu Port in the context of the district’s experience of being the subject of state power in the language of trauma. “The chronic trauma is characterised by grounded feelings of displacement, dispossession, and alienation. These feelings are conjured</td>
</tr>
<tr>
<td>Source</td>
<td>Reference</td>
<td>Description</td>
</tr>
<tr>
<td>--------</td>
<td>-----------</td>
<td>-------------</td>
</tr>
<tr>
<td>LCDA, 2015</td>
<td>LCDA. 2015. “LAPSSET Corridor Development Authority (LCDA).” Accessed 25 March 2015. Available at: <a href="http://www.lapsset.go.ke">http://www.lapsset.go.ke</a></td>
<td>This is the official website of the LAPSSET Corridor Development Authority and contains official announcements and background information for the project.</td>
</tr>
<tr>
<td>Meagher, 2013</td>
<td>Meagher, K. 2013. “The Jobs Crisis behind Nigeria’s Unrest.” Current History 112 (754): 169-174.</td>
<td>This article explains the unrest in northern Nigeria, including the rise of Boko Haram, in the context of how the regional states were treated by the state both in terms of revenue allocation and the treatment of informal sector activities. The author then examines the dynamics of oil discovery, extraction and minimal benefit sharing contributed to the crises in the Niger Delta.</td>
</tr>
<tr>
<td>Source</td>
<td>Title</td>
<td>Details</td>
</tr>
<tr>
<td>--------</td>
<td>-------</td>
<td>---------</td>
</tr>
<tr>
<td>Save Lamu, 2013</td>
<td><em>Save Lamu. 2013. RE: Environmental Impact Assessment Study Report for Construction of the First Three Berths of the Proposed Lamu Port and Associated Infrastructure.</em></td>
<td>This document is a detailed response to the ESIA from the Ministry of Transport (above). Among the issues raised are: lack of genuine and balanced public consultation in the writing of the report, weak description of socioeconomic impacts and lack of meaningful mitigation measures. The document opens up a number of avenues that are overlooked by the ESIA. For instance, the report points out that the mitigation discussion lists possible (not concrete) measures and these are not included in the total cost of the project. This has implications for who is to bear the cost of these measures and their relative priority in the context of the project.</td>
</tr>
</tbody>
</table>
The document also points out that the ESIA does not detail a resettlement action plan for affected communities, the amount of compensation or the land to be allocated to them.


The paper identifies the following problems concerning LAPSSET in Lamu: lack of environmental impact assessment; lack of consultation and participation of the local community; lack of access to information; potential social impacts including threats to traditional livelihoods; threat to World Heritage site; lack of clear benefit-sharing mechanisms; and the interests of area political leaders. The paper also notes the following government responses to the problems: addressing land tenure as a priority; environmental impact assessment; benefit sharing and poverty reduction; constitutional rights awareness program; and establishment of various focus group committees. In conclusion, the paper makes eight recommendations specific to Lamu county that call for coordination, representation, civic education to protect the rights of Indigenous People along the LAPSSET corridor.


Article covering broad concerns around livelihoods, sustainability and land allocations in early stages of LAPSSET.

---

**In-text reference** | **Full reference** | **Description**
--- | --- | ---
*Mkutu Agade* | Mkutu Agade, K. 2014. ‘Ungoverned Space’ and the Oil | Article considering recent oil discoveries by Tullow Oil in Turkana and...
<table>
<thead>
<tr>
<th>Year</th>
<th>Source</th>
<th>Details</th>
</tr>
</thead>
<tbody>
<tr>
<td>2014</td>
<td>Find in Turkana, Kenya. <em>The Round Table: the Commonwealth Journal of International Affairs</em>, 103(5), 497-515.</td>
<td>Resultant conflicts over land rights, job opportunities and tenders, in the context of significant existing security challenges in the County. Argues that in this ‘ungoverned’ context there is high risk for protracted social conflict focused around oil, and for regional instability is high, such as has been seen elsewhere in the continent’s recent history.</td>
</tr>
<tr>
<td>Ng’asike, 2013</td>
<td>Ng’asike, L. 2013. ‘Turkana pastoralists oppose Tullow Oil proposal’. <em>The Standard</em>, 29 July. Accessed 1 February 2015. Available at: <a href="https://www.standardmedia.co.ke/business/article/2000089602/pastoralists-oppose-tullow-oil-proposal">https://www.standardmedia.co.ke/business/article/2000089602/pastoralists-oppose-tullow-oil-proposal</a></td>
<td>Newspaper article reporting Turkana pastoralists rejecting a proposal by Tullow Oil to move to a new exploration site in Lokichar basin in Turkana South; local elders citing that the ‘that the ongoing oil exploration in the region has interfered with pasture land and that pasture for their animals will be decimated.’</td>
</tr>
<tr>
<td>Source</td>
<td>Date</td>
<td>Summary</td>
</tr>
<tr>
<td>-------</td>
<td>------</td>
<td>---------</td>
</tr>
<tr>
<td>Akumu, W.</td>
<td>2013</td>
<td>Article reporting Tullow Oil’s suspension of operations in Turkana East and Turkana South sub-counties after hundreds of locals held protests demanding jobs. Reports industry analysts saying the incident exemplifies growing economic activism in East Africa, highlighting the need for clear rules of engagement between investors and hosts, the likely risk to existing investments, and the region’s reputation as a destination for extractives investment.</td>
</tr>
<tr>
<td>Kavanagh, M.</td>
<td>2014</td>
<td>Article explaining Tullow Oil’s challenges in engaging effectively with local residents in Turkana, particularly in relation to local unskilled job creation in a highly technical and mechanised industry.</td>
</tr>
<tr>
<td>Hatcher, J.</td>
<td>2014</td>
<td>In-depth feature article exploring the range of life-changing impacts for locals of Turkana County from the recent discovery of oil.</td>
</tr>
<tr>
<td>Reuters</td>
<td>2013</td>
<td>Article reporting accusations against federal Turkana MP James Lomenen of inciting his community to protest against Tullow Oil, leading to Tullow’s suspension of operations. Reports conflicting allegations of violence and property damage by protestors, and MP’s assertion that protests were peaceful.</td>
</tr>
<tr>
<td>Omondi, G.</td>
<td>2013</td>
<td>Article reporting a deal brokered by government officials with Tullow Oil to enable it resume its suspended operations in Turkana, in which Tullow Oil strikes deal to resume work in Turkana.</td>
</tr>
</tbody>
</table>

Similar job listings can be found on many other websites.
agreed to double its social investments to Sh340 million annually and offer training scholarships to enable locals take up high skilled jobs.

**Omondi, 2014**


Article reporting President Uhuru Kenyatta yesterday asking Turkana residents to consider converting their land into equity stakes in the LAPSSET pipeline.

**Turkana Times, 2014**


Article reporting President Uhuru Kenyatta yesterday asking Turkana residents to consider converting their land into equity stakes in the LAPSSET pipeline.

---

**Part 5** Isiolo

<table>
<thead>
<tr>
<th>In-text reference</th>
<th>Full reference</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Boye &amp; Kaarhus, 2011</td>
<td>Boye, S. R. &amp; Kaarhus, R. 2011. Competing Claims and</td>
<td>Article investigating competing claims over land rights in Isiolo District and</td>
</tr>
</tbody>
</table>
Khaaros, 2011 | Contested Boundaries: Legitimising Land Rights in Isiolo District, Northern Kenya. *Africa Spectrum*, 46(2):99-124. | explaining clashes occurred in the district in 2011. Through focus groups, the researchers find that the 5 main ethnic groups (Somali, Turkana, Borana, Sambaru and Meru) hold different claims on land (from ownership to its use). They argue that these claims, risen from the inability of the old constitution to appropriately regulate for the use of Trust Land, could potentially be addressed by the New constitution. In order to do so, local institutions must be strengthened as to provide a viable tool to address competing claims.

Community Land Bill, 2013 | The Community Land Bill (2013). | Not yet commenced. Long title: An Act of Parliament to give effect to Article 63 (5) of the Constitution; to provide for the recognition, protection, management and administration of community land; to establish and define the powers of Community Land Boards and management committees, to provide for the powers of county governments in relation to unregistered community land and for connected matters.

Hornsby, 2012 | *Kenya: A History Since Independence*. London: IB Tauris. | One of the most comprehensive analysis of the Kenyan history since independence, covering nearly 50 years (1963-2011) in 1000 pages. Offers a great insight on a series of crucial issues in Kenya such as politics (clientelism, corruption, transition to democracy), ethnicity, land, the debate between centralisation and decentralisation as well as the use of violence by the state recurring to a wide range of literature.

<table>
<thead>
<tr>
<th>Author(s)</th>
<th>Title</th>
<th>Source</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Salesa, H.</td>
<td>“Communities in Northern Kenya urged to take up opportunities that comes with LAPSSSET project – Isiolo Governor”. <em>Isiolo County Government</em>. Accessed 3 April 2015. Available at: <a href="http://www.isiolo.go.ke/?_p=news/isioo_lapset_project_more.php">http://www.isiolo.go.ke/?_p=news/isioo_lapset_project_more.php</a></td>
<td>Published on the Isiolo County website, the article provides with a good overview of local perceptions on the benefits related to the construction of LAPSSSET. It is remarkable that Isiolo Governor, Mr. Doyo, believes that the LAPSSSET will further marginalise local communities, especially pastoralist ones. Mr. Doyo calls for community collective action and support from NGOs. These are good signals of “resistance” in Isiolo. The RVI might wish to conduct more research on its potential.</td>
<td></td>
</tr>
<tr>
<td>TV Kiss</td>
<td><em>Isiolo Report on Violence</em>. Accessed 2 April 2015. Available at: <a href="https://www.youtube.com/watch?v=lucYCJ7CmSA&amp;feature=related">https://www.youtube.com/watch?v=lucYCJ7CmSA&amp;feature=related</a></td>
<td>TV news explaining the nature of the conflict in Isiolo in 2012. Conflict outbreaks seem linked to the creation of a resort city in Isiolo, where politicians and business are increasingly grabbing land, thus excluding local communities from grazing areas. The report specifies 5 hot spots: Wamba, Merti, Laisamis, Isiolo Garbatulla and Tigania East. The RVI might wish to further research on the nature of conflict in these areas.</td>
<td></td>
</tr>
<tr>
<td>Versi, A. &amp; Kubakuru, W.</td>
<td>“Isiolo shakes off dust and cobwebs”. <em>African Business</em>, October 2014. Accessed: 3 April 2015. Available at: <a href="http://search.proquest.com/docview/1619365295?account_number=79731028">http://search.proquest.com/docview/1619365295?account_number=79731028</a></td>
<td>Newspaper article focussing on the economic inputs LAPSSSET could bring to Isiolo. The main argument is that the inclusion of Isiolo has the potential to lift up the economic situation of the city. This is already emerging in increased business investments and inflation in land prices. Authors warn</td>
<td></td>
</tr>
</tbody>
</table>
on the foreign identity of investors and the rise of inequality.

Additional resources according to section

<table>
<thead>
<tr>
<th>Conceptualising Resettlement</th>
<th>Full Reference</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Cernea, 1996</strong></td>
<td>Cernea, M. 1996. Understanding &amp; Preventing Impoverishment from Displacement – Reflections on the State of Knowledge. In: McDowell, C. (Ed.). Understanding Impoverishment: The Consequences of Development-Induced Displacement. Oxford: Berghahn Books, pp.13-32</td>
<td>Article reviews Cernea’s Impoverishment Risks and Reconstruction model and situates inadequate financing as a fundamental cause of resettlement failure. Part of the problem for limited financing are vested interests that resist formation of better policy enactments and fair resettlement implementation. Another consequence of these interests is that valuation processes are often shrouded in secrecy. This has led to limited channels for grievance redress and regular local resistance.</td>
</tr>
<tr>
<td><strong>Downing, 2009</strong></td>
<td>Downing, T. &amp; Downing, C. 2009. Routine and Dissonant Cultures: A Theory about the Psycho-socio-cultural Disruptions of Involuntary Displacement and Ways to Mitigate Them without Inflicting Even More Damage. In: Oliver-Smith, A. (Ed.). Development &amp; Dispossession: The Crisis of Forced Displacement and Resettlement. New Mexico: School for Advanced Research Press, pp. 225-</td>
<td>Distinguishes between hard (national) and soft law (IFI safeguards). The latter is more comprehensive but is not enforceable, the former is potentially enforceable but less comprehensive. Looks at psycho-socio-cultural implications of this narrow conceptualization of DFDR impacts. DFDR narrow conceptualization is often caused by commonly believed fallacies (e.s.p. that compensation is enough and that DFDR is a single event). Looks at necessary IFI safeguards that</td>
</tr>
<tr>
<td>Source</td>
<td>Reference</td>
<td>Summary</td>
</tr>
<tr>
<td>--------</td>
<td>-----------</td>
<td>---------</td>
</tr>
<tr>
<td>Fisher, 2009</td>
<td>Fisher, W. 2009. Local Displacement, Global Activism: DFDR and Transnational Advocacy. In: Oliver-Smith, A. (Ed.). <em>Development &amp; Dispossession: The Crisis of Forced Displacement and Resettlement</em>. New Mexico: School for Advanced Research Press, pp. 163-180</td>
<td>Reflects on the increasing role of NGOs in helping to mitigate the worst impacts of DFDR. Points to their ability to increase PAP voice mechanisms and build organizational and awareness capacities so that effective resistance can be mounted. Thus a key challenge is building the capabilities of local NGOs and linking them to international groups so that Projects can be monitored and pressurized when they cause harm, introducing new accountability mechanisms. NGOs also help influence policies. Conceptualises projects as political instruments to project modernity, and so NGOs are crucial to help overcome power imbalances. Shows when NGOs have been effective in influencing DFDR, including the World Commission on Dams’ role in instigating new IFI safeguards.</td>
</tr>
</tbody>
</table>
### Induced Displacement. Oxford: Berghahn Books, pp. 77-98

Integrate local populations into wider society.

---

### Kenya Resettlement Overview

<table>
<thead>
<tr>
<th>Full Reference</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Nyangira, N. 1987. Ethnicity, class, and politics in Kenya. In: Schatzber, M.G. 1987. ed. The Political Economy of Kenya. London: Praeger, pp. 15-31.</td>
<td>The chapter provides a particular insight in the land issue in relation to politics and class formation in the ‘60s. Hence, Nyangira’s account settles well the rationale behind the White Highland Resettlement Scheme and the further resettlement policies occurring in the late ‘60s. The chapter highlights also how ethnicity and land access have been increasingly politicised since independence.</td>
</tr>
</tbody>
</table>

---

### Chebyuk Case Study

<table>
<thead>
<tr>
<th>Full Reference</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Soini, E. 2007. Land tenure and land management in the districts around Mount Elgon: An assessment presented to Mount Elgon Regional Ecosystem Conservation Programme (MERECP). ICRAF Working Paper no. 49. Nairobi, Kenya: World Agroforestry Centre.</td>
<td>This is a report consulting the World Agroforestry Centre on the type of land tenure and its exploitation on the Mt. Elgon. The final purpose of the review was the understanding of limitations in implementing forest resource management. The piece is very focussed on environmental aspects of land tenure. Yet, it highlights some of the problems which emerge in the report such as landlessness, and failure to convert customary land into freehold tenure.</td>
</tr>
<tr>
<td>Mushtaq, N. 2008. “POLITICS-KENYA: An Intractable Land Dispute Grinds On”. Inter Press Service, 19 March. Accessed 10 February 2015. Available at: <a href="http://www.ipsnews.net/2008/03/politics-kenya-an-">http://www.ipsnews.net/2008/03/politics-kenya-an-</a></td>
<td>The article deals with the 2008 counterinsurgency campaign led by the Kenyan government against the SLDF militias on the Mt. Elgon. After a chronicle of governmental operations, Mushtaq attempts to explain the roots of the conflict which he believes to be in the</td>
</tr>
</tbody>
</table>
**Kwale Case Study**

<table>
<thead>
<tr>
<th>Full Reference</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Kabiri, N. 2001. The Coast Mining Rights Forum: An Anti-Tiomin or Anti-Titanium Mining Coalition in Kenya? In: Southeastern Regional Seminar in Africana Studies (SERSAS), 31 October 2001, Greenville, North Carolina, USA.</td>
<td>An analysis of the dynamics and agenda of the coalition that formed in resistance to Tiomin’s mining activities in Kenya that asks whether the formation of resistance was partisan or united under a common goal. The author far-sightedly questions how the absence of Tiomin will affect the coalition’s ability to remain salient and united.</td>
</tr>
<tr>
<td>Mzuki, H, et al. 2013. “Resettling Displaced People in a Coastal Zone Mining Project: Evaluating the Agricultural Land Use Potential of the Proposed Resettlement Site - A Case of Titanium Mining in Kenya.” Journal of Environment and Earth Science 3 (4): 2013.</td>
<td>This paper is an evaluation of land use potential of the selected resettlement site for people displaced by the titanium mine in Kwale. It concludes that the soil in the resettlement site is low in nutrients and requires fertilization; the study also recommends that “social infrastructure” be availed to resettled and host communities. The study as financed by Tiomin and carried out by experts from the Department of Agricultural Sciences in Pwani University, the Department of Environmental and Health Sciences from the Technical University of Mombasa, as well as the Kenya Agricultural Research Institute. Although it takes some views expressed by PAPs into account, the study focus is on agriculture and land use from a mostly technical and scientific perspective rather than a social, political or economic perspective.</td>
</tr>
<tr>
<td>National Land Commission. 2014. Strategic Plan: 2013-2018. Strategic Plan.</td>
<td>This is the official Strategic Plan for the National Land Commission. According to the Plan, the NLC’s mandate is to “manage public land on behalf of national and county governments” (8). The Plan is intended to represent a road map for the NLC to achieve its medium-term goals by focusing on the following themes:</td>
</tr>
<tr>
<td>• Verifying and streamlining records; finalization on digitization of land records.</td>
<td></td>
</tr>
</tbody>
</table>
### LAPSSET and Lamu

<table>
<thead>
<tr>
<th>Full Reference</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Source</td>
<td>Title</td>
</tr>
<tr>
<td>--------</td>
<td>-------</td>
</tr>
<tr>
<td>Laher, R. 2011.</td>
<td>“Resisting Development in Kenya’s Lamu District: A Postcolonial Reading.” <em>Africa Institute of South Africa, Policy Brief, 48 (April).</em></td>
</tr>
<tr>
<td>Ministry of Transport. 2013.</td>
<td><em>Environmental and Social Impact Assessment Study Report for Construction of the First Three Berths of the Proposed Lamu Port and Associated Infrastructure.</em></td>
</tr>
</tbody>
</table>

**Isiolo**

<table>
<thead>
<tr>
<th>Full Reference</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Hogg, R. 1980.</td>
<td><em>Pastoralism and Impoverishment: the case of the Isiolo Boran of Northern Kenya. Disaster.</em> 4(3):299-310.</td>
</tr>
</tbody>
</table>
companies already controlling the execution of the standard gauge railway, the berth port in Lamu and the Kenyatta airport, Jiwaji warns for the negative impact of an “all China affair” on technological transfer, local employment and market competition.

<table>
<thead>
<tr>
<th>Reference</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Swift, J. 1991. Local Customary Institutions as the Basis for Natural Resource Management Among Boran Pastoralists in Northern Kenya. <em>IDS Bulletin</em>. 22(4):34-37.</td>
<td>In this article, the author analyses policy implication of top-down resources management mechanisms in the specific case of the Borana pastoralist community in Isiolo. He argues that where customary institutions exist to regulate the management of natural resources (water, grazing lands…), these are more effective than government-induced policies. This is the case among the Borana. Hence, Swift argues that policy-makers should attempt to conjugate both customary and statutory approaches to enhance the use and management of natural resources.</td>
</tr>
</tbody>
</table>
ANNEXURE 3 – ADDITIONAL CASE STUDY MATERIALS

LITERATURE LIMITATIONS

Chebyuk

The literature on Chebyuk presents some limitations on data and structure of the settlement. With regard to Phase III, the number of PAPs cannot be clearly quantified as many sources refer to PAPs in terms of households rather than presenting the exact number of people concerned. Further limitations concern the organisation of the settlement such as services provision, structure of the villages, a clear definition of the bodies in charge for resettlement.

Kiambere

Available literature relies heavily Mburugu’s World Bank-sponsored impact assessment. Despite attempts to contact Mburugu and the University of Nairobi, we have not been able to obtain a copy of the original impact assessment report.

Kwale

The literature on titanium mining in Kwale relies on indirect information regarding Tiomin and Base Titanium’s resettlement plans; we have not been able to obtain full-text copies of the RAPs and have relied on excerpts and secondary analyses. In addition, while the Kayumba document has been a useful source of information on the documents mentioned above, some caution should be exercised towards the author’s findings as the document is a dissertation and has not been peer-reviewed.
KWALE TITANIUM MINE: KEY ACTORS AND TIMELINE OF EVENTS:

Key Actors

The key actors in the Kwale Titanium Mine resettlement can be grouped into the following broad categories: the private sector, the Kenyan government; local farmers and villagers; and local and national civil society.

Private Sector

Tiomin Resources, Inc: International mining company, based in Canada; became Vaaldiam Mining, Inc in 2010

Tiomin Kenya, Ltd: Locally registered company, wholly owned by Tiomin Resources

Fairlane: Consultants hired by Tiomin to study and propose compensation

Coastal Environmental Services: South African firm commissioned by Tiomin to carry out original EIA study

Base Iron, Ltd: Purchased Tiomin’s mining rights and is currently carrying out mining in Kwale

Base Titanium, Ltd: Locally registered, wholly owned by Base Iron, Ltd

Kenyan Government

District Resettlement and Compensation Committee (DRCC): National committee formed by government to manage compensation process set prices for the various rates that would be acceptable to the farmers; chaired by Maffat Kangi, District Commissioner of Kwale District

National Environmental Management Authority (NEMA): Kenya government agency in charge of issuing licenses

Kenyan High Court: To handle grievances reaching litigation

Local farmers

Nguluku-Maumba Joint Farmers Executive Committee

Frank Mutua: Led group of 203 farmers, most of whom did not have title deeds, in taking Tiomin to court
Civil Society

Coastal Mining Forum: Coalition of organizations created with aim to oppose titanium mining in Kwale on environmental and human rights grounds, eventually becomes Coastal Rights Forum

CoastWatch: Nairobi-based NGO with links to coast; took Tiomin to court

ActionAid Kenya: Involved in commissioning parallel EIA, helped farmers in litigation with 50% of costs

Mining Watch Canada: Civil society organization in Canada where Tiomin is based

Timeline of events:

1996  Tiomin begins prospecting and discovers deposits of titanium in 1997

1998  Tiomin begins to negotiate land ownership with farmers

1999  Farmers unhappy with proposed compensation and talk to media, NGOs; Tiomin offers to increase initial offer

2000  NGO Coalition commissions Kenyatta University to carry out parallel EIA which exposes major gaps in the Tiomin EIA (such as undisclosed negative environmental impacts)

2000  CoastWatch court case

2000  Project put on hold by government

2001  Coastal Rights Forum takes legal action against Tiomin, asks High Court to restrain Tiomin licensing until compensation is sorted out; case is unsuccessful

2001  Farmers win permanent injunction in court action against Tiomin

2002  Farmers accept out of court settlement with Tiomin (response to division within farmers and delaying tactics by Tiomin), injunction lifted

2004  Farmers challenge proposed compensation in court (sued Ministry of Agriculture or Compensation and Resettlement Committee?)

2005  NEMA approves ESIA and grants TIOMIN EIA License

2007  Tiomin-Kenya begins operations and seizes land

2007  Bulldozers destroy houses and farmers are evicted off lands
2008  Farmers' last case, mining project suspended for long time

2010  Tiomin Kenya changes name to Vaaldiam Resources; mining rights briefly owned by Chinese mining company Jinchuan Group before being sold to Base Iron Ltd, which currently operates mine in Kwale

2011  Base Resources launches operations; carries out Post-Resettlement Monitoring and Audit Report
KEY LESSONS FROM CASE STUDIES

1. **Project funding**: DFDR outcomes were suboptimal irrespective of who funded the project; either the Government of Kenya acting by itself (Chebyuk) or working with the World Bank (Kiambere) or the government facilitating a private international company (Kwale).

2. **Participation**: All three case studies failed to include PAPs in planning or implementation of DFDR leading to suboptimal safeguards.

3. **Compensation**: In all case studies compensation initially proposed by agents, whether cash or in-kind, was inadequate to satisfy the needs of people that would be affected by the project and did not consider loss of natural resources. The variety of compensation demonstrates that compensation is often ad hoc and open to influence.

4. **PAP identification**: For all cases, the initial core problem was the failure to identify who would be impacted and how they would be impacted. Baseline studies and social impact assessments were not carried out or were inadequate. Independently monitoring would have been beneficial.

5. **Scoping**: In all case studies, scoping of resettlement sites did not occur, meaning existing host communities and the amount of land available was not considered. Loss of livelihoods (Kiambere) or conflict (Chebyuk) was the result.

6. **Grievance channels**: In all cases, official channels to raise grievances were absent or inadequate. Thus negative impacts of resettlement were permitted to take place and persist.

7. **PAP resistance**: In cases where authorities or administrators initiated measures to attempt to redress grievances, it was the result of pressure from collective action; petitions in Chebyuk and coalitions with NGOs in Kwale. It appears NGOs have an increasingly important role in helping safeguard PAPs during DFDR.

8. **Legislative vacuum**: Even when administrators responded to PAP pressures, redress actions failed to address many negative DFDR impacts given that legislation was inadequate in ensuring that all PAPs were recognised (Kwale) or that compensation would allow restoration of livelihoods and security of tenure (Chebyuk). Thus a rigorous legislative framework is important.

9. **The wider political context**: The wider political context can influence Government’s handling of DFDR. In Chebyuk post-independence and nationalist aspirations resulted in expanding eligibility for compensation. In Kiambere, the Structural Adjustment Programme (SAP) era that witnessed a reversal in
project lending by IFIs, may have led the Kenyan government to overlook DFDR impacts in their desire to attain funding. In Kwale, the post-SAP and increasingly globalized era saw the emergence of NGO activism and a complementary move towards following due process (appeals through the courts), at least on paper.

**OTHER PROMINENT ISSUES**

<table>
<thead>
<tr>
<th>Prominent causes of Poor DFDR outcomes in case studies</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Theme</strong></td>
</tr>
<tr>
<td>Haphazard or narrow eligibility criteria</td>
</tr>
<tr>
<td>Lack of long-term monitoring</td>
</tr>
<tr>
<td>Problems of influx of migrants</td>
</tr>
<tr>
<td>Loss of natural resources</td>
</tr>
<tr>
<td>Land tenure insecurity</td>
</tr>
<tr>
<td>National &amp; local corruption</td>
</tr>
</tbody>
</table>
ANNEXURE 4 – COMMUNITY LAND BILL LEGAL ANALYSIS

The Community Land Bill (the CLB) is intended to protect community land rights, and provide the legal framework for the use, registration, transfer and management of community land. Under the CLB, all community land in Kenya is ‘owned by the communities’, ‘community’ meaning a homogenous and consciously distinct group of users of community land who share ancestry, similar culture or unique mode of livelihood, ethnic language, socio-economic interest, geographical space or ecological space. ‘Community land’ is defined as

‘all land used as community settlement area, farming area, grazing area, rangelands, fish landing sites, common resource area including watering points, salt licks, wildlife habitats, wildlife corridors, livestock passage routes and cattle dips,’

as well as land traditionally or historically used for communal purposes, or land converted by law into community land. The CLB sets out the process for the demarcation and registration of parcels of community land, and the management of those parcels by Community Land Committees which are selected by the community and required to be representative of the diversity of that community. The CLB establishes Community Land Boards which are to oversee management of community land by the committees, in conjunction with county governments. Community land which is not registered is held by the county government in trust for the community until it is demarcated and registered.

ASPECTS OF THE CLB PARTICULARLY RELEVANT TO LAPSSET

The CLB touches on key issues that have arisen or are likely to arise in relation to LAPSSET, namely the compulsory acquisition of community land or rights in community land, the rights of pastoralist communities and of fisher folk. Generally, these issues do not appear to be addressed adequately so as to mitigate the harms caused by resettlement as identified in the case studies.

COMPULSORY ACQUISITION OF COMMUNITY LAND, OR RIGHTS ON CUSTOMARY LAND

There are two sections in the CLB which relate to the compulsory acquisition of community land or rights over community land. Rights over community land could include for examples customary rights of occupation of community land, or a right of way, granted to individuals.

Section 7(2) relates to the acquisition of particular rights over community land, and section 34(e) relates to acquisition of community land. These sections have concerning elements in common, as well as disparities which could be strategically exploited by governments wishing to acquire community land for projects such as LAPSSET.
A section to similar effect in the Trust Land Act 1970 (which will be repealed by the Community Law CLB) has been historically used by government as a tool for dispossession of communities inhabiting trust land (what were ‘native reserves’ pre-independence). Wide discretionary powers of acquisition were widely abused by government, resulting in communities being displaced from land ostensibly for public interest, but in fact for the benefit of elite interests (Musembi and Kameri-Mbote 2013).

As such these acquisition provisions in the CLB warrant close examination

Section 7(2) provides as follows:

No right on community land may be expropriated or confiscated save by law in the public interest and consideration of payment in full, of just compensation to the person or persons.

Section 34(e) of the CLB provides as follows:

(2) Where community land is compulsorily acquired, it shall only be in the interest of defence, public safety, public order, public morality, public health or land use planning and subject to prompt payment in full of just compensation to the community.

COMPENSATION REQUIREMENTS

The requirement that ‘consideration of payment in full, of just compensation to the person or persons’ or ‘prompt payment in full of just compensation to the community’ (emphasis added) be made raises significant concerns. The nature of ‘just compensation’ is not further specified, leaving it open to a prima facie interpretation that cash compensation would be sufficient under these provisions of the CLB. The use of the word ‘payment’ lends weight to the interpretation that financial compensation would satisfy this provision. As seen from the case studies, cash alone is a wholly inadequate compensation for displaced communities to re-establish their lives elsewhere. There is also no obligation imposed on the government to provide any relocation assistance, help in identifying replacement land or other services to communities whose land is compulsorily acquired.

Both provisions fail to stipulate who is obliged to provide this compensation. Given the multitude of levels of government and different government agencies involved in land management in Kenya, as well as the involvement of corporate entities and donors in development projects, this could result in confusion, buck-passing and delay in provision of compensation to affected communities.

GROUNDS FOR COMPULSORY ACQUISITION

A particular shortcoming of section 34(e) is that the ‘land use planning’ ground for acquisition (under which acquisition for a public transport and infrastructure project such as LAPSSET would be likely to fall) is unclear and does not include a public interest component. ‘Land use planning’ is not a defined term, it is vague and does not elaborate the types of land use for which community land can be acquired. More importantly, it does not requires that the ‘land use planning’ be in the public or national interest, as would typically be required to empower a government to acquire land to use for a public development project.
Although section 7(2) does include a public interest component for the acquisition of particular rights over community land, it would be open to the government to choose to acquire a parcel or parcels of community land instead under section 34(e) which does not require that the acquisition for land use planning be in the public interest. Further, the government may also opt to acquire land under section 34(e) because it would only need to compensate ‘the community’ as a whole, rather than dealing with individual right holders which would be more time-consuming and complex.

**INDIVIDUAL OR COMMUNITY COMPENSATION**

The language of this section 34(e) also requires that compensation be paid to ‘the community’, leaving it uncertain as to whether the compensation is due to individual community members, households, or the Community Land Committee (if there is one at the time of acquisition). If it is the latter, the lack of any further elaboration on how the Committee should distribute compensation within the community is concerning.

It is difficult to understand how individual compensation under section 7(2) would operate under the CLB. Section 43(1) stipulates that although a Community Land Committee may allocate part of the community land to a member or a group of members of the community for exclusive use and occupation, no separate title can be issued for such a parcel. The lack of individual title has been a significant problem in the past as identified in the case studies, and the indivisibility of community title in this way could cause issues where only part of a community land parcel is acquired. In the absence of individual titles it could be difficult to accurately identify and compensate the members of the community whose rights of exclusive use and/or occupation are being acquired.

In summary, these two short sections about compulsory acquisition of community land raise a number of concerns relating to the nature of compensation (cash alone?), who is required to pay the compensation, the permissible grounds for compulsory acquisition and who is entitled to receive compensation and how they might be identified. These shortcomings are troubling in the light of ongoing land acquisitions as a result of LAPSSET.

**RIGHTS OF PASTORALISTS**

Community land is defined as including grazing areas and livestock passage routes (amongst other things), and a pastoral community would appear fit within the definition of ‘community’ under the CLB. However the community land management framework, requiring demarcation and registration of specified parcels of land and the establishment of a Community Land Management committee comprised of members who ‘live in the land’ does not appear to be in harmony with the traditional nomadic lifestyle of many pastoralist communities. This form of ‘territorial fixity’ impedes mobility, a crucial aspect of sustainable livestock production in arid and semi-arid areas, as was observed in relation to group ranching schemes (Kituyi 1990; Rutten 1992; Galaty 1999 in Musembm and Kameri-Mbote 2013).
There are various provisions relating indirectly to pastoralists, including section 34 which provides that unless the contrary is expressed in the register, all registered community land shall be subject to rights of way and rights of water subsisting at the time of registration. Section 45(1) enables a Community Land Committee to designate a special purpose area, including for access and rights of way, on their community land. Both of these provisions allow for community land to be subject to the rights of way and access to water for pastoralists groups, however these rights are at the discretion of the community which does not provide any certainty for pastoralists.

Section 44 of the CLB specifically relates to the rights of pastoralists. Section 44(1) provides that:

Customs and practices related to land used by pastoral communities shall be taken into consideration as long as they comply with the provisions of this Act or other applicable law.

Given the customs of practices of pastoralists are subjugated to the provisions of the CLB or any other land law, this section offers a fairly empty form of protection.

**RIGHTS OF FISHER FOLK**

Community land in the CLB is defined as including ‘fish landing sites’, however it is apparent from the combination of provisions below that the CLB provides no protection in relation to fishing waters. The third schedule of the CLB purports to convert all public land in the Mombasa, Kwale, Kilifi, Tana River, Lamu and Taita Taveta counties into community land, except:

- j) public lands that fall within mangroves, and wetlands or fall within the buffer zones of such reserves or within environmentally sensitive areas;

- (k) public lands along watersheds, river and stream catchments, public water reservoirs, lakes, beaches except fish landing areas;

Further, ‘fisheries’ are defined as within ‘natural resources’ and are thereby excluded from the definition of community land. The result of this combination of provisions means that traditional fishing waters are not entitled to the same rights and protections as community land, cannot be managed by Community Land Committees, nor compensated if they are compulsorily acquired.
ANNEXURE 5 – RECOMMENDATIONS FOR FURTHER RESEARCH

This section lists evidence gaps for current and potential resettlement impacts of LAPSSET that could be targeted for future research by the RVI

RECOMMENDATION FOR RESEARCH IN SPECIFIC LOCATIONS:

• **Management plans:** RAPs compiled for Lamu and Isiolo LAPSSET related DFDR including the parties responsible for its implementation, the mechanism for community participation grievances redress are important gaps in the literature. (Lamu Port and Isiolo)

• **Tullow Oil DFDR:** On the ground research into the nature and extent of resettlement by or on behalf of Tullow would be valuable as it could foreshadow some of the likely LAPSSET DFDR issues in Turkana. (Turkana)

• **Equity share:** Investigate how the equity shares proposal will be designed and implemented. It could be an innovative proposal deserving serious thought, but could have negative consequences if it replaces immediate compensation to facilitate displacement. Comparative assessments of similar schemes in other countries (see Cernea, 2009), would also be warranted. (Turkana)

• **Unregistered community land management:** The RVI might wish to investigate the current process and measures being developed at county level for the management of unregistered community land, the capacity of county level governments, and the extent to which Article 63(2)(d)(iii) is actually being complied within Isiolo and elsewhere. (Isiolo)

• **Inter government conflict monitoring:** In the context of devolution, it would be useful to investigate how tensions between and within different levels of government over competition for economic benefits play out. For instance, tensions between counties have emerged over the economic benefits stemming from infrastructural development, intensified the new constitutional power of counties to raise territorial revenues. (Lamu Port, Isiolo)
RECOMMENDATIONS FOR THEMATIC RESEARCH

- **Legal implementation issues**: The RVI may wish to conduct further research into implementation issues connected with post 2012 land reform in Kenya, particularly the IDP Act, and identify the barriers to giving effect to what has the potential to be a very progressive and comprehensive land reform programme that could benefit LAPSSET-affected communities.

- **PAP participation and resistance**: Investigate how community and NGO capacity can be built to allow them to effectively participate in DFDR planning and implementation. This may include knowledge sharing on their rights, what to expect from the valuations process and how to engage with local officials and companies. It may also include investigating how they can build organisational capabilities to monitor DFDR, link with other organisations or media, and better attain access to and successfully use the justice system.

- **Compensation improvement**: Investigate under what circumstances in-kind compensation is considered, what are its parameters, and what can be done to attain more instances of appropriate in-kind compensation.

- **Trends in grievance response**: Identifying under what circumstances governments are more responsive to PAP grievances and when they are likely to address these issue. For example trends in types of protests, level of marginalization of PAPs, roles and organizational capabilities of NGOs, time in election cycle, ethnicity of PAPs vis a vis the ruling party could be looked at.

- **Corruption**: Identify the nature and sources of corrupt land sales that can fuel influx of migrants, increase community conflicts and reduce available land. This may include how erroneous land sales could be mitigated through independent or community monitoring, transparency of information, utilising the new corruption bureau set up under the Constitution (2010) or other measures.

- **Conflict**: Explore ways to identify potential conflict before it happens by mapping natural resource use (including land carrying capacity), local demography, and historical tensions.