State Party: Kenya

Date of Inscription: 2001 Criteria: (ii) (iv) (vi) Ref: C 1055

State of Conservation Report

For the UNESCO / World Heritage Committee on

Lamu Old Town
World Heritage Site

Lamu, January 2023
STATE OF CONSERVATION REPORT 2020 DECISION: 44 COM 7B.6

Executive Summary

The report of the Reactive Mission carried out in December 2019 and received by the State Party in 2020 has been shared with the Governor of the County Government of Lamu, who has pledged to put in place a number of measures to support the initiatives started by the National Museums of Kenya towards addressing the recommendations of the report. The State Party has also been undertaking a project that seeks to address a number of key recommendations of the report. The State Party remains grateful for the continued support it has received from the World Heritage Centre as it looks forward to completing the programme in collaboration with the newly constituted County Government of Lamu which has already expressed a positive attitude towards resolving these challenges. This has been demonstrated through their active participation in regular consultative meetings through the site management.

The State Party also wishes to state that a surveying and mapping program aimed at assessing the condition of buildings and streetscapes within the World Heritage Property has commenced and is at an advanced stage. Towards this cause, a mapping exercise for the traditional neighborhoods (mitaa) within which the historic buildings are located has been undertaken and the report and map are to be presented to the new chief officers and CECs for their input and adoption. The generated report of the mapping and condition survey exercise is expected to be escalated to the national level authorities to justify the need for special funds to meet the conservation needs of Lamu Old Town. One of the authorities that has been identified is the Kenya Urban Support Programme, under the State Department for Housing and Urban Development which is supported by the World Bank.

The mapping and condition survey will precede the completion of the Management Plan. In 2019, the National Commission for UNESCO supported a number of stakeholder consultative meetings whose recommendations enabled the review and improvement of the draft management plan. The data and analysis of the condition survey and generation of site maps will see the final completion of the document in close consultation with the relevant technical departments of the newly constituted County Government of Lamu as well as the Governor.
The series of high-level meetings that were being planned by the Site Manager and National Museums of Kenya were delayed due to the electioneering processes experienced in the country from June 2022, which interrupted many activities. Following the inauguration of both County and National Governments as well as the installation of key departmental heads paves way for the completion of these processes and meetings. In addition, the National Museums of Kenya is pursuing to resuscitate activities of the Lamu Heritage Committee with a view to operationalizing the committee’s action plan. In November 2022, the Board of National Museums of Kenya accompanied by the Director General, the Director of Antiquities, Sites and Monuments as well as the Keeper – Coastal Region made an official courtesy call to the new governor of Lamu County, HE Hon Issa Abdullah Timamy, where the governor was presented a brief on the recommendations of the 2019 Reactive Mission Report as well as the challenges facing the property. The governor expressed his commitment towards putting in place measures to mitigate the challenges as well as address the current problems facing the town. He cited the re-introduction of the Lamu Cultural Festival as one of the practical efforts revived by the office to preserve the culture of Lamu, as well as the rehabilitation of the Lamu waterfront and the removal of illegal hawkers and motor taxis from the area.
State of Conservation Report

Lamu Old Town (Kenya)(C1055)

Response from the State Party to the World Heritage Committee’s
Decision: 44 COM 7B.6, paragraph by paragraph

Year of inscription on the World Heritage List
2001
Criteria (ii) (iv) (vi)

The World Heritage Committee,

1. **Having examined** Document WHC/21/44.COM/7B.Add,
2. **Recalling** Decision 42 COM 7B.45, and 43 COM 7B.107, adopted at its 42nd (Manama, 2018), and 43rd (Baku, 2019) sessions respectively,
3. **Expresses its thanks** to the State Party for organizing a Reactive Monitoring mission to the property in November/December 2019, considering the security concerns and **requests** that the State Party implement the recommendations of the mission;

In November 2022, an official copy of the Reactive Mission Report, Ref. No. CLT/WHC/AFR/20/141 dated 17th September 2020 from the Director of the World Heritage Centre through the Office of the Permanent Delegate of the Republic of Kenya to UNESCO was officially presented to the newly elected Governor of Lamu, Hon Issa Timamy, and the recently appointed Lamu County Secretary, Amb Ali Abbas. The new administration committed to reviewing the document to see how best to actualise a number of key recommendations in collaboration with the National Government and the National Museums of Kenya.

4. **Underlines** the utmost urgency of clarifying the boundaries of the property and putting in place an enlarged buffer zone to include all of Lamu Island, parts of Manda Island, and relevant mangroves belts in the area, as requested numerous times in the past, and **also requests** that an updated clearly delineated map of the property and its enlarged buffer zone be submitted to the World Heritage Centre and the Advisory Bodies for comment
prior to formally submitting it to the World Heritage Committee as a minor boundary modification in line with Paragraph 164 of the Operational Guidelines;

The NMK, through the “strengthening governance and management structures" has been developing a number of maps through the Lamu Old Town, including a neighbourhood and boundaries map in collaboration with the technical departments within the County Government of Lamu. These maps and reports are to be presented to the recently appointed Chief Officers responsible for Culture and Urban Development for their official review and input for adoption under the County Executive Committee for them to become official County Government documents. The chief officers and departmental directors will be completing the induction workshop on the 10th of February 2022, after which their first course of action will be review of the Lamu Urban Structure plan, status condition of the Lamu Old Town, proposed boundaries as presented to the governor in November 2022 and review of the Gazette Notice for the Lamu water catchment area as advised by the Water Resource Authority in November 2023.

Schedule for these activities has already been agreed upon, and NMK and the County Government are working towards actualisation of the activities and objectives.

5. **Expresses its concern about the overall state of conservation of buildings within the property, and further requests the State Party to complete the survey of the building stock and strengthen enforcement of building controls to halt the deterioration and use of inappropriate materials;**

The mapping and condition survey component of the “strengthening governance and management structures at the Lamu Old Town WHS” project is at an advanced stage, and the collected data, through mobile application tools (Kobo Collect) has been analysed and discussed with the relevant technical departments of the county government of lamu. The analysis was supported by aerial photography using drone technology. This report is subject to input to the relevant departmental directors as well as chief officers and county executive committee members for discussion and adoption for official county working documents, and it is upon which conservation needs and intervention measures will be based on. In November 2022, highlights of the report were presented to the county governor when he formally met members of the National Museums of Kenya Board.
accompanied by the Director General and the Director Antiquities, Sites and Monuments. The Governor revealed that he has already instructed the newly appointed Chief Officer responsible for the Lamu municipality to re-establish the Lamu Old Town County Commission by proposing suitable names of members and also to operationalise the committee.

6. **Regrets that a revised Management Plan which takes into account the Lamu Port Southern Sudan-Ethiopia Transport (LAPSSET) project has not yet been completed and urges the State Party to complete it as soon as possible and submit it to the World Heritage Centre for review by the Advisory Bodies;**

The State Party affirms her concurrence with the sentiments expressed by the advisory bodies (ICCROM) on the importance of inclusion into the draft management plan, the existing site boundaries, proposed expanded areas clearly demarcating the core area boundaries, inner and outer protection areas, Manda - Kitau sky line and the Lamu Sand dunes.

The State Party suggested in her application to WHC for the IAR that the submission of the reviewed Draft Heritage Management Plan for Lamu be extended until the end of the project\(^1\) in order to allow enough time for the results and the analysis of the condition survey to be articulated and incorporated into the draft management plan.

It is also to be noted that the National Commission for UNESCO supported a number of consultation meetings between the 18\(^{th}\) to the 21\(^{st}\) of December 2019 that was aimed at reaching consensus with the stakeholders on the critical issues that needed to be addressed in the management plan and also to identify the relevant actors. The proceedings of the stakeholder meetings have been utilized to review the draft form. The draft form will be completed once the condition survey has been analyzed and a report prepared. The revised document is expected to be presented to the newly appointed county administration for their recruitment and concurrence on a number of action plans and also to facilitate their incorporation into the current county economic development plan for budgetary allocation purposes. The Curator – Lamu Museum has already had 2 meetings with the newly appointed county executive member, Aisha Miraj.

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\(^1\) "strengthening governance and management structures at the Lamu Old Town WHS"
7. **Recognizes** that the National Museums of Kenya (NMK) has been included in the technical committee for the LAPSSET Master Plan, but also urges the State Party to ensure that a Memorandum of Understanding (MoU) between the NMK and the LAPSSET Corridor Development Authority is completed to ensure that the NMK has a role in decisions, that may affect heritage along the corridor, and in particular the Outstanding Universal Value (OUV) of relevant World Heritage properties, including Lamu Old Town;

The NMK is pursuing the signing of the MoU with the newly appointed substantive Director General of the LAPSSET Corridor Development Authority, Mr Stephen Ikua. The matter could not have been concluded in the 1 year transition period in which an acting Director was in charge following the retirement of the former Director, Mr Silvester Kasuku. The Director of Antiquities Sites and Monuments, Dr Fredrick Manthi has already been in touch with the chief of the LAPSSET project Development Authority Mr Stephen Ikua and scheduled a meeting within the month of February 2023 to discuss and agree on, among others, signing of the pending MoU as well as joint approach on the preservation of cultural heritage along the LAPSSET corridor.

8. **Takes note** of the need for greater awareness of the potential threats of the LAPSSET project on the OUV of the property at both the political and civil society levels, and requests furthermore the State Party to:

   (1) Send a High-Level governmental delegation, including representatives of the Ministry of Sport, Culture and Heritage and the National Museums of Kenya, to the property to assess the range of challenges and the urgency of finding solutions to ensure the safeguarding of the OUV of the property,

The former Cabinet Secretary for Sports, Culture and Heritage Hon. Amb. Amina Mohammed visited the Lamu Old Town in 2021 to familiarize herself with the challenges facing the World Heritage Site. The minister was accompanied by the then Director General of the National Museums of Kenya Dr. Kibunjia Mzalendo and met the site management, local community representatives and businessmen and discussed with them among other issues the emergence of motorbike taxis locally known as *bodaboda*. The Minister pledged support from the local government and highlighted the government’s commitment towards preservation of the Site.
Facts collected from her familiarization trip would be presented to the Cabinet to seek redress for the cross-cutting issues.

A key component of the Strengthening Governance and Management of Conservation at the Lamu World Heritage Site (SGMC-LWHS) is undertaking a high-level meeting, bringing together a number of Cabinet and Principle Secretaries from a number of relevant ministries as well as Directors of parastatals active within the Lamu Old Town and its environs. It is envisaged that the high-level discussions led by Lamu Municipality will initiate negotiations with national authorities on possible special funding for the world heritage property.

In 2022, Kenya was conducting her National Elections, and the electioneering processes interrupted significantly quite a number of activities that required a high level of political goodwill at both national and county government levels. This saw the frequent rescheduling of the proposed high-level meetings because many of the officials could not be found at the same time. The process of appointment of the new officials following the successful conclusion of the elections also delayed significantly the scheduling of new dates for the proposed meetings. It is hoped that many of these meetings can be conducted between the months of February and March 2023 and that significant agreements can be reached in time. In addition, the new formation of the Kenya government has anchored the State Department on Culture and Heritage in the Ministry of Tourism, Wildlife and Heritage. This new formation is expected to advance the needs and development of heritage through the existing Tourism Fund (TF) and the Kenya Tourism Development Corporation.

The new Lamu County Governor has also demonstrated a lot of enthusiasm towards improving the condition of the Lamu Old Town, following his swearing-in. One of the major activities that he has undertaken was to resuscitate the Lamu Festival which had been suspended since 2019. The Governor, in addition, has undertaken the removal of hawkers and fish mongers from the Lamu waterfront which has really improved the presentation of the town, and he has also enforced restrictions on the movement of motorcycles within the precincts of the Old Town. Currently, he is overseeing the improvements of the paved areas on the waterfront and major repairs on the sea-wall, all of which are aimed at improving the quality of the public open spaces.
In February 2023, the new Cabinet Secretary for Tourism, Wildlife and Culture, Hon Penina Malonza, accompanied by the Permanent Secretary for the State Department of Culture and Heritage Hon Ummi Bashir made their maiden visit to the Lamu Old Town World heritage site during the official inauguration of the Lamu Museum. Even though it was a brief visit, the challenges facing the property were briefly presented to the two dignitaries, opening up opportunities for more detailed deliberations on the same.

(2) Establish a Heritage Task Team made of relevant government agencies at the national and local levels with the support and involvement of civil society in order to develop appropriate responses to the many development issues that may affect the OUV of the property,

Grounds for the establishment of an effective Heritage Task Team have already been laid through the formation of the Lamu Heritage Committee The Committee came into fruition following strong recommendations by key cultural heritage stakeholders in Lamu Old Town and also guidance from the High Court Orders (petition No 22 of 2012) pertaining to the right to culture for the Lamu community, where it was agreed upon that a well-coordinated framework should be in place, bringing together key institutions involved and forming a “Preservation of Lamu Cultural Heritage Committee”, to look into all the challenges and develop an implementation plan of preserving Lamu WHS. The Committee had developed an action plan with a number of recommended interventions which had been presented to Lamu and the County Government for funding. However, activities of the Committee were disrupted by the outbreak of COVID-19 in 2020 and also the sudden departure of LAPSSET CEO. The activities of the committee are expected to be revived, following the appointment of a substantive Director General of the LAPSSET Authority.

However, a number of members of the Lamu Heritage Committee have been conducting own initiatives, including research. One of these initiatives is a research project funded by Western Indian Ocean Marine Science Association (WIOMSA) for research on impacts of large-scale infrastructure developments on coastal biodiversity. The research project is focusing on the LAPSSET infrastructure project in Lamu. The research project is implemented by WWF Kenya in collaboration with LCDA and the National Environment Management Authority (NEMA).
One of the themes being investigated through this consultancy is the status of compliance with environmental and social safeguards for sampled projects under LAPSSSET programme.

The scheduled meeting between the Director Antiquities Sites and Monuments – National Museums of Kenya and the new Director General of the LAPSSSET Authority will seek to advance the activities of the Lamu Heritage Committee, and possibly escalate it as part of the MoU. In addition, the National Museums of Kenya participated in the Sustainable Tourism at World Heritage Sites that was supported by the UNESCO Regional Office for Eastern Africa with funding from the German International Development Agency (GIZ). Two Kenyan Sites – Fort Jesus and Lamu Old Town – were involved in the project. The execution of the project within Lamu town provided new avenues and impetus in the cordial working relationships between the NMK and the County Government of Lamu. The two main stakeholders have now started to put up programmes in place for ensuring the enforcement of development control as well as the improvement of public open spaces.

(3) **Create a stakeholder and community forum for Lamu Island, which can also work closely with the LAPSSSET project,**

In January 2022 the Kenya National Commission for UNESCO, through a grant from UNESCO Participation Programme, organized a workshop to capacity build women and youth organizations to effectively contribute to the governance and management of cultural and natural heritage in Lamu County, specifically Lamu Old Town World Heritage Sites. One of the key outcomes of the program was the formation of the Lamu Heritage Group, whose agenda is to help mitigate and develop achievable strategies geared towards improving the management and conservation of Lamu’s WHS and be a driver for the sensitization and awareness in the community. The interim officials have already been identified, and they are working through the Curator’s office to have the group officially registered by the Department of Social Sciences. The Lamu Heritage Group’s main focus is to link up with proponents of the mega developments within the precinct of the property with a potential of negative impacts such as the LAPSSSET so as to advance implementation of mitigation measures.
The Lamu Heritage Group was one of the key partners in the Sustainable Tourism at World Heritage Sites project, where they were engaged in undertaking repairs on the town gate, as well as sitting stone benches in public open spaces. A member of the Lamu Heritage Group was also nominated by the NMK to participate in the World Heritage Futures Lab for Southern and Eastern Africa supported by UNESCO, Africa World Heritage Fund and Electric South. In the programme, the youth are expected to develop a virtual tour of the Old Town of Lamu, utilizing the latest AI technologies. This is expected will advance the visitor experience at the World Heritage Site.

(4) Set up a core corporate social responsibility programme in collaboration with the LAPSSET Corridor Development Authority and the County Government to ensure that sufficient funds are available for conservation at the property and heritage related projects;

Attracting increased funding from state and non-state actors is a key objective of the SGMC-LWHS project. It is envisioned that through the high-level meetings to be organized, one of the core subjects will be a proposal for corporate social responsibility of the major actors in the implementation of the mega projects to support the advancement of heritage conservation and management initiatives. Discussions on how to frame the proposal are ongoing between the Chief Officer at Lamu Municipality and the Municipal Manager. These discussions have also been brought to the attention of the new County Executive Committee members for Trade, Tourism and Culture and Lands, Physical Planning and Urban Development. Plans are also underway to develop a concept note to be presented to the Kenya Urban Support Programme under the State Department for Housing and Urban Development for special consideration of the Old Town of Lamu.

9. **Requests moreover the State Party to:**

(1) Complete, as soon as possible, the work on the revision of the Strategic Environmental Assessment (SEA) for the LAPSSET project, taking into account both individual and cumulative impacts that the project and all of its sub-projects may have on the OUV of the property, as well as on Lake Turkana World Heritage property, and that no further
components of LAPSSET be implemented before the SEA is completed and submitted to 
the World Heritage Centre for review by the Advisory Bodies;

Revision of the SEA has not been completed, having been affected by COVID-19 Outbreak. The 
document will be submitted immediately the process is complete. The NMK is currently 
following up with the relevant State Departments to see if the process has been restarted.

(2) Provide to the World Heritage Centre, for each sub-project of LAPSSET (resort city, 
international airport, etc.), full information about the projects and their plans along with 
the necessary Environmental and Heritage Impact Assessments (EIAs/HIAs), for review by 
the Advisory Bodies before any irreversible decisions are taken about their 
implementation;

Work on the detailed plans for the Resort City and International Airport have not yet 
commenced. However, the National Museums of Kenya has participated in a series of EIA 
stakeholder consultation meetings for the Lamu Lokichar oil and gas pipeline project.

10. Notes that the work on the Lamu Coal Plant is on hold, and requests as well that 
alternative solutions be proposed to meet the electricity needs of the region, and that any 
developments in this regard undergo thorough independent EIAs/HIAs to ensure that there 
are no negative impacts on the OUV of the property;

Relevant State Party agencies will be informed of these concerns

11. Requests in addition the State Party to invite a joint World Heritage 
Centre/ICOMOS/ICCROM Reactive Monitoring mission to the property in the first half of 
2023 to review the progress made on the recommendations of the 2019 mission and the 
Decisions of the World Heritage Committee, for examination by the World Heritage 
Committee at its 46th session;

The State Party will be initializing processes for the official invitation.

12. Finally requests the State Party to submit to the World Heritage Centre, by 
1 February 2022, a progress report, and by 1 December 2022, an updated report on the
state of conservation of the property and the implementation of the above, for examination by the World Heritage Committee at its 46th session

https://www.wiomsa.org/cities-coasts-ongain/a-case-oflapset-infrastructure-project-in-lamu/?fbclid=IwAR0FngRXnzFmADYRnxvC-Vhlq1NFhzPg5fVWWtuLE9HaKdMK-bapTCEmkVQ
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https://www.wwfkenya.org/coastal_kenya_programme/
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REQUEST FOR PROPOSAL

FOR

ASSESSING THE STATUS OF COMPLIANCE WITH ENVIRONMENTAL AND SOCIAL SAFEGUARDS BY LAPSSET PROGRAMME

RFP NO. WWF K/NRB/023

To be received on or before 5.00 P.M.

On Friday 26th February 2021,

E mail tenders@wwfkenya.org
Letter of invitation

WWF Kenya is in the process of sourcing for proposals for a consultancy services for assessing the status of compliance with environmental and social safeguards by LAPSSET programme.

Prices quoted should be net inclusive of all costs and taxes, must be expressed in Kenya shillings and shall remain valid for a period of 120 days from the closing date of the tender.

Interested eligible candidates should submit completed Proposal Documents marked with the Tender Name and Number addressed to the procurement officer and sent by e mail to tenders@wwfkenya.org to be received on or before 5 pm on 26th February 2021

For any clarifications, please send your queries to kenya.procurement@wwfkenya.org no later than 2 days before the closing date.
1.0. Project background

WWF Kenya in collaboration with the National Environment Management Authority (NEMA) and LAPSSET Corridor Development Authority (LCDA) have received financial support from the Western Indian Ocean Marine Science Association (WIOMSA) towards implementation of a joint research project aimed at assessing the impact of large scale infrastructure developments on coastal biodiversity with specific focus on the LAPSSET Infrastructure Project in Lamu. The project, which covers a period of 3 years, is in its first year of implementation. The goal of the project is to provide data and information that will contribute in safeguarding and maintaining the integrity of critical coastal ecosystems (marine and terrestrial) within the LAPSSET Program area for people, economy and nature.

The research project will be confined within the LAPSSET project core area in Hindi and Basuba Wards of Lamu County. The project is focused on assessing the impacts of the LAPSSET Program in the following key areas:

i) **Biodiversity:** The project seeks to establish the trend and extent of loss of the natural capital (mangroves, coral reefs, sea grass beds, terrestrial forests, grasslands, wetlands etc.) in the study area

ii) **Community livelihoods:** A socio economic assessment by the project is important to establish the status of Project Affected Persons (PAPs) especially on their livelihoods

iii) **Physical and Land Use Planning:** The project will assess the land use and land tenure trends since the launch (2012) of the LAPSSET project High cost of LAPSSET

iv) **Environmental Management:** The project seeks to assess the status of compliance with Environmental and Social safeguards

v) **Climate mainstreaming:** The project aims to establish the climate variability/risk and adaptation considerations necessary in the design and implementation of LAPSSET programme

vi) **Institutional frameworks:** The project aims to document the capacity needs for environmental governance institutions in the LAPSSET area

2.0 Rationale for the consultancy

The LAPSSET Programme is desirous to ensure all programme related environmental and social impacts are adequately identified and managed in all its components. It is for this reason that an Environmental and Social Impact Assessment (ESIA) was done in 2011 prior to the start of implementation of the programme. As part of the ESIA, an Environmental Management Plan (EMP) was put in place to guide environmental and social safeguard activities for the programme. The EMP has been the road map guiding the project to ensure compliance with appropriate safeguard measures to minimize negative impacts on the environment. The main objective of the consultancy is to review and assess the implementation and adherence by the programme activities to the safeguard measures described in the EMP as well as compliance with the EMCA CAP 387. It will also recommend areas for improvement to enhance compliance.
3.0 Consultancy objectives

i. Review environmental and social management performance of LAPSSET Programme activities;
ii. Assess the progress in implementation of Environmental Management Plan (i.e. are the recommended mitigation and management measures followed?)
iii. Assess the overall effectiveness of the EMP in ensuring environmental and social safeguards by the LAPSSET Programme
iv. Document lessons learnt and recommend best practices that the activities should embrace to improve compliance with safeguard measures

4.0 Scope of the consultancy

The audit’s scope will cover LAPSSET Programme activities such as construction of the port; roads; jetties; offices; roads; and oil pipeline among others within the study site. The number of activities to be audited under each area will be agreed upon during negotiations with the client. The consultant will undertake the following activities in delivering the environmental and social review report:

i. Review the EIA and EMP documents for the LAPSSET Programme;
ii. Discuss the list of activities to be reviewed with NEMA;
iii. Review each activity approval process and assess whether it has been done in accordance with the procedures prescribed in EMP and Environmental (Impact Assessment and Audit) Regulations 2003;
iv. Review the EMPs for selected programme activities under implementation;
v. Assess compliance levels by the activities and the adequacy of the EMPs;
vi. Give recommendations for improvements where necessary on the EMPs for on-going programme activities;
vii. Assess the overall effectiveness of LAPSSET Programme EMP and safeguards practices

5.0 Methodology

The methodology for undertaking the work will include:
(i) Review of relevant LAPSSET programme documents including the EIA; EMP and other relevant projects reports
(ii) Undertake consultations with stakeholders involved in implementation of various LAPSSET Programme activities to gather information on the sampled activities; approval process; their location and performance on safeguards
(iii) Undertake field visits specifically to the identified activity sites to assess implementation of the activity Environmental Management Plans
(iv) Undertake interviews with the project affected persons to assess social impact of the activities

Throughout the work the consultant will regularly communicate and work closely with WWF Kenya and NEMA to seek clarifications or further guidance as and when required during the course of the consultancy.

6.0 Consultancy deliverables

The main deliverables include:
i) Inception report – describing the methodology and timelines for undertaking the review
ii) Draft Environmental and Social Review Report;
iii) Presentation of draft review report to stakeholders for review and input;
iv) Submit Final Environmental and Social Review Report. The consultant will submit five hard copies and a soft copy to NEMA for review and approval
v) Dissemination of findings of final review report to stakeholders in a workshop to be organised by the client

### 7.0 Consultant qualifications

A consultant with relevant experience in environmental assessment and management is being sought. The consultant should have the following qualifications:

1. A Master’s Degree in any of the following fields: Environmental Sciences; Natural Resource Management; Community development, or any other relevant qualification from a recognized institution;
2. At least ten (10) years of experience in environmental assessment and management, preferably in the coastal zone;
3. Knowledge on relevant environmental legislation and project planning cycle;
4. Evidence of strong analytical and communication skills;
5. Strong understanding of the natural resources and social economic issues in the coast region;

### 8.0 Consultant supervision

The consultant shall report to WWF Kenya for all administrative matters while NEMA will provide overall technical supervision of the consultancy.

### 9.0 Consultancy duration

**The consultancy is for 30 days, within a 2 months’ period.** Prior to signing of the contract the consultant will present to WWF a work plan with clear timelines for delivery of the assignment for approval as well as a budget for delivering the works (as a daily professional fee since WWF Kenya shall provide logistical facilitation for undertaking the assignment).

**Instructions for Submission of proposals**

Interested parties are invited to submit a technical proposal outlining

(i) their understanding of these terms of references;
(ii) a proposed methodology/approach and completion period;
(iii) a capacity statement with short CVs of individuals to be involved in this assignment;
(iv) Proof of prior experience in undertaking similar consultancies - 3 letters of recommendation;
(v) a high-level workplan;
(vi) a separate financial proposal with a complete cost breakdown
LAMU PORT PROJECT

Human Rights Implications from the Perspective of Marine Cultural Heritage:
Framework and Guidelines for Training and Free, Prior and Informed Consent

D. Davitti, J. Omolo, L. Thuo and L. Wills

1. Background on LAPSSET

The Lamu Port, South Sudan, Ethiopia Transport Corridor (LAPSSET) is one of the largest infrastructure projects in Kenya. It is being carried out as one of the flagship projects under Kenya’s Vision 2030.¹ The project spans three countries: Kenya, South Sudan and Ethiopia, but the benefits anticipated from the project are expected to span the entire Eastern African region. It is a major infrastructure development project that involves developing a transport corridor from a new Port in Lamu through the towns of Garissa, Isiolo, Maralal, Lodwar and Lokichoggio to branch at Isiolo to Ethiopia and South Sudan.² The corridor is made up of a new road network, railway line, oil refinery at Lamu, oil pipeline, Lamu Airport and free port at Lamu (Manda Bay) in addition to resort cities at the coast and in Isiolo.³ The project is expected to spur economic growth in Kenya and open up regions which were hitherto underdeveloped. In March, 2013, the LAPSSET Corridor Development Authority was created to plan, coordinate and manage implementation of all LAPSSET projects.⁴

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⁴ Legal Notice No. 58 of 22nd March, 2013.
Figure 1: Map of LAPSSET Corridor, from Enns and Bersaglio 2019
2. LAPSSET Project Components

There are several components to the LAPSSET project.

a. **Lamu Sea Port** - the Lamu Port Master Plan consists of 32 berths all located along a 6 km strip of the Indian Ocean coastline. The berths were to be constructed in phases, with the first three due for completion in 2016, 20 by 2030 and the rest after 2030. Manda Bay was chosen for the port because it has deep waters and is therefore able to berth deeper vessels.

b. **Standard Gauge Railway** - the Standard Gauge Railway, (popularly referred to as the SGR), is a railway line from Lamu through Isiolo to South Sudan and Ethiopia. This component allows for faster passenger and cargo trains (going at speeds of 160 km/h for passenger train and 120 km/h for cargo train respectively). The SGR was expected to reduce the pressure on the roads for long-haul cargo between Lamu and South Sudan and Ethiopia, handling 3 and 4.7 million tonnes of import and export cargo respectively by 2020 and 5.1 and 9.3 million tonnes respectively by 2030.

c. **Oil pipeline from Lamu through Isiolo to South Sudan and Ethiopia** - this project involves the construction of a 1,260 km crude oil pipeline from Juba in South Sudan to Lamu and a 980 km product Sine from Lamu to Ethiopia. Initial projections were for the pipeline and Sine to be completed by 2016.

d. **Highway from Lamu, through Isiolo to South Sudan and Ethiopia** - this 880-kilometre-long road is projected to run from Lamu to Isiolo (530 km) and from Isiolo to Lokichogio (350 km).

e. **International airports** - in addition to the existing Manda Airport, Isiolo, Lake Turkana and Lokichoggio are expected to be serviced by international airports, all of which were scheduled for completion by 2020.

f. **Resort cities** - Lamu, Isiolo and Turkana are expected to develop into resort cities with Kipsing Hill in Isiolo and Eliye Springs in Turkana being earmarked in this regard.

g. **Oil refinery at Lamu** - this refinery is expected to serve Kenya and Ethiopia with its capacity of 120,000 barrels per day.

h. **Associated infrastructure for electricity supply, water supply, highway, railway oil pipeline and other utilities such as optic cable, power lines and sewage** - it is estimated
that the project will require 1,100 MW of electricity and a 185 km long water supply chain that is required to be in place by 2020. A corridor is also expected to be constructed to provide for other utilities such as optic cable, power lines and sewage.

3. Objectives of the Lamu Port Project

The decision to embark on the project was influenced by the fact that Mombasa port was the only gateway to international waters, serving both Kenya and its neighbours. The number of imports coming through the port, coupled with the limited land available at the port of Mombasa, restricted movement of ships into the port and any inefficiencies or delays at the port affected the economies of the whole region. It is hoped that when the port is fully operational, it will ease congestion at the Mombasa port, which has increased cost of shipping of goods and trade in the region, by providing an alternative shipping port and thus create a competitive environment for commerce and trade flexibility.

The construction of a second port is also considered to be strategically sound for security reasons. In addition to creating a safer transport route for crude oil from South Sudan, the regions covered by the project are areas which have been prone to conflict and banditry, all of which have undermined security in the area. With the coming of the LAPSSET project, there has been an increase of security apparatus in the area in Lamu and the construction of police stations in Mandera. This has made it possible for security agencies to promptly respond to security threats and community conflicts, thereby heightening security in the region. The improved access to job opportunities created by the LAPSSET project have also had the collateral benefit of expanding means of livelihood beyond livestock keeping, thereby diffusing conflicts caused by reliance on one means of livelihood, especially livestock keeping.

Further, Kenya’s railway system was also unable to cope with current and future demands since it was a metre gauge line and therefore outdated. One of the components of the Lamu Port Project was therefore the Standard Gauge Railway.

Moreover, the project also seeks to increase economic growth through creating interconnectivity between African countries and through socio-economic development along the corridor by creating job opportunities both from the port and corridor development and from other fields including agriculture, manufacturing, logistics, transport and trade.
In addition, the project is also expected to open up the sea for access to the North and Eastern parts of Kenya as well as to South Sudan and Ethiopia. It is anticipated that the LAPSSET corridor will incentivise investment in underdeveloped and sparsely populated regions of the country.

4. Implementation of the Project

The port project has been implemented in two phases. Phase one is made up of 3 berths. Phase 1 is at 70% completion and has been fully funded by the government of Kenya for a sum of USD 480 million.\(^5\) Phase 2 which is made up of 29 berths is to be financed by private sector investors. Phase 2 has not started.

5. Financing of the Project

At the onset, it was anticipated that Kenya would raise funding for the project from private investors from Brazil, China, the EU, India, Japan, Qatar and South Korea. However, when these fell through on their commitments, it was agreed that Ethiopia, South Sudan and Kenya would leverage domestic resources for their respective parts of the project. Kenya could only afford to pay in phases to allow for the construction of 32 berths at the Lamu Port. The Cabinet approved the funding of the project through public private partnerships in 2014.\(^6\) The contract for the construction of the first three berths was awarded to the China Communications Construction Company in 2013.

In 2015, the LAPSSET project was included in the African Union PIDA Project (Program for Infrastructure Development in Africa). This allowed for its inclusion for support through the African Union Commission/New Partnership for Africa’s Development for funding and implementation financing. It would also allow the project to attract foreign direct investment.\(^7\) Indeed, subsequently, the African Development Bank made a grant of KES 195 million to the government of Kenya for the Lamu Port project.\(^8\)

In 2020, the three countries signed a Memorandum of Understanding to use crowdfunding to raise the money needed to build the infrastructure and to make provision for joint budgetary allocation.


PPPs in Kenya are regulated by the Public-Private Partnerships Act. The Act was enacted for the purposes of facilitating participation of private actors in government development projects through ‘financing, construction, development, operation or maintenance of infrastructure’. The participation could be by way of concessions or contractual agreements.

The Act defines public-private partnerships as arrangements between a contracting authority and a private actor to perform a public function on its behalf, to receive benefit from that function whether by way of compensation from a public fund, charges collected from users or consumers of a service provided to them or a combination of both and where the private actor incurs liability arising from performance of the actions which are set out in the project agreement.

Institutions under the Act

a. The Public Private Partnership Committee

The Committee is made up of principal secretaries from various ministries and persons appointed by the cabinet secretary. Its functions are to:

- ensure that each project agreement is consistent with the provisions of the Act and national priorities
- formulate policy guidelines on public private partnerships
- approve project proposals submitted to it by a contracting authority
- approve project lists
- authorise allocations from the Public Private Partnership Project Facilitation Fund
- formulate or approve standards, guidelines and procedures for awarding contracts and standardized bid documents

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10 Act No 15 of 2013.
11 Section 2 of the PPP Act.
12 Section 4 of the PPP Act.
13 Section 7 of the PPP Act.
• examine and approve the feasibility study conducted by a contracting authority

• review the legal, institutional and regulatory framework of public private partnerships

• oversee the monitoring and evaluation by contracting authorities, of a public private partnership from the commencement to the post completion stage

• ensure approval of, and fiscal accountability in the management of, financial and any other form of support granted by the Government

• ensure the efficient implementation of any project agreement entered into by contracting authorities

b. Public Private Partnerships Unit

This is established within the state department responsible for finance.\textsuperscript{14} Under the Act, the unit has two functions: to serve as the secretariat and technical arm of the Committee; and to provide technical, financial and legal expertise to the Committee and any node established under the Act.\textsuperscript{15}

c. Public Private Partnership Nodes

Whenever a contracting authority\textsuperscript{16} intends to enter into a public private partnership arrangement with a private party, it must establish a public private partnership node.\textsuperscript{17} Each node is headed by the accounting officer of the contracting authority and shall consist of such financial, technical, procurement and legal personnel as that authority shall, in consultation with the unit, consider necessary for the performance of its functions in relation to a project.\textsuperscript{18} The functions of the node are:

• identify, screen and prioritize projects based on guidelines issued by the Committee

• prepare and appraise each project agreement to ensure its legal, regulatory, social, economic and commercial viability

• ensure that the parties to a project agreement comply with the provisions of the PPP Act

\textsuperscript{14} Section 11 of the PPP Act.
\textsuperscript{15} Section 14(1) of the PP Act.
\textsuperscript{16} The PPP Act in its section 2 defines a “contracting authority” as ‘…a State department, agency, state corporation or county government which intends to have a function undertaken by it performed by a private party…’
\textsuperscript{17} Section 16(1) of the PPP Act.
\textsuperscript{18} Section 16(2) of the PPP Act.
• undertake the tendering process
• monitor the implementation of a project agreement
• liaise with all key stakeholders during the project cycle
• oversee the management of a project in accordance with the project agreement
• submit to the unit, annual or such other period reports on project agreements
• maintain a record of all documentation and agreements relating to each project
• prepare projects in accordance with guidelines and standard documents issued by the Committee
• facilitate the transfer of assets at the expiry or termination of a project agreement

How PPPs work under the Act

A contracting authority intending to enter into a public private partnership can conceptualise or identify potential projects and then undertake the preparatory and tendering processes of the project. While doing this, the contracting authority must consider the strategic and operational benefits of entering into a public private partnership arrangement compared to the development of the facility or provision of the service by itself. Further, such a project must have been approved as part of the national priority list by the Committee and published as such by the Unit. Once a project is approved, the contracting authority must carry out a feasibility study to determine viability. The feasibility study must consider the following:

• the technical requirements of the project
• the legal requirements to be met by the parties to the project
• the social, economic and environmental impact of the project
• the affordability, value for money and public sector comparator for the project.

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19 Section 31(1) of the PPP Act.
20 Section 31(2) of the PPP Act.
21 Section 33 of the PPP Act.
Once a feasibility study has been concluded, its report is submitted to the Committee for approval. In considering whether to approve the project or not the Committee must consider the recommendations of the Unit and the Debt Management Office which must give its approval. Once all approvals have been secured by the contracting authority, the contracting authority shall proceed to invite requests for qualification by notice in at least two newspapers of national circulation and in the electronic media. The bidding process must be undertaken competitively.

7. Applicable International Legal Framework and the Role of Marine Cultural Heritage

In 2001 Lamu Old Town, the oldest and best-preserved Swahili settlement in East Africa, was inscribed as a UNESCO World Heritage site. In describing the cultural and historical significance of Lamu Old Town, UNESCO cites the well-preserved buildings that represent a long history of the development of Swahili building methods that is reliant on locally sourced coral, lime and mangrove poles. UNESCO further cites the outstanding universal value of the tangible and intangible attributes of the Old Town and emphasises the need to maintain its relationship with the surrounding landscape.

Thus, large infrastructure development projects such as the development of Lamu Port represent a real threat to the cultural heritage of the inhabitants of the Old Town and the surrounding areas, both in respect of its integrity as an island town with close connections to the sea and dunes and to its ultimate survival in terms of the fresh water that the dunes supply. UNESCO goes on to emphasise the need to protect the Old Town and the surrounding islands and mangroves.

Of particular concern to local campaigning groups, as further discussed in this document, is the sustainability of the Lamu Port project and its effect on traditional fishing and construction methods, as well as basket weaving practices which are all entirely reliant on the shallow waters surrounding Lamu Island and the survival of the mangroves. Of key importance to the longer term

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22 Section 35 of the PPP Act.
23 Section 37(1) of the PPP Act.
24 Section 29(1) of the PPP Act.
26 Ibid.
27 Ibid.
sustainability and survival of Lamu Old Town and its MCH is also the fact that mangroves have a key role in ensuring local resilience and adaptation against adverse climate change impacts.

The 1972 UNESCO Convention Concerning the Protection of the World Cultural and Natural Heritage (1972 World Heritage Convention) addresses nature conservation and the preservation of cultural properties and recognises the need to preserve human interaction with nature.

Article 1 defines cultural heritage primarily from the perspective of tangible cultural heritage, that is to say, it protects artistic artefacts, monuments and similarly man-made manifestations of cultural heritage. As such, it foregrounds cultural heritage as follows:

**Monuments:** architectural works, works of monumental sculpture and painting, elements or structures of an archaeological nature, inscriptions, cave dwellings and combinations of features, which are of outstanding universal value from the point of view of history, art or science;

**Groups of buildings:** groups of separate or connected buildings which, because of their architecture, their homogeneity or their place in the landscape, are of outstanding universal value from the point of view of history, art or science;

**Sites:** works of man or the combined works of nature and man, and areas including archaeological sites which are of outstanding universal value from the historical, aesthetic, ethnological or anthropological point of view.

A similar approach is also identifiable in the 2001 UNESCO Convention on the Protection of Underwater Cultural Heritage (2001 Underwater Cultural Heritage Convention, of which Kenya is not a state party). Article 1 of the 2001 Convention defines underwater cultural heritage as ‘all traces of human existence having a cultural, historical or archaeological character which have been partially or totally underwater, periodically or continuously, for at least 100 years’. Such ‘traces of human existence’ include building, artefacts, human remains, vehicles or parts thereof and other objects of prehistoric character.

The above definitions, however, have been found to be inherently problematic as they suggest a separation between land and sea when considering the importance of cultural heritage. As such, the UNESCO definitions should be seen as a (non-exhaustive) starting point to the conceptualization of
a more comprehensive definition of marine cultural heritage (MCH) which refers more broadly to entire heritage landscapes that mirror the symbiotic relationship between human beings and the sea. Christer Westerdahl first introduced the concept of maritime cultural landscape in 1992, within the context of maritime archaeology, as a bridge between coastal buildings and traditions and underwater sites, whilst also including the concept of maritime culture to encompass the various ways in which human beings utilized the maritime space. Contemporary scholars, therefore, within and beyond archaeology, have embraced the concept of **MCH, understood as ‘all past human action on the coasts as well as directly on the sea’ and encompassing**

tangible remains such as shipwrecks, submerged settlements, ports and harbours, maritime ecologies, and geology as well as equally vital intangible components such as cultural practices, artistic and linguistic expressions, local skills, traditional and historical knowledge. The reach of MCH is then similarly broad and includes its relationship to economic development, environmental management, social justice, education and identity.

It is to this conceptualization of the **symbiotic relationship** between human beings and the sea that, as demonstrated in this document, the **right to culture** and **indigenous people’s specific right to free, prior and informed consent**, as enshrined in international human rights law, can contribute to add a richer understanding of cultural heritage as also encompassing much-needed dimensions of indigenous rights, intergenerational rights, futurity and sustainability.

In the specific context of Lamu Old Town, in fact, it is possible to identify expressions of the relationship between human beings and the sea which transcend mere economic and transactional boundaries, to encapsulate local as well as indigenous traditions tightly connected to the coastal

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30 See definitions in J Henderson, ‘Oceans without History? Marine Cultural Heritage and the Sustainable Development Agenda’ (2019) 11 *Sustainability* 5080. According to Henderson, the adjective ‘marine’ is to be preferred to ‘maritime’ as it relates to all things pertaining to the sea and as such encompasses all activity associated with the oceans while ‘maritime’ is usually used in a more restricted sense to refer to sea travel, shipping and exploration. ‘Marine’ also fits in with the terminology used in the Ocean Sciences and by marine stakeholders in spatial planning, conservation, tourism, ecological services, engineering and development more generally. ‘Marine’ is not used to negate or replace the term ‘maritime’ as it is used in archaeological contexts but rather to flag the relevance and utility of heritage as a usable knowledge base to current marine stakeholders who might not otherwise think it is relevant to their activities”.

31 These dimensions are at the core of our project ‘Protecting the past, preserving the future’, which understands the protection of Marine Cultural Heritage (in its tangible and intangible manifestations) as crucial to the preservation of planetary boundaries, ensuring intergenerational equity and a sustainable future for generations to come. See also R.M. Hutchings, *Maritime Heritage in Crisis: Indigenous Landscapes and Global Ecological Breakdown* (Routledge, 2017).
mangroves. Aspects of MCH in Lamu Old Town are primarily, but not only, of an intangible nature, in that they pertain to perceptions, practices, traditions, representations, customs and broader cultural landscapes, related for instance to fishing and traditional construction methods.

As a State Party to the 1972 World Heritage Convention and to the 2003 Convention for the Safeguarding of the Intangible Cultural Heritage, Kenya has an obligation to preserve World Heritage Sites, such as Lamu Old Town. This includes, by virtue of Article 5(1) of the 1972 World Heritage Convention, adopting policies to integrate cultural and natural heritage into comprehensive planning programmes. Accordingly, consideration of the adverse impacts that the realization of Lamu Port and the broader LAPSSET corridor will have on the cultural heritage of the community in Lamu should have formed part of the planning of the new port’s development. Article 6(1) of the 1972 World Heritage Convention goes on to explain that such heritage constitutes world heritage and extends the duty to co-operate in the protection of heritage sites to the international community as a whole, albeit whilst respecting the sovereignty of the State in which the heritage site exists. The extension of this duty therefore would encompass any donor states investing in the port project as part of the PPP structure described in this document. Furthermore, Article 6(3) places a duty on all States Parties not to take any deliberate measures which might damage directly or indirectly the cultural and natural heritage on the territory of other States Parties to the World Heritage Convention which again brings into question the actions of any donor states and international financial institution involved.

The Right to Culture

The right to culture is protected by Article 27 of the Universal Declaration of Human Rights (UDHR) which states:

*Everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits.*

Article 27 of the UDHR is replicated and reinforced by Article 15 of the International Covenant on Economic, Social and Cultural Rights (ICESCR), which goes on to provide that:

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The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for the conservation, the development and the diffusion of science and culture. ³³

171 countries, including Kenya, have ratified ICESCR and are therefore bound by its provisions.³⁴

In order to comply with Article 15 of the ICESCR, States parties have both positive and negative obligations:

- **Positive Obligations:**
  - Put in place conditions for and facilitate **participation** in cultural life.
  - Promote access to cultural life.
  - Preserve cultural goods.

- **Negative Obligations:**
  - Refrain from **interference** with the exercise of cultural practices.
  - Refrain from **interference** with access to cultural goods and services.³⁵

Whilst the full realisation of Article 15 of the ICESCR can be achieved progressively, retrogressive measures that impact a community’s ability to take part in cultural life are prohibited unless it can be shown that a careful consideration of alternatives was undertaken which included consideration of all of the rights contained in ICESCR.³⁶

Cultural goods, as pertaining the right to culture, have been interpreted to include:


³⁴ As of 10 June, the following four countries were ICESCRE signatories: Comoros, Cuba, Palau and the United States of America. The following 22 countries/states had taken no action in relation to the treaty: Andorra, Bhutan, Botswana, Brunei, the Cook Islands, Holy See, Kiribati, Malaysia, the Federal States of Micronesia, Mozambique, Nauru, Niue, Saint Kitts and Nevis, Saint Lucia, Samoa, Saudi Arabia, Singapore, South Sudan, Tonga, Tuvalu, the United Arab Emirates and Vanuatu.


- **Nature’s gifts**, such as seas, lakes, rivers, mountains, forests and nature reserves, **including the flora and fauna found there**, which **give nations their character** and **biodiversity**.\(^{37}\)

- **Intangible cultural goods**, such as languages, **customs, traditions**, beliefs, **knowledge** and history.

As outlined later in this document, in relation to stakeholder interviews, the local fishermen of Lamu expressed concern over the dredging of the Lamu channel in order to accommodate the larger vessels that will be using the new port. The communities’ traditional fishing practices, which are carried out from traditional hand-crafted dhows, are not suited to the deep waters that would replace their current shallow fishing territories.

Furthermore, the building of the new port will impact on the fertile mangroves which the local community use for traditional basket weaving and construction practices which are vital aspects to the community’s cultural heritage and to their longer-term survival and climate change mitigation.

These concerns are crucial, when it comes to the protection of the right to culture in respect of both the positive obligation to preserve cultural goods – namely the coastal seas; flora and fauna; and biodiversity of the area, as well as intangible goods – and the negative obligation to refrain from interfering with the exercise of and access to such cultural goods.

Thought must therefore be given to whether careful consideration, that took account of all the rights contained in ICESCR, was taken prior to the decision to develop Lamu Port. When interpreting Article 15, the Committee for Economic, Social and Cultural Rights (CESCR) stressed the importance of giving **special protection** to a number of specific communities including **indigenous peoples** and **persons living in poverty**.\(^{38}\) Local fishermen of Lamu Old Town, as evidenced later in this document, explained that the impact of building the port and dredging the channel is to render them without work. Article 6 of the ICESCR recognises the right to work,

\(^{37}\) In their work, both Luisa Maffi and Alexandria Poole, just to mention two of the most prominent scholars, advocates for the recognition and affirmation of ‘biocultural heritage’, representing ‘not only the biogenetic diversity of landscapes, but also the interrelation this diversity shares with the language, heritage, cultural memory, ecological knowledge and values of local and indigenous communities’. Furthermore, this concept fully captures ‘the diverse ways of being between human communities and their local environments’ referred to in this document. See A.K. Poole, ‘Where is Goal 18? The Need for Biocultural Heritage in the Sustainable Development Goals’ (2018) 27 *Environmental Values* 55-80, 57. See also L. Maffi, ‘Cultures are not museums’ (2012) The European, at https://www.theeuropean.de/en/luisa-maffi-2/6068-biocultural-diversity.

including the right to gain living by work which is freely chosen and obliges states to take appropriate steps to safeguard this right. Read in conjunction with Article 11 of the ICESCR which confers a right to an adequate standard of living, including food and housing, it is hard to see how action that adversely impacts the livelihood of the local and indigenous communities could have been carefully considered, particularly in light of the lack of consultation with the effected community (see interviews below). Other relevant protected rights most likely impacted by the construction of Lamu Port (beyond the right to culture and indigenous peoples’ rights, especially to Free, Prior and Informed Consent) are the right to life, the right to health, the right to self-determination, the right to an adequate standard of living, the right to a livelihood, the right to be free from discrimination, and the right to an effective remedy.

The Constitution of Kenya views culture as ‘the foundation of the nation and as the cumulative civilization of the Kenyan people and nation’. In its article 44, the Constitution grants every person the right to enjoy his/ her culture. Indigenous Peoples and their Free, Prior and Informed Consent

Lamu is home to four different indigenous communities: the Bajuni, the Sanye, the Boni and the Orma. The Bajuni peoples are the largest indigenous population in the area and they mostly rely on farming, fishing and mangroves harvesting. Therefore, this appears to be the community which will be most affected by Lamu Port, since the Sanye and Boni rely mainly on forest resources as hunters and gatherers and the Orma are pastoralists. The impact of the broader LAPSSET project on these and other indigenous peoples remain to be seen, although this is beyond the immediate scope of this document.

For the purposes of these guidelines, it is important to note that indigenous peoples are recognized, in international law, as entitled to ‘the effective protection of their traditional lands, territories and resources as well as their distinctive cultures, practices and traditions’, not least because their homes hold about 80 per cent of planetary biodiversity. The two main international legal instruments giving effect to such effective protection are the 2007 United Nation Declaration on the Rights of Indigenous Peoples (UNDRIP) and the International Labour Organization Convention

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39 Article 10.
41 Ibid.
42 UN Doc A/RES/61/295 (2 October 2007).
No. 169 Concerning Indigenous and Tribal Peoples in Independent Countries (ILO Convention No. 169). Other relevant instruments are the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the Convention on the Elimination of All Forms of Racial Discrimination (CERD).

These documents enshrine (albeit to different degrees) the state's duty to obtain Free Prior and Informed Consent (FPIC) from indigenous peoples in relation to development projects which may impact their land, communities and (of essential importance for our purposes) their culture. Whilst various UNDRIP’s provisions (such as articles 10, 11, 19, 28 and 29) refer to the need to obtain FPIC before a project is approved and commences, article 32(2) is of central importance to the normative content of FPIC in international law, since it establishes that:

 states shall consult and cooperate in good faith with the Indigenous peoples concerned through their own representative institutions in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources.43

‘Territories and other resources’, within the context of UNDRIP implementation, have been interpreted broadly as going beyond the land immediately inhabited by indigenous peoples, and including areas that they use for traditional practices, in line with their ancestral relationship with the land. With direct pertinence to MCH, article 25 of the UNDRIP pertains to both land, waters and coastal seas, in order to ensure that indigenous peoples can “maintain and strengthen their distinctive spiritual relationship…and to uphold their responsibilities to future generations in this regard”.44

The former and current Special Rapporteur in the field of cultural rights often also reiterated the importance of FPIC, and confirmed its crucial role for the self-determination of indigenous peoples,45 and for their survival as distinct peoples,46 especially when development activities have ‘a direct bearing on areas of cultural significance, in particular sacred places, or

43 Ibid.
44 Aguon and Hunter, 33.
45 Report of the Special Rapporteur on the field of cultural rights to the UN General Assembly, ‘Universality, cultural diversity and cultural rights’ (25 July 2018) UN Doc A/73/227, para 62: ‘[f]or indigenous peoples, the right to self-determination and most of other human rights cannot be fully realized without respect for their world views and cultural resources, and therefore implies their right not to be forced into assimilation. An integrated approach, bringing together universality and cultural diversity is essential, as is free, prior and informed consent’. See also para 77(d).
on natural resources that are traditionally used by indigenous peoples in ways that are important to their survival.\textsuperscript{47} UN Special Procedures have also expressed concern about the tendency to conflate indigenous peoples with local groups, causing confusion as to ‘the importance of recognizing the particular international legal status of indigenous people, due to the application of the right to self-determination, and the specific legal framework which applies to them under the UNDRIP and other relevant standards’.\textsuperscript{48}

The work of the UN Treaty Bodies, mandated to interpret the normative content and monitor the implementation of relevant international instruments, has also been decisive in clarifying the normative content of FPIC as requiring an obligation to obtain the consent of indigenous people (rather than to merely consult with them) prior to approving or commencing a development project which would impact on their land, communities and culture,\textsuperscript{49} and the corresponding indigenous peoples’ right to self-determination, which entails the right to freely pursue their economic, social and cultural development.\textsuperscript{50}

Explicit reference to FPIC, however, is unfortunately absent from the decision by the High Court of Nairobi in \textit{Mohamed Ali Baadi and Others v Attorney General},\textsuperscript{51} which considered more generally the rights to public participation and access to information of local communities, as enshrined in Kenyan domestic law. Such rights, the Court found, were not respected in relation to the project because although there was evidence of meetings regarding the projects, there was no evidence of dialogue at these meetings, nor was information concerning environmental impact assessments made available before commencement of the projects. It is important to note that there is no specific domestic legislation that expressly protects the rights of indigenous peoples, neither has Kenya adopted the UNDRIP or ILO Convention 169 on indigenous and tribal people. Thus, while there is acknowledgement of the protection

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\textsuperscript{47}Ibid.
\textsuperscript{48}Report of the Special Rapporteur in the field of cultural rights, Karima Bennoune, to the UN General Assembly on climate change, culture and cultural rights (10 August 2020) UN Doc A/75/298, paras 55-56. See also Report of the Special Rapporteur on the rights of indigenous peoples to the UN Human Rights Council (1 November 2017) UN Doc A/HRC/36/46, paras 44-50.
\textsuperscript{49}See e.g. CERD Committee, General Recommendation No. 23 on the Rights of Indigenous Peoples (1997) contained in UN Doc A/52/18, annex V, paras 4 and 5; CESCR, General Comment No. 21, paras. 3, 36, 37, 50, 55(e). According to article 55(e), state parties ‘should obtain [indigenous peoples’] free and informed consent when the preservation of their cultural resources, especially those associated with their way of life and cultural expression, are at risk’.
\textsuperscript{50}Also affirmed in the UN Declaration on the Right to Development (4 December 1986) UN Doc A/RES/41/128, available at: \url{www.ohchr.org/en/professionalinterest/pages/righttodevelopment.aspx}. According to article 32(1) of the Declaration, ‘indigenous peoples have the right to determine and develop priorities and strategies for the development or use of their lands or territories and other resources’.
\textsuperscript{51}Mohamed Ali Baadi and Others v. Attorney General, High Court of Kenya at Nairobi (No. 22 of 2012) [2018]eKLR.
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of community land in the Constitution (see above), FPIC is not respected when dealing with land belonging to indigenous peoples.

**Right to Development**

In the context of the vast port project in Lamu, it is of course also vital to consider the local residents right to development. At the international level these are primarily contained in the UN Declaration on the Right to Development. The right to development, as conferred by Article 1 of the Declaration, is an inalienable right which ensures all individuals have the right to participate in, contribute to, and enjoy economic, social, cultural and political development and implies the full realisation of the right to self-determination. Article 2 provides that individuals are the central subject of development and should therefore be an active participant and beneficiary.

By virtue of Article 3, the primary responsibility for creating the conditions for the right to development lies with the State. This role, as per Article 8, includes taking all necessary measures at the national level to create equitable access to basic resources, food and housing.

The right to development, as contained in the Declaration, is underpinned by active participation which was discussed earlier in these guidelines and was clearly absent from the planning stages for the new port.

**Sustainable Development**

What is clear from the legal framework set out thus far, is that States have obligations under international law to promote, protect and fulfil the rights of indigenous and local communities when embarking on development projects in the area. Many of the rights-based issues that are discussed in these guidelines are directly linked to matters of sustainable development. In particular, Goal 14 of the UN Sustainable Development Goals which aims to conserve and sustainably use the oceans, seas and marine resources. The negative impact on small-scale fisheries as a result of the continuous deterioration of coastal waters is highlighted and the three billion people dependent of marine and coastal biodiversity for their livelihoods is noted. Target 14.B specifically covers provision for access to marine resources for small-scale artisanal fishers such as the indigenous and local fishing

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52 Ibid.
communities in Lamu. The issues relating to the achievement of Goal 14 are well understood by the Kenyan authorities as they gear up to co-host, alongside Portugal, the 2020 UN Ocean Conference which aims at addressing the challenges posed towards achieving sustainably managed oceans.\textsuperscript{54}

The previous 2017 Ocean Conference brought about General Assembly Resolution 71/312, Our Ocean, Our Future: Call for Action\textsuperscript{55} which underlines the need to integrate Goal 14 into national development plans and strategies. It promotes the involvement of relevant stakeholders including national and local authorities, local communities, business and industry and recognises that the ocean forms an important part of individuals and communities natural and cultural heritage.

Whilst the resolution advocated the use of effective and transparent multi-stakeholder partnerships, including public-private partnerships,\textsuperscript{56} it also calls for mitigation measures to address harmful impacts on the ocean and coastal and blue carbon ecosystems such as mangroves.\textsuperscript{57} It also calls for capacity building and technical assistance for small-scale fishers in developing countries “to enable and enhance their access to marine resources and markets and improve the socio-economic situation of fishers and fish workers within the context of sustainable fisheries management.”\textsuperscript{58}

Key to successful sustainable development is the commitment from those financing large scale development projects like Lamu Port. The matter of financing for development was first properly addressed by the international community in 2002 at the International Conference on Financing for Development from which the Monterrey Consensus was born. The Consensus embodied an agreement between developed and developing countries recognising their roles in respect of development financing. The Consensus notes that in order to enable sustainable development, necessary internal conditions need to exist to create a domestic environment capable of encouraging the private sector; and attracting and making effective use of international investment and assistance.\textsuperscript{59} The Consensus goes on to note that, “freedom, peace and security, domestic stability, freedom, peace and security, domestic stability,

\textsuperscript{54} Owing to the Covid-19 pandemic, a decision was taken on 7 April 2020 to postpone the Conference to a later date. Further information available at: www.un.org/pga/74/2020/04/07/un-ocean-conference-3/.


respect for human rights, including the right to development, and the rule of law ... and democratic societies are also essential and mutually reinforcing.”

The Monterrey Consensus has subsequently been built upon, including in 2015 by the Addis Ababa Action Agenda which created a renewed framework for financing sustainable development that focuses on the synergies of the sustainable development goals. Areas identified include the protection of ecosystems for all, including a commitment to coherent policies and financing in order to protect, manage and restore marine ecosystems and the promotion of their sustainable use. Governments, businesses and households are all identified as needing to change behaviours in order to ensure sustainable production. In this regard, corporate sustainability is encouraged including reporting on environmental, social and governance impacts.

The central tenet to achieving all the rights discussed thus far, and as previously mentioned in these Guidelines, is the meaningful participation of the rights holders and the right to free, prior and informed consent pertaining to indigenous peoples. These issues have been emphasised by the UN Special Rapporteur on the right to development in both his 2019 Guidelines and recommendations on the practical implementation of the right to development and 2020 report on financing for development. In order for participation to be meaningful, the rights holders should be placed at the centre of decision making about their development, including decisions about financing for development. In order to achieve sustainable results, it should also be part of a holistic multi-stakeholder process including States, international organizations, civil society, members of academia and the private sector. The Special Rapporteur also warns about the lack of standards for due diligence, environmental and social impact assessments and meaningful consultation with affected populations under public-private partnerships in the absence of a harmonised framework.

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8. Impact on Indigenous and Local Communities

Many indigenous communities rely on natural resources not just for their livelihood but also for their cultural practices. These communities typically relate to these resources in a sustainable way, or else their livelihoods would disappear or their cultures would perish.

Principle 10 of the Rio Declaration recognises that these communities therefore have a right to take part in decision making regarding these resources and substantive rights with regard to these resources.

Article 8(j) of the Convention on Biological Diversity require states to promote the preservation of the knowledge, innovations and practices of indigenous and local communities and promote their wider application with the approval of the holders of the knowledge and come up with ways of equitably sharing the benefits arising from the utilisation of such knowledge.

A review of reports on the LAPSSET projects indicates that the focus of the government has been on the economic benefits of the project both for the country and for the local communities. The government has touted the growth of employment both from the corridor construction and operation of the components listed above as the main benefit to Kenyans from the project.

The project is also projected to increase business through the provision of essential goods and services to those involved in the construction of the project and its operations.

Beyond the construction phase, it is anticipated that as a result of the project, new education and learning institutions, industries and urban developments will contribute to the economy by creating thousands of jobs for local Kenyans.

It is also projected that irrigation projects, food processing and export processing zones will come up in Garissa, Bura and Lamu; livestock farming and meat processing in Garissa, Mandera Border Post and Isiolo; distribution and warehousing and transport logistics centres in Moyale and Nadal Border Posts, Isiolo and Lamu; and fishing, fish processing, boat making/ship building and repair are expected to thrive at Lake Turkana and Lamu.

However, the state does not indicate how the local communities will be facilitated to tap into these opportunities, particularly those requiring technical skills, in light of the low literacy levels in the area, a concern voiced repeatedly by local residents and leaders interviewed during stakeholder meetings in Lamu. There are therefore concerns that the project will benefit communities outside of
the Lamu in particular more than the local residents without proper planning and capacity-building by the state in collaboration with the county government.

There is also no reference to the impact on the existing economic life of the people in the affected regions, particularly Lamu which is well known for fishing and mangrove farming by indigenous communities. Both of these activities have been affected by the construction of the Port. This will be discussed in greater detail later in this report.

9. Public Participation from a Human Rights Perspective

Public participation is both a human rights issue and a governance issue. Regional human rights mechanisms have ruled that the right to public participation is an inherent part of the right to development and that the people’s right to development cannot be achieved where they are not consulted in the process of decision-making and implementation of a project. Following several stakeholder meetings with various leaders and residents in Lamu, it became apparent that there was no meaningful consultation with the people of Lamu before the initiation of the LAPSSET project in the region.

This section reviews guidelines of public participation to outline the framework that ought to be followed where large-scale projects such as this one have an impact on local communities. Comparisons will also be drawn to other regions and decisions of other courts in assessing effective public participation. While Kenya does not have legislative guidelines on what constitutes effective public participation, some guidelines have been developed by the Office of the Attorney-General, in consultation with various stakeholders, and reference will be made to them in this section.

9.1 International Best Practice Principles on Public Participation

The Public Participation International Best Practice Principles,65 prepared by the International Association for Impact Assessment (IAIA) provide some guidance to individuals and groups that are affected by a proposed project that is subject to a decision-making process. The guidelines seek to define the prerequisites for effective public involvement and the conditions for credible public participation processes which maximise the interests and commitment of all stakeholders.

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65 André P et al, 2006 Public Participation International Best Practice Principles, Special Publication Series No. 4, Fargo, USA: International Association for Impact Assessment.
These principles emphasise the centrality of public participation in impact. However, they are ‘broad, generic and non-prescriptive’ and are intended to apply at all levels, within the available constraints of time, information and resources.\textsuperscript{66}

The standards define public participation as:

\textit{the involvement of individuals and groups that are positively or negatively affected by a proposed intervention (e.g. a project, a programme, a plan, a policy) subject to a decision-making process or an interested in it.}

\textbf{9.2 Levels of Participation}

According to the guidelines, there are different levels of participation relative to the phase of the impact assessment process i.e. from initial community analysis and notice of the proposed project to approval of decision making, monitoring and follow up. These include passive participation/information reception, consultation and interactive participation. Of these, passive participation affords the least engagement, and the guidelines classify it as a unidirectional engagement while interactive participation offers high levels of engagement through such forums as workshops, negotiation, mediation and even co-management.\textsuperscript{67} The guidelines make it clear that public participation is not achieved where public opinion is manipulated using public relations techniques or where there is limitation of the freedom to participate.\textsuperscript{68}

The guidelines also capture the link between public participation and good governance and the different purposes that should be pursued in a public participation process. These include inviting those affected and interested to the decision-making process ‘to foster justice, equity and collaboration’; informing and educating stakeholders on the proposed intervention and its consequences; gathering from the public information about their human and biophysical relationship with the environment (including traditional and local knowledge); seeking public input on the project and how to reduce its negative impacts, increase its positive outcomes and compensate them where impacts cannot be mitigated; arriving at a better analysis of proposals thus resulting in more creative development, more sustainable interventions and by extension greater public acceptance and support on the project; and mutual learning of stakeholders and improvements to the public participation and impact assessment practice for a proposal.\textsuperscript{69}

\textsuperscript{66} André et al (as above) 2.
\textsuperscript{67} As above.
\textsuperscript{68} André et al, 4.
\textsuperscript{69} As above.
In relation to environmental protection, the 1992 Rio Declaration acknowledges public participation and the right to information as central to the achievement of sustainable development, in the following terms:  

\[\text{Environmental issues are best handled with the participation of all concerned citizens, at the relevant level. At the national level, each individual shall have appropriate access to information concerning the environment that is held by public authorities, including information on hazardous materials and activities in their communities, and the opportunity to participate in decision-making processes. States shall facilitate and encourage public awareness and participation by making information widely available. Effective access to judicial and administrative proceedings, including redress and remedy, shall be provided.}\]

9.3 Regional Standards on Public Participation

The African Commission on Human and Peoples’ Rights has also adjudicated over what consultation should mean in the context of development projects, particularly those whose scale is that they will have a ‘major impact’ on the community. In Centre for Minority Rights Development (Kenya) & Another on behalf of the Endorois Welfare Council v Kenya, in interpreting the right to development under the African Charter, the Commission advocated for a human-rights based approach to development and set out guidelines for the application of the right to development.

The Commission considered the right to development as a two-pronged one; addressing both procedural (dealing with process) as well as a substantive element (dealing with the outcome or end of the project). The Commission ruled the right to development to be both ‘constitutive and instrumental, or useful as both a means and an end’. It was the obligation of the state to ensure that both the procedural and substantive elements were met and a violation of either prong constituted a violation of the right to development. Conversely, the fulfilment of only one of the prongs was not sufficient to fulfil the right to development.

On the process, the Commission asserted that the right to development required the consultation of communities before decisions affecting them were made. It set out three broad principles to guide the consultation process: consultation in ‘good faith’, the use of ‘culturally appropriate procedures’ and consultation must be done with the aim of ‘reaching an agreement’. Such consultation should

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72 At para 277 of the decision.
73 As above.
74 At para 284. These obligations are also contained in the Report of the African Commission’s Working Group of Experts on Indigenous Populations/Communities (Twenty-eighth session, 2003) and the ILO Convention 169 which
take into account the literacy levels of the affected group and the impact of the development project on means of livelihood.

The Commission made reference to the decision of the Inter-American Court of Human Rights where the regional court established that the State of Suriname had an obligation to actively consult with the Saramaka people according to their customs and traditions in undertaking development projects within their territory.\(^75\) This duty implied within it consistent communication between the parties and required the state to both accept and disseminate information.

In particular, the Commission found that where large-scale development projects were to have a major impact on the territory of a community, there was a greater obligation on the part of the state: that of obtaining their ‘free, prior and informed consent, according to their customs and traditions’.\(^76\)

The determination of whether the project requires consultation in good faith or free, prior and informed consent is done by assessing the impact of the proposed government action on the particular group, through an impact assessment study which should be done for all development projects affecting communities.

On the substance of the right to development, the Commission found that it was only satisfied where the state ensured that there was ‘mutually acceptable benefit sharing’\(^77\) and ensure that the project improves the ‘capabilities and choices’ of the affected community in line with the UN Declaration on Development which includes within the right to development ‘active, free and meaningful participation in development’.\(^78\) It was therefore not enough to engage with communities by giving them tokens, as the Kenyan government did with the Endorois by giving them food aid; there must be a demonstration that the community is empowered by the project.

Failure by the Kenyan government to demonstrate compliance on both the procedural (the state failed to consult with the Endorois Welfare Council and to account for the illiteracy of the majority) and substantive (failing to provide adequate compensation and benefits) prongs of the right to development resulted in a violation of the right of development of the Endorois people.

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\(^{75}\) Case of the Saramaka People v. Suriname, Inter-American Court of Human Rights, Judgment of November 28, 2007.

\(^{76}\) Para 291. The obligation of free, prior and informed consent was restated in the case of the Kichwa Indigenous People of Sarayaku v Ecuador, Judgment of June 27, 2012 (Merits and reparations).

\(^{77}\) Para 296.

\(^{78}\) Para 283.
9.4 National and County Standards on Public Participation

Public participation is a principle anchored in common law as an element of the doctrine of natural justice. As indicated above, Kenya does not have a unified legislative framework on public participation. It is anticipated that both the national and county governments will pass legislation on public participation. However, public participation is a constitutional value that permeates the entire constitutional framework. It is encapsulated in Article 10 of the Constitution as one of the values that should guide all persons whenever they interpret or apply the Constitution, enact interpret or apply any other law or whenever public policy decisions are made or implemented. Article 10 includes within it democracy and participation of the people, inclusiveness, good governance, integrity, transparency and accountability as national values and principles of governance.

Article 27 which guarantees equality and non-discrimination in the enjoyment of all rights and freedoms also prohibits the state from discriminating directly or indirectly on any of the prohibited grounds listed therein. Article 33 entitles every person to the freedom to seek, receive or impart information and Article 35 entitles every citizen to not only information held by the state but also that which is held by any other person and which is necessary for the exercise or protection of a right or fundamental freedom. The state is also under an obligation to ‘encourage public participation in the management, protection and conservation of the environment’.79

In relation to the two-tiers of government, public participation is considered an integral to decision-making. The objectives of devolved government includes giving powers of self-governance to the people and increasing people’s participation in the exercise of state power and in decision-making affecting them; and the recognition that people have the right to manage their own affairs and further their development.80 National legislation for the governance and management of urban areas and cities is also required to provide for the participation of the residents in the governance of urban areas and cities.81 Among the functions allocated to county governments by the Constitution include ensuring and coordinating the participation of communities in governance. It is the obligation of county governments to assist communities to develop the administrative capacity to enhance their exercise of power and participation in governance at the local level.82

79 Art 69 (1) (d) of the Constitution.
80 Art 174 (c) and (d) of the Constitution.
81 Art 184 (1), Constitution of Kenya.
82 Fourth Schedule Part 2(14).
Guidelines on public participation have been developed for both the national and county levels of government. The Ministry of Devolution and Planning and the Council of Governors developed and published the County Public Participation Guidelines of 2016.\(^83\) These guidelines define public participation as:

*the process where individuals, governmental and non-governmental groups influence decision making in policy, legislation, service delivery, oversight and development matters. It is a two-way interactive process where the duty bearer communicates information in a transparent and timely manner, engages the public in decision making and is responsive and accountable to their needs. The public gets actively involved in the process when the issue at stake relates directly to them.*

According to the guidelines, public participation is a mandatory and continuous process,\(^84\) which entails five stages: collaboration between the state and the public to develop decision criteria and alternatives and identify preferred solution; involvement of the public with the end goal of ensuring that their concerns are factored in throughout the decision-making process and particularly when developing decision criteria and options; consultation with the public to obtain feedback on alternatives or decisions; informing the public by offering information to enable them understand the issues, options and solutions; and empowerment of the public by handing over final decision-making authority to them.\(^85\)

The County Guidelines import the principles on citizen participation contained in the County Government Act.\(^86\) They anchor the obligation of facilitating public participation on the constitutional foundation which vests sovereign power in the people of Kenya, which power is delegated to state actors at both the national and county levels. The Guidelines further assert that this sovereignty must be respected and institutionalized in all governance processes.\(^87\)

For participation to be meaningful, the County Guidelines proffer certain conditions: clarity of the subject matter created by establishing realistic and practical goals acceptable to all stakeholders; clear structure and process setting out the rules of participation, tools and how final decisions will be arrived at; access to information in acceptable, easy to use formats; opportunity for balanced influence to avoid dominance by any group; commitment to the process of public participation; inclusive and effective representation which reaches out to all stakeholders; a climate of

\(^83\) These can be accessed here: [https://sentaokenya.org/?smd_process_download=1&download_id=24075](https://sentaokenya.org/?smd_process_download=1&download_id=24075) (accessed 21 August 2020).
\(^84\) As above, 9.
\(^85\) County Public Participation Guidelines (2016), 1.
\(^86\) Act No.17 of 2012, sec 87.
\(^87\) County Public Participation Guidelines (2016), 3.
integrity created by credible, honest and trustworthy government officials; a belief in the value of public input resulting in better decision-making; capacity to engage that ensures that both government agencies and the public have the knowledge and skills to participate effectively in the process; complete transparency effected through timely sharing of understandable and accessible information and bearing in mind standing conditions of the participants i.e. their socio-economic status, religious beliefs, ethnicity and clans, seeing as knowledge levels, incomes and power wielded will influence deliberations and ultimately affect outcomes.\(^8^8\)

The Guidelines also offer a framework for the public participation process, which includes establishing the content for discussion (policy problems and proposals); legitimising the decision-making process (who needs to be involved, at what level, who are the opinion shapers and decision makers, institutional capacity, kinds of decisions to be made and the decision-making process); implementing the policy, legislation or development plan, and monitoring and evaluation (outlining a monitoring and evaluation framework and implementation plan).\(^8^9\)

At the national level, the Kenya Draft Policy on Public Participation has not yet been formally adopted. It is pending Cabinet approval before implementation. It is anticipated that the policy will provide an execution framework to guide both levels of government, the private sector and non-state actors in public engagement around issues of governance by setting standards and coordination mechanisms for public participation. It acknowledges that there have been hindrances to the realisation of effective public participation as envisaged in the Constitution including lack of standards and effective coordination mechanisms; ineffective inclusion of marginalised groups, citizen apathy, inadequate funding and inadequate coordination among providers.\(^9^0\)

The policy acknowledges the right to access information as enshrined in the Constitution and the obligation of the government to disclose information to the public through appropriate media and formats, particularly for zones with high levels of illiteracy. The policy asserts that the right to access information can only be limited in accordance with Article 24 of the Constitution, section 6 of the Access to Information Act, 2016 and sections 43 and 49 of the Kenya Defence Forces Act, 2012.\(^9^1\)

The policy also concedes that public participation in governance cannot be achieved without sufficient budgetary allocation for the necessary infrastructure processes and planning for public participation.

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\(^8^8\) As above, 8.
\(^8^9\) County Public Participation Guidelines (2016), 9.
\(^9^1\) As above, 14.
participation, actual engagements, monitoring and evaluation, feedback and coordination. To facilitate these activities, the policy requires the allocation and protection of the necessary resources by all government agencies and that their budgets provide for public participation.

To ensure that those engaged in activities which impact communities are equipped to effectively carry out public participation processes, the Policy recognises that relevant skills are needed to manage and coordinate public participation effectively, including stakeholder identification and mobilisation, facilitation and documentation, analysis, communication and monitoring and evaluation and preparation of public participation reports. The capacity building should be done at all levels and will also have the effect of removing the fear of intimidation and encouraging individuals to hold to account duty-bearers. The policy therefore seeks to standardise capacity building and the tools of engagement.⁹²

To ensure implementation of the Policy, the Policy proposes the establishment of a multi-sectoral coordination agency under the leadership of the Office of the Attorney-General and Department of Justice which will include other state bodies with a mandate on the areas addressed in the policy and non-state actors who work directly in any of the policy areas which the Policy focuses on.

Each of the levels of government is required to prepare guidelines on public participation and publish an annual Public Participation Report detailing the level of public participation and the challenges experienced.

To anchor public participation in law, both national and county governments are to pass legislation to provide a working definition of public participation, how public participation is to be effected and the duties of stakeholders, the identification of participants and how their participation will be realised, the incorporation of special interest groups, the criteria for meaningful participation; timelines for participation, the rights and duties of members of the public and capacity building for key stakeholders. The law should also include a mechanism on how monitoring, evaluation, learning and resource mobilization is to be realised.

The County Guidelines on Public Participation developed for county governments provide parameters, in line with international and regional standards, on free, prior, informed consent before development projects affecting the public can be initiated. Most importantly, they give obeisance to the constitutional dictate of the sovereignty of people in Article 1 of the Constitution by

empowering the people to make decisions on projects affecting them. However, the latter are not applicable to LAPSSSET as it is a national government project.

Nevertheless, the national government was consulted in the drafting of the County Public Participation Guidelines and the lack of a national policy on public participation did not preclude the national government from taking guidance from the existing policy to obtain free, prior, informed consent before commencing the LAPSSSET project. The absence of a national policy/legislation on public participation does not exempt the national government of its obligation under the Constitution to give effect to national values and principles such as democracy and participation of the people, inclusiveness, good governance, integrity, transparency and accountability.93

The courts have given guidance as to the adequacy of public participation in the case *In the Matter of Mui Coal Basin Local Community*,94 where the High Court stated that:

> it is not possible to come up with arithmetic formula or litmus test for categorically determining when a court can conclude there was adequate public participation. However as we have alluded above, the courts look at the bona fides of the public actor, the nature of the subject matter, the length and quality of engagement and the number of mechanisms used to reach as many people as possible.95

From a reading of international principles on public participation, the court also formulated guidelines and stated that public participation at a minimum should entail the following principles: that the government agency or public official involved fashion a programme of public participation that accords with the nature of the subject matter; that there be innovation and malleability depending on the nature of the subject matter, culture and logistical constraints; that whatever programme of public participation is chosen include access to and dissemination of relevant information; that public participation should not be taken to mean that everyone must give their views so long as there is intentional inclusivity and diversity; that the right to public participation does not guarantee that everyone’s views will be controlling so long as the government agency or public official took the views into consideration in good faith; and finally, that the right to public participation is intended to cross-fertilise and enrich the views of the office holders with those of the people to be most affected by a decision or policy not to usurp their technical or democratic role.96

94 (2015) eKLR
95 At para 99.
96 At para 97.
10. Right to a Clean and Healthy Environment

The right to a clean and healthy environment was first recognized in the 1972 Stockholm Declaration. The Declaration not only correlates a clean and healthy environment to dignity and well-being but it also acknowledges the right to enjoy a clean environment during one’s lifetime and the obligation to protect and improve it for future generations. It provides in part that:

…man has the fundamental right to freedom, equality and adequate conditions of life, in an environment of a quality that permits a life of dignity and well-being, and he bears a solemn responsibility to protect and improve the environment for present and future generations.97

In order to pass on a clean and healthy environment to future generations, any development pursued must not only be focused on the present generation, but it must also bear in mind the capacity of future generations to enjoy and reap benefits from the same environment. The World Commission on Environment and Development (WCED) in its 1987 Report emphasized the need for sustainable development, which it defined as:

development that meets the needs of the present without compromising the ability of future generations to meet their own needs.98

The Commission pointed out that sustainable development encompasses not only the concept of needs but also the idea of limitations created by the environment’s ability to meet both present and future needs.99

The right to a clean and healthy environment is directly related to the right to life and other rights set out in the Universal Declaration of Human Rights.100 The centrality of a clean and healthy environment to the enjoyment of all other rights was stated by the International Court of Justice in the Gabčikovo-Nagymaros Project (Hungary/Slovakia) where it asserted:

the protection of the environment is…a vital part of contemporary human rights doctrine, for it is a sine qua non for numerous human rights such as the right to health and the right to life itself. It is scarcely necessary to elaborate on this, as damage to the environment can impair and undermine all the human rights spoken of in the Universal Declaration and other human rights instruments.101

97 Principle 1.
98 p. 37
99 Ibid.
100 See also Kenya Association of Manufacturers & 3 others v Cabinet secretary, Ministry of Environment and Natural Resources & 3 others [2018] eKLR, para 133; Peter K. Waweru v Republic [2006] eKLR.
10.1 Right to a Clean and Healthy Environment in Kenya

Before the 2010 Constitution, the right to a clean and healthy environment did not enjoy constitutional protection, and the rights of citizens to vindicate the right were limited by strict requirements on locus standi. With the adoption of the Environmental Management and Coordination Act (EMCA), the limitations imposed on standing by the courts where a person needed to demonstrate special injury over and above the rest of the public to sue were done away with. Section 3 of the Act entitled every person to the right to a clean and healthy environment and the right to bring an action in the High Court where this right is denied, threatened or violated. EMCA also adopted the meaning of sustainable development set out in the 1987 Brundtland Report.

Without public participation, good governance and responsive, transparent and accountable government is impossible to achieve. Sustainable development also requires access to both judicial and administrative remedies where there has been environmental harm.

Both the right to a clean and healthy environment and sustainable development have found expression in the 2010 Constitution of Kenya. The Bill of Rights entitles every person to a clean and healthy environment which includes the right to have the environment protected for the benefit of present and future generations through legislative and other measures and the right to have obligations relating to the environment (including public participation) fulfilled. Where this right is denied, violated, infringed or threatened, any person may apply to a court for redress in addition to any other remedies available without having to demonstrate that they have incurred any loss or suffered any injury. In *Kenya Association of Manufacturers & 3 Others v Cabinet Secretary, Ministry of Environment and Natural Resources & 3 Others*, the court, in upholding the ban on plastic bags found that the law was consistent with the constitutional requirement of giving effect to the right to a clean and healthy environment, which requires the state to eliminate processes and activities that are harmful and likely to endanger the environment. In *Adrian Kamotho v Council of Governors*, the right to a clean and healthy environment was said to import an obligation on the part of national and county governments to provide toilets and other sanitation facilities on the country’s road network to give effect to the right to a clean and healthy environment on the roads. The court directed the

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102 Act No.8 of 1999.
103 EMCA, sec 2.
104 Art 42
105 Art 70.
107 [2020] eKLR.
formulation of a working group to formulate a policy to incorporate the construction of toilets and other sanitation facilities as part of roadside developments for existing and new roads and that the policy take into account the need to have the facilities properly maintained by the county governments once established.

In *African Center for Rights and Governance and 3 Others v Municipal Council of Naivasha*, the court found that an unlicensed waste facility and an illegal dumpsite maintained by the Municipal Council of Naivasha, and later by the county government of Nakuru violated the right to a clean and healthy environment and directed that an environmental impact assessment be done failing which the land was to be restored to its original use within 90 days.

Any person can institute a claim to protect the right to a clean and healthy environment without demonstrating that they have incurred loss or suffered injury and a lack of public participation with the local community taken together with absence of proof that trees were harvested in a sustainable manner was enough to require that tree harvesting in the Lembus Forest be restrained. Sustainable development is one of the national values and principles recognized by the Constitution. In addition, Article 69 of the Constitution imposes certain obligations upon the state in relation to the environment. The state is required to:

- ensure sustainable exploitation, utilisation, management and conservation of the environment and natural resources, and ensure the equitable sharing of the accruing benefits
- work to achieve and maintain a tree cover of at least ten per cent of the land area of Kenya
- protect and enhance intellectual property in, and indigenous knowledge of, biodiversity and the genetic resources of the communities
- encourage public participation in the management, protection and conservation of the environment
- protect genetic resources and biological diversity
- establish systems of environmental impact assessment, environmental audit and monitoring of the environment
- eliminate processes and activities that are likely to endanger the environment

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108 Petition 50 of 2012.
109 Joseph Leboo & 2 others v Director Kenya Forest Services & another [2013] eKLR.
• utilise the environment and natural resources for the benefit of the people of Kenya

In addition, EMCA requires every proponent of a major project to apply for an Environmental Impact Assessment licence before undertaking such projects. The application must be accompanied by an environmental impact assessment study report. The report must be published in the Gazette, in at least two newspapers circulating in the area or proposed area of the project and over the radio. The publication must state the following:

• a summary description of the project
• the place where the project is to be carried out
• the place where the environmental impact assessment study, evaluation or review report may be inspected
• a time limit, not exceeding sixty days for the submission of oral or written comments on environmental impact assessment study, evaluation or review report

11. Public Participation in the LAMU Port Project

To gauge the level of public participation in the design and implementation of the Lamu Port Project, interviews were conducted with various stakeholders whose feedback is outlined below:

11.1 Meeting with the Kenya National Commission for UNESCO on 23rd July, 2019
(Mr. John Omare)

• The respondent is the director in charge of Culture Programme.
• The Commission is a State Corporation established under the Kenya National Commission for UNESCO Act, 2013
• The Commission is responsible for coordinating the activities of UNESCO within the country.
• The Commission has 5 focus areas:
  - Natural sciences

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111 Section 58 of the National Environmental Coordination Act.
112 Section 5 of the National Environmental Coordination Act.
- Social and human sciences
- Communication and information
- Culture
- Education,

- The respondent was recommended to the researchers as his area of expertise was the protection of culture and he highlighted the 6 Culture Conventions that have been adopted by UNESCO:
  - 1972 Convention Concerning the Protection of the World Cultural and Natural Heritage
  - 2001 Convention on the Protection of the Underwater Cultural Heritage
  - 2003 Convention for the Safeguarding of the Intangible Cultural Heritage
  - 2005 Convention on the Protection and Promotion of the Diversity of Cultural Expressions
- He reported that Kenya has only ratified the 1972, the 2003 and 2005 Conventions.
- In relation to the 2003 Convention, he reported that the Ministry of Sports, Culture and Heritage was the focal ministry. Under this Convention, three elements were listed as in need of urgent protection:
  - The traditions and practices associated with the Kayas of the Mijikenda (funding for this is available through UNESCO).
  - The three male rites of passage of the Maasai community
  - Isukuti dance of Isukha and Idakho communities of Western Kenya
- Under the 1972 Convention Concerning the Protection of the World Cultural and Natural Heritage, which Kenya ratified in 1991, he reported that 7 of the world heritage sites listed were from Kenya. These include:
  - The Lake Turkana National Park
  - Mt Kenya National Park
- The Great Rift Valley Lakes - Elementaita, Nakuru and Bogoria
- Fort Jesus
- Lamu Old Town
- The Sacred Kaya Forests of the Mijikenda
- Thimlich Ohinga Cultural Landscape

- The Commission’s concern in relation to each of these sites is to ensure that due to their outstanding universal value, environmental impact assessment is carried out where there are threats.

- In terms of ensuring compliance with Kenya's commitment under the various international instruments, the Commission mainly relies on the Ministry of Foreign Affairs to put pressure on other government agencies to act to ensure protection of these sites.

- Mr Omare further narrated that the Lamu Port Project and the risks that it presents to Lamu Old Town formed part of the subject of discussions at the 43rd Session of the World Heritage Committee meeting (30th June- 10th July, 2019) which proposed that the Committee visits the Lamu Port project as well as the Lamu coal plant. However, due to safety concerns the visit is yet to happen (More information available at https://whc.unesco.org/archive/2019/whc19-43com-18-en.pdf).

- It was highlighted that the coal plant was shut down until an environmental impact assessment had been undertaken, which was a victory for the protection of the site.

- The Commission had also expressed concern about the impact of the airport on the sites.

- Unfortunately, the Commission’s role has also been hampered by limited funds for coordination of activities to develop and revise the management plan for Lamu Old Town. It had been anticipated that the funds would be contributed by the Lamu Port-South Sudan-Ethiopia-Transport (LAPSSET) Corridor project, the national government and the county government.

- When asked whether KNATCOM had had effective discussions with stakeholders on the LAPPSET project, it was reported that there had been some consultative meetings to prepare, but that the Commission had not received much collaboration with the government on the project. It was noted with disappointment that KNATCOM was not even consulted before the project was initiated.
• Mr Omare expressed concern that whereas the government had indicated that it was committed to the protection of cultural heritage, no concrete action had been taken to do so in light of the project. He reiterated that KNATCOM was not opposed to development; their concern was with the sustainability of the development.
11.2 Meeting with Katiba Institute on 25th July, 2019 (Mr. Lempaa Suyianka and Mr. Omar Elmawi)

- Met Mr. Lempaa Suyianka (advocate of the High Court of Kenya, he represented the Petitioners in the High Court case *Mohamed Ali Baadi and Others v Attorney General & 11 Others* [2018] eKLR-Malindi Petition). He is also acting for them in the appeal before the Court of Appeal) and Mr. Omar Elmawi (involved in advocacy work relating to the Lamu Coal Project- www.decoalonize.org. He is the Campaign Coordinator)

- Katiba Institute was established in 2011 to promote knowledge and studies of constitutionalism and to facilitate the implementation of Kenya’s new Constitution. Its activities include publications on the Constitution, workshops on constitutional issues, public interest litigation, development of the legal and judicial system, establishment of county governments, land reform, review of legislative bills to implement the Constitution, and promoting the participation of Kenyans in public affairs.

- Katiba Institute has been involved in advocacy work relating to the Lamu Port and Coal projects through legal representation for affected persons and through mobilisation and sensitisation of affected communities; its work has mainly revolved around right to a healthy environment, right to culture, right to access to information and public participation.

- The Institute was fully satisfied with the outcome of the Malindi petition.

- Institute feels that fishermen remain conflicted between the importance of right to culture and monetary compensation. They are more interested in monetary compensation on a long term basis.

- Institute thinks that the fact that the government is going ahead with the Port project despite the pending case before the Court of Appeal weakens the case in terms of leverage. Probably, by the time the court shall be making its final determination, phase 1 of the port project would be complete or would be at a very advanced stage (Indeed, phase 1 is already completed while the appeal remains pending in court).

- Participation of private investors in the port project would present a challenge in terms of accountability to the public.

- There was a concern that the low literacy levels in Lamu were likely to deny local residents any potential benefits in terms of employment and business opportunities.

- The residents feel that the government programmes put in place to support education in Lamu are not sufficient and there is fear that opportunities will be taken by non-locals.
11.3 Meeting with, Lamu Fort (National Museum of Kenya) (Mr. Mwenje Mohamed, the Curator on 29th July, 2019)

- National Museums of Kenya (NMK) is a state corporation established by an Act of Parliament, the Museums and Heritage Act 2006; its role is to collect, preserve, study, document and present Kenya’s past and present cultural and natural heritage.

- The preservation of Lamu Old Town as a world heritage site is under the management of the National Museum of Kenya. Some of the activities of the National Museum of Kenya in relation to preservation of Lamu Old Town include:
  - Lobbying for listing and ensuring that Lamu Old Town is maintained in the list of World Heritage Sites
  - Playing an advisory role within the Lamu County Government under the Lamu Old Town Conservation by-laws.
  - Development of a management plan for the town through the Lamu Old Town Planning Commission made up of the National Museum of Kenya; County Government; Ministry of Public works; Ministry of Health; Physical Planning Department; Ministry of Trade; Provincial Administration; 3 Community Members and a Representative of the business community. The County Government of Lamu provides the secretariat for the commission; The commission is housed by the National Museum of Kenya.

- Involvement of the National Museum of Kenya in the Port Project started midway and there was a proposal to include a nominee of the National Museum of Kenya in the LAPSSET advisory board

- The National Museum of Kenya received funding to carry out a heritage impact assessment in 2014-2015 whose report was presented to LAPSSET for incorporation in the design and implementation of the projects.\(^{113}\)

- The National Museum of Kenya thinks that there would be need for the implementers of the port project to exercise caution so as not to undermine the status of Lamu Old Town as a world heritage site.

- The Malindi petition led to the establishment of Lamu Heritage Committee. The Committee is made up of LAPSSET; National Museum of Kenya; Lamu County Government; National Environmental

\(^{113}\) Report can be accessed at: [https://whc.unesco.org/document/135436](https://whc.unesco.org/document/135436).
Management Authority; Kenya Ports Authority; Community Members; The committee has developed an action plan for Lamu Town.

- Coordination of protection activities are hampered by the lack of clear structures between the role of the County Government and the National Government in protecting the town.
- Advocacy engagements for the protection of Lamu Town from international actors appear to lack sustainability. Carried out in an ad hoc and uncoordinated manner.

11.4 Meeting with Save Lamu on 30th July, 2019 (Mr. Abubakar Mohamed Ali).

- Mr. Abubakar is the chairman of the board of Save Lamu.
- Save Lamu is a coalition of Community Based Organisations and other stakeholders; it is made up of 40 individual members and Community Based Organisations (local and international)
- Save Lamu supports the port project because it will open up Lamu. Says Lamu has been marginalised since independence.
- Save Lamu not impressed by the manner in which the project was designed and implemented; no public participation and no Environmental and Social Impact Assessment.
- As a way of building the capacity of the residents of Lamu, some students have been sponsored by the government to undergo marine training.
- Save Lamu has been carrying out advocacy work through court action and through sensitization workshops.
- Save Lamu has held numerous meetings with government officers over the port project. Meetings have been initiated by Save Lamu and the government hasn't shown any commitment to the resolutions of the meetings.
- Save Lamu played a significant role in rallying stakeholders to support the court action in Malindi.
- Save Lamu is happy with the outcome of the Malindi petition.
- Save Lamu shall facilitate distribution of the compensation awarded to fishermen by providing relevant data.
- Fishermen would be happier to receive money and not equipment
- Engagement with the government post Malindi petition hasn't been easy. Government officials not available for meetings.
- There is fear that opportunities brought by the port project would be taken up by foreigners.
Save Lamu has been advocating for the government to offer more training opportunities for the residents of Lamu to enable them take up new opportunities.

Fishermen could ditch traditional fishing methods once they are provided with modern fishing gear; traditional fishing methods lead to small catches which sustains poverty levels in Lamu. Fishermen are more concerned about their livelihood.

11.5 Meeting with Lamu Youth Alliance on 29th July, 2019 (Mr. Isack Abubakar)

- Mr. Abubakar is a member of the Board for Save Lamu
- He won the award for the 'Human Rights Defender, 2018' in Kenya
- The mandate of Lamu Youth Alliance includes the following:
  - Countering violent extremism
  - Protection of the environment
  - Promotion of education
  - Advocacy and capacity building on human rights.
  - Public participation in county activities
- LYA is registered as a Community Based Organisation since 2010.
- It has been involved in sensitisation work on the likely negative impact of the port project.
- It has been training community members on their rights under the Constitution.
- LYA views the port project as more promising to outsiders than locals.
- LYA not opposed to the project but would like mitigation measures to be put in place. LYA is completely opposed to the coal project.
- LYA says that the location of the port project is a strategic spot for tourism, especially snorkeling activities.
- The activities of LYA are supported by local and international partners. Support has been in the form of funds and resource persons like advocates.
- There has been no change of attitude or approach by the government despite the judgement by the court in the Malindi petition.
- LYA took part in the Malindi petition through Save Lamu.
• Fishermen in Lamu do not see the monetary compensation awarded by the court as a sufficient remedy. It must be combined with other mitigation measures to ensure conservation of mangroves, coral reefs and protection of vulnerable communities.

• The proposal for the government to buy modern fishing equipment for fishermen not likely to yield much because of corruption in government. Fishermen also worried that it would be more expensive to maintain the larger and modern vessels.

• The money awarded by court should be distributed through the Beach Management Unit.

• There are concerns that opportunities created by the port would be taken up by outsiders (persons from other regions or ethnic communities in Kenya).

• The community does not have confidence in any consultations with the government since they were not included in the process from the beginning.

• There is an influx of people from other communities emigrating to Lamu to take up economic opportunities.

• Worried that the second phase might present more challenges because of involvement of private sector financiers.

11.6 Meeting with the Lamu Beach Management Unit (BMU) on 29th July, 2019 (Mr. Adam Lalu)

• Beach Management Units (BMU) are created under the Fisheries Management and Development Act and is made up of fishers, fish traders, boat owners, fish processors and other beach stakeholders who traditionally depend on fisheries activities for their livelihoods.

• Mr. Adam is a member of BMU and was assigned to speak to us by the Chairman of BMU, Mr. Somo.

• Membership of BMU is not limited to fishermen. It covers all persons in the fishing industry in Lamu.

• BMU is registered with the Fisheries Department. It controls fishing methods; sensitizes members on their rights;

• Not been meaningfully involved in the Lamu port project by the government; views not taken into account

• The project is likely to require fishermen to shift to new fishing grounds.
- Advocacy work by BMU on Lamu Port project has been through sensitization of members and coordination of activities under Save Lamu
- Save Lamu has been the main actor in advocacy relating to the project. Other organizations work within the Save Lamu umbrella.
- BMU is happy with the outcome of the Malindi petition
- BMU has no trust in the government initiatives in trying to enlist the participation of fishermen since it hasn't been forthcoming with information. Further, the government has not been keeping its promises
- The proposal to compensate fishermen as awarded by the court came from the government and not the petitioners.
- BMU thinks the best remedy would be to build the financial and technical capacity of fishermen.
- BMU has fears that government could use the compensation money to support other sectors at the expense of fishermen.
- BMU would like the compensation to be paid from the Malindi petition to be allocated as follows
  - 40% to be available to members as loans
  - 40% to be paid as cash grant to members
  - 20% to be utilized for development of fishing infrastructure
- BMU thinks the monetary award is not sufficient for damage likely to be caused by the project
- The figure of 4700 fishermen in Lamu used by the court could be inaccurate. It came from the Fisheries Department. Number of BMU members is higher than this.
- BMU fears that opportunities arising from the port project would not be shared equitably. Opportunities likely to be taken by outsiders.

11.7 Meeting with Ghalib Ahmed (Mr. Bush) on 30th July, 2019

- Mr. Bush is a resident of Lamu, born in Lamu
- He is the proprietor of Bush Gardens Restaurant in Lamu Town.
- He is a former deputy chairperson, Lamu Tourists Association.
- He is the current chairperson of Lamu Culture Festival.
- He is a member of Lamu Fishermen Association.
• The mandate of Lamu Culture Festival includes: conservation of Swahili culture like dances, dhow building skills, dhow racing; promoting Lamu as a tourist destination; preservation of Lamu Town as a UNESCO heritage site
• Lamu Culture Festival has not been directly involved in advocacy work on the port project. Respondent did not see the Port Project as a threat. In fact, he thinks the port would bring more opportunities.
• The government should simply ensure that there are mitigation measures to preserve the ecosystem
• The respondent thinks that most fishermen employ traditional fishing methods because of poverty/ lack of means/ better facilities and thus sees no harm in the calls for them to adopt modern fishing techniques.
• Adoption of modern fishing gears and methods would greatly boost the economy of Lamu by opening it to international trade through exports.
• The mere creation of the port would not lead to extinction of the culture of the people of Lamu. Respondent gave the example of Mombasa where despite having developed into a town, Kiswahili culture still remains dominant and attracts tourists.
• Respondent thinks that younger generations in Lamu are more open to adopting new fishing methods. Most of them own speed boats
• Maintaining old boats made of wood has become very costly, thus the need to embrace new boat making technology and use of fiber glass.
• Respondent thinks that since the port project is located on the mainland and not Lamu island, the threat to the status of Lamu as a UNESCO protected site is not real.
• Respondent observed that the port project is unlikely to undermine the cultural heritage of the people of Lamu. Further he observed that the cultural practices have been resilient enough to weather invasion by different other civilizations in the course of history (invasion by the Portuguese, Chinese, Arabs, Europeans etc).
• Lamu Culture Festival was not consulted by the government on the design and implementation of the port project.
11.8 Focus Group Discussion at Kwasasi Village in Lamu County on 30th July, 2019
(Organised By Save Lamu)

Participants
- Kassim Ali Mohammed
- Abdi Bam Athumani
- John Kagwema Kamau
- Bakari Abdalla Bakar
- John Mutua
- Japheth Dori
- Nzaro Kalama
- Najim Mohamed
- Abdul Karim Mohamed
- Abubakar Ali Mohamed

- Kwasasi village hosts the port and coal projects in Lamu. It is located in Hindi/ Mokowe Ward.
- The area is mainly inhabited by the Bajuni and Boni; their main economic activities are- fishing, beekeeping, farming and animal husbandry.
- The residents depend on the sea for fishing and mangroves for timber for building houses and boats.
- Respondents fully opposed to the Coal Project but support port project subject to consultations and institution of mitigation measures.
- Poor literacy rates prevalent: highest level of education for respondents was form four (High School), most were illiterate.
- The respondents said that they had not been involved in the design and implementation of the Port project; they support development initiatives but wish to be consulted.
- Participation in community engagement with government has been hindered by failure to package the content in ways accessible to all including the uneducated.
- The criterion used by the government to identify affected communities lacks objectivity and transparency.
The respondents expressed fear that opportunities would be taken up by outsiders since they are not educated and lack money for business.

11.9 Meeting with a Representative of the Kenya Ports Authority on 31st July, 2019 at the Port (Mr. Benson Komora)

- Mr. Komora is a Human Resource Officer with the Kenya Ports Authority.
- Kenya Ports Authority was established in January 1978 under an Act of Parliament (Kenya Ports Authority Act). It is mandated to manage and operate the Port of Mombasa and all scheduled seaports along Kenya’s coastline that include Lamu, Malindi, Kilifi, Mtwapa, Kiunga, Shimoni, Funzi and Vanga. In addition, the Authority manages Inland Waterways as well as Inland Container Depots at Embakasi, Eldoret and Kisumu.
- Construction of the port project is being done by China Communications Construction Company which was contracted by the Kenya Ports Authority.
- The port project is made up of 32 berths each measuring approximately 400 meters in length.
- Part of the land on which phase 1 of the project sits was reclaimed from the sea (approximately 2 kilometers into the sea).
- Respondent acknowledges that the location of the project is a traditional fishing site for residents.
- The 1st Berth is almost complete (to be ready in a month's time); the crane to serve this berth has been purchased already; the 2nd and 3rd berths to be completed by the year 2020.
- 50% of the work force on site are locals (manual labourers); technical jobs are being carried out by non-locals because of lack of the required skill set.
- Kenya Ports Authority is running a training programme for locals so as to prepare them for employment (approximately, 300 locals have been trained).
- Respondent declined to respond to our question on the Kenya Ports Authority's engagement with stakeholder on the project. Says a different department would be better-placed to respond to this.
- Respondent says that no immediate plans exist for phase 2 of the port projects; says that even the process of land acquisition has not started.
- Says that there have been many consultative meetings with locals and that they support the project.
- Says he doesn't know if there are plans to ensure that locals continue to reap benefits once the port is operationalised.
• Says that within the current design of the port project, there is no provision for schools, hospitals. There is only a police station located within the port.

• Says that there has been an influx of foreigners to areas surrounding the port and that the benefits of the project are already evident in the changing lifestyle of the local residents; there are motor bike operators, shops- there are small towns coming up.

• Says that at present, other than technical staff, the project does not have female employees. Says not sure if there are capacity building initiatives specifically targeting women.

11.10 Meeting with the County Government of Lamu on 1st August, 2019 (Mr. John Mburu and Mr. Abdulhakim Aboud Bwana)

• Mr. Bwana is the deputy County Governor while Mr. Mburu is the County Secretary.

• County Government has been involved in various activities for the promotion of cultural heritage. These include: participation in the annual cultural festival; identification of cultural sites for preservation by the National Museum of Kenya; promotion of collaboration with Magical Kenya and Kenya Tourism Board to market Lamu as a tourist destination;

• There has not been any meaningful consultation with the County Government on the port project.

• The County Government would have wished to be involved in looking at the adverse effects of the project and identification of mitigation strategies and planning for the provision of services with the influx of foreigners. The County Government is already overburdened.

• As a way of preparing the locals for the benefits likely to come with the port project, the County Government is currently conducting capacity building programmes. It is also subsidizing training costs. It has been offering scholarships and bursaries.

• The capacity building initiatives are being run in Technical and Vocational Education and Training Institutions. The courses include: welding, mechanical engineering, masonry, clearing and forwarding, driving, coxswaining, carpentry, plant operation etc.

• Respondents say that the national government does not appear to care about the adverse effects of the project to locals.

• Respondents say that locals would be more interested in economic benefits and there would be need for a benefits sharing arrangement.

• Respondents acknowledge that it would be difficult to genuinely identify the people who could be entitled to compensation as fishermen in the context of the court case. Everyone claims to be a
fisherman. Membership in the Beach Management Unit would not be helpful as its membership includes all in the fishing industry.

11.11 Kenya National Commission for Human Rights (Email Correspondence with Ms. Stella Wangechi)

- The mandate of the Commission
  The Kenya National Commission on Human Rights (KNCHR/Commission) is the National Human Rights Institution (NHRI) for Kenya. It is established by the Constitution of Kenya (Article 59) and operationalised by the Kenya National Commission on Human Rights Act. The Commission is also established as per the Paris Principles. The commission enjoys a wide mandate on the promotion and protection of human rights in both private and public spheres in the country.

- Has the Commission been involved in advocacy work relating to the Lamu Port Project and in what ways?
  As per the mandate of the commission, we have received and investigated several issues arising from this project. The advocacy around this project has been done through conducting fact finding investigations, undertaking public forums, hosting mediation sessions and holding policy meetings with duty bearers.

- What are the current activities of the commission relating to the project/ engagement with civil society and affected communities/ international actors?
  The commission is actively engaged in the larger LAPPSET projects especially through their EISA review processes. Besides giving feedback to the EISA, the commission monitors the stakeholder engagement processes to ensure that they follow transparent and inclusive processes. Additionally, our officers ensure that fundamental stakeholder views are communicated back to the communities once the project developers make decisions on the issues raised.

  The commission has recently conducted a human rights and environmental training with lead agencies of EISA review plus NEMA officials. The objective of the training was to infuse human rights lens into the overall review of EISA.

- Was the Commission involved in any way in the design and implementation of the project?
  NO
What proposals does the commission have regarding the project?

The Lamu port is bound to increase expansion of business activities in the area and beyond. Businesses have both positive and negative impacts. In terms of negative impacts, human rights violations are likely to increasingly be impacted. The expansion of business must therefore go hand in hand with the government’s commitment to infuse human rights standards into business.

11.12 Meeting with Zainab Ghadhamfar, SAVE LAMU, on 13 January 2021

The respondent is a lawyer currently working with SAVE LAMU. She is a local resident who received her basic education on the island but who also went to university in Nairobi and later returned to Lamu to work.

In the period since LAPSSET began, she noted that there had been rapid urbanization and an influx of people into Lamu to take advantage of the economic opportunities created by the project. Due to this influx, there was concern about cultural erosion, so much so that the UNESCO World Heritage Commission had communicated its consideration of the deregistration of Lamu as a world heritage site. In this regard, a workshop had been scheduled for 19-22 January 2021 by stakeholders to consider how to manage this challenge and put in place measures for disaster management around the heritage site.

Economically, she noted that while the LAPPSET project portended economic benefits, these benefits were not proportionately enjoyed by residents, particularly those who were less educated and simultaneously economically disadvantaged. Since economic opportunities for professionals were few, Lamu residents, whose education levels are not high, were unlikely to get these opportunities.

As a young lawyer, she noted that while promises had been made to build the capacity of the youth to take on jobs on the project, the sponsorship that had been promised had not come through in full, thereby hampering the promised training of youths on the island.

It was therefore her view that in the immediate short term, because of the destruction of mangrove forests to make way for the port, the livelihoods of the majority of the residents had been affected. Without sophisticated fishing equipment, fishermen were no longer able to carry out their normal fishing activities as they had no capacity to move their fishing into the deep sea. Traders who previously invested in fishing in the island no longer consider it economically viable as most of the
good fishing grounds, including those of lucrative stocks such as crustaceans and other seafood, have been destroyed. This means less income for locals.

Given that for cultural and religious reasons women were dependent on men as the breadwinners, where men can no longer access fishing grounds, women had no resources for family upkeep. This has meant that many Lamu residents remain poor despite the increasing wealth brought on by the project, which appears to be favouring communities from the inland. Without resources for daily upkeep, it is difficult to invest in education for local children, meaning that poverty could be cyclic if interventions are not made to remedy the situation.

She expressed concern that the youth and women on the island are disillusioned with the project as the President and other national government officials who have toured the island to inspect the project appear to tout all the benefits of the project without inviting input from the locals on their concerns for erosion of their environment, cultural heritage and livelihoods.

11.13 Meeting with Raya Famau, Save Lamu, on 14 January 2021

Raya is a also a resident of Lamu who has lived there all her life. She is currently a community representative with Save Lamu. She noted that Lamu had been historically marginalised and no development projects had taken place there until LAPSSET was inaugurated.

The region is also predominantly inhabited by Muslims and she pointed out that the Islamic culture is particularly strict on women. Under Islamic culture, land ownership is predominantly male, which means that even where women use land, they only have access rights as neither their traditions nor their religion allows them to own land.

When the government issued compensation for land acquired for the project, she narrated that landowners were paid KES1.5 million (approx. USD14,000) for each acre of land acquired, money that was given to the registered (male) landowners.

Since there is no obligation to share this compensation with their wives, there were instances where men left their homes with the money and started new lives elsewhere. This meant that the proceeds from the acquisition of the land were in most cases not used for meeting family needs; which, coupled with displacement from the land in the LAPSSET area, left some women and children destitute. Without access to land, women were not able to grow maize and cassava as they had traditionally done and thus family incomes decreased.
She noted the close relationship between the environment and well-being of women; that where there is destruction of the environment, women suffered disproportionately compared to men, as their lives were centred on access to land.

Without access to land and little income that comes from subsistence farming, many women found themselves unable to meet the basic needs of their families, including healthcare and education. This was made worse by the fact that men who had been fishing had also had their fishing activities hampered by the destruction of fishing grounds when mangrove forests were cut down and the ports constructed.

In relation to the Coal Power Project, which had been the subject of litigation in Malindi, it was narrated that farmers were deprived of access to the land affected by the project during the pendency of the suit, without compensation, which also affected the livelihoods of the concerned residents.

It was her assessment that whereas the long-term benefits of the project may be laudable, the current trajectory indicates that local residents will not benefit to the same extent as people from the inland who have come to Lamu. She expressed concern about the long-term impacts of the influx of outsiders on local culture, language and way of life and how this might impact cultural events which have contributed to the status of Lamu as a world heritage site.

She reiterated that Lamu residents were not opposed to LAPSSET, but they were concerned about the continued destruction of mangrove forests (which are central to their economy and way of life), the potential loss of world heritage site status, the impact of the project on tourism and economic lives of people and that women were not included at all in the decision-making processes around the project.

**Summary of Key Findings**

- Kenya has a comprehensive legal and policy framework for the protection of the environment, which is also directly relevant to the protection of MCH.
- While public participation is anchored in the Constitution, there is no legislative framework that governs public participation at the national level. At the national level, the Kenya Draft Policy on Public Participation has not yet been formally adopted. Nevertheless, the principles of citizen participation in the County Government Act and the County Guidelines
provide a robust framework and offer guidance on public participation which can be relied on by the national government for development projects pending adoption of a national framework. The principle of public participation also permeates the entire constitutional framework and should guide all actors where the public interest is concerned.

- While there is no specific legislation that protects the rights of indigenous groups neither has Kenya adopted the UNDRIP or ILO Convention 169 on indigenous and tribal people, the obligation of public participation permeates Kenya’s constitutional framework and is affirmed by several court decisions. The African Commission has also established this obligation as part of the right to development.

- Despite the constitutional obligation of public participation, and findings of the African Commission in the *Endorois Case* on the obligation of the state to consult communities before decisions affecting them were made in fulfilment of their right to development, the government failed to meaningfully involve key stakeholders (especially local and indigenous communities) in the design and implementation of the Lamu Port project. The national government’s lack of consultation with indigenous communities before commencement of LAPSSET in violation of international standards has been confirmed in several court decisions.

- The fishermen in Lamu appear not to have agreed on the best method to use in distributing the money awarded in the Malindi Petition. Most respondents said that the money should be distributed through the Beach Management Unit. However, membership of BMU also includes people within the fishing sector who are not fishermen.

- This lack of consensus reveals the complexity of ensuring meaningful participation. In a sense, some stakeholders could be using public interest concepts like protection of the environment or preservation of MCH as pretext for obtaining economic compensation.

- There has not been change of tune by the government on engagement with stakeholders following the determination by the High Court in Malindi.

- The government filed an appeal against the High Court judgement and obtained an order for stay of execution of the judgement pending the determination by the Court of Appeal. In the meantime, the project has gone on unhindered. First 3 berths that form phase 1 of the port project are nearing completion.
• Phase 1 of the port project has been funded fully by the government of Kenya while the remaining phases are to be financed by private sector investors. The current COVID-19 pandemic, however, has affected the project. Phase 1 is almost complete (reportedly at 80 per cent of completion as of November 2020), the commissioning and handover was delayed because the port equipment was sourced internationally. The project timeline has been adjusted at the request of the contractor and it is now expected that the commissioning of the first phase will happen in December 2021. As a consequence, the rest of the project will also be delayed.

• Most stakeholders appeared to be totally opposed to the Coal Power Project but supportive of the Port project subject to incorporation of concerns raised by stakeholders. This position might be motivated by two facts:
  • The port project is being financed by the Government and being carried out by a Government entity- Kenya Ports Authority. The Coal Project is being carried out by a consortium of private investors. The Coal project thus may present difficulties to stakeholders seeking to hold the investors accountable based on public law concepts.
  • The adverse effects of the Coal project on the environment might seem more apparent as compared to the adverse effects of the Port Project on the environment and cultural heritage.

• Low literacy levels in Lamu might deny the residents a chance to reap the economic benefits likely to be brought about by the port project.

• Opposition to the port project might be motivated by a feeling of invasion of Lamu by non-locals while Lamu has been neglected and marginalized by successive governments since independence. The residents do not have confidence government initiatives and the manner in which the project was initiated has not helped matters. Further, residents think that the government has not been sincere in its commitments to them and has also not been forthcoming with information.

• There indeed exists a vibrant network of actors conducting advocacy in relation to the Lamu Port Project. However, most of these actors are based within Lamu Town (the island). There might be need to involve the immediate (rural) host communities based on the mainland where the project is located.

• There was a general feeling among respondents that preservation of cultural heritage should not be done at the expense of the economic advancement of Lamu residents. For instance, preservation of traditional fishing methods would lead to more poverty since this is done on a small-scale basis. These methods though attractive to tourists, are uneconomical since they use old wooden boats that are becoming increasingly costly to maintain. There would be need to show residents the real (including economic) benefits of preservation of cultural heritage.

• It is not clear at present whether the government has a policy in place to ensure incorporation of local content in the project and whether it would put in place a benefit sharing arrangement with the host community or the Lamu County Government.

• Amongst the various capacity building and other initiatives envisaged at national and county level, there appears to be none specifically targeting women and/or taking into consideration the specific impact of the project on their rights and needs.

• The project development appears to have worsened the economic conditions of women, partly due to their pre-existent lack of access to land rights at both community and family level. Destitution and lack of access to livelihood options have therefore intensified as a result. Women in the community still appear to support the project, based on its promises for future improvement of local conditions. At the same time, they fear for the destruction of the mangrove forest, and the environmental and social sustainability of the area in the longer term.
The Development Corridors Partnership is a research and capacity building collaboration among institutions from China, Kenya, Tanzania, and the UK. Its main purpose is to deliver effective research and build capacity so development corridor decision-making can be based on sound scientific evidence and effective use of available planning tools and procedures.
Executive Summary

This report presents the results of the study “Development Corridors in Kenya: A Scoping Study”. The objective was to review the current baseline situation in relation to mega-scale development corridor projects in Kenya with regard to the people and society, environment, conservation and development. The work forms the basis for the planning and implementation of the Development Corridors Partnership (DCP) research programme that will offer innovative solutions towards achieving these mentioned goals both in Kenya and Tanzania but also aims to showcase best practice applicable to other countries and regions.

The scope of the report includes a conceptual framework for understanding development corridors in Kenya and related initiatives as outlined in the National Spatial Plan 2015-2045, with the Lamu Port and Lamu-Southern Sudan-Ethiopia Transport (LAPSSET) and Standard Gauge Railway (SGR) corridors being the two main corridors under consideration. It then reviews a broad array of stakeholders and their influence on Kenya’s development corridors. It analyses the development corridor implementation in Kenya by looking into Corridor Project Negotiation and Agreement Process, challenges to corridor implementation, litigation and resultant impacts. It goes further to highlight potential social and ecological impacts of development corridors, and climate change-related risks facing the development corridors.

The study applied several data collection and analysis tools. Literature review, stakeholder analysis and a critical review of relevant policies and legislation were completed to identify actors and policy, as well as legislative frameworks relevant to the development corridors in Kenya. Efforts were also made to collect data from selected government agencies and actors through telephone and email communications (Section 1.1 to 1.3).

Key Findings

1. Development corridors in Kenya and related initiatives (Section 2.1 & 2.2)

This study established that Kenya has two main development corridor projects. The first one is the Lamu Port-Southern Sudan-Ethiopia Transport (LAPSSET), a flagship project under Kenya’s Vision 2030, whose aim is to create seamless connectivity between the East African countries of Kenya, Ethiopia and South Sudan. The second is the Standard Gauge Railway (SGR), which is also a Vision 2030 flagship project as well as the East Africa Railways Master Plan (2009) project aimed at connecting Kenya, Tanzania and Uganda. Additionally, other development corridor related initiatives identified include dams and water transfers, Lake Turkana Wind Power Farm, oil and gas exploration and production, airports, resort cities and industrial park projects.

2. Key Stakeholders and their influence in Kenya’s Development Corridors (Section 3.1 to 3.7)

Over 100 stakeholders involved in the design, development and implementation of development corridors in Kenya were identified and documented. These include government ministries, parastatals and research institutions, industries, regional bodies, international/donor agencies, Non-Governmental Organizations (NGOs), and umbrella bodies (such as Kenya Private Sector Alliance (KEPSA) and Kenya Association of Manufacturers (KAM)). All these stakeholders have continued to influence policies towards development corridors in Kenya at varying levels as discussed in Section 3. The Office of the President (OP) features prominently as the key initiator and decision maker in the development corridor processes in Kenya. However, the government through its relevant ministries play a central role in providing strategic direction and support for the implementation of the projects.
3. Development corridor implementation in Kenya (Section 4.1 to 4.3)

The conceptual framework for the development corridors in Kenya is outlined in the National Spatial Plan 2015-2045. The study found that the process of initiation and implementation of development corridors in Kenya is guided by the Public Private Partnership Act No 15 of 2013. Moreover, the project execution process begins with the relevant government authority inviting proposals from potential project investors and contractors to show their interest and eligibility, and follows through eighteen stages. The conducive regulatory framework in the utility sectors facilitates Public-Private Partnerships (PPPs), supportive policy and legal environment, with several sectoral legal strategies and policy process.

4. Challenges to corridor implementation (Section 4.4)

The study established that there are several challenges faced during development corridors implementation in Kenya. These include: litigation and its resultant impacts, change to a devolved system of government, national and regional politics, management challenges due to human resource management issues, corruption and fraud during land acquisition and compensation, delay in passing of legislation, financial constraints resulting to delayed construction, insecurity due to presence of the Al-Shabaab, and climate change related risks. These challenges have resulted mainly in the delay in the implementation of the corridor projects, lack of support by the local communities, loss of revenue and investor confidence, and conflict between different stakeholders.

5. Potential impacts of development corridors (Section 5.1, 5.2, 6.1, 6.2 & 6.3)

The study identified several potential impacts associated with the development corridors in Kenya. These include land and water scarcity, biodiversity loss, social marginalisation, economic displacement, resource-based conflicts, deforestation, threats to heritage sites, livelihood impacts and dilution of cultural identity, increased exposure to drugs and diseases (including HIV/AIDS expansion), and child labour and climate change related impacts. Although Kenya has put in place a comprehensive climate change strategy and climate change institutional structures, it was found that there is little evidence of the integration of climate risks into plans for Kenya’s development corridor processes to foresee and mitigate climate change impacts. Apart from the negative impacts, the results of the study also showed that there are several potential positive impacts which include: opening of remote areas, economic growth and development of the area, more efficient modes of transport, improved security, reduced accidents in the highways, rapid growth of urban centres, and perhaps intensified agricultural activities.

6. Kenya’s ESIA and SEA process (Section 7.1 &7.2)

The Environmental and Social Impact Assessment (ESIA) and Strategic Environmental Assessment (SEA) are anchored on the National Environment Management and Coordination Act of 1999 and revised in 2015 to both align it with the Constitution of Kenya 2010 and to incorporate some aspects such as Strategic Environmental Assessments. These processes are governed by the National Environment Management Authority (NEMA). As a party to international conventions, treaties and agreements on the management of the environment, Kenya through NEMA initiate legislative proposals to give effect to them. The objective of the SEA in Kenya is to systematically integrate environmental considerations into policy, planning and decision-making processes, such that environmental information derived from the examination of proposed policies, plans, programmes or projects are used to support decision making. This study established that the ESIA and SEA processes and results underestimated the actual impacts of the SGR and LAPSSET projects on nature and people, while the mitigation measures, their implementation, monitoring and evaluation were inadequate or non-existent.
7. Priority research areas and capacity needs in Kenya (Section 8.1 & 8.2)

Based on the findings of the scoping study, several priority research areas are proposed with themes that are centred on corridor impacts, mitigation and sustainable management. These are biodiversity and conservation, water resources and supply-demand assessments, livelihoods, climate change adaptation in corridors, and scenarios of land use in the corridors. The study identified some capacity needs and are as follows: training for professionals in carrying out EIAs and SEAs, training for regulators in ESIAs and SEAs, training of Post-Doctoral Research Assistants and Research Assistants on quantitative and qualitative research methods, stakeholder engagement skills, land use scenarios analysis, image processing and GIS, modelling, climate change and adaptation skills, and scientific writing skills.
# Contents

Executive Summary ........................................................................................................... 1

Key Findings ...................................................................................................................... 1

Contents ............................................................................................................................. 1

Figures ............................................................................................................................... 3

List of Abbreviations ........................................................................................................ 1

1 Introduction .................................................................................................................... 2

2 Methodological approach to the scoping study .............................................................. 3

2.1 Literature review ......................................................................................................... 3

2.2 Stakeholder analysis .................................................................................................. 3

2.3 Observations and interviews ...................................................................................... 3

3 Development corridors in Kenya and related initiatives .................................................. 3

3.1 LAPSSET corridor .................................................................................................... 5

3.1.1 How it came about, where and what it is ................................................................. 5

3.1.2 LAPSSET past and current stretch ....................................................................... 6

3.1.3 LAPSSET key decision makers .......................................................................... 6

3.2 SGR corridor ............................................................................................................... 6

3.2.1 How it came about, where and what it is ................................................................. 6

3.2.2 SGR past and current stretch .............................................................................. 7

3.2.3 SGR key decision makers ................................................................................... 7

3.3 Related initiatives ....................................................................................................... 8

3.3.1 Dams and water transfers .................................................................................... 8

3.3.2 Lake Turkana Wind Power Farm ......................................................................... 8

3.3.3 Oil and gas exploration and production ............................................................ 8

4 Stakeholders and their influence in Kenya’s development corridors ................................. 9

4.1 Government Ministries and county governments ..................................................... 9

4.2 Parastatals and research institutions ....................................................................... 11

4.3 Industries .................................................................................................................. 12

4.4 Regional bodies ....................................................................................................... 13

4.5 Donor agencies and international NGOs ............................................................... 13

4.6 National Non-Governmental Organisations (NGOs) ............................................... 15

4.7 Umbrella bodies ...................................................................................................... 16

5 Development corridor implementation in Kenya ............................................................ 16

5.1 Regulatory anchors .................................................................................................. 16

5.2 Corridor project negotiation and agreement process ............................................... 17

5.3 Procedures for the execution of projects .................................................................. 18

5.4 Challenges to corridor implementation .................................................................... 20
5.4.1 Litigation and its resultant impacts ......................................................... 20
5.4.2 Devolution, national and regional politics .............................................. 21
5.4.3 Management challenges ........................................................................ 21
5.4.4 Corruption and fraud during land acquisition and compensation .......... 21
5.4.5 Delay in the passing of legislation .......................................................... 21
5.4.6 Financial constraints resulting in delayed construction ......................... 22
5.4.7 Insecurity due to the presence of the Al-Shabaab ................................. 22
6 Potential impacts of development corridors .................................................. 22
6.1 Biophysical impacts of development corridors .......................................... 22
6.1.1 Land and water ...................................................................................... 22
6.1.2 Biodiversity .......................................................................................... 23
6.2 Socio-economic impacts of development corridors .................................... 23
6.2.1 Displacement of people, conflicts and land speculation ...................... 23
6.2.2 Social marginalisation and cultural value deterioration ....................... 23
6.2.3 Livelihoods and poverty reduction ........................................................ 24
7 Climate Change-related risks facing the development corridors .................. 24
7.1 Climate change key trends ......................................................................... 24
7.2 Impacts on development corridors from climate change .......................... 25
7.3 Climate change adaptation and mitigation ................................................. 25
8 Kenya’s ESIA and SEA process ................................................................. 26
8.1 Regulatory framework ............................................................................... 26
8.2 The Environmental Impact Assessment (EIA) and Strategic Environmental Assessment (SEA) processes ................................................................. 26
9 Priority research areas and capacity needs in Kenya .................................... 28
9.1 Priority research areas ............................................................................... 28
9.2 Capacity needs .......................................................................................... 29
10 Conclusions .................................................................................................. 30
11 Bibliography ............................................................................................... 31
12 Appendices .................................................................................................. 35
12.1 Appendix 1. Quality of the coverage of the sectors in the adaptation literature ................................................................. 35
12.2 Appendix 2. List of Key Stakeholders in the Development Corridors in Kenya ................................................................. 36
12.3 Appendix 3. List of Development Corridor and related projects .............. 38
12.4 Appendix 4. Policy and Legislative Frameworks relevant to the Development Corridor Processes ................................................................. 42
12.5 Appendix 5. The likely impacts of development corridors on biodiversity and areas of conservation importance ....................................................... 47
12.5.1 References ............................................................................................ 49
12.6 Appendix 6. Key challenges to corridor implementation in Kenya by Corridor projects. 50
Figures

Figure 1: The northern corridor member states and envisaged transit and transport links .......... 4
Figure 2: Position of the SGR (Phases I & II) (a) in relation to the LAPSET and (b) location of the LAPSET Corridor including roads, proposed resort cities and proposed airports .................... 5
Figure 3: Power vs influence diagram for government ministries in corridor development processes. ........................................................................................................................................................................... 10
Figure 4: Power vs influence diagram for parastatals and research institutions ..................... 11
Figure 5: Power vs influence diagram for industries .................................................................................................................................................................................................................. 12
Figure 6: Power vs influence diagram for donor agencies and international NGOs .................. 14
Figure 7: Power vs influence diagram for NGOs ................................................................................................................................. 15
Figure 8: Power vs influence diagram for umbrella bodies .......................................................... 16
Figure 9: Steps in Establishing Public-Private Partnerships ......................................................... 18
Figure 10: Steps to be followed in Development Corridors Projects Identification and Selection. 18
Figure 11: Steps followed in actualizing solicited proposals ....................................................... 19
Figure 12: Steps followed when acquiring land for development corridors ............................... 20
Figure 13: Integrated EIA development process in Kenya. Note: PPP – Policies, Plans and Programmes .................................................................................................................................................................................................................. 27
Figure 14: SEA development process in Kenya ........................................................................... 28
List of Abbreviations

AfDB- African Development Bank
ASALs- Arid and Semi-Arid Lands
AU- African Union
COMESA- Common Market for Eastern and Southern Africa
CRBC- China Road and Bridge Corporation
CRDC- China Railway Design Corporation
CSOs- Civil Society Organizations
DCP- Development Corridors Partnership
EAC- East African Community
EIA- Environmental Impact Assessments
ERS- Economic Recovery Strategy for Wealth and Employment Creation
ESIAs- Environmental and Social Impact Assessments
EU- European Union
FoNNAP- Friends of Nairobi National Park
GDP- Gross Domestic Product
GIS- Geographic Information System
GoK- Government of Kenya
HIV/AIDS- Human Immunodeficiency Virus/ Acquired Immunodeficiency Syndrome
IGAD- Intergovernmental Authority on Development
INGOs- International Non-Governmental Organizations
JICA- Japan International Corporation Agency
KALRO- Kenya Agricultural and Livestock Research Organization
KAM- Kenya Association of Manufacturers
KEPSA- Kenya Private Sector Alliance
KRB- Kenya Roads Board
KWCA- Kenya Wildlife Conservancies Associations
LAPSSET- Lamu Port-Southern Sudan-Ethiopia Transport
LCDA- LAPSSET Development Corridor Authority
MoICNG- Ministry of Interior and Coordination of National Government
MoNTP- National Treasury and Ministry of Planning
NCTTA- Northern Corridor Transit and Transport Agreement
NEMA- National Environment Management Authority
NGO- Non-Governmental Organizations
NLC- National Land Commission
NNP- Nairobi National Park
PIDA- Programme for Infrastructural Development in Africa
PPP- Public Private Partnership Act
UNDP- United Nations Development Programme
RAs- Research Assistants
SADC- Southern African Development Community
SDGs- Sustainable Development Goals
SEAs- Strategic Environmental Assessments
SGR- Standard Gauge Railway
STE- Save The Elephants
USAID- United States Agency for International Development
VDS- Vision 2030 Delivery Secretariat
WB- World Bank
1 Introduction

The Kenya Vision 2030 is Kenya’s long-term development blueprint that “aims to transform Kenya into a newly industrializing, middle-income country providing a high quality of life to all its citizens by 2030 in a clean and secure environment” (GoK-NESC 2007). The Kenya Vision 2030 was launched on October 30, 2006 and is based on three ‘pillars’: the economic, the social and the political. The adoption of the Vision follows the successful implementation of the Economic Recovery Strategy for Wealth and Employment Creation (ERS) launched in 2002 (GoK 2003). The Vision is being implemented in successive five-year medium-term plans, with the current third plan covering the period 2018-2022. The economic, social and political pillars of the Kenya Vision 2030 are anchored on macroeconomic stability, continuity in government reforms, enhanced equity and wealth-creation opportunities for the poor, infrastructure, energy, science, technology and innovation, land reform, human resources development, security, and public sector reforms. Being a top priority government plan and with mandates cutting across multiple ministries, it is nested in the Office of the President (GoK-NESC 2007).

The Vision has identified several flagship projects in every sector to be implemented over the Vision period and to facilitate the desired growth rate. In the Vision 2030 Sessional Paper No. 12 of 2012, one of the goals/strategies is to build infrastructure development to support identified flagship projects, to ensure contribution to the economic growth and social equity goals. It also calls for the strengthening of the institutional framework for infrastructure development and accelerating the speed of completion. This development must be assessed against the backdrop of “Isolation, insecurity, weak economic integration, limited political leverage, and a challenging natural environment that combine to produce high levels of risk and vulnerability”, as noted in the Vision 2030 Development Strategy for Northern Kenya and Other Arid Lands (GoK 2012).

More recently, Kenya launched the Big Four Agenda and Action Plan to guide the development agenda of the country in the period 2018-2022. The Agenda is closely aligned to the Vision 2030 and is focused on following topical issues: manufacturing, affordable housing, universal health care and food security. Manufacturing has the potential to advance socio-economic development through increased and diversified exports, reduced import bills and enhanced employment creation (KIPPRA 2018). But it, along with housing and food security, are associated with buildings and associated structures that occupy land spaces and host activities that impact on the environment. Likewise, a clean environment and universal access to safe water can greatly improve public health and minimise costs related to health care services. In this manner, well designed Environmental Impact Assessments and Strategic Environmental Assessments for development corridors and auxiliary infrastructure can play a critical role in meeting the goals of the Big Four Agenda.

Corridor developments, which comprise the installation of linear or polygonal megastructures, have direct and indirect impacts on the four “spheres” of planet earth: the biosphere, hydrosphere, atmosphere and lithosphere. As well as impacting on people and their diverse societal structures and interactions, including socio-ecological interdependencies, within their known, predicted, and unknown spheres of influence. Given these actual and potential effects, it is important to ensure that corridor developments are undertaken ensuring that a balance is maintained between conservation and development, and that generational and inter-generational benefits are at least sustained, or better still accrue with time. This Scoping Report reviews the current baseline situation in relation to mega-scale corridor development in Kenya with regard to society, environment, conservation, and development. This report forms the basis for the planning and implementation of the Corridors Development Partnership (DCP) research programme that will offer innovative solutions towards achieving these mentioned goals, both in Kenya and globally.
2 Methodological approach to the scoping study

2.1 Literature review

The DCP Kenya team conducted a detailed review of relevant open access published papers; government documents, policy papers, reports and strategies; private sector reports, documents and strategies; and media reports and commentaries related to development corridors. In particular, the team reviewed documents relating to the planning process, implementation and impacts of the installation of the Standard Gauge Railway (SGR) and the Lamu Port South Sudan Ethiopia Transport (LAPSSET) corridor and their related initiatives in Kenya.

2.2 Stakeholder analysis

The stakeholder analysis was conducted systematically based on Mitchell’s taxonomy of stakeholders (Mitchell et al. 1997). Stakeholders were identified and mapped based on their interaction either with the SGR and LAPSSET directly, or with the communities living in the corridor areas. Power-influence mapping was undertaken based on the perceived authority of the stakeholder in the corridor area. For example, government parastatals and ministries with representatives on the LAPSSET Corridor Development Authority Board would be considered to have high power and influence.

2.3 Observations and interviews

The foundation laid by the literature review and the stakeholder analysis made it possible for the research team to carry out visits to the field, where primary data was collected. Formal and informal interviews with corridor institutions such as LAPSSET, Konza Technopolis Development Authority (KOTDA), Kenya National Highways Authority (KeNHA), Geothermal Development Company (GDC) and SGR were conducted as were opportunistic interviews with individuals interested in development corridors in Kenya. This included groups such as Kenya Wildlife Conservancies Association (KWCA), Save the Elephants (STE), Amara Conservation, Friends of Nairobi National Park (FoNNAP) and other stakeholders.

3 Development corridors in Kenya and related initiatives

In 1985, the countries of Burundi, Democratic Republic of Congo, Kenya, Rwanda, and Uganda signed the Northern Corridor Transit and Transport Agreement (NCTTA) and its associated protocols to implement the Northern Corridor. The Northern Corridor is a multimodal trade route linking the landlocked countries of the Great Lakes Region with the Kenyan maritime seaport of Mombasa¹. South Sudan acceded to the Agreement in 2012. The Northern Corridor was envisaged to facilitate regional economic development. Implementation of the Agreement was vested in the Northern Corridor Transit and Transport Coordination Authority which is based in Mombasa, Kenya. This is partly the context within which the national development corridors have been framed (Figure 1).

¹ http://www.ttcanc.org/page.php?id=11
The conceptual framework for the development corridors in Kenya is outlined in the National Spatial Plan 2015-2045, with the LAPSSET and SGR corridors being the two of focus (GoK 2015). Development corridors in Kenya are diverse, ranging from linear infrastructure such as rails, roads and pipelines, to spatially spread nodes such as business hubs, ports and luxury cities (Figure 2). Today, several projects have been proposed and are either ongoing or planned. Four projects have featured prominently. These are 1) The LAPSSET Corridor; 2) SGR Corridor; 3) KOTDA, and 4) the Resort Cities. Other associated projects include the expansion of existing highways in the country, installation of wind power projects in Northern Kenya and the construction of dams to aid water transfer in the country. These projects are outlined briefly below, and more details are presented in the Appendices.

Figure 1: The northern corridor member states and envisaged transit and transport links.

Source: Northern Corridor Transit and Transport Coordination Authority website²

² http://www.ttcanc.org/
3.1 LAPSSET corridor

3.1.1 How it came about, where and what it is

The Lamu Port-Southern Sudan-Ethiopia Transport (LAPSSET) corridor was initiated under Kenya’s Vision 2030. The project aims to create seamless connectivity between the Eastern African Countries of Kenya, Ethiopia and South Sudan, connecting an estimated population of 160 million people across these three countries. Further, the corridor is part of the larger land bridge intended to connect the East African coast from Lamu Port to the west coast of Africa at Douala Port, Cameroon. Regional economic bodies such as COMESA-EAC-SADC Tripartite and the Intergovernmental Authority on Drought and Development (IGAD) are involved in the extension efforts (Lapsset Corridor Development Authority 2016).

LAPSSET comprises Lamu Port, a railway line, road network, oil pipeline, oil refinery, airports (e.g. at Isiolo, Lamu), and resort cities (e.g. Isiolo). Some of these elements are in progress. For instance, the Lamu Port construction was launched on 2nd March 2012 and is still ongoing, whereas an airport in Isiolo is already complete although it is not yet operational. The road that links Isiolo with Moyale on the Ethiopian border was 85% complete by 2016 (Lapsset Corridor Development Authority 2016).

During the African Union (AU) Summit held in Johannesburg, South Africa in June 2015, LAPSSET was endorsed and added to the AU Presidential Infrastructure Championship Initiative (PICI) project. Further, the project’s admission to the African Union PIDA project (Programme for Infrastructure Development in Africa) elevated its financial support from continental institutions.
such as AU/NEPAD (New Partnership for Africa’s Development) (Lapsset Corridor Development Authority 2016).

3.1.2 LAPSSET past and current stretch

The only extensive infrastructure prior to the implementation of the LAPSSET corridor project was the road network, but it was poorly to moderately developed, comprising mainly of marram. The envisioned corridor, when complete, will have a length of over 2,000km, from the coastal town of Lamu and extending into the hinterland, to the Sudan border through the Isiolo, Lodwar and Nakodok, and with a branch from Isiolo extending northwards to the Ethiopia border via Moyale. It traverses the following counties: Lamu, Garissa, Isiolo, Meru, Laikipia, Samburu, Baringo, Marsabit and Turkana (Figure 2). Further, LAPSSET will consist a 1,710km long railway line, a 2,240km long oil pipeline, and a dual carriageway of 880km (REPCON Associates 2017).

3.1.3 LAPSSET key decision makers

There are multi-level, and multi-sectoral stakeholders involved with key decision making process at various stages of the LAPSSET project. They included: The Office of the President (OP) which initiated and is leading the process, as well as government ministries, parastatals, umbrella bodies, regional and international agencies, and Non-Governmental Organisations (NGOs), among others. In March 2013, through the Presidential Order Kenya Gazette Supplement No. 51, Legal Notice No. 58, the LAPSSET Corridor Development Authority (LCDA) was established. The agency is charged with steering the LAPSSET corridor project working in conjunction with the Office of the President and key stakeholder ministries as key decision makers. The ministries that sit on the LCDA board, and that can, therefore, be considered as the core ministries, are the National Treasury, Transport, Infrastructure, Housing and Urban Development, Energy, Tourism and Wildlife, and Lands and Physical Planning. The ministries have associated parastatals such as Kenya Ports Authority (KPA), National Environment Management Authority (NEMA), and the National Land Commission (NLC) that are also key decision makers since they are directly involved in the project implementation and sit on the Board of the LCDA. NGOs and Civil Society Organisations (CSOs) such as Save Lamu and Muslims for Human Rights (MUHURI) have attempted to shape the implementation of LAPSSET. Organisations, from an African, East African and international perspective, including the African Union (AU), Inter-Governmental Authority on Development (IGAD), East African Community (EAC) and international donor organisations and investors, have had variable levels of influence on the LAPSSET project decision making, as reflected in Section 3 below.

3.2 SGR corridor

3.2.1 How it came about, where and what it is

The standard gauge railway (SGR) is another large flagship project conceived under the Kenya Vision 2030 development agenda. It followed the recognition that the old railway system that was fully established by the early 1900s, running westwards to Uganda from the coastal town of Mombasa and through the central and western parts of Kenya, was aged and unable to sustain the ideal load capacity of the region (AWEMAC 2012). Regionally, the SGR forms part of both the East Africa Railways Master Plan (2009) and the Eastern African SGR regional network. This master plan aims to rejuvenate existing railways serving Tanzania, Kenya and Uganda, and make extensions to Rwanda, Burundi, South Sudan, Ethiopia and beyond (CPCS Transcom International Limited 2009).
On 1st October 2009, Kenyan and Ugandan governments signed a memorandum of understanding for the construction of the SGR from Mombasa to Kampala. On 28th August 2013, Rwanda came on board, and the three governments (Kenya, Uganda and Rwanda) signed a Tripartite Agreement commitment to fast track the SGR development to their respective capital cities. South Sudan later joined as an interested stakeholder in the project. The government of Kenya has completed the first phase of the SGR project from Mombasa to Nairobi. The construction of the second phase from Nairobi to Naivasha has begun (Ministry of Transport and Infrastructure, 2014).

3.2.2 SGR past and current stretch

Prior to the conception of the SGR project, Kenyan railways had a total network length of 2,210km. The main network, covering 1,083km, runs from Mombasa through Nairobi and Nakuru, to Malaba at the Uganda border point. Another 217km branch line run from Nakuru to Kisumu, linking with the ferry service on Lake Victoria (Berger 2011). Another additional set of branch lines, of 618km in total length, runs from Nairobi to the towns of Magadi, Taveta (Tanzania border), Kitale and Butere (western Kenya), and to Nyahururu, Nanyuki and Solai (central Kenya) (Berger 2011).

Kenya’s SGR, commonly referred to as the Mombasa-Nairobi-Kisumu-Malaba SGR, is to be implemented in two phases. Phase 1 is the Mombasa-Nairobi railway covering a total length of 485km. The phase traverses eight counties of Mombasa, Kwale, Kilifi, Taita-Taveta, Makueni, Kajiado, Machakos and Nairobi, passing through 31 towns, with 33 terminals. The Phase 1 subgrade length is 427km and comprises 98 medium and large bridges, 969 culverts, and 77 overpasses across roads (AWEMAC, 2012). The SGR Phase 1 route generally runs parallel to the Mombasa-Nairobi Highway (A109), which is 482km long. Full operation of this phase was intended in December 2017 (Habitat Planers 2016), but the passenger component was launched earlier by Kenya’s President on 1st June 2017.

Phase 2 is divided into sub-components A and B. Phase 2A has already begun. It starts at Nairobi South Station and will terminate at Enosupukia in Narok County covering a total length of 120km. This phase will pass through five counties, namely: Nairobi, Kajiado, Kiambu, Nakuru and Narok, in that order. There will be six terminals and four tunnels built along the corridor. The first tunnel will be built at a length of 4.5Km. Phase 2B is set to undergo a separate Environmental Impact Assessment (EIA) study and report from Phase 2A. When completed, the SGR will connect Mombasa city port with the interior part of the country (Habitat Planners, 2016).

3.2.3 SGR key decision makers

The SGR project has been led by the Office of the President under the Vision 2030 development programme. Kenya Railways Corporation (KRC), as the implementing agency, is mandated to work in liaison with such players for successful implementation. The following two ministries sit on the board of the KRC and are therefore regarded as the primary decision-makers in its implementation: The National Treasury, Transport, Infrastructure, Housing and Urban Development ministries. The key parastatals include KeNHA, NEMA, and NLC. International donors such as China Exim Bank, World Bank (WB), and the African Development Bank (AfDB) have directly funded roads and energy infrastructure along the corridor. Umbrella bodies such as KCC, Kenya Association of Manufacturers (KAM), conservation groups, CSOs, and other stakeholders’ efforts may also contribute to some of these decision-making situations. These are discussed further in Section 3 below.
3.3 Related initiatives

3.3.1 Dams and water transfers

The National Water Master Plan (NWMP) 2030 is aligned with Vision 2030 and aims to develop the country’s available surface and groundwater resources to the fullest extent possible. In order to meet water demands and mitigate drought impacts through multipurpose development, inter- and intra-basin transfers, as well as through promotion of water saving, reuse of water, roof and rock catchments for water harvesting, among others (MEWNR and JICA 2013). For example, activities proposed along the yet to be constructed western sector of the SGR are: a multi-purpose (domestic, irrigation, hydropower) dam in the Nandi hills to transfer 189 million cubic metres per year (MCM/yr) of water to Lake Victoria South Catchment Area, including Kisumu City (MEWNR and JICA, 2013); Itare and Londiani dams will be built in the Lake Victoria South Catchment Area (Mau) which will transfer 41MCM of water per year to the Greater Nakuru area; and augmentation of groundwater supplies to Nakuru town from three major well fields of Kabatini, Baharini, and Olobanita (15,000 m³/day). In association with the LAPSSET corridor, it is proposed for Wajir town to pipe water from the Merti aquifer in Habaswein area, 110km south of Wajir, to relay a total of 2.2MCM/year of potable water to Wajir (Luedeling et al. 2015). This plan illustrates the significant role of groundwater storage in water security assurance (Foster and MacDonald 2014), particularly in the arid and semi-arid lands (ASALs). Further, in the Lamu area where the port construction is taking place, it has been estimated that the water demand for the port construction will be 1200m³/day, against a supply of 450m³/day from the ten boreholes at the Hindi-Magogoni water supply. This water deficit will be worsened by the expected growth in the population of Lamu area, from 16,146 people in 2009 (with a demand that is not being met of 181,550m³/day) to 450,000 people by 2030 (County government of Lamu 2013).

3.3.2 Lake Turkana Wind Power Farm

The Lake Turkana Wind Power project which was commissioned in 2018 is of significant strategic benefit to Kenya and is one of the largest private investments in Kenya’s history. The wind farm site is in Marsabit District in northern Kenya, approximately 50km north of South Horr Township and 8km east of Lake Turkana. The farm consists of three interconnected components: a wind farm at Lake Turkana, Lake Turkana to Suswa transmission line, and road adjustments, upgrades and construction. It aims to provide 300MW of reliable, low-cost wind energy to the national grid, equivalent to over 20% of the current installed electricity generating capacity. The project includes rehabilitation of the existing road from Laisamis to the wind farm site, approximately 200km, as well as plant and equipment lay-down areas, and access road network in and around the site for construction, operations and maintenance purposes. The construction of the transmission line is the responsibility of the Kenyan Government through the state-owned Kenya Electricity Transmission Company (KETRACO). KETRACO will own the transmission line and have a tolling arrangement with Kenya Power (Lake Turkana Wind Power Project 2011).

3.3.3 Oil and gas exploration and production

In 2012, Tullow Oil made the first discovery of crude oil in the South Lokichar Basin at the Ngamia-1 well. Since then, Tullow drilled more wells in Turkana County and determined that they are economically viable, with an estimated 600 million recoverable barrels of crude oil. Tullow oil has already improved the road infrastructure to support the pilot transfer of 2000 barrels of oil per day by road to the coast, which started at the end of 2017. Eventually, pipeline infrastructure
extending to Lamu port, with a transfer capacity of 200,000 barrels of crude oil per day, will be built to replace the road transportation³.

4 Stakeholders and their influence in Kenya’s development corridors

The importance of including stakeholders in a project has been widely recognised. According to Freeman (1984), a stakeholder is “any group or individual who can affect or is affected by the achievement of an organisation’s objectives”. Stakeholders can range from individuals to formal and informal groups and institutions, directly or indirectly involved with an organisation and its activities. Stakeholder analysis is an essential part of stakeholder management.

Within the Kenyan development corridor context, a wide range of stakeholders have been identified (Appendix 2.) with varying degrees of involvement in the development corridor processes. Some inferences have been made specific to LAPSSET and SGR in Section 2 above. This section examines the broader stakeholder pool and how they inter-relate. The power and influence of stakeholders are also illustrated in this section. In this context, power is the level of authority a stakeholder has in relation to the corridor development project, while influence is the level of involvement of the stakeholder in the project, and/or the degree to which they can influence those with power to change the course of the proposed development.

4.1 Government Ministries and county governments

The government of Kenya through the Office of the President and various ministries has developed multi-sectorial initiatives towards the realisation of the development needs of the country. Under the Presidency, the Vision 2030 which is the national development blueprint, and the Constitution of Kenya, 2010 have been key milestones in the organization and coordination of the government’s input towards the development agenda. More recently, the Big Four Agenda that was launched by the President, comprising manufacturing, housing, universal health care and food security, and underpinning job creation, health, food security and development, has added on to the Vision 2030’s 3rd Medium Term Plan (MTP) targets and tangible achievements expected by 2022.

To promote and spur sustainable socio-economic activities countrywide, and in resonance with the United Nations Sustainable Development Goals (SDGs) and the African Union Agenda 2063, Kenya has reviewed and streamlined its policies, strategies and plans. This is in order to inspire coordination between national and county governments, and national growth in all sectors, including: transport and development, environment and forestry, energy, agriculture, water and sanitation, industrialization and development, and extractives. Some of the intended transformative flagship projects include LAPSSET, the SGR, and the Northern Corridor and their associated nodes. To ensure sustainable implementation and actualization of the desired economic transformation, the National Treasury and Ministry of Planning (MoNTP) has sought partnerships with local and international monetary funds and donors to mobilize projects’ finances, while the LAPSSET Development Corridor Authority (LDCA) and the Vision 2030 Delivery Secretariat (VDS), both domiciled in the Office of the President, were established to

³ www.tullowoil.com
oversee the implementation, hence they have both high power and influence in corridor development projects (Figure 3).

Figure 3: Power vs influence diagram for government ministries in corridor development processes.


Those ministries in whose dockets implementing agencies fall, and those that sit on the boards of such agencies, tend to have both high power and influence. As a major mobilizer of funds across the mega projects, the Ministry of the National Treasury and Planning (MoNTP) also has a lot of power and influence on the projects’ implementation. This is however intertwined with the mandates, roles and responsibilities of at least twelve other ministries and the shared sustainable development agenda within and across sectors. For example, the Ministry of Information Communication and Technology (MoICT) might be particularly needed for effective telecommunication infrastructure installation along the corridors, just as the Ministry of Interior and Coordination of National Government (MoICNG) would ensure security and safety which is important for successful projects’ implementation, especially during site works.

The government works with global finance organisations such as the World Bank and African Development Bank, international agencies such as the UN and powerful International Non-Governmental Organisations (INGOs) such as Japan International Corporation Agency (JICA), the United States Agency for International Development (USAID) and the European Union (EU). However, there are concerns of the low level of partnership with the private sector and NGOs with a national and subnational scope.
4.2 Parastatals and research institutions

Under the Ministry of Transport and Infrastructure Development, the Kenya Roads Board (KRB) has the mandate to oversee the national road network and co-ordinate its development, rehabilitation and maintenance. KENHA plays an important role in highways. When the Kenya Roads Bill 2017 transitions into an Act, there will be established an overall Public Roads Standards Board with representation from some of the smaller existing and proposed new institutions and other stakeholder groups. Other parastatals such as the Kenya Rural Roads Authority (KERRA) and Kenya Urban Roads Authority (KURA) are also involved, but due to their more restricted jurisdictions, they have less power and influence over the overall corridor development (Figure 4).

Figure 4: Power vs influence diagram for parastatals and research institutions


The National Environmental Authority (NEMA) and Kenya Wildlife Service (KWS) which mainly deal with environmental and biodiversity conservation, also play a huge role in the establishment of large transport corridors. NEMA requires that Strategic Environmental Assessments (SEAs) and Environmental and Social Impact Assessments (ESIAs) are carried out for all projects that are implemented in the country. KWS manages over twenty national parks and reserves in the country, which cover a considerable area of the national land mass and contribute significantly to the national Gross Domestic Product (GDP) through tourism. The organization also has high visibility due to the international profile of its parks and partnerships and holds a high-power vs influence standing (Figure 4).
Kenya Railways Corporation (KRC) is responsible for the supervision of the construction of the SGR but seems to have both low power and influence in the current scheme of things, being more of a recipient of the finished product to manage (Figure 4). The parastatals such as NEMA, KURA, KERRA, KWS, among other parastatals generally partner with international organisations such as the United Nations Development Programme (UNDP) and United Nations Environment (UNEP), as well as national research institutes such as Kenya Agricultural and Livestock Research Organisation (KALRO), Kenya Forestry Research Institute (KEFRI), and universities. They do this to promote research and build capacity in development sectors such as agriculture, water, biodiversity, energy, and transport and infrastructure. Due to this, the research institutions have relatively high influence, but because they are far removed from the actual corridor implementation and development process, they have low power (Figure 4).

4.3 Industries

Several industry stakeholders are working in the development corridors particularly in the construction and extractives (cement and quarry, mining, and oil and gas) sectors. However, the Chinese companies that have been awarded construction contracts are dominant. These are the China Road and Bridge Corporation (CRBC), China Railway Design Corporation (CRDC), and the CRRC Corporation, which manufactures locomotives. These companies all fall within the low power-low influence quadrant as they are the recipients of contracts with more operational rather than decision making roles in the projects (Figure 5). The Kenya based cement manufacturers, including Bamburi Cement Company, have the same influence but higher power than the Chinese construction companies. In part because they have established track records within the country. Amongst the industry group, Tullow Oil Company scores highest on both power and influence, particularly because fossil fuel is still a major energy source and a pipeline is to be constructed to transport the resource from Turkana area to the Lamu Port (Figure 5).

![Figure 5: Power vs influence diagram for industries](image-url)

APEC Ltd = APEC Consortium Ltd, ARM AFRICA = ARM Cement Ltd, AOC = Africa Oil Corporation, CRRC = CRRC Corporation Ltd, TGMC = Turkana Gold Mining Company Ltd., BAMBURI = Bamburi Cement Company, CRDC = China Railway Design Corporation, CRBC = China Road and Bridge Corporation, MMC = Mayfox Mining Company, DANGOTE = Dangote Cement Plc, EAPC = East African Portland Cement, TULLOW = Tullow Oil Company
4.4 Regional bodies

East Africa has three regional bodies, the African Union (AU), East African Community (EAC⁴) and the Intergovernmental Authority on Development (IGAD⁵) whose main mandates are to deepen socio-economic, political and cultural ties, and promote regional cooperation and integration. There are already tangible efforts to create an East Africa common market. Conceptions of joint mega projects such as LAPSET and the SGR from the port of Mombasa, Kenya all the way to the Democratic Republic of Congo can be a major boost to the region’s economy.

The EAC has developed and reviewed various multi-sectoral policies to guide a common development agenda in key sectors such as energy, fisheries and trade. It has developed a Vision 2050 development plan geared to spur economic transformation in the East African countries. At the continental scale, AU’s Agenda 2063 emphasizes the role of infrastructure in the growth and sustainable development of the continent, for example through its Programme for Infrastructural Development in Africa (PIDA).

The partnership has been another key investment area for regional bodies. IGAD, AU, and EAC have worked very closely with respective government ministries, the United Nations, European Union, among other stakeholders in various areas of conflict resolution, drought, climate change, water, agriculture and biodiversity. One key commission created by EAC is the Lake Victoria Basin Commission, established in 2001 to coordinate various interventions in the Lake Victoria Basin region and to turn it into an economic growth zone for regional livelihood improvement. All these bodies fall in the high power-high influence bracket but are subservient to each country’s development agenda and priorities.

4.5 Donor agencies and international NGOs

The donor agencies and international NGOs involved in corridor development projects in Kenya have been doing so through funding and research. These agencies hold different levels of power and influence over the development corridor processes (⁴ East African Community (EAC) member states are; Burundi, Kenya, South Sudan, Tanzania, and Uganda,
⁵ Intergovernmental Authority on Development (IGAD) is composed of eight-member states, namely; Djibouti, Ethiopia, Somalia, Uganda, Kenya, Eritrea, the Sudan, and South Sudan)
with most of them clustering in the categories of moderate to high influence, and moderate power. This could be partly attributed to their international scope, presence and acceptance among the nations, and strong participation in funding for development projects through country line ministries, and an inclination to make such projects have positive development-oriented outcomes for the countries within which they carry out their projects.

**Figure 6:** Power vs influence diagram for donor agencies and international NGOs

4.6 National Non-Governmental Organisations (NGOs)

Most of the NGOs that are carrying out programmes and projects within the development corridors tend to focus on biodiversity and environmental conservation, development, governance, extractives, health, livelihoods, famine relief, and poverty alleviation. Other sectors include media, land, water and general or cross-cutting research areas (Appendix 2.). Most of these organisations cluster around moderate power, but along that line have a wide range of influence (Figure 7). This could be attributed to their visibility, capacity, and recognition by the government as being a proven and dependable key actor, e.g. the Kenya Red Cross which stands out as having the highest power and influence among the considered group of organisations.

Figure 7: Power vs influence diagram for NGOs


6 Caritas is widely recognized by communities in marginalised counties such as Turkana where the Catholic church was traditionally the main provider of basic services such as education and water (Conversation with Professor Daniel Olago, Institute for Climate Change and Adaptation, University of Nairobi on 23rd April 2018)
4.7 Umbrella bodies

Transparency, accountability, inclusivity, gender and good governance are today key pre-requisites for bankable development projects, from their design to implementation. Civil Society Organizations (CSOs) and other umbrella bodies have traditionally taken on the watchdog role to ensure that these principles, as well as human rights, effective resource management and environmental protection, are incorporated in projects and programmes countrywide. In Kenya, umbrella bodies have been formed coalescing around thematic areas of interest such as biodiversity, human rights, climate change, and property rights. The umbrella bodies play other critical roles such as monitoring the actions of donors and other actors and fostering cooperation and constitutionalism among various stakeholders to promote transparency, accountability and good governance in projects and programmes. These umbrella bodies vary in their scope from national, regional to global.

Although generally characterised by low power, the influence of umbrella organisations ranges from low to high (Figure 8). Some of the more influential umbrella bodies like Kenya Private Sector Alliance (KEPSA) and Kenya Association of Manufacturers (KAM) have continued to influence policies geared towards creating enabling business environments and promoting national and international trade. The NGO Coordination Board has high power and influence because of its mandate which is to register, facilitate and coordinate all national and international NGOs operating in Kenya.

![Figure 8: Power vs influence diagram for umbrella bodies](image)

**Figure 8**: Power vs influence diagram for umbrella bodies


5 Development corridor implementation in Kenya

5.1 Regulatory anchors

In Kenya, corridor development projects are governed by the Public-Private Partnership (PPP) Act which was enacted in 2013, paved the way for capital and infrastructure projects to gravitate towards PPPs. The PPP Act defines a PPP as an agreement between a contracting authority and a private authority, where the private body undertakes and takes the risk of providing a public function and receives the benefit regarding compensation from a public fund or charges collected from the users of the public function. The Act further defines a contracting authority to
be a state department, agency, state corporation or county government, which intends to have a function undertaken by it performed by a private party (Section 3, Public-Private Partnerships Act (No 15 of 2013).

The development of the PPP Act begun with the creation of an enabling legal environment, ensuring that PPP initiatives are part of the reform agenda. Domestication of internationally successful PPP models and the preparation of PPP bankable transactions resulted in a PPP pipeline in June 2012 (Ministry of Finance Kenya 2014). In March 2009, the government adopted an institutional framework through the Public Procurement Disposal (Public-Private Partnerships) Regulations 2009 (PPPU). This was followed by an enquiry into the country’s legal and regulatory framework which recommended the enactment of a PPP law to address the identified gaps, conflicts, inconsistencies and overlaps in the laws in existence then in 2010. In December 2011 the government approved a PPP policy statement which formed the basis for the establishment of institutions to champion the PPP agenda, facilitate mobilisation of domestic and international private sector investments, and to provide for Government support for PPP projects, as well as providing a clear and a transparent process for project development. On 5th December 2012, the government received financial support from the World Bank for the Infrastructure Finance and PPP project to increase private sector investment in the Kenyan infrastructure market (GoK-PPP Unit 2018).

Subsequently, the Public-Private Partnership Act was passed and came into effect on 8th February 2013. The Act provides for the participation of the private sector in the financing, construction, development, operation, or maintenance of infrastructure or development projects of the Government, through concession or other contractual arrangements and the establishment of the institutions to regulate, monitor and supervise the implementation of project agreements on infrastructure or development projects (PPP Act 2013). The Act defines the process of PPP projects identification, prioritisation, conceptualisation, preparation, tendering, negotiations, award, approval, implementation, monitoring and evaluation, and finally how they are handed over to the government where applicable (Appendix 4.).

5.2 Corridor project negotiation and agreement process

The process of initiation and implementation of development corridors in Kenya is guided by the Public Private Partnership Act No 15 of 2013. The PPP is defined as a performance-based contract under which the private sector supplies public services over time and is paid by the public sector, end user or hybrid of both. The output is specified by the contracting authority while input is the responsibility of the private sector. The Act describes nine steps for the establishment of a partnership (Figure 9) and stipulates the processes to be guided by the principles of transparency, free and fair competition and equal opportunity. Meanwhile, the process of identifying and selecting a suitable development project follows the steps in Figure 10.
5.3 Procedures for the execution of projects

The project execution process begins with the relevant government authority inviting proposals from potential project investors and contractors to show their interest and eligibility. It follows through eighteen stages as shown in Figure 11 below.
The acquisition of land for the development corridors and associated projects in Kenya is guided by the Land Acquisition Act, Chapter 295. The Act stipulates the steps to be taken in the identification, approval and surrender of land that the government seeks to use for development purposes (Figure 12).

*Figure 11: Steps followed in actualizing solicited proposals*

*Source: Public-Private Partnerships Act No 15 of 2013*
5.4 Challenges to corridor implementation

Large projects such as development corridors have rarely been rejected to the point of halting their commencement in Kenya (Kakonge 2015). However, their implementation has been stalled, delayed or progressively slowed down at some point in the process. Recent experiences with the development corridor projects have identified some common causes of such delays to include compensation for land and property, devolution, national and regional politics, lack of public participation, negative impacts of projects on environment and biodiversity as well as a violation of cultural rights. These have affected different corridor projects variably as discussed in Appendix 6.

5.4.1 Litigation and its resultant impacts

Prolonged incidents of legal battles have impacted the projects finances and timelines, leading to loss of billions of shillings in lost time, legal costs, and operating costs. From 2015, human rights activists and institutions, biodiversity and environmental lobby groups, interested individuals, indigenous community groups, financial institutions, contractors and public and private investment companies, and government agencies have sued and or have been sued for various reasons relating to the implementation of the development corridors in Kenya. The legal challenges have revolved around fraudulent acquisition of land, exclusion in participation in key
corridor processes, inadequate compensation for land and property, inflated project costs, abuse or infringement of human rights including cultural, economic and social rights, damage to and or potential damage to the environment and key natural resources and national heritage sites, and tendering and contracting processes.

Two examples are presented to illustrate the resultant impacts of litigation, and others are listed in Appendix 6. In August 2015, the Nairobi County filed a petition in court to stop the payment of Ksh. 2.5 billion in compensation for land that had been earmarked for construction of the Standard Gauge Railway. The county claimed that the compensation would benefit fraudsters who were using fake title deeds for parcels of land that were located along the Embakasi Township Reserve (Kamau 2015). In January 2017, activist Okiya Omtatah and the Kenya Coalition for Wildlife Conservation demanded court orders be given to quash the Environmental Impact Assessment License that had been issued by NEMA on 13th December 2016, which allowed the construction of SGR Phase 2 through Nairobi National Park (Rajab 2017). Grounds for the appeal before the National Environment Tribunal included the following: scientific studies for purposes of identifying the most suitable of all seven possible routes for SGR to pass through Nairobi National Park (NNP) had not been undertaken; due process was not followed in acquiring of a licenses, including use of faulty ESIA reports; and finally that construction through the NNP would cause continuous irreversible degradation and damage to the ecosystem. Respondents included the China Road and Bridge Corporation, NLC, KWS, NEMA, KRC, Attorney General Githu Muigai and the Transport ministry. These have resulted in delays in project implementation as the court processes take considerable time to resolve (Wasuna 2016, Rajab 2017).

5.4.2 Devolution, national and regional politics

Development corridor projects traverse numerous counties in Kenya, and consequently there are many stakeholders involved who have varied interests and expectations. It is not uncommon to encounter devolution and geographical conflicts between neighbouring counties. For example, Machakos and Makueni counties have claimed ownership of the Konza Techno City project (Nzioka 2013). In addition, conflict and delays among East African Community (EAC) countries have been reported (Kagire 2017) leading to delays in the implementation of project components, cancellation of project partnerships and financial commitments and rerouting and renegotiations with new alliances and partnerships.

5.4.3 Management challenges

Human resource management challenges such as poor payment and wrongful termination of employment contracts for workers have resulted in protests and demonstrations, and standoffs between the project implementers such as the China Roads and Bridges Company (CRBC) and workers leading to disruption of the SGR construction activities.

5.4.4 Corruption and fraud during land acquisition and compensation

Incidents of corruption and fraud linked to the acquisition of, and compensation for, land and property earmarked for development corridor projects have been reported across in the country. Cases of inflated costs of land have been linked to the Konza Techno City (Mung’ahu 2017) and the LAPSSET project (Guguyu 2015) resulting in delays as well as loss of credibility with funders and investors in these projects. Low payments to landowners have in some cases resulted in them refusing to vacate the land, leading to protracted compensation claims (Okoth 2016) and hindering the implementation of these projects.

5.4.5 Delay in the passing of legislation

Delays in passing relevant legislation have resulted in delayed project implementation including the creation of relevant corridor institutions. For example, the delay in the creation of Konza
Technopolis Development Authority (KOTDA) has been linked to the delays of consultancy work by Tetra Tech Inc, a US consultancy firm that was expected to oversee the implementation of the first phase of the project by marketing it, building primary infrastructure, water and sewerage systems, and roads, and negotiate land leases with potential investors (Okuttah 2013).

5.4.6 Financial constraints resulting in delayed construction

In 2014, the Kenyan government allocated funds to the SGR but failed to allocate LAPSSSET Sh10 billion required to facilitate putting up the first three berths of Lamu port. The launch of the construction of the berths, which was contracted to China Roads and Bridge Corporation in August 2016, was postponed three times before construction was later initiated in 2016. Inadequate funds have also resulted in scaling down of the project by doing away with some components of the project. This has included scaling down the capacity of Lamu coal-fired power plant by half (expected to power port operations) to cut on costs and avoid generating more electricity than needed (Otuki 2018).

5.4.7 Insecurity due to the presence of the Al-Shabaab

The existence of terror groups and long-standing conflicts between rival clans and communities living in different counties that the LAPSSSET project passes through has posed a challenge to the implementation of the projects (Kimanthi 2015). In most of the 12 counties that LAPSSSET passes through (Lamu, Wajir, Garissa, Isiolo, Turkana, Tana River, Samburu, and Marsabit), serious cases of insecurity have been experienced.

6 Potential impacts of development corridors

6.1 Biophysical impacts of development corridors

6.1.1 Land and water

The SGR and LAPSSSET corridors are essentially linear features but their influence is likely to extend into spatially large swaths of land, with them at the centre, due to their expected effects in spurring economic growth and development and the consequent ramifications such as rapid growth of urban centres and perhaps intensified agricultural activities as they open external markets. They thus have significant direct and indirect, and contribute to cumulative impacts on when other existing and planned activities are taken into consideration. Increasing deforestation and fragmentation of habitats for varied end-uses, such as settlement and agriculture, compromises the services of many ecosystems (Mogaka et al. 2009), and changes the surface and groundwater regimes with resultant impacts on water availability and the function and operation of existing water infrastructure (Stockholm Environment Institute 2009). For example, 100,000ha of the Mau Complex (part of the recharge zone for the Kisumu and Nakuru regional groundwater aquifers was lost between 2000 and 2009 (UNEP 2009). River and groundwater systems are being degraded by human activities, through for example, catchment degradation, pollution, siltation, bank encroachment, and over-abstraction (Moind-fockler et al. 2007, Stockholm Environment Institute 2009, UNEP 2009). Such stresses and geographical location in arid settings exacerbate vulnerability to current and future climate risks (Stockholm Environment Institute 2009, Field et al. 2014). Thus, the protection of the biophysical systems associated with rivers, lakes, wetlands and groundwater, is of prime importance. Such protection will not work without adequate land use planning, based on the assessment of the vulnerability of the resources to land degradation effects, including those from mega-infrastructure projects. Water users also must understand the need for surface and groundwater protection (Mumma et al. 2011).
6.1.2 Biodiversity

The development corridors in Kenya, especially SGR and LAPSSET have been widely discussed both in print and electronic media. According to these sources, the two projects have already impacted on and still have potential impacts on different areas of conservation importance and biodiversity. However, the impacts are varied and may be restricted to certain sections of the projects. In particular, the project's impacts have been identified as land degradation, fragmentation and habitat loss; loss of aesthetic values of the landscapes; loss of and reduction of biological diversity; changes in wildlife movement, behaviour and blockage of migration corridors; increase in and emergence of human-wildlife conflicts; loss of wildlife due to road kills and accidents; water and air pollution due to noise and spillages; and parament destruction of wetlands. These are discussed in detail in Appendix.

6.2 Socio-economic impacts of development corridors

6.2.1 Displacement of people, conflicts and land speculation

The implementation of development corridor projects requires large parcels of land, which is rare in the hands of government or government agencies. Consequently, the government must acquire these parcels of land from private landowners or community owned parcels. Recent analyses have indicated that such demand for larger parcels of land has resulted in displacements of people and an influx of “foreigners” leading to land speculation and higher land prices. Especially within the key development hubs such as LAPSSET’s Lamu, Isiolo and Turkana’s proposed resort cities. For example, Isiolo has witnessed both a rise in land prices from less than USD$2500 to more than $1 million per acre and high incidents of land grabbing (Abdi and Kamwana 2014, Versi 2014). It is expected that other cities along the development corridors will face similar challenges.

Development corridors have also fostered the emergence of new dimensions of conflict at different levels: among counties, between local and central government, among communities, and between locals and ‘foreigners’. For example, conflicts have emerged between Isiolo and Nyambene counties over the economic benefits stemming from infrastructural development such as LAPSSET’s airport (Kiarie 2012) and over the resort city boundary between Isiolo and Meru Counties (Abdi and Kamwana 2014). Meanwhile, the influx of “foreigners” along the development corridors, land grabbing and the resultant landlessness faced by the locals is likely to create and exacerbate violence and conflict among local communities (Kiarie 2012, Versi 2014). For example, Isiolo has witnessed several episodes of conflict, usually involving pastoralist communities clashing over natural resources. Whereas in Turkana, cross-border insecurity, inter-ethnic resource-based conflict, small arms proliferation and low state penetration (Fong 2015) that compromises law and order, have been reported.

6.2.2 Social marginalisation and cultural value deterioration

Because of their remote locations, low agricultural production potential, low human population densities, vast lands, and poor infrastructure, among other factors, the Arid and Semi-Arid Lands (ASALs) have been historically marginalised with respect to the national socio-economic development programmes. One outcome of this marginalisation is that these areas are characterised by high illiteracy levels with significantly fewer schools, poor infrastructure and social amenities. The long-standing historical marginalization of these indigenous communities exacerbates their vulnerability to competition for economic opportunities occasioned by the corridor projects. If they are forcibly torn off their traditional forms of livelihood and culture, the change-over would be troubled and torturous (Letai and Tiampati 2013).
Most of the development corridor and their associated projects cut across many indigenous communities’ settlement areas. The indigenous communities in Kenya’s ASALs, including the Awer, Orma, Somali, Borana, Rendille, Samburu and Turkana, have historically distinct social, economic and cultural traditions. The emergence of new infrastructure in these areas may result in social and cultural changes: many ESIA reports that have been done in these areas point out some aspects of concern related to labour and employment, changes in social behaviour due to the influx and influence of people with different cultures, traditions and social perspectives, increased exposure to drugs and diseases, including HIV/AIDS expansion, and child labour, among others (Sena 2014).

6.2.3 Livelihoods and poverty reduction

Kenyans living in arid and semi-arid lands have the highest incidence of income poverty. Development corridors are aimed at economic improvement and poverty reduction. However, it is not clear how these projects have or will impact on poverty levels both locally and nationally. Yet, preliminary studies have pointed to serious impacts on local livelihoods, especially of resource-dependent communities due to obstructed access to these resources. For example, studies along the Kenyan coast have shown that fisher communities in Lamu have lost access to fisheries due to closures of traditional fishing waters. This has affected a significant number of artisanal fisher-persons who presently depend upon the waters of the channel for their livelihood. Projects that traverse pastoralist areas are likely to disrupt access to both livestock and wildlife grazing due to the blocking off migratory routes and grazing areas, and the loss of crucial fall-back zones for these animals during drought. Other expected challenges associated with such projects include an increase in the level of vulnerability with many people dropping out of pastoralism (Letai and Tiampati 2013). The creation of investment and job opportunities are positive benefits, but these may not directly accrue to the resident communities due to a lack of adequate education and requisite skills sets. This leads to “outsiders” getting the much better paid technical jobs, while the locals are restricted to the poorly paid non-skilled jobs. This creates conflict, such as has been witnessed in the oil exploration and production sector in Turkana.

7 Climate Change-related risks facing the development corridors

7.1 Climate change key trends

Kenya’s vulnerability to climate change has been widely recognised (Herrero et al. 2010, Ojwang’ et al. 2010, Parry et al. 2012, Mwangi and Mutua 2015, USAID 2018). Kenya’s climatic conditions vary significantly between its coastal, interior and highland regions (Herrero et al. 2010, Parry et al. 2012). The climate pattern is influenced mainly by its position relative to the equator, proximity to the Indian Ocean and Lake Victoria, varied topography and the El Niño–Southern Oscillation (ENSO) phenomenon (Parry et al. 2012). In Kenya, climate change manifests in extreme climatic events such as droughts and floods posing a considerable challenge to development and poverty alleviation efforts.

Recent temperature trend analyses have pointed to an increase in observed mean annual temperature of 1.0°C since 1960 representing an average rate of 0.21°C per decade (Mcsweeney et al. 2009). Predictive models suggest that warming of about 1°C will occur by the 2020s, and 4°C by 2100, and will vary by regions (Funk et al. 2010). Similar trends have been

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7 The ‘Handbook for Preparing a Resettlement Action Plan’ (IFC 2002), authored by the International Finance Corporation (IFC)
reported in rainfall patterns with increased rainfall unreliability across the country. The Intergovernmental Panel on Climate Change (IPCC) analyses project a general decrease in mean annual rainfall in Kenya, a situation that is echoed by Funk et al., (2010) and the ETC East Africa (2006). Extreme changes in precipitation and related disasters, such as droughts and flooding have been reported (ETC East Africa 2006), with a devastating loss to wildlife, human life and property over the years (Herrero et al. 2010, Ojwang’ et al. 2010). Other climatic-related hazards in Kenya include forest fires and landslides. The projections of these extreme weather patterns vary but are closely linked to changes in precipitation (ETC East Africa 2006, Stockholm Environment Institute 2009).

7.2 Impacts on development corridors from climate change

There is already evidence of impacts of climate change on the development agenda for Kenya with significant economic and social costs (Mcsweeney et al. 2009, Funk et al. 2010, GoK 2010, Herrero et al. 2010, Ojwang’ et al. 2010, Mwangi and Mutua 2015, USAID 2018). For example, the production of hydroelectric power has been affected over the past 20 years by the reduced rainfall and destruction of water towers (GoK 2010). Energy sector analysts predict that “climate change is likely to worsen the situation as it will result in prolonged droughts which will see water levels in the generating dams recede further”, whereas “extreme weather events such as rainstorms will destroy the energy generation and distribution systems.”

Mega infrastructure such as railways, resort and port cities and communication installations are also vulnerable to climate change impacts, especially torrential rains and the accompanying floods, and increasing temperatures. For example, industry experts predict that “climate change poses and will continue to pose serious impacts linked to the degradation, maintenance and potential decrease in lifespan of the key infrastructural development projects such as warping of rail-tracks”. Meanwhile, the industrial sector has been affected by the reduced access to water supplies and hydroelectric power during times of drought, and damage to coastal installations due to the rise in sea levels. Thus, the cumulative impacts of climate change have the potential to reverse much of the progress made towards the attainment of Kenya’s Vision 2030 that also forms the foundation for development corridors in the country (GoK-NESC 2007).

7.3 Climate change adaptation and mitigation

Although Kenya has put in place a comprehensive climate change strategy and climate change institutional structures8 (e.g. GoK-NESC 2007, Linddal and Mutimba 2007, GoK 2010), there is little evidence of the integration of climate risks into plans for Kenya’s development corridor processes to foresee and mitigate climate change impacts. Furthermore, factors such as poverty, weak institutions, inadequate information, poor access to financial resources and high-interest rates, low management capabilities and competition over scarce environmental resources have been linked to the “climate ignorance” scenarios in the country. In addition, the OECD (2015) reported an uneven sectoral coverage of knowledge about climate risks with the largest data gaps witnessed on biodiversity and ecosystem services, as well as infrastructure and business and industry (Appendix 1. ). It is therefore important that relevant policies and measures for adaptation and mitigation against climate change are identified and implemented. These should aim to bridge the gap between the assessment of impacts and tangible, actionable results to facilitate investment in key areas to mitigate and adapt to the climate change impacts by the development corridor actors.

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8 Kenya has made attempt at increasing its capacity to cope with climate change through the National Environmental Management Authority (NEMA); Kenya Meteorological Department (KMD); and the National Disaster Operations Centre (NOC). Additional relevant institutional structures relevant to climate change are included in Appendix 1. .
8 Kenya’s ESIA and SEA process

8.1 Regulatory framework

The Sessional Paper No. 6 of 1999 entitled “Environment and Development” gave rise to the National Environment Management and Coordination Act of 1999. This Act (revised in 2015 to both align it with the Constitution of Kenya 2010 and to incorporate better some aspects such as Strategic Environmental Assessments), established the National Environment Management Authority to manage the environment and matters connected with it. This was established under Section 7 of the Act. NEMAs mandate is to monitor the operations of industries, projects or activities to determine their immediate and long-term effects on the environment. The Act also lays down provisions about environmental quality standards. Further, where Kenya is a party to an international convention, treaty or agreement on the management of the environment, the Authority must initiate legislative proposals to give effect to them (Section 124). The Authority may prescribe measures to ensure that the biological resources in place are preserved, issue guidelines to promote the conservation of the various terrestrial and aquatic systems, and protect species, ecosystems and habitats threatened with extinction.

The National Environment Policy 2013 provides a framework for an integrated approach to planning and sustainable management of Kenya’s environment and natural resources. Of note are the “Environmental Right” which states that “every person in Kenya has a right to a clean and healthy environment and a duty to safeguard and enhance the environment”; and the “Right to Development” which states that “the right to development will be exercised taking into consideration sustainability, resource efficiency and economic, social and environmental needs”. These two rights reflect a desired and positive balance between conservation and development, that neither should impede the other, and that EIA processes must be professionally and competently undertaken to ensure such a balance.

8.2 The Environmental Impact Assessment (EIA) and Strategic Environmental Assessment (SEA) processes

The 2015 revision of the EMCA 1999 changes the previous reference to “Environmental Impact Assessment”, to “Integrated Environmental Impact Assessment” in recognition of the fact that such assessments should also include social, economic, cultural and other factors, and should not focus solely on environmental aspects. The Integrated EIA process also referred to locally as ESIA (Environmental and Social Impact Assessment), although the latter terminology is not specified in the Act, has as its overall objective “to ensure that environmental concerns are integrated into all development activities to contribute to sustainable development”. The EIA process in Kenya is illustrated in Figure 13.
Figure 13: Integrated EIA development process in Kenya. Note: PPP – Policies, Plans and Programmes

Source: Olago, 2012; adapted from the National Environment Management Authority (NEMA), Kenya

Strategic Environmental Assessments (SEAs) were not previously incorporated in EMCA 1999. Recognising this, the Environmental (Impact, Audit and Strategic Assessment) Regulations, 2009 were enacted to fill in this gap (Figure 14). However, the SEA is now adequately captured in EMCA (Amendment) Act 2015. The objective of the SEA in Kenya is to “systematically integrate environmental considerations into policy, planning and decision-making processes, such that environmental information derived from the examination of proposed policies, plans, programmes or projects are used to support decision making”.

9 Priority research areas and capacity needs in Kenya

9.1 Priority research areas

Based on the findings of the scoping study, the following priority research areas are proposed:

- **Process**: the decision-making processes through which corridor projects are designed, approved and implemented is still to be mapped clearly. There is a need to identify key decision-making points where the project can make a significant impact by providing technical input or building capacity.

- **Biodiversity and conservation**: this will include inventorying and mapping biodiversity, sensitive sites, and wildlife migration corridors. These data will be assessed against proposed infrastructure and linked to land use scenarios for the corridors.

- **Current and future supply and demand for water**: there are major challenges to ensure water supply in the corridor areas of influence. There is a need to assess the existing water resource base for both surface and groundwater. Current and proposed plans for augmentation of water supply in the corridors and their areas of influence will be assessed in the context of resource limitations (quantity and quality), as well as current and future competing demands and risks. These will also be evaluated with respect to their impacts on the communities of users. Aspects relating to water accounting from source to users will be assessed in specific areas, as will the value addition of enhanced water supplies to other sectors (e.g. agriculture). The impact of the corridors on water resources will also be assessed, as this together with other risks such as climate change may affect the water supply in the corridors and beyond.

- **Impacts on livelihoods**: in Kenya any development process must undergo some public participation, but such processes generally don’t consider livelihoods. Case study areas will be identified where the influence of corridors on livelihoods can be tested – for example, the impacts that land-use changes and corridor project implementation have on...
the social-ecological systems and their consequent impacts of livelihoods. The corridors spheres of influence and the aspects that are beneficial or detrimental to livelihoods will be studied.

- **Climate change adaptation in corridors**: there is a need to assess the climate change adaptation and mitigation measures, including the role of climate finance in sustainable investment in the corridor areas.

- **Scenarios of land use in the corridors**: scenarios of land use change will be analysed to determine the impacts of the corridors on the socio-economic and bio-physical environment.

- **Cumulative impact assessments**: a development corridor is constituted by several individual projects that will shape the landscape, and impact people and nature. However, impact assessments that look at the combined future impacts of these projects, at a corridor level, don’t exist. This project will aim to conduct at least one cumulative impact assessment in one corridor of choice.

- **Co-ordination, co-operation and collaboration between the various sectors/stakeholders in the corridors**: there is a need to understand the kind of co-ordination, co-operation and collaborations that exist between the various sectors or stakeholders in corridors.

- **Community and stakeholders**: There is a need to understand the needs of the community and stakeholders, and the best way to present the outputs of the study so that they can be understood and used to inform policy – how can we make the communities/stakeholders own the interventions proposed by the study?

### 9.2 Capacity needs

The following capacity needs/gaps have been identified:

- **Low availability of information to the local communities**: most claim to have learned of the development projects only when the EIAs were being conducted. EIAs are required to carry out public meetings to explain the proposed project and its potential impacts, and to capture and incorporate the views of the stakeholder communities.

- **Training for professionals in carrying out EIAs and SEAs**: the quality of the EIAs delivered to NEMA is inconsistent. Many EIAs underestimated the actual impacts on nature and people of the proposed projects, while cumulative and residual impacts are generally inadequately addressed. Some training is needed for registered EIA experts to develop their skills in EIA and SEA assessments and learn techniques that could allow them to make better assessments.

- **Training for regulators**: why are some clearly inadequate EIA and SEA approved? What should regulators request regarding scope and quality of EIA/SEA reports? Where should experts be involved and how? Also, it is important to build capacity on why stage-by-stage processing and considering international best practice is important. For example, the SEA process for the LAPSSET project was conducted after some components of the project had already begun (construction of the Lamu Port).

- **Training of Post-Doctoral Research Assistants and Research Assistants**: on quantitative and qualitative research methods, stakeholder engagement skills, land use
scenario analysis, image processing and GIS, modelling, climate change and adaptation skills, and scientific writing skills.

10 Conclusions

The scoping study set out to address two objectives. First was to review the current baseline situation about mega-scale development corridor projects in Kenya and how they interact with people and the environment. The results of this study have provided and illustrated the development corridor investment and development process in Kenya. In particular, the review has highlighted the SGR and the LAPSSET and described other related projects along the corridor areas. The review further established that the corridor development process, from planning, implementation to maintenance has varied levels of impacts on both humans and the natural environment. Furthermore, the study has demonstrated that the corridor implementation process in Kenya has been faced with numerous challenges, including legal, social, economic, and cultural challenges. A wide range of stakeholders exert varying levels of influence and power which affect corridor implementation to various degrees. The study has also established a lack of accountability by the corridor proponents especially for the implementation of impact mitigation measures. Project beneficiaries and those affected have not been adequately involved in various processes.

Secondly, the study hoped to justify the planning and implementation of the Development Corridor Partnership research programme in Kenya. The preceding issues form a strong basis for research and capacity on sustainable investment in development corridors in Kenya. Particularly, the study has outlined key areas of research gaps and capacity needs that require prioritisation. It is based on these considerations that we believe the Development Corridor Partnership project is timely as it will offer innovative solutions towards some of these issues. Indeed, the preliminary results of the study will be evaluated further during the actual implementation of the DCP project in Kenya with other key partners and development corridor stakeholders.
11 Bibliography


KIPRA, 2018. Realizing the “Big Four” Agenda through Energy as an Enabler.


Lapsset Corridor Development Authority, 2016. Brief on Lapsset Corridor Project.

Letai, J. and Tiampati, M., 2013. Capturing benefits whilst safeguarding livelihoods: The debate over LAPSSSET.


## 12 Appendices

### 12.1 Appendix 1. Quality of the coverage of the sectors in the adaptation literature

<table>
<thead>
<tr>
<th>Risk/Sector</th>
<th>Coverage/Discussion</th>
<th>Cost estimates</th>
<th>Benefit estimates</th>
</tr>
</thead>
<tbody>
<tr>
<td>Coastal zones and coastal storms</td>
<td>Comprehensive coverage at global, national and local levels in impact assessment studies. Good evidence base on early low regret options and iterative adaptive management including policy studies and decision making under uncertainty (real options).</td>
<td>X X X</td>
<td>X X X</td>
</tr>
<tr>
<td>Floods, including infrastructure</td>
<td>Growing number of adaptation cost and benefit estimates (impact assessment studies) in several countries and local areas, particularly on river flooding. Evidence base emerging on low regret options and non-technical options. Some applications of decision making under uncertainty.</td>
<td>X X</td>
<td>X X</td>
</tr>
<tr>
<td>Water sector management, including cross-sectoral water demand</td>
<td>A recent focus on supply-demand studies at the national level, but a range of global, river basin or local studies available. Focus on supply, engineering measures; less attention to demand, soft, and ecosystem-based measures. Some examples of decision making under uncertainty, particularly robust decision making, with policy relevant studies.</td>
<td>X X</td>
<td>X X</td>
</tr>
<tr>
<td>Other infrastructure</td>
<td>Several studies on road and rail infrastructure. Examples of wind storm and permafrost.</td>
<td>X</td>
<td>X X</td>
</tr>
<tr>
<td>Agriculture (multifunctionality)</td>
<td>High coverage of the benefits of farm level adaptation (crop models), and some benefits and costs from impact assessment studies at global and national level. Evidence base emerging on potential low regret adaptation, including climate smart agriculture options (soil and water management).</td>
<td>X X</td>
<td>X X</td>
</tr>
<tr>
<td>Overheating (built environment, energy and health)</td>
<td>Good cost information on heat-alert schemes and some cost-benefit studies for future climate change. Increasing coverage of autonomous costs 1 associated with cooling from impact assessment studies (global and national). Growing evidence base on low-regret options for built environment (e.g. passive cooling).</td>
<td>X X</td>
<td>X X</td>
</tr>
<tr>
<td>Other health risks</td>
<td>Increasing studies of preventative costs for future disease burden (e.g. water, food and vector borne disease), but coverage remains partial.</td>
<td>X</td>
<td>X X</td>
</tr>
<tr>
<td>Biodiversity/ ecosystem services</td>
<td>Low evidence base, with a limited number of studies on restoration costs and costs for management of protected areas for terrestrial ecosystems.</td>
<td>X X</td>
<td>X X</td>
</tr>
<tr>
<td>Business, services and industry</td>
<td>Very few quantitative studies available, except for the electricity sector, oil and gas production and tourism. Some focusing on winter tourism and some on autonomous adaptation from changing summer tourism flows.</td>
<td>X X</td>
<td>X X</td>
</tr>
</tbody>
</table>

**Key:**
- X X X Comprehensive coverage at different geographical scales and analysis of uncertainty.
- X X Medium coverage, with a selection of national or sectoral case studies.
- X Low coverage with a small number of selected case studies or sectoral studies.
- The absence of a check indicates extremely limited or no coverage.

*Adapted from the OECD 2015*
### Abbreviations and Names

<table>
<thead>
<tr>
<th>Abbreviation</th>
<th>Name</th>
</tr>
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<tbody>
<tr>
<td>ACC</td>
<td>African Conservation Centre</td>
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<tr>
<td>ACCESS</td>
<td>Africa Collaborative Centre for Earth Systems Science</td>
</tr>
<tr>
<td>Act!</td>
<td>Act, Change, Transform</td>
</tr>
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<td>ACTS</td>
<td>African Centre for Technology Studies</td>
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<td>ADESO</td>
<td>African Development Solutions</td>
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<td>Anglican Development Services</td>
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<td>Africa Environmental Film Foundation</td>
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<td>African Development Bank</td>
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<td>African Centre for Open Governance</td>
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<td>AfriCOG</td>
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<td>ALIN</td>
<td>Arid Lands Information Network</td>
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<td>APSEA</td>
<td>Association of Professional Societies of East Africa</td>
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<td>AU</td>
<td>African Union</td>
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<td>African Union</td>
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<td>CAK</td>
<td>Conservation Alliance of Kenya</td>
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<tr>
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<td>Community Action for Nature Conservation</td>
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<td>CEJAD</td>
<td>Centre for Environmental Justice and Development</td>
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<td>GETRAD</td>
<td>Centre for Training and Integrated Research in ASAL Development</td>
</tr>
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<td>EU</td>
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<td>GIZ</td>
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<td>HURIA</td>
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<td>ICRAF</td>
<td>International Centre for Research in Agroforestry</td>
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<tr>
<td>IDLO</td>
<td>International Development Law Organization</td>
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<tr>
<td>IDLO</td>
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<td>IFAW</td>
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<td>NWCPBC</td>
<td>National Water Conservation &amp; Pipeline Corporation</td>
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<td>Pastoralist Girls Initiative</td>
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<td>SUPKEM</td>
<td>Supreme Council of Kenya Muslims</td>
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<td>United States Agency for International Development</td>
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<td>Water Services Regulatory Board</td>
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<td>WRA</td>
<td>Water Resources Authority</td>
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## 12.3 Appendix 3. List of Development Corridor and related projects

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<tr>
<th>LAPSSET Corridor</th>
<th>SUBCOMPONENT</th>
<th>DESCRIPTION OF SUBCOMPONENTS</th>
<th>STATUS</th>
<th>STAKEHOLDERS/FUNDING/INVESTMENT</th>
</tr>
</thead>
</table>
| **Lamu Port** | Consists of 32 deep sea berths at Manda Bay estimated to cost US $5 Billion. | • First berth will be ready in June 2018  
• Two will be ready in December 2020.  
• The other berths are intended to be constructed and operated by the private sector. | • Government of Kenya (US $480 million)  
• Private Sector Investors US$ 5 Billion |
| **Highways** | Inter-regional Highways from Lamu to Isiolo, Isiolo to Juba (South Sudan), Isiolo to Addis Ababa (Ethiopia), and Lamu to Garsen (Kenya) | • Detailed engineering designs for Lamu – Garissa – Isiolo (537 Km) are completed.  
• Construction of Nakodok – Lokichar road (738 km) commenced.  
• 505 km Isiolo – Marsabit – Moyale completed.  
• Construction of Lamu – Witu – Garsen (112 KM) has been prioritised for construction to connect with existing road infrastructure. | • Government of Kenya  
• Government of Ethiopia  
• Government of South Sudan  
• (Estimated US$ 1.4 billion)  
• World Bank (US$ 500 million loan) |
| **Railways** | Inter-regional standard gauge railway lines from Lamu to Isiolo, Isiolo to Nakodok (Kenya/South Sudan border) and Juba (South Sudan), Isiolo to Moyale (Kenya/Ethiopia border) and Addis Ababa (Ethiopia), and Nairobi to Isiolo. | • Preliminary engineering and feasibility studies have been completed for Kenya-Ethiopia route. | • Government of Kenya  
• Government of Ethiopia  
• (US$ 7.1 Billion) |
| **Pipeline** | Crude Oil Pipeline from Lokichar to Lamu to Isiolo. In the longer-term additional crude oil pipelines may be extended to link with fields in South Sudan. | • Crude oil pipeline from Lokichar to Lamu along with tank storage and loading facilities is under FEED (Front End Engineering Design).  
• 53 ha of land have been reserved for oil tank storage and an oil refinery with a capacity of 125,000 bpd at Lamu. | • Government of Kenya  
• Government of Ethiopia  
• Private sector |
| **Airports** | International airports are proposed at Lamu, Isiolo and Turkana. The Airport at Lamu and Turkana need upgrading, and a new Airport is proposed at Lamu. |  |  |
| --- | --- |  |  |
|  | • Intermediary airports are under construction to build up air transport and logistic business case for international airports.  
  • Preliminary facilities (2.3 km runway and terminal building) at Manda airport in Lamu have been completed.  
  • 1 km runway in Isiolo airport and a terminal building are completed.  
  • Work at Lake Turkana airport has not started yet. |  |  |
|  | Government of Kenya  
  • PPP framework  
  • (an estimated cost of US$ 188 million, US$ 175 million and US$ 143 million for Lamu, Isiolo and Turkana, respectively) |  |  |
| **Resort cities** | Three resort cities have been proposed at Lamu, Isiolo and Lake Turkana. Lamu Resort City will mainly comprise a convention centre as the core facility, amusement centre, terminal station, culture centre and fisherman’s wharf as sister cities. |  |  |
|  | • Preparation work for a master plan for Lamu Resort city and Metropolis is underway. |  |  |
|  | PPP Framework  
  • (estimated cost of about US$ 970 million, US$ 200 million and US$ 42 million for Lamu, Isiolo and Lake Turkana, respectively) |  |  |
| **Standard Gauge Railway (SGR)** |  |  |  |
| **Phase I** | Covers 472 km from Mombasa to Nairobi |  |  |
|  | The China Road and Bridge Corporation (CRBC)  
  • Kenya Railways (KR)  
  • EXIM Bank of China  
  • (Kshs. 294.3 billion) |  |  |
| **Phase II** | Covers Naivasha to Malaba and is divided into four sections: Naivasha–Kisumu; Kisumu–Malaba; Kisumu Port development and expansion of the Inland Container Depot at Embakasi in Nairobi. |  |  |
|  | Kenya Railways Corporation  
  • China Communications Construction Company (CCCC) |  |  |
<table>
<thead>
<tr>
<th>Highways</th>
<th>Mombasa-Nairobi (BECHTEL)</th>
<th>The two-lane Nairobi-Mombasa Highway is being converted into a dual carriageway to address the increasing traffic congestion between Kenya’s capital city Nairobi and the country’s major port city Mombasa. The project was unveiled in September 2016.</th>
<th>US and UK export credit agencies financing through Public private partnership</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Masara-Suna-Kehancha Road (C13)</td>
<td>This is an ongoing project. It is funded by</td>
<td>Government of Kenya, PPP Framework, (KSh 8 billion), Japan International Corporation Agency (JICA), and the Government of Kenya at a cost of 39 billion.</td>
</tr>
<tr>
<td></td>
<td>Mombasa Southern Bypass - Dongo Kundu (Miritini - Mwache)</td>
<td>The project has already begun</td>
<td>JICA/GoK, (39 Billion)</td>
</tr>
<tr>
<td></td>
<td>Nairobi Southern Bypass</td>
<td></td>
<td>Exim bank of China, Government of Kenya Ksh 18.7 Billion</td>
</tr>
<tr>
<td></td>
<td>Malindi-Bagamoyo</td>
<td>The project is yet to begin.</td>
<td>African Development Bank (AfDB) US $751.3m</td>
</tr>
<tr>
<td>Project</td>
<td>Details</td>
<td>Funders</td>
<td></td>
</tr>
<tr>
<td>----------------------------------------------</td>
<td>--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------</td>
<td>-------------------------------------------------------------------------------------------------</td>
<td></td>
</tr>
<tr>
<td>Ngong road dualling is Sh3 billion project</td>
<td>The dualling project has already began</td>
<td>JICA/Government of Kenya Sh3 billion</td>
<td></td>
</tr>
<tr>
<td>Mombasa Port Expansion</td>
<td>The project involves construction of the second phase of the second container terminal at the Mombasa port.</td>
<td>The project is ongoing, Funded by JICA at a cost of Sh35 billion.</td>
<td></td>
</tr>
<tr>
<td>Konza Techno City</td>
<td>Konza will be a smart city, with an integrated urban information and communication technology (ICT) network that supports delivery of connected urban services and allows for efficient management of those services on a large scale.</td>
<td>Project is ongoing, PPP Framework with (Ksh. 595 Billion)</td>
<td></td>
</tr>
<tr>
<td>Lake Turkan wind power project</td>
<td>The Project is in Loiyangalani District, Marsabit County, Kenya. It comprises of 365 wind turbines, each with a capacity of 850kW, and a high voltage substation that will be connected to the Kenyan national grid through an associated Transmission Line,</td>
<td>Kenyan Government, Funded through a consortium comprising (Ksh. 61.172 Billion)</td>
<td></td>
</tr>
<tr>
<td>Water Transfer Projects</td>
<td>One of the water transfer projects includes Elgeyo Marakwet Mega Dam. This is an example of some of the periphery projects along the development corridors targeting Western and Northern Kenya. It is expected to irrigate more than 20,000 acres of land.</td>
<td>Kerio Valley Development Authority with funding from CMD di Ravena and Itenera of Italy, (Sh66.5 billion)</td>
<td></td>
</tr>
</tbody>
</table>
12.4 Appendix 4. Policy and Legislative Frameworks relevant to the Development Corridor Processes

1. Climate Change Act 2016: The Climate Change Act (No. 11 of 2016) is the first comprehensive legislative framework for climate change governance for Kenya. The objective of the Act is to “Enhance climate change resilience and low carbon development for sustainable development of Kenya.” The Act establishes the National Climate Change Council (Section 5), Climate Change Directorate (Section 9) and Climate Change Fund (Section 25). All these new institutions have distinct mandates under the Ministry of Environment and Forestry.

2. Kenya Vision 2030 (2008) and its Medium-Term Plans: Vision 2030 Secretariat is the mandated institution to oversee the implementation of the Kenya Vision 2030 – the country’s development blueprint. It recognises climate change as a risk that could slow the country’s development. Climate change actions were identified in the Second Medium Term Plan (MTP) (2013-2017). The Third MTP (2018-2022) included climate change as a thematic area and mainstreamed climate change actions in sector plans.

3. National Climate Change Response Strategy 2010: Kenya’s National Climate Change Response Strategy was the first national policy document on climate change. It aimed to advance the integration of climate change adaptation and mitigation into all government planning, budgeting and development objectives.


6. Green Economy Strategy and Implementation Plan (GESIP): GESIP is Kenya’s blueprint to advance toward a low-carbon, resource efficient, equitable and inclusive socio-economic transformation. The GESIP aims to integrate resource use efficiency into and minimize negative environmental impacts related to the country’s economic development.

7. National Climate Finance Policy (2018): The National Climate Finance Policy (2018) establishes the legal, institutional and reporting frameworks to access and manage climate finance. The goal of the policy is to further Kenya’s national development goals through enhanced mobilisation of climate finance that contributes to low carbon climate resilient development goals.

9. Water Act 2016: Provides for the regulation, management and development of water resources, water and sewerage services such as construction of mega dams and water storage facilities.

10. Agriculture Sectoral Sector Development Strategy 2010-2020: Seeks to stimulate increased investment in rural railway, roads, water supply, transportation, storage, cattle dips, rural markets, electrification, communications, water management schemes, stockholding grounds, stock auction markets, stock routes and abattoirs. The stock of rural infrastructure is in poor condition and inadequate for the development of the rural economy, and is also unevenly distributed leaving some high agricultural potential areas with little or no coverage.

11. Tourism Act 2011: Provide for the development, management, marketing and regulation of sustainable tourism and tourism-related activities and services. It also seeks to promote expansion of tourism facilities such as resorts and airports.

12. Community Land Act, 2016: It provides for the recognition, protection and registration of community land rights; management and administration of community land; to provide for the role of county governments in relation to unregistered community land and for connected purposes.

13. Energy Bill (2017): Part 3, section 43; Part 4, section 74 (i), and Part 9 address climate change related issues. It consolidates the laws relating to energy, to provide for National and County Government functions in relation to energy, to provide for the establishment, powers and functions of the energy sector entities; promotion of renewable energy; exploration, recovery and commercial utilization of geothermal energy; regulation of midstream and downstream petroleum and coal activities; regulation, production, supply and use of electricity and other energy forms.

14. Northern Corridor Master Plan: Promises to improve logistics and ease cargo congestion in East Africa, promote industrial development and stimulate the economy.

15. National Spatial Plan (2015-2045): The National Spatial Plan 2015-2045 provides a national spatial design framework for the integration of social, economic and political policies. The plan indicates Kenya’s intention to enhance disaster preparedness in all disaster-prone areas and improve the capacity for adaptation to climate change.

16. Kenya’s Nationally Determined Contribution (NDC) (2016): Kenya’s NDC under the Paris Agreement of the UNFCCC includes mitigation and adaptation contributions. Regarding adaptation, “Kenya will ensure enhanced resilience to climate change towards the attainment of Vision 2030 by mainstreaming climate change into the Medium-Term Plans (MTPs) and implementing adaptation actions.” The mitigation contribution “seeks to abate its GHG emissions by 30% by 2030 relative to the BAU scenario of 143 MtCO2eq.” Achievement of the NDC is subject to international support in the form of finance, investment, technology development and transfer and capacity development.

17. Blue Economy Strategy (2017): To be implemented by the Ministry of Water in partnership with the Ministry of Agriculture and Irrigation, Ministry of Transport, Infrastructure and Ministry of Housing and Urban Development.
18. National Trade Policy (2009): Seeks to ensure adequate infrastructure including transportation, water, electric power, waste disposal, security and telephones as well as secure, affordable storage and warehousing facilities at ports and several infrastructural programmes including roads, energy, rail transport and Nairobi Metropolitan development programmes.

19. Environmental Management and Coordination Act (No. 8 of 1999 and Amendment 2015): It emphasizes that every person in Kenya is entitled to a clean and healthy environment and had the duty to safeguard and enhance the environment. The Act provides overarching regulations and enforcements for the overall protection and conservation of the environment in Kenya, including air quality, water pollution and the regulation of toxins. The Act also mandates the relevant authority to ensure the sustainable use of hill sides, mountain and forest areas within the country and shall control the harvesting of forests and any natural resources in these areas, to protect water catchment areas, prevent soil erosion and regulate human settlement.

20. Kenya’s Foreign Policy 2014: Kenya’s Foreign Policy aims to achieve several national objectives, inter alia to: Protect Kenya’s sovereignty and territorial integrity; Promote integration; Enhance regional peace and security; Advance the economic prosperity of Kenya and her people; Project Kenya’s image and prestige; Promote multilateralism; Promote the interests of Kenyan Diaspora and partnership with the Kenyans abroad.

21. Executive Order: The Nairobi Metropolitan Area Transport Authority (2017): Provides a comprehensive and dynamic platform for addressing the decades-old challenges in the transport sector that have bedevilled the Metropolitan Area that encompasses four counties of Kiambu, Machakos, Kajiado and Nairobi. It seeks to develop a sustainable urban mobility plan that will be the basis for the orderly and structured development of the proposed Metropolitan Area mass-transit system, which incorporates both bus rapid-transit and commuter rail.

22. County Public Participation Guidelines: Public participation is both a key promise and provision of the Constitution of Kenya. It is instilled in the national values and principles of governance stipulated in article 10. The Legislature and Executive at both national and county levels are required to engage the public in the processes of policy making, monitoring and implementation. The Constitution, (Article 174c), provides that one object of devolution is: “to give powers of self-governance to the people and enhance their participation in the exercise of the powers of the State and in making decisions affecting them”. The Constitution assigns the responsibility to ensure, facilitate and build capacity of the public to participate in the governance to the county government through function 14 (Schedule 4 Part 2).

23. Public Private Partnerships Act 2013: Provides for the participation of the private sector in the financing, construction, development, operation, or maintenance of infrastructure or development projects of the Government through concession or other contractual arrangements; the establishment of the institutions to regulate, monitor and supervise the implementation of project agreements on infrastructure or development projects and for connected purposes.

24. Urban Areas and Cities Act (No 13 of 2011): Provides for the, classification, governance and management of urban areas and cities; to provide for the criteria
of establishing urban areas, to provide for the principle of governance and participation of residents.


26. Environment and Land Court Act (No 19 of 2011): Establishes a superior court to hear and determine disputes relating to the environment and the use and occupation of, and title to, land, and to make provision for its jurisdiction functions and powers.


29. Industrial and Commercial Development Corporation: This an Act of Parliament to establish a corporation to be known as the Industrial and Commercial Development Corporation for facilitating the industrial and economic development of Kenya [Act No. 7 of 1967.]

30. Investment Promotion Act 2004: Promotes and facilitate investment by assisting investors in obtaining the licenses necessary to invest and by providing other assistance and incentives.

31. Roads Act 2008: Provides for the establishment of the Kenya National Highways Authority, the Kenya Urban Roads Authority and the Kenya Rural Roads Authority, to provide for the powers and functions of the authorities.

32. Kenya's Industrial Transformation Programme: Seeks to promote sector-specific flagship projects in agro-processing, textiles, leather, construction services and materials, oil and gas and mining services and IT related sectors that build on our comparative advantages. It creates an enabling environment to accelerate industrial development through industrial parks/zones along infrastructure corridors, technical skills, supporting infrastructure and ease of doing business.

33. Kenya Country Strategy Paper 2014-2018/African Development Bank 2014-2018: The Bank’s Country Strategy Paper (CSP) 2014-18 for Kenya supports the country’s ambitions and addresses its main developmental challenges by promoting job creation as the overarching objective. To achieve it, the CSP is articulated around the following two pillars: (i) Enhancing physical infrastructure to unleash inclusive growth; and (ii) Developing skills for the emerging labour market of a transforming economy.


35. Nairobi Integrated Urban Development Master Plan (NIUPLAN): Integrates all the existing Master Plans of various infrastructures within the city of Nairobi and its
surrounding. Infrastructure to be included is urban transport, railway, airport, power, water supply, sewerage, telecommunication and solid waste management.

36. National Broadband Strategy (NBS) for Kenya 2013-2017: The Strategy focuses on five key thematic areas that have direct impact on its implementation and success. These are: Infrastructure, Connectivity and Devices Content; Applications and Innovations; Capacity Building and Awareness; Policy, Legal and Regulatory Environment Financing and Investment.


38. United Nations Development Assistance Framework for Kenya 204-2018: This an expression of the UN's commitment to support the Kenyan people in their self-articulated development aspirations. This UNDAF has been developed according to the principles of UN Delivering as One (DaO), aimed at ensuring Government ownership, demonstrated through UNDAF’s full alignment to Government priorities and planning cycles, as well as internal coherence among UN agencies and programmes operating in Kenya.

### 12.5 Appendix 5. The likely impacts of development corridors on biodiversity and areas of conservation importance

The SGR development corridor is likely to have impacts on biodiversity, areas of conservation importance, water resources and ecosystem services. The impacts may vary for different sections of the corridor. Some of the impacts are listed in the table below.

<table>
<thead>
<tr>
<th>Section of the SGR</th>
<th>Likely impacts</th>
</tr>
</thead>
</table>
| Nairobi National Park (the SGR encroaches on 87.29 ha of the park) dividing the park into two portions) | • Exposure of the fragile ecosystem to irreversible damage and degradation (Rajab, 2017, Connor, 2015)  
• Division of the park into two and human traffic during construction will result to disturbance of vegetation and wildlife likely to change animal behaviour  
• Loss of aesthetic value of the park  
• Reduction in biological diversity due to negative impacts on species  
• Habitat fragmentation may lead to inbreeding of wildlife species eventually resulting to genetically weak populations prone to diseases.  
• Interruption of natural river flow (Ambani, 2017)  
• Changes in animal behaviour and movement due to noise pollution and disturbance in dispersal areas (Michengi, 2016)  
• Increased incidents of human-wildlife conflicts (Muchengi, 2016) |
| Tsavo Conservation area | • Habitat degradation of animal passage ways that have been constructed has been reported due to illegal use of the passage ways by herds to drive thousands of cattle into the Tsavo National Parks (Okita-Ouma, 2017).  
• Loss of wildlife space e.g. about 10.2 km² of land in Tsavo West and East has been lost to SGR construction.  
• Blockage of wildlife dispersal areas when areas fenced off hinder wildlife movement (Okita-Ouma, 2017).  
• Increased human-wildlife conflicts are expected in areas experiencing illegal settlements of people that block vital animal passages. This has already been witnessed in the Tsavo area where passages have been constructed to mitigate against negative impact of SGR on wildlife movement.  
• Permanently degradation of natural environments  
• Increased rail and road kills of wildlife especially elephants  
• Erodion of the banks of the Tsavo River at Section 2 by excavation activities undertaken during the construction (Kariuki, 2015) |
| Voi Area | • Death and injury to wildlife is likely to be experienced if wildlife is not properly funnelled into the passages and instead attempt to cross the railway (Koech, 2018, Okita-Ouma, 2017) |
| Kwale/Kilifi Counties | • Blocking of streams that ensure consistent supply water to neighboring communities (Kariuki, 2015). For example, blocking of Mkupe Stream and Mwang’ombe River at the Mariakani |
| Mombasa | • Destruction of wetlands (Kariuki, 2015). For example, the reclamation of a section of a tidal flood wetland in Maganda to allow construction of a camp site for Chinese workers |
| Maai-Mahiu Area | • Pollution due to noise, waste and dust coming from the workstations (Ambani, 2017) |
| Ngong Forest | • Habitat degradation through forest clearing and exposure to human activities |
Figure 1. A section of the standard gauge railway passing through Tsavo National Park in Taita Taveta (Source: Salaton Njau, Nation Media Group).

Figure 2. A lioness killed by a speeding train on the SGR near Voi (Courtesy of Koech, 2018).

Under the Wildlife Management and Conservation Act 2013 and the Forests Act 2005, the LAPSSET section between the Indian Ocean at Lamu and Kisima (Samburu) has been reported to host a total of 13 areas protected (1 gazetted Forest, 3 National Parks and 9 National Reserves) offering habitats to huge numbers of wildlife (SEA-037 LAPSSET Corridor Authority Development report -NEMA–2017). The SEA report outlined the likely negative impacts of the LAPSSET on key wildlife spots, biodiversity and conservation areas along the route as follows:

<table>
<thead>
<tr>
<th>Section of the LAPSSET</th>
<th>Likely impacts</th>
</tr>
</thead>
<tbody>
<tr>
<td>Hindi-Ijara-Garissa</td>
<td>• Fragmentation of critical habitat for the critically endangered Hirola antelope and associated wild dogs which are endangered around the Arwale nature reserve and conservancies</td>
</tr>
<tr>
<td></td>
<td>• Blockage of watering paths for the Rothschild Giraffe accessing River Tana watering Points</td>
</tr>
<tr>
<td></td>
<td>• Loss of woodland habitat for Buffaloes from the Boni Forest Nature reserve</td>
</tr>
<tr>
<td>Garissa-Benane- Kula Mawe</td>
<td>• Fragmentation of habitat around Rahole National Reserve</td>
</tr>
<tr>
<td>Location</td>
<td>Issue</td>
</tr>
<tr>
<td>----------</td>
<td>-------</td>
</tr>
<tr>
<td>Isiolo Archers Post (Ngaremara area)</td>
<td>Fragmentation of the vast Meru Conservation area whose nucleus is Meru National Park and Bisanadi National Reserve</td>
</tr>
<tr>
<td>Isiolo-Seleolipi</td>
<td>Blockage of Elephant Migratory corridor between Lewa Conservancy Buffalo Springs, Samburu and Shaba game reserves</td>
</tr>
<tr>
<td>Isiolo-OldonyiroKirisia Forest</td>
<td>Blockage of the Kirimon Elephant Migratory Corridor</td>
</tr>
<tr>
<td>Loosai and Mt. Marsabit Nature Reserve</td>
<td>Blockage of major elephant migratory corridor</td>
</tr>
<tr>
<td></td>
<td>Blockage of Elephant Migratory Corridor to and from Marsabit National Park</td>
</tr>
</tbody>
</table>

12.5.1 References


A. The Standard Railway Gauge Development Corridor

The SGR project has been delayed at different stages for a number of reasons.

Litigation and its resultant impacts on the projects finances and timelines has been a serious issue, leading to loss of billions of shillings in lost time, legal costs, and operating costs (Oruko, 2017). As a result, the financier China Exim Bank had to cut down on cost of constructing the second phase of the line by an estimated KSh. 32 billion (Oruko, 2017).

Litigation has included:

- In 2017, there were at least four active cases in relation to construction of the Nairobi- Naivasha section (Phase 2A). While one was on the National Environment Tribunal, three were in the Environment and Lands Court. In September 2017, the National Environment Tribunal temporarily stopped construction of the section until the case was heard and determined. Despite these orders, continuation of the work by the China Bridge Corporation and Kenya Railways Corporation had activist Omtatah together with environment conservation lobby group demanded the jailing of the officials for contempt of the Tribunal’s orders.
- In early 2017, the Miritini Free Port Ltd and African Gas and Oil Company Ltd moved to Court to stop the construction of a section of the SGR until a compensation suit they had filed was heard and determined. The two claimed that the two companies had not been paid Sh519 million that National Land Commission awarded them for compensation of land. Compensation conflicts between the government and communities then becomes an obstacle. An audit conducted by National Land Commission’s Audit department and the Kenya Railways Corporation Risk and Audit department confirmed that between April and June 2015, an estimated Ksh.370 million was paid through fraudulent and inflated compensation for land in areas such as Voi (Taita Taveta) required for construction of the Standard Gauge Railway (Oruko, 2015). In early March, 2018, land conflicts were reported as one of the key causes of delay in construction of the 273 kilometer Malaba-Kampala section of the SGR (Nakato, 2018). This has been made worse by lack of funds to compensate landowners so they can give up their land for construction of the SGR.

There has also been conflict and delays among East African Community (EAC) countries for a number of reasons (Kajilwa, 2015). For example, in 2016, Kenya lost its SGR partnership deal with Rwanda when the latter chose to use the Tanzania railway as its link to the ocean because of cost considerations. Kenya’s failure to get financial resources to build the SGR to the Uganda border has also led Uganda scale back its ambition to the rail gauge (Barigaba, 2018). In addition, lack of resources by Tanzania has also affected Kenya’s pace of completing the SGR. Tanzania through the Minister of Finance Philip Mpango in February 2016 asserted that Tanzania lacked its own financial resources to support their part of the SGR project (Majaliwa, 2016). The cancellation of financing contract with the Chinese due to alleged irregularities in the tendering process led Tanzania’s President Magufuli to seek alternative finance from a number of sources. However, the efforts were unsuccessful, and Tanzania had to allocate part of the country’s development budget to finance Phase 1 SGR from Dar-es-salaam to Morogoro (194km) costing Tsh1 trillion ($450 million) (Sarokin, 2017). Even after the completion of the Mombasa-Nairobi section of the SGR, there is no assurance that funds will be available for completion of SGR in the Kenyan part to the Ugandan border and Kisumu. The Ugandan and Rwandan sections have not yet been
completed. The China Exim Bank that has funded the major part of the SGR construction has also shown reluctance to provide more funds without Uganda’s assurance of commitment to the project.

Human resource management problems such as poor payment / wrongful termination of employment contracts for workers resulting to protests/demonstrations, and standoffs between the China Roads and Bridges Company (CRBC) and workers leading to disruption of construction activities. This was witnessed in April 13, 2016 when hundreds of workers who had been hired by the CRBC to construct SGR held demos blocking the Mombasa Road at Makindu protesting poor pay (Wanyama, 2016).

**B. Konza Technology City**

One of the key development projects being undertaken in Kenya and which is expected to compliment greater economic transformation along the SGR corridor is the Konza Techno City, Malili Ranch in Machakos County. This digital city is set to become Africa’s tech hub when completed. The project was launched in 2013 and was expected to have been completed by end of 2017 but it has had many false starts with delays/ stalling due to a number of factors.

Corruption scandals in relation to Konza Techno City have marred the dream of building the techno city. Court cases have been filed against senior government officials who have been accused on behalf of Kenyan government of brokering deal with Malili Ranch Ltd to purchase 5,000 acres of land for construction of the techno city (Mung’ahu, 2017). The case confirmed conspiracy charges to defraud Malili Ranch between February 2, 2009 and January 11, 2010. Although the case has been concluded, the scandal has continued to haunt the project and blemish the dream of the techno city.

Delay in passing of legislation have also been a contributing factor. In 2013, the delay in passing of the KOTDA Bill to institutionalize the Konza Technopolis Development Authority (KOTDA) as a legal entity hence give it power to enter into contractual obligations with the financiers made the construction of the technopolis fall behind schedule (Okuttah, 2013). For instance, this delayed the work of the US consultancy firm Tetra Tech Inc. that was expected in June to oversee the implementation of the first phase of the project by marketing it, building primary infrastructure, water/ sewerage systems and roads, and negotiate land leases with potential investors.

Financial constraints brought about by the delay in passing of the KOTDA Bill hence delay in fundraising efforts of KOTDA to support the initial phase of the project are another challenge (Okuttah, 2013). Although the government had during the phase one of the project allocated only Sh1.3 billion, the project required Sh63.8 billion to be completed. Although the Jubilee government allocated Sh793 million in the 2013/2014 budget for the project, not much was achieved (Okoth, 2016). The private sector is expected to inject huge amounts of funds in the project while the government is expected to invest heavily in basic infrastructure.

Devolution and geographical politics; where Machakos and Makueni counties are claiming ownership of the project (Okoth, 2016). This issue has yet to be resolved.

Fears of investors in relation to availability of sufficient and uninterrupted water supply steady and low cost energy as stated in the city’s plan (Ochieng, 2016). Although construction at Konza City was expected to begin in April 2016, the investors held onto their funds, as they demand that the government to give assurance that infrastructure will be rolled out as promised on paper and supply of power and water be reliable. Availability of water has been challenge making it necessary for the government in November 2017 to spearhead commission the building of Thwake Dam at the confluence of and Athi and Thwake rivers to begin in January 2018 (Ngotho, 2017).

**C. Lamu Port-South Sudan-Ethiopia-Transport (LAPSSET)**
The stalling of some key stages of the **LAPSSET** project can be attributed to a number of challenges.

Financial constraints resulting to delayed construction. For example, in 2014, the Kenyan government allocated funds to the SGR but failed to allocate LAPSSET Sh10 billion required to facilitate putting up of the first three berths of Lamu port. The launch of the construction of the berths contracted in August 2016 to China Roads and Bridge Corporation was postponed three times before construction was later initiated in 2016. Inadequate funds have also resulted to scaling down of the project by doing away with some components of the project. This has included scaling down by half the capacity Lamu coal-fired power plant (expected to power port operations) in order to cut on costs and avoid generating more than needed electricity (Otuki, 2018).

Pursuit national interests within the EAC have also led to challenges in the project. For instance, for the Uganda oil pipeline, the push for Uganda to choose the Tanzania route over Kenya’s was advocated for by France’s Total Petroleum since it was also drilling oil there (Achuka, 2016). Given that the passage of Uganda’s pipeline was expected to play a key role in export of Kenya’s oil and the success of the LAPSSET, this move by Uganda has undermined completion and success of the LAPSSET project as earlier planned.

Problems in land acquisition and compensation hence causing delays in meeting the projects’ timelines. In Kenya, low payments to landowners of parcels of land being acquired for the project have in some cases refused to vacate their land leading to protracted compensation claims (Okoth, 2016). Furthermore, investors in the LAPSSET project have complained about rocketing cost of land hence making taking up of projects related to LAPSSET a huge obstacle (Guguyu, 2015). In November, 2014, an injunction against any Lamu port work was issued by the High court sitting in Malindi where six land owners had filed a petition to have the mega project suspended until their concerns on land were resolved (Machuhi, 2014). They demanded information on mode of resettling and compensating people displaced be provided. They also expressed fears that a false list of beneficiaries for the land was being used by the Ministry of Lands under the then Land Secretary.

Legal issues resulting to court orders being launched to challenge the project. For example, court case by Lamu residents against the project where claims have been made that before the launch of the project, a comprehensive transboundary EIA by all the countries was not conducted and it was political leaders who played a major role in the approval of the project (Kakonge, 2015).

Corruption allegations have also plagued the LAPSSET project. A good example is the planned construction of Kenya’s largest dam (96km²), High Grand Falls Dam, proposed at the common border of Kitui, Tharaka-Nithi, and Tana River counties at Kivuka on River Tana. In 2013, the construction of the dam was halted due to claims of inflated cost. The revised amount of Sh. 148 billion in 2016 was being sought as loan from China to complete the construction. The dam is meant to generate between 500MW and 700MW of electricity as well as supply water to the proposed Lamu port and resort city (Okoth, 2016).

Insecurity due to presence of the Al-Shabaab terror group as well as and long-standing conflicts between rival clans and communities living in different counties that LAPSSET project passes through has also posed a challenge (Kimanthi, 2015). In most of the 12 counties that LAPSSET passes through (Lamu, Wajir, Garissa, Isiolo, Turkana, Tana River, Samburu, and Marsabit), serious cases of insecurity have been experienced. Cattle rustling has also been undermining the success of the project.

In addition, the EIA process was considered to have uncertainties in relation to compensation, land rights and disruption of livelihoods and protection of world heritage site. Since the project was launched in 2012, critical information related to the project was not
shared with the stakeholders. These were among issues raised in a court case filed by Malindi fishermen in 2012 aimed at halting the LAPSET project. Lamu residents filed a petition in the High Court against the LAPSET Project earmarked for Lamu and surrounding areas (Katiba Institute, 2018). The case was successful on the grounds raised, with the court ruling that the project failed to meet basic legal and constitutional requirements. The court ordered the issues to be incorporated in the ESIA report by NEMA.

On May 1, the Malindi High Court ordered Kenyan government to pay 4,600 fishermen Ksh. 1.7 billion as compensation due to loss of their traditional fishing and cultural rights. Construction and operations of the Lamu port was expected to halt traditional fishing practices. In addition, the court directed officials in charge of LAPSET return to court in October 2018, that the EIA licence be returned to NEMA for further action in accordance with the ruling as well as involvement of government agencies and Lamu County Government in LAPSET implementation. With about 42 per cent of the project completed and commissioning of the first berth scheduled for June 2018, monetary compensation has been ruled out by the government, the disagreement between the fishermen and government have continued with the fishermen insisting they want the compensation in monetary terms hence will return to court for legal redress (Kazungu, 2018).
INVESTING IN A GREEN BELT AND ROAD?

ASSESSING THE IMPLEMENTATION OF CHINA’S GREEN CREDIT GUIDELINES ABROAD
# Table of Contents

**Executive Summary** .............................................................................................................. 6

**Introduction** .......................................................................................................................... 7

**Scope and Methodology** ........................................................................................................ 8

**Part I: Case Studies** .............................................................................................................. 10

**Map of Case Studies** ............................................................................................................ 11

- **APRIL Pulp and Paper Mills, Indonesia** ................................................................. 12
- **Hambantota Port, Sri Lanka** ..................................................................................... 16
- **Jakarta-Bandung High Speed Rail Project, Indonesia** ........................................... 22
- **Lamu Coal Power Plant, Kenya** ............................................................................... 26
- **Mes Aynak Copper Mine, Afghanistan** ................................................................. 32
- **Sasan Ultra Mega Coal Plant, India** ........................................................................ 38
- **Yamal LNG Project, Russia** ..................................................................................... 44

**Part II: Bank Performance Based on GCG Key Performance Indicators** ......................... 48

**Part III: Strengthening the KPIS** ...................................................................................... 59

- **Implications for Belt and Road Investments** .............................................................. 61

**Policy Recommendations** ................................................................................................. 63

**Appendix I: Evolving International Norms and Standards** ............................................. 64

**Appendix II: Green Credit Guidelines KPIS** .................................................................... 67

**Endnotes** ............................................................................................................................... 90
**ACRONYMS**

<table>
<thead>
<tr>
<th>Abbreviation</th>
<th>Full Form</th>
</tr>
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<tbody>
<tr>
<td>BRI</td>
<td>Belt and Road Initiative</td>
</tr>
<tr>
<td>BOC</td>
<td>Bank of China</td>
</tr>
<tr>
<td>CDB</td>
<td>China Development Bank</td>
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<tr>
<td>CBRC</td>
<td>China Banking Regulatory Commission</td>
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<tr>
<td>China Exim Bank</td>
<td>China Export-Import Bank</td>
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<tr>
<td>EIA</td>
<td>Environmental Impact Assessment</td>
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<tr>
<td>ESIA</td>
<td>Environmental Impact Social Assessment</td>
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<tr>
<td>GCG</td>
<td>Green Credit Guidelines</td>
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<tr>
<td>ICBC</td>
<td>Industrial and Commercial Bank of China</td>
</tr>
<tr>
<td>IFC</td>
<td>International Finance Corporation</td>
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<tr>
<td>KPI</td>
<td>Key Performance Indicator</td>
</tr>
<tr>
<td>MEP</td>
<td>Ministry of Environmental Protection</td>
</tr>
<tr>
<td>MOFCOM</td>
<td>Ministry of Commerce</td>
</tr>
<tr>
<td>UNESCO</td>
<td>United Nations Educational, Scientific, and Cultural Organization</td>
</tr>
<tr>
<td>WB</td>
<td>World Bank</td>
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</table>
ACKNOWLEDGEMENTS

This report would not be possible without the support and feedback from our partners: Sergio Baffoni and the Environmental Paper Network, Meiki Paendong and WALHI West Java, Hemantha Withanage and Center for Environmental Justice, Omar Elmawi and Save Lamu, Gino Cocchiaro and Natural Justice, Jodi Vittori and Global Witness, Sayed Ikram Afzali and Integrity Watch Afghanistan, Joe Athialy, Eugene Simonov and Rivers Without Borders, and Alexey Knizhnikov and World Wildlife Fund Russia. Friends of the Earth US would also like to thank Michelle Chan, Vice-President of Programs, and Karen Orenstein, Deputy Director of the Economic Policy team, for their support in developing this report. Special thanks given to Mark Grimsditch and Greenovation Hub for their feedback as well.
EXECUTIVE SUMMARY

In 2012, China’s Green Credit Guidelines (GCG) set a precedent in the world of sustainable finance by obligating banks to comply with host country law and international norms in their overseas lending. Five years since its publication, the GCG still stands as one of the most progressive and interesting examples of a sustainable finance policy in the world.

Since then, however, consistent and effective implementation remains a key challenge in realizing the full potential of the GCG. This report evaluates Chinese banks’ implementation of the GCG in overseas investments based on the China Banking Regulatory Commission’s recently published Key Performance Indicators for green credit. This study is the first of its kind to consider the efficacy of the KPIs in assessing and improving the environmental and social performance of Chinese overseas investments.

In light of China’s wide-reaching Belt and Road Initiative (BRI), case studies are selected from BRI related countries, including Afghanistan, Indonesia, Kenya, Russia, India, and Sri Lanka. These examples span across the pulp and paper, mining, energy, and infrastructure sectors.

Key findings of this report are:

• Similar to the findings of a 2014 study published by Friends of the Earth US, Chinese banks still struggle to comply with host country laws and regulations, let alone international norms and standards. Of particular concern are international norms related to banks requiring high quality environmental and social impact assessments from their clients, in addition to ensuring that public consultations are conducted based on Free, Prior and Informed Consent.

• Chinese banks continue to have weak channels of communication and engagement with the public and local stakeholders, which significantly undermine the implementation of the Guidelines.

• The CBRC’s publication of the Key Performance Indicators (KPIs) is a positive first step in promoting better implementation of the GCGs; however, some KPIs (i.e. relating to international practices and norms, and resolving local conflicts) remain under-developed in regards to advancing the spirit and objectives of the Guidelines.

• As currently written, the KPIs miss an opportunity to serve as a valuable tool in the global fight against climate change. In particular, KPIs should promote one of the international banking sector’s leading climate-related financing norms: curbing coal sector financing.

• Better bank-level and project-level disclosure, including requiring that banks publicly disclose their KPI self-assessments, would promote stronger implementation of the Guidelines and thus better environmental and social risk management by banks.

• In developing countries, Chinese banks should better use the GCG as a means to screen and assess how environmental and social risks may in fact undermine the financial viability and feasibility of a project, especially in the infrastructure sector.
INTRODUCTION

As early as 2007, the China Banking Regulatory Commission (CBRC) began promulgating policies to align the activities of the financial sector with the country’s domestic environmental objectives. In 2012, the CBRC intensified these efforts by upgrading, expanding, and internationalizing one of its most progressive sustainable finance policies, the Green Credit Guidelines (GCG). The policy calls on banks to “strengthen the environmental and social risk management for overseas projects to which credit will be granted[,] and make sure project sponsors abide by applicable laws and regulations”.

Furthermore, Article 21 of the Guidelines uniquely obligates banks to follow “appropriate international practices or international norms ...as far as such overseas projects are concerned, so as to ensure alignment with good international practices”ii. The inclusion of Article 21 marked a new high point in the realm of sustainable finance, as no other country has published national policies regulating a bank’s environmental and social impacts abroad. Article 21 states:

Banking institutions shall strengthen the environmental and social risk management for overseas projects to which credit will be granted and make sure project sponsors abide by applicable laws and regulations on environmental protection, land, health, safety, etc. of the country or jurisdiction where the project is located. The banking institutions shall make promise in public that appropriate international practices or international norms will be followed as far as such overseas projects are concerned, so as to ensure alignment with good international practices.

However, implementing the GCG has proven challenging. Two years after the launch of the GCG, Friends of the Earth US published Going Out, But Going Green? Assessing the Implementation of China’s Green Credit Guidelines Overseas (2014). Based on an analysis of seven case studies, the report found that there was limited evidence that Chinese banks were actively implementing Article 21. These findings were echoed by the Independent Expert on the Effects of Foreign Debt (part of the United Nations High Commissioner for Human Rights) who raised concerns regarding the increasing environmental, social, and human rights impacts of Chinese overseas investment. The United Nations Independent Expert noted that, “The Green Credit Guidelines provide an opportunity to enhance respect for human rights in Chinese project financing and foreign investment. The Independent Expert is nonetheless concerned about the implementation of the Guidelines by Chinese banking institutions in overseas projects given that the mechanisms for monitoring and enforcing compliance still appear to be weak”iii.

In addressing this challenge, in 2014 the CBRC began requiring Chinese banks to submit to bank regulators a self-evaluation based on “Key Performance Indicators for Implementing Green Credit”. The Key Performance Indicators (KPIs) aim to provide more detailed guidance to banks by encouraging them to incorporate “the green credit concept into banking operations, increase the awareness of extending green credit to boost the ecological development, actively develop innovative green financial products, and give more support to green economy, circular economy and low-carbon economy”iv.

KPIs were developed for each relevant article of the GCG. For instance, the overseas component of the GCG, Article 21, has five KPIs which are used to measure green credit implementation.

With the publication of the KPIs, banks must provide a self-evaluation regarding whether they met, barely met, or failed to meet KPIs for each article of the GCG, and they also are required to submit these self-evaluations to bank regulators each year”. However, these self-evaluations are not publicly disclosed, and are designed to reflect broad, institutional compliance, rather than project level compliance.
SCOPE AND METHODOLOGY

As the KPIs have been in effect for three years now, the objective of this report is to evaluate Chinese banks’ compliance to the overseas components of the GCG based on official KPI metrics. The report uses the five KPI metrics developed for Article 21 as the basis for evaluation. In doing so, the report hopes to shed light on current challenges facing Chinese banks abroad, and shares observations on the efficacy of the KPIs in accurately measuring the environmental and social performance of overseas Chinese bank investments. Ultimately, we hope that this research can serve to further strengthen GCG implementation, especially as Chinese banks accelerate their investments in Belt and Road countries.

Part 1 of the report examines case studies from the pulp and paper, infrastructure, mining, energy, coal, and transportation sectors. Geographically, the projects span across Indonesia, Sri Lanka, Afghanistan, Kenya, India, and Russia. In this first section, the report includes information on each case study’s general background, financing, environmental and social impacts, and level of compliance with host country and international standards, which is the core obligation of Article 21.

We specifically selected these case studies in light of China’s Belt and Road Initiative, which called on Chinese industries and businesses to invest in economic corridors linking China to Central Asia, Southeast Asia, the Middle East, Africa, and Europe. Although it is beyond the scope of this report to comprehensively assess all Chinese overseas investments, or even those in the BRI region, the ability of Chinese banks to implement robust, measurable green credit practices on a project level carries, we believe, significant implications for helping Chinese banks to manage environmental, social, and political risks in Belt and Road investments.

Part 2 examines each of the five official KPIs for Article 21, which aims to ensure that banks have strong internal processes and capabilities to understand overseas environmental and social issues. For each indicator, we look at bank implementation in the seven case studies and use the KPIs as our primary metric of bank performance.

In this report, we directly reproduce the compliance categories from the original KPI documents. Our only revision to the official KPIs was substituting the “N/A” column with an “Unclear” Column. The “Unclear” category was needed as we were at times unable to adequately assess KPIs based on publicly available information.

Our evaluation is then followed by Part 3, which discusses the opportunities and limitations of the KPIs themselves in promoting and measuring green credit implementation.

Finally, our report concludes with a final discussion of key findings and policy recommendations for Chinese banks and policy makers.
## Article 21 KPIs

<table>
<thead>
<tr>
<th>Article</th>
<th>Core Indicator</th>
<th>Meet</th>
<th>Barely Meet</th>
<th>Fail to Meet</th>
<th>Unclear* Column added due to lack of publicly available information</th>
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<tbody>
<tr>
<td>21.1</td>
<td>The banking institutions shall ensure the staff conducting overseas project financing acquire sufficient knowledge of law and regulations in the host countries concerning environmental protection, land, safety and health and gain sufficient experience of the environmental and social risk management in overseas projects. Where necessary, with the experts’ support, the bank shall make appropriate judgment to the environmental and social risk management of the projects to be granted credit, and the risk management willingness and capacity of the project initiator.</td>
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<tr>
<td>21.2</td>
<td>The banking institutions shall implement whole procedure management to the environmental and social risks of projects to be granted credit.</td>
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<tr>
<td>21.3</td>
<td>The banking institutions shall make promise in public that appropriate international practices or international norms will be followed as far as such overseas projects are concerned, such as:</td>
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<tr>
<td></td>
<td>-- Make promise to adopt “Equator Principles”;</td>
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<tr>
<td></td>
<td>-- Sign and join the “Global Compact” initiated by the United Nations;</td>
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<tr>
<td></td>
<td>-- Sign and join the United Nations Environment Programme Finance Initiative (UNEP FI)</td>
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<tr>
<td>21.4</td>
<td>The banking institutions shall make in-depth understanding of international best practice of the assessment and control of environmental and social risks for international financing projects and ensure alignment with good international practices in essence.</td>
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<tr>
<td>21.5</td>
<td>The banking institutions shall hire qualified and independent third-party to make assessment and examination of environmental and social risks to the overseas financing projects which arouse disputes in terms of their said risks.</td>
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### The Significance of Chapter 4 of the Green Credit Guidelines

KPI 21.2 requires that banks “implement whole procedure management to the environmental and social risks of projects to be granted credit”. This is in reference to Chapter 4 of the Green Credit Guidelines, which includes Articles 15 – 21. Importantly, the reference to Chapter 4 confirms that Chinese bank regulators expect Chinese banks to use the same environmental and social risk procedural management process for both domestic and overseas loans. Prior to the publication of the KPIs, it was unclear if GCG risk management processes equally applied to Chinese banks’ overseas investments.

Chapter 4 of the Green Credit Guidelines sets out Chinese bank regulatory expectations regarding how banks should manage environmental and social issues in the loan management process. These include conducting due diligence, examining client compliance to relevant environmental and social requirements, assessing environmental and social risks, examining the environmental records of clients, and conducting post-loan management. It also obligates banks to suspend or terminate financing where “major risks or hazards are identified” (Article 19).

Where possible, this report attempts to reference Articles 15-21’s KPIs in evaluating the environmental and social performance of a project. However, due to a lack of publicly available information, we are unable to fully assess case studies based on KPI metrics for Articles 15-20.
PART I: CASE STUDIES

- APRIL Pulp and Paper Mill, Indonesia
- Hambantota Port, Sri Lanka
- Jakarta-Bandung High Speed Rail Project, Indonesia
- Lamu Coal Plant, Kenya
- Mes Aynak Copper Mine, Afghanistan
- Sasan Coal Ultra Mega Power Plant, India
- Yamal Liquid Natural Gas Export, Russia
The Belt and Road Initiative (BRI) is a national Chinese initiative calling for increased economic and political cooperation via an economic “belt” and maritime “road” between China and the Eurasian continent. The initiative was proposed as a long-term development strategy by the Central Committee of the Communist Party in China and calls for the country’s business, industrial, and financial sectors to invest abroad and deepen China’s integration with the world. According to the Belt and Road Progress Research Team at Renmin University, Chinese policy banks will play a pivotal role in serving “as the backbone for financial cooperation”, with “domestic commercial banks serv[ing] as the follow up driver for commercial cooperation”. Chinese academics have characterized BRI as “China’s grand strategy of deepening its reform and opening up as well as practicing its ideas of win-win cooperation”. Projects included in this report are highlighted in the map above.
Located in Sumatra, the Kampar Peninsula is a key conservation site for the Sumatran tiger. However, APRIL pulp and paper plantations are directly contributing to ongoing habitat loss. In Riau province, peatland destruction caused by APRIL plantations have also led to the loss of traditionally owned forests and livelihoods of local communities.
Investing in a Green Belt and Road?

**Background**

Asia Pacific Resources Limited (APRIL) is a member of the conglomerate RGE Group, founded and controlled by billionaire tycoon Sukanto Tanoto, who has been found guilty of tax evasion in Indonesia. APRIL is a major concession holder on the Kampar Peninsula, which is located on the island of Sumatra. Its Pangkalan Kerinci operations on the Kampar Peninsula are capable of producing 2.8 million tons of pulp and 850,000 tons of paper annually.

The Kampar Peninsula contains the largest and thickest deposit of peatland in Indonesia. Spanning across approximately 700,000 hectares, the area consists of mostly peat swamp forests which are valued for their vital role in storing carbon and regulating climate change. Collectively, APRIL and its subsidiaries manage more than 265,000 hectares of the region. APRIL subsidiaries include PT Riau Andalan Pulp & Paper (RAPP), PT Riau Andalan Pulp & Paper (Riaupulp) and PT Riau Andalan Kertas.

Since the establishment of its first mill in 1993, APRIL has long attracted controversy for the adverse impacts of its mills and plantations. In response to intense international outcry, APRIL published its first Sustainability Report in 2003. In 2005, the company further announced they would voluntarily use High Conservation Value assessments in land use planning for its concessions. In turning a new leaf, APRIL signed the Principles of the UN Global Compact and has become a member of various forestry standards and certification programs. In May 2015, APRIL further committed to a new sustainability policy. However, APRIL continues to struggle in resolving social conflicts, managing peatlands, and complying with Indonesian laws.

**Project Financing**

*APRIL has received loans from nine Chinese banks:*

- Ping An Bank provided a corporate loan of 130 million USD
- Industrial and Commercial Bank of China (ICBC) provided a corporate loan of 100 million USD and project finance debt of 1.8 billion RMB
- China Development Bank provided two corporate loans totaling $800 million USD
- China CITIC Bank provided four corporate loans totaling $713 million USD
- Bank of China provided $253 million USD in corporate loans and $1.8 billion RMB in project finance
- Agricultural Bank of China provided $1.8 billion RMB in project finance
- China Construction Bank provided $1.8 billion RMB in project finance
- Bank of Communications provided a corporate loan of $53 million USD
- Shanghai Pudong Development Bank provided a corporate loan of $53 million USD
### Summary of Environmental and Social Impacts

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<tr>
<td><strong>Destruction of peatlands</strong></td>
<td>Peatlands function as important storage sinks for carbon and other greenhouse gas emissions such as methane, and their destruction has been shown to accelerate climate change\textsuperscript{xviii,xxii}. APRIL and its suppliers have repeatedly been shown to have illegally destroyed peatlands; in 2016, the Indonesian government placed sanctions and froze two super concessions because of APRIL’s role in massive peat fires\textsuperscript{xxi}. The company has also been investigated for its role in starting illegal forest fires\textsuperscript{xxi}. Furthermore, APRIL has violated its own sustainability policies\textsuperscript{xxxi} by illegally converting forest land into acacia plantations and creating drainage canals in peatlands\textsuperscript{xxi}. The string of illegal activity eventually led to the suspension of APRIL’s NGO partnership with the World Wildlife Federation and Greenpeace\textsuperscript{xxiv}, with APRIL eventually apologizing for “an erosion of trust” with NGO stakeholders\textsuperscript{xxv}.</td>
</tr>
<tr>
<td><strong>Biodiversity</strong></td>
<td>The Kampar Peninsula is a key conservation site for endangered species such as the Sumatran tiger. It is a “Regional Priority Tiger Conservation Landscape” for the conservation of Sumatran tigers, whose population has dipped to 400-500 due to habitat loss and deforestation\textsuperscript{xxiv}. According to a study published by Wildlife Conservation Society, World Wildlife Federation, and the Smithsonian National Zoological Park, Riau province should be considered as one of the “highest priority places in the world for conservation of extant tiger populations”\textsuperscript{xxxi}. In addition to tigers, pulp and paper production has directly contributed to the loss of other biodiversity, such as elephants and orangutans\textsuperscript{xxxi}.</td>
</tr>
<tr>
<td><strong>Climate Change</strong></td>
<td>The draining or burning of peatlands is responsible for up to five percent of anthropogenic carbon emissions in the world, and in Indonesia, “the worst days of the peat forest fires resulted in emissions greater than the daily emissions from the entire United States economy”\textsuperscript{xxix}. In 2014, forest fires in Riau province were responsible for 52% of fire alerts in the whole country\textsuperscript{xxix}. In 2016, Riau province continued to be the source of roughly half of all forest fires in Indonesia\textsuperscript{xxi}. With the importance of peatlands increasingly recognized globally\textsuperscript{xxii}, in December 2016 Indonesian President Joko Widodo placed a moratorium banning any activities which damage or drain peatlands\textsuperscript{xxi}. Furthermore, protecting peatlands and primary forests plays a critical role in allowing Indonesia to meet its Intended Nationally Determined Contribution (INDC)\textsuperscript{xxiv}. As referenced earlier, APRIL has been repeatedly linked to peatlands destruction.</td>
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<tr>
<td><strong>Loss of traditionally owned forest, livelihood, and land</strong></td>
<td>The clearance of peatlands in Riau province has caused long-standing social conflicts over the loss of traditionally owned forest and land. The international and Indonesian NGO coalition Eyes on the Forest has continuously documented numerous social conflicts over forest clearance and communities’ land rights\textsuperscript{xxv}. Findings show that local communities have continuously reported that APRIL and its subsidiaries repeatedly cleared natural forest on traditionally owned land, thus compromising their ability to sustain local livelihoods while causing a host of human rights violations\textsuperscript{xxxi,xxvi}.</td>
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### Assessing Compliance

| **Host Country Law and Regulations** | Since 2009, APRIL has repeatedly cleared peat soil, thus violating Government Regulation 26 of 2008. This law requires that peatlands which have a peat depth of three meters and are located upstream should be protected and designated as a “National Protection Area”. However, APRIL did not take the appropriate measures to protect such peatlands in Riau province. A subsequent law passed in 2016, Government Regulation 57 of 2016, further requires that peatlands be protected. According to the Environmental Paper Network, “PT. RAPP keeps draining the peat with canals in order to plant acacia, leading to massive erosion. A research done by JMGR together with one University in Riau found that in the depth of peat of Pulau Padang assessed subsidence to 9-10 cm / year. This mean the entire island of Pulau Padang, its ecosystems and its communities may disappear”\textsuperscript{xxv}. |
Any fires on company-owned concessions are the responsibility of the concession holder; as such, the concession holder must take steps to adequately prevent and manage fires under Indonesian law per **Article 49 of Law 41 of 1999**. Because of the high rates of unmanaged fires in Riau province, NGOs have collected first-hand documentation that APRIL has not adequately fulfilled this legal obligation. Furthermore, **Articles 47, 60, 67, 68, and 70** codify communities’ rights to utilize the forest and forest produce, be made aware of forest designation plans, offer information or suggestions regarding forestry development, and supervise the implementation of forestry development, whether directly or indirectly. However, affected communities are unable to exercise these rights in APRIL concessions and have reported being assaulted or even beaten by company staff. In the most extreme effort to suspend APRIL subsidiary PT RPAP’s operations, 28 Indonesians protested by sewing their mouths shut and initiating a hunger strike in 2012.

**Article 76 of Law No. 6 of 2014** on Villages allows local communities to manage its own village resources, including forests. Environmental watchdogs have documented how at least one APRIL concession was not obtained in accordance with this law, nor did the company allow communities their rights to utilize the forest for their livelihood. As a result, local communities repeatedly urged local and national government to oppose the concession, sending multiple petitions, issuing several community statements which rejected the company’s operation, and filing lawsuits.

**Law No. 20 of 2001** on the Eradication of the Criminal Act of Corruption and its amendment **Law No. 20/2001** prohibits and penalizes corruption (per Article 12.5). Civil society organizations, such as environmental watchdog network WALHI, have long documented how APRIL “knowingly pulped natural forest wood from concessions whose licenses were issued through corrupt practices.”

In operating concessions located on land owned by indigenous peoples, APRIL failed to conduct meaningful consultations with affected communities under the international best practice of **Free, Prior, Informed Consent (FPIC)**. FPIC is codified under the United Nations Declaration on the Rights of Indigenous Peoples, of which China and Indonesia voted in favor for. NGOs have documented APRIL’s longstanding abuse of local communities, which includes violence and intimidation. Local communities have repeatedly stated their rejection of APRIL operations, protesting the company’s failure to uphold stated commitments and respect community rights. International and Indonesian NGOs have in the past raised concerns regarding the failure of Chinese banks to employ FPIC in their APRIL investments.

China Development Bank (CDB), Ping An Bank, and ICBC have signed on to the **United Nations Environmental Programme Finance Initiative (UNEP FI) Statement of Commitment by Financial Institutions on Sustainable Development** as members of UNEP FI. The statement publicly commits financial institutions to take a “precautionary approach” and “compl[y] with all applicable local, national, and international environmental regulations applicable to our operations and business services.” It also commits banks to “foster openness and dialogue relating to environmental matters with relevant audiences.” However, APRIL’s extremely inconsistent environmental and social performance reflects a fundamental failure on the part of banks to successfully observe this international commitment.
The Hambantota Port is located less than 40 km away from Bundala National Park, the country’s first RAMSAR site. The region is known as an important stopover for migratory birds like the Greater Flamingo. Local environmental groups, such as Center for Environmental Justice, have voiced concerns that the Hambantota Port caused the destruction of the Karagan Levava Lagoon, an “important refuge” for migratory birds according to Sri Lankan government documents.
Investing in a Green Belt and Road?

Located at the southern tip of Sri Lanka, the Hambantota Port has failed to generate a profit since becoming operational in 2010. In addition to the lack of financial return on the project, the port has led to significant environmental and social impacts, such as the destruction of the Karagan Levava Lagoon, an important wetland refuge for migratory birds, and the resettlement of hundreds of families, many of which were forced to relocate to an area with poorly constructed or installed infrastructure such as roads, drains, and pipes. Moreover, the port’s close proximity to the country’s first RAMSAR site, Bundala National Park, and an active elephant corridor has led Sri Lankan groups, such as Center for Environment and Justice, to question the port’s long term impact on local wildlife and wetland ecosystems.

Background

Known for wildlife sanctuaries, nature reserves, and unspoiled beaches, Hambantota is a small town located on the southern tip of Sri Lanka. In 2002, the Sri Lankan government announced plans to develop the region into an international industrial and commercial hub despite there being no local demand for such projects. The plan originated from former Sri Lankan President Mahinda Rajapaksa’s vision of transforming his hometown into the country’s second most prestigious city through the construction of several large infrastructure projects.

Hambantota Port, Sri Lanka

- Planning
- Design
- Agreement
- Construction
- Operational
- Closure
- Decommission

Located at the southern tip of Sri Lanka, the Hambantota Port has failed to generate a profit since becoming operational in 2010. In addition to the lack of financial return on the project, the port has led to significant environmental and social impacts, such as the destruction of the Karagan Levava Lagoon, an important wetland refuge for migratory birds, and the resettlement of hundreds of families, many of which were forced to relocate to an area with poorly constructed or installed infrastructure such as roads, drains, and pipes. Moreover, the port’s close proximity to the country’s first RAMSAR site, Bundala National Park, and an active elephant corridor has led Sri Lankan groups, such as Center for Environment and Justice, to question the port’s long term impact on local wildlife and wetland ecosystems.
One of these projects is the Hambantota Port which became operational in 2010. Although there was at the time legitimate need to relieve congestion at Sri Lanka’s largest and busiest port (Colombo Port), the Hambantota Port is extremely under-utilized due to the continued lack of local demand. For instance, only six ships docked at the port in 2011, and in 2013, there were less than 100 ships. In an attempt to boost the port’s traffic and profitability, the Sri Lanka Port Authority began redirecting shipments of vehicles from Colombo Port to Hambantota Port. Although the decision increased port traffic, it has not improved the port’s profitability.

The port’s unprofitability, coupled with loans from other major Chinese financed infrastructure projects, has contributed to Sri Lanka’s soaring foreign debt. Loan repayment for the infrastructure projects has become so dire that it even forced the government to take out an additional $1.5 billion loan with the International Monetary Fund to help cover the payments crisis. In an effort to manage the severe debt crisis, the government decided to lease 80% of the port and 15,000 acres of an adjacent industrial zone to the Chinese project developers, causing a wave of local protests and discontent over fears of a “Chinese colony” developing in the country. Although the project commenced well before the announcement of the BRI, it is strategically located along sea routes to the Middle East and Africa, and is now seen as a major component of the Belt and Road’s Maritime Route.

**Project Financing**

China Exim financed Phase 1 and 2 of the Hambantota Port. Phase 1 cost $361 million USD, and Phase 2 cost $810 million USD.

In Phase 1, eighty five percent was financed by China Exim Bank via loans; the remainder was financed by the Sri Lanka Port Authority (SLPA). China Exim provided a $306 USD million loan to the Sri Lankan government with a 15 year tenor and four year grace period. The loan agreement was signed in 2007, and construction began in 2008. Two Chinese contractors, China Harbour Engineering Company (CHEC) and Sinohydro, were hired to build the port.

The project was completed ahead of schedule in part to coincide with former president Rajapaksa’s birthday. However, opening ahead of schedule led to an inability to remove large rocks near the port mouth, as these rocks blocked large ships from entering the port. This required Chinese contractors to resort to underwater blasting of rock, forcing the SLPA to take an additional $82 million USD loan from China in order to remove the rock without damaging existing infrastructure. Consequently, the increased cost of materials raised the total cost of construction to $145 million USD. The final cost has not yet been calculated, but according to Sri Lankan officials, in the “worst case[,] Phase I total cost may be US$ 508 million.”

Despite the high price tag of Phase 1 and lack of port traffic, in 2015 the Sri Lankan government decided to expand the Hambantota Port, with China Exim Bank again financing it. Through a government concessional loan, China Exim Bank bankrolled the second phase of the $808 million USD project, which included plans for a main container berth, a multi-purpose berth, two feeder container terminals, transition berth, new oil terminal and yard area, an artificial island of 50 hectares, and a 60 hectares yard adjacent to the quay wall.

Controversially, Chinese Communications Construction Company (CCCC) and China Merchants Group were given exclusive operating rights to an industrial zone and four berths for a period of 35 years. The companies will have majority control with 53 per cent of shares, while the SLPA would retain 47% equity in the port. In particular, Chinese ownership of the port and industrial zone has stoked local fears that China plans to relocate its domestic, polluting factories overseas to Sri Lanka. In January 2017, the controversial deal sparked violent protests during its opening ceremony, drawing hundreds of people and injuring several.

Although the project still remains unprofitable, the government has raised the possibility of a third phase of port expansion in order to add a container oil terminal and additional berths and oil wharfs.
Summary of Environmental and Social Impacts

Wildlife Impacts
The Hambantota Port is located less than 40 km away from Bundala National Park, a nature reserve spanning 6216 hectares. It is one of the country’s most important wetland sanctuaries and home to 32 mammal species, including leopards, spotted deer, and civet cats. In 1991, UNESCO designated the park as the country’s first Ramsar site for its international significance in migratory waterfowl and wetland conservation\textsuperscript{xxxii}. Because the port is located near the national park, Sri Lankan environmental groups like Center for Environmental Justice have raised concerns that the EIA did not sufficiently study the port’s potential impacts on wildlife\textsuperscript{xxxiii}. In particular, it did not account for impacts on the Karagan Levava lagoon, an important wetland ecosystem for migratory birds\textsuperscript{xxxiv}.

Dredging
Furthermore, siting the Hambantota Port within the naturally existing Karagan Levava lagoon essentially destroyed the lagoon and its wetland ecosystem, as the port construction required dredging 40,000 cubic meters from the lagoon\textsuperscript{xxxv}. The destruction of the Karagan Levava lagoon is especially concerning since wetlands are considered to be one of the country’s most valuable wildlife habitats\textsuperscript{xxxvi}. In particular, the Sri Lankan government has noted that the Karagan Levava lagoon was an “important refuge” for migratory birds, in addition to being an elephant corridor connecting the nearby Bundala, Lunugamvehera and Udawalawe National Parks\textsuperscript{xxxvii}.

Resettlement
The Hambantota Port required the relocation of 270 families\textsuperscript{xxxviii}. The relocation process was controversial for offering below market compensation amounts, and for assigning communities to Siribopura, an arid, inhospitable area where basic infrastructure such as roads, drains, and pipes were incorrectly installed or constructed. In Siribopura, resettled families fear herds of wild elephants, which have already damaged or destroyed houses. According to one report, “it would be suicidal to live there” without an electric fence, of which there are none\textsuperscript{xxxix}.

Assessing Compliance

Host Country Law and Regulations
The National Environmental Act, No. 47 of 1980 establishes rules regarding conducting and soliciting public feedback on EIAs, of which the construction of ports and harbors are included\textsuperscript{xc}. However, the port project did not adequately allow for public feedback on the EIA because no in-person consultations were conducted, as required by this law.

According to the Land Acquisition Act No. 9 of 1950, compensation to resettled land owners must be calculated based on market value\textsuperscript{xci}. However, resettled peoples have reported that they were not compensated based on market values, as referenced earlier.

International Norms and Best Practices
The Bundala Wetlands was named as the first Ramsar site upon Sri Lanka joining the Ramsar Convention in 1990. Ramsar sites are selected based on “account of their international significance in terms of ecology, botany, zoology, limnology or hydrology” (Article 2.2). In 2005, it was also named as a UNESCO Biosphere in recognition as a core refuge for resident and migratory birds such as the Greater Flamingo\textsuperscript{xcii}, in addition to the endangered Sri Lankan elephant\textsuperscript{xciii}. Ensuring the appropriate study of the port’s impacts on the lagoon was especially critical since as of 2006, the lagoon’s threat status was already designated as high\textsuperscript{xct}. By overlooking impacts on the Bundala Ramsar site and Karagan Levava lagoon, the EIA did not identify and account for all relevant environmental impacts, contrary to international best practices\textsuperscript{xctv}. 
### International Norms and Best Practices

**Free, prior informed consent** is codified in the United Nations Declaration on Indigenous Rights. Although originally conceptualized as a means of ensuring the rights of indigenous and forest dwelling peoples, today, it is considered best practice to apply FPIC as the basis for meaningful consultation in all projects impacting local communities.xxvii However, the project did not conduct public consultations based on FPIC standards.xxviii

In cases of requiring **involuntary displacement**, numerous financial institutions have developed involuntary resettlement policies, such as the World Bank, IFC, Asian Development Bank, African Development Bank, and Equator Principles banks. All these institutions require that the assets of resettled communities are compensated at higher or equal value.

In the Hambantota case, however, resettled communities did not receive fair compensation for their land or houses based on market value. Moreover, the fact that communities were settled in an unsafe area under worse conditions ultimately exacerbated problems in the resettlement process.
Although the Jakarta-Bandung High Speed Rail project has been touted by the government as a means to reduce traffic in Jakarta, the rail line, being designed to bring riders in and out, and not through the city, will not likely reduce traffic congestion within Jakarta.

The high speed rail line between Jakarta and Bandung has been criticized for being too high cost for too little social benefits. For instance, a train line between Jakarta and Bandung already exists. Picture below is a train station in Bandung.

The project has become extremely controversial due to its failure to comply with Indonesian laws, such as the requirement to incorporate public participation in the environmental impact assessment. Local communities living along the proposed rail line have strongly opposed the high speed rail, as it would require hundreds of households to relocate. In this picture, local communities protest the project in May 2017, calling for affordable housing rather than a high speed rail.
Investing in a Green Belt and Road?

Investing in a Green Belt and Road?

JAVA HIGH-SPEED RAIL

LEGEND:
Phase 1 Jakarta-Bandung
Phase 2 Bandung-Surabaya

Originally conceived as a route to connect the east and west sides of Java island, the rail line was ultimately shortened to connect just the cities of Jakarta and Bandung, as an early feasibility study showed that a rail line across the island would be too cost prohibitive, in part due to engineering challenges caused by the route’s steep gradient of up to 30%. As a result, the project was at first cancelled by the Indonesian government in September 2015, who instead called for the development of a medium speed train between Jakarta and Bandung. However, the project was unexpectedly revived a few weeks later when China waived the requirement of a government guarantee on the project. Although initially hailed as one of the first major Belt and Road projects in Indonesia, the Jakarta-Bandung high speed rail has since become a controversial investment due to its failure to comply with Indonesian laws. Furthermore, a rail line already exists between Jakarta and Bandung and would not improve traffic in Jakarta.
In 2016, WALHI West Java, which is part of the largest environmental network in Indonesia, called on the project financier China Development Bank to cancel financing to the project due to the project’s failure to comply with local laws and international standards. In a letter, WALHI West Java stated that: “The HSR project will cause environmental and social problems for the people of Indonesia, and will in turn cause Indonesians to question the ‘win win’ relationship the Chinese government so often seeks to cultivate in foreign countries”\textsuperscript{ciii}. In June 2017, a second letter from WALHI was sent to China Development Bank reiterating local concerns\textsuperscript{civ}. However, despite confirming receipt of the letters, CDB has not responded to these concerns.

**Project Financing**

China Development Bank (CDB) is financing 75% of the project, which is estimated to cost a total of $5.5 billion USD. CDB provided a $3.94 billion USD\textsuperscript{CV} loan, with the remaining financing to be raised via equity by Indonesian consortium partners\textsuperscript{cvi, cvii}. China did not require a sovereign loan guarantee from the Indonesian government\textsuperscript{cviii}.

**Summary of Environmental and Social Impacts**

| Water, Geologic, and Agricultural Impacts | Much of the region between Jakarta and Bandung consists of community farms and rice fields. The rail line would dramatically alter land use in the region, as the project calls for the creation of a large rubber plantation in a water catchment area\textsuperscript{cx}. The cultivation of monoculture crops like rubber\textsuperscript{cx} will likely lead to overexploitation of local water resources, and the proposed corresponding development for cities, residential housing, or industries along the rail line will further stress local water resources by driving up demand\textsuperscript{cx}. The project would disrupt the water supply of the region, affecting irrigation to rice paddies in West Java; it may also lead to a rise in earthquakes and landslides, as the rail line will pass through Purwakarta, an area with numerous geological faults\textsuperscript{cxii}. |
| Resettlement | The HSR project will adversely impact local communities currently living along the rail route. According to the West Java chapter of WALHI, 727 farming households and 113 non-farming households currently live in the region, and with the construction of the rail line, they will likely lose their homes and farming based livelihoods. Research conducted by WALHI West Java further found that the project sponsor did not host a public consultation under FPIC (free, prior, informed consent) standards; furthermore, the majority of local communities did not wish to resettle\textsuperscript{cxiii}. Purchasing land rights from the community has already proved to be a major barrier to the project, as CDB repeatedly delayed loan disbursement due to the slow land acquisition process\textsuperscript{cxiv}. According to media accounts, CDB required 100% of necessary land to be acquired prior to loan disbursement\textsuperscript{cv}.

**Assessing Compliance**

<p>| Host Country Law and Regulations | Country Law No. 32 of 2009, regarding environment management and control requires that an EIA of a project this size should take at least 1-1.5 years. However, the EIA was conducted in just seven days. As a result, the EIA contains inaccurate and flawed data analysis regarding the project’s actual environmental impacts. For instance, the EIA did not include analysis on cross province/district impacts, or cumulative, long term impacts on the region\textsuperscript{cxvi}. Furthermore, adequate analysis could not possibly have been conducted in such a short period. |</p>
<table>
<thead>
<tr>
<th>Host Country Law and Regulations</th>
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</thead>
<tbody>
<tr>
<td><strong>The Government Regulation 27 of 2012</strong> regarding environmental permits requires public participation in the drafting of an environmental impact assessment (EIA). The law requires project sponsors to incorporate public participation and concerns in the EIA, and that EIA documents be completed in no less than 75 days. However, this did not occur. WALHI West Java has documented that public participation and concerns were not integrated into the EIA. The regulation also requires that the environmental permitting process take at least 100 days so environmental authorities have adequate time to review the EIA. Although the EIA was approximately 300 pages, the environmental permit was approved in just one day, which is insufficient time to have credibly reviewed a complex document.</td>
</tr>
</tbody>
</table>

| Law 26 of 2007 regarding spatial arrangement stipulates that spatial plans can only be updated or changed every five to twenty years, depending on the local government, or only in times of extraordinary circumstances such as a natural disaster. Once the project was awarded to China, however, the central Indonesian government reportedly pressured provincial and regional governments to immediately adjust their spatial plans to accommodate the Bandung HSR, overriding local authorities and rushing the local approvals process. |

| Similarly, by ordering provincial, district, and municipal areas to change their spatial plans, the national government violated **Government Regulation No.15/2010** regarding spatial planning management, as only provinces, districts, and municipalities, not national government, have the authority to arrange, control, and manage local spatial planning. |

| According to the **Transportation Ministerial regulation No. 43/2011** regarding the masterplan of national railways system, development of the high speed train should begin in the year 2030. However, the central government ignored this regulation and accelerated the timetable so that construction could begin in 2016. |

| The HSR project consortium has demanded exclusive rail rights, which would create a rail monopoly and thus violate **Country Law No.5/1999** about monopoly practical and unfair business dispute. |

<table>
<thead>
<tr>
<th>International Norms and Best Practices</th>
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<tbody>
<tr>
<td>According to the International Association for Impact Assessment, <strong>EIAs should be credible, integrative, participative, and systemic</strong>. Conducting an EIA of this size and scale cannot be credibly completed within seven days. The extremely expedited process in this case clearly falls short of international best practices for preparing a valid, high quality EIA.</td>
</tr>
</tbody>
</table>

| Affected communities were not consulted under **free, prior, informed consent**, which is codified under the **United Nations Declaration on the Rights of Indigenous Peoples**. Free, prior, informed consent (FPIC) aims to ensure that affected communities are provided all relevant project information in order to freely (without threat or coercion) agree or disagree to an activity before it commences. It also frames consultations with affected communities as a process rather than an objective in it of itself. In this case, local communities did not consent to the project. |
Construction of the Lamu Coal Plant in Kenya would likely have significant impacts on Old Lamu Town, located on Lamu Island, which is a UNESCO World Heritage Site.
Although located on the mainland, the Lamu coal plant may nonetheless impact Old Lamu Town, a UNESCO World Heritage site on Lamu Island due to negative impacts on mangroves, marine life, in addition to environmental health impacts on Lamu communities. The Lamu coal plant would also be approximately just eight kilometers from a primary school.
The ESIA describes the coal plant as part of the Lamu Port, South Sudan, Ethiopia (LAPSSET) transport corridor, a massive infrastructure initiative which aims to connect Kenya, Ethiopia, and South Sudan via railways, highways, gas pipelines, airports, and a port based in Lamu. In contrast, according to local organizations such as Save Lamu and Natural Justice, Amu Power has described the power plant as a means to meet domestic electricity demand. However, Kenyan and international experts have argued that the coal plant may in fact “create unnecessary capacity” by the time it becomes operational.

Currently, the project has stalled due to ongoing an ongoing lawsuit and a legal complaint being filed against the project at the National Environmental Tribunal and High Court of Kenya, respectively.

**Project Financing**

Industrial and Commercial Bank of China (ICBC) is arranging 900 million USD in export credit financing to two Chinese contractors, Power Construction Corporation of China (PowerChina) and Sichuan No. 3 Power Design & Consulting Company, for the construction of the Lamu coal plant. ICBC will also serve as lead financial advisor to the project. The agreement was made in June 2015.

At the time of writing, African Development Bank (AfDB) is considering providing a $100 million USD partial risk guarantee.

**Summary of Environmental and Social Impacts**

<table>
<thead>
<tr>
<th>Preservation of UNESCO Heritage Site Lamu Old Town</th>
<th>Construction of the coal plant has raised concerns regarding the impacts of dust, pollution, and increased activity on the UNESCO Heritage site. Lamu Old Town is the oldest and best preserved Swahili town in East Africa, spanning sixteen hectares. Built of coral, lime, and mangrove poles, Lamu Old Town was once the most important trade center in Eastern Africa, and is known as the “cradle of Swahili civilization”. Its unique architecture reflects a mix of Swahili, Arabic, Persian, Indian and European influences. According to the UNESCO Mission report in 2015, the coal plant may have negative impacts on the preservation of the site.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Impacts on Mangroves and Marine Life</td>
<td>The project is located on Kwasasi, public land known for robust mangrove forests and marine life. Mangroves are one of the most carbon rich ecosystems in the world and serve an important role in regulating climate change impacts since they are able to store roughly 1000 tons of carbon per hectare. The coal plant would likely degrade the mangroves, as warm water that is discharged by the coal plant would disrupt the delicate balance of mangrove swamps; according to the project’s ESIA, “dredging activities during the construction phase are projected to cause significant and serious damage to the neighboring mangroves, sea grasses and coral reefs habitats.”</td>
</tr>
<tr>
<td>Resettlement Free, Prior, and Informed Consent</td>
<td>Contrary to international best practice, a resettlement action plan (RAP) was not completed with the submission of the ESIA. Since the project site is located on public land, it would have to be leased to Amu Power from the Kenya Ports Authority. Moreover, local communities have established strong generational ties with the land, using it for seasonal farming of fruit, grains, and other crops. Furthermore, the region contains traditional fishing areas that are used by over 3000 indigenous fisher folk from the nearby Pate Island, Lamu Island, and mainland. These communities generally lack formal titles to the land, and concerns regarding whether a resettlement process will account only for residents who can prove spiritual or ancestral ties to the land, and not those who will be economically displaced due to their customary use of the land, remain unaddressed. Although some local residents and farmers have received compensation, fishing communities were not properly consulted and were allegedly coerced into signing compensation forms. Kenya-based NGO Save Lamu also have concerns that planned compensation for fisherman may only include fishing nets, which is clearly inadequate.</td>
</tr>
</tbody>
</table>
## Investing in a Green Belt and Road?

### Pollution and Environmental Health Impacts

The plant will create significant air, water, and soil pollution – well known impacts of coal power plants\(^{cxlv}\). In addition to the negative impacts on marine biodiversity, the Lamu coal plant will likely lead to significant environmental health impacts. According to the project’s EIA, about one third of the project site will be used to dispose of dry ash across 100 hectares. Dry ash causes air pollution and exposes humans to a variety of toxic particulate matter and heavy metals such as mercury, lead, and cadmium\(^{cxlvi}\). Even if fly ash is instead disposed of as wet ash, it still carries significant environmental health impacts, as toxins may then leach into the water system\(^{cxlvii}\).

## Assessing Compliance

### Host Country Law and Regulations

**The Land Act (Section 12)**\(^{cxlviii}\) prohibits the government from allocating public lands located on environmentally sensitive areas. Due to the project’s negative impacts on mangroves, fishing areas, and watersheds, this law establishes the government’s duty to refrain from allocating land to a development projects with inherent environmental and social impacts.

According to the **Environmental (Impact Assessment and Audit) Regulations** (per section 17.1), project sponsors must seek the views of affected communities when conducting an EIA\(^{cxlxi}\). According to Save Lamu and Natural Justice, public meetings were not conducted according to these regulations\(^{cxl}\).

In terms of climate change impacts, the Lamu coal plant may potentially violate **Kenya’s National Climate Change Plan and its Intended Nationally Determined Contribution (INDC)** under the United Nations Framework Convention on Climate Change (UNFCCC). According to Save Lamu and Natural Justice’s analysis, “Although the EIA approximates the amount of CO2 emission, there is no analysis, either in the ESIA or in the Climate Change and GHG Specialist Study, of whether the proposed project, which would add 8.8 million tons of CO2eq per year in 2030, is consistent with Kenya’s commitment under the UNFCCC.”\(^{cli}\)

### International Norms and Best Practices

At the time of this writing, the AfDB may provide a risk guarantee for the project. If approved, the Lamu coal plant would be required to observe African Development Bank Safeguards. Receiving a risk guarantee from the AfDB would also require that the project comply with the IFC Performance Standards\(^{cxl}\). Currently, the project would not comply with either safeguard system.

According to Save the Lamu and Natural Justice, the project would currently violate AfDB’s **Safeguards 1, 2, and 4** based on client’s failure to submit a resettlement action plan with submission of the ESIA, the failure to conduct meaningful consultations under free, prior, informed consent standards, in addition to the omission of key analysis in the ESIA, such as pollution prevention and control in relation to the UNESCO World Heritage site\(^{cxl}\).

Furthermore, based on the project’s improper EIA process and violation of local laws, the project would not comply with **IFC Performance Standard 1** regarding the assessment and management of environmental and social risk impacts (section 8), **Performance Standard 5** regarding land acquisition and involuntary resettlement (section 9-29), and **Performance Standard 7** regarding indigenous peoples (section 12). Due to the project’s destruction of mangrove forests, the project would not comply with **Performance Standard 6** on biodiversity conservation. The project’s adverse impacts also would violate **Performance Standard 8** because of the inherent damage that would be caused to the cultural heritage and integrity of the UNESCO site area (section 14).
The ESIA does not follow international best practice as it does not provide meaningful site alternatives. For instance, the proposed alternative locations for the coal plant also fall within the UNESCO World Heritage site. Save Lamu has critiqued the ESIA for failing to conduct all necessary marine surveys, evaluate impacts on bird life, and failure to assess cumulative impacts outside the immediate vicinity of the project. The ESIA also did not fully conduct and incorporate public feedback, as required by local law. According to international best practices, EIAs should be cumulative, participatory, and include project alternatives.

An increasing number of multilateral and private banks are shifting financing away from coal activities. The World Bank, the US Export Import Bank, European Investment Bank, the European Bank for Reconstruction and Development, and OECD export credit agencies all have now established policies which restrict coal financing or require the use of best and cleanest technologies. This is not the case in the Lamu coal plant, as it calls for super critical coal technology, which is not the most clean or efficient of coal technologies. Private banks such as J.P. Morgan Chase and Wells Fargo have also pledged to restrict support to coal projects, and the Brazilian National Development Bank has committed to no longer finance coal and oil projects. As such, ICBC’s decision to finance a coal plant starkly contrasts the increasing international trend away from coal financing.

Mangroves are one of the most carbon rich ecosystems in the world and serve an important role in regulating climate change impacts. Pollution from the coal plant would likely degrade mangrove swamps in the region.
The Mes Aynak copper mine is located just 40 km southeast of Kabul, causing concerns regarding water pollution as both the mine and city share the same water supply. The copper mine has drawn international attention as its development would require the destruction of Buddhist ruins, an original stop along the ancient Silk Road.
Mes Aynak Copper Mine, Afghanistan

**Background**

Mes Aynak is a copper mine located in Logar province. Approximately 40 km southeast of Kabul, the mine is the largest copper reserve in Afghanistan and estimated to be the second largest copper deposit in the world\(^\text{xix}\). It contains 11-17 million metric tons of copper, 7,700 metric tons of silver, 600,000 metric tons of cobalt, and an unidentified amount of gold\(^\text{xix}\). The project is the largest private sector investment in the country and was widely seen as a bellwether for catalyzing future foreign investments following the US War in Afghanistan\(^\text{xx}\).

In 2007, the Mes Aynak project was awarded to Metallurgical Corporation of China (MCC) and Jiangxi Copper Company Ltd (JXCC), both state owned enterprises. In 2008, the companies established a joint venture called MCC-JCL Aynak Minerals Company to explore and exploit Mes Aynak, in addition to another mining concession in western Afghanistan. MCC holds 75% of the shares, and JXCC owns 25%. MCC-JCL purchased a 30-year lease on the entire Mes Aynak site for $2.9 billion USD\(^\text{xxi}\).

<table>
<thead>
<tr>
<th>Company</th>
<th>MCC</th>
<th>Hunter Dickinson Inc.</th>
<th>Kazakhmys Corporation, LLC</th>
<th>Phelps Dodge Corporation, LLC</th>
<th>Strikeforce Limited Cyprus</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Total Investment</strong></td>
<td>2.9 Billion USD</td>
<td>1.7 Billion USD</td>
<td>2.2 Billion USD</td>
<td>0.9 Billion USD</td>
<td>2.4 Billion USD</td>
</tr>
<tr>
<td><strong>Production Process (Phases)</strong></td>
<td>All production Concentration, Smelting, and Cathode Copper to be Processed in Afghanistan</td>
<td>Initial Production of Concentration and Cathode Cu via SX/EW in Afghanistan, Potential for Proprietary Concentration Leach</td>
<td>All Production-Smelting, and Cathode Copper to be Processed in Afghanistan</td>
<td>Initial Production of Concentration and Cathode Cu via SX/EW in Afghanistan, Potential for Proprietary Concentration Leach</td>
<td>Production of Concentration in Afghanistan</td>
</tr>
<tr>
<td><strong>Start of Production</strong></td>
<td>Initial Heap Leach, SX/EW, Year Five, Based On REF Year Six</td>
<td>Year Seven</td>
<td>2 Years Heap 4 Years Concentration</td>
<td>Year Six</td>
<td>Year Four</td>
</tr>
<tr>
<td><strong>Maximum Royalty Percentage</strong></td>
<td>19.5%</td>
<td>15%</td>
<td>18.1%</td>
<td>12.5%, Capped at 100M USD/year 19.5%</td>
<td>7.5%</td>
</tr>
<tr>
<td><strong>Energy Production</strong></td>
<td>400 Mw</td>
<td>100 Mw</td>
<td>350 Mw</td>
<td>15 Mw</td>
<td>Import Power from outside</td>
</tr>
<tr>
<td><strong>Environment</strong></td>
<td>World Bank Equator Standards</td>
<td>World Bank Equator Standards</td>
<td>No Commitment</td>
<td>World Bank Equator Standards</td>
<td>World Bank Equator Standards</td>
</tr>
<tr>
<td><strong>Bonus to Government of Afghanistan Millions</strong></td>
<td>$808 3 Installments</td>
<td>$100 Multiple Installments</td>
<td>$2 1 Installments</td>
<td>$243 Multiple Installments</td>
<td>$238 Multiple Installments</td>
</tr>
<tr>
<td><strong>Infrastructure (Railway Investment)</strong></td>
<td>Yes</td>
<td>No</td>
<td>Yes</td>
<td>No</td>
<td>No</td>
</tr>
</tbody>
</table>

This table illustrates the varying bid offers for the Mes Aynak copper mine. MCC’s bid included rail investment, in addition to offering the highest royalty percentage and bonus payments to the Afghan government. Similar to nearly all other bidding companies, MCC’s bid also required World Bank and Equator Principle Standards to manage environmental issues.
Project Financing

Chinese foreign aid and bank loans have partially financed the project. According to MCC’s 2015 prospectus, a portion of China’s $2 billion USD foreign aid to Afghanistan from 2014 – 2017 was used to promote the Mes Aynak project. Chinese media have also reported that China Development Bank and China Exim provided bank loans to the project. According to the Aynak Mining Contract, MCC was required to produce a full bankable feasibility study, which at the time of this writing did not appear to be publicly available.

According to the mining contract, the project must comply with World Bank Environmental and Social Safeguards Policy, the Equator Principles, and Voluntary Principles on Security and Human Rights.

Summary of Environmental and Social Impacts

<table>
<thead>
<tr>
<th>Cultural Heritage and Archaeological Ruins</th>
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</table>
| The copper reserve sits atop a major archaeological site known for its ruins of Buddhist temples and stupas with influences from ancient Greece, India, China, Southeast Asia, and Uyghur cultures. During the fifth and seventh century AD, Mes Aynak was a stop along the ancient Silk Road, being located midway between Rome to China. Spanning across 100 – 400 hectares, the Buddhist ruins of the Mes Aynak project was first documented in the 1960s. Given the site’s cultural and historical importance, archaeologists and the general public have repeatedly tried to register Mes Aynak as a UNESCO World Heritage site. Since the mining contract was awarded to the Chinese companies, a small team of dedicated archaeologists have scrambled to excavate and preserve artifacts; so far, only ten percent of the site has been excavated.

<table>
<thead>
<tr>
<th>Security</th>
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| Security is one of the main reasons preventing the project from moving forward, as the region is long known for terrorist activity. Al-Qaeda once used Mes Aynak as a training base, and it is believed that Osama bin Laden planned the September 11, 2011, attacks on the United States there. More recently, Taliban insurgents have taken control of the area, threatening both archaeologists and company workers. Fifteen hundred Afghan police were assigned to protect the MCC mining compound from the Taliban. However, police protection appears to have been inadequate. According to one account, “In 2011, an SUV full of MCC workers hit a land mine on one of the winding gravel roads, killing all passengers in the vehicle. The compound itself is often a target for rockets fired from the surrounding mountains. With the increasing number of abductions and death threats, rocket attacks, and land mines, the security situation deteriorated so badly that by 2014 MCC was forced to evacuate all its workers.”

<table>
<thead>
<tr>
<th>Water, Pollution, and By-products</th>
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</table>
| Copper mining is highly water intensive, and even the process of conducting initial studies have impacted the fragile environment by lowering the water table. If the project moves forward, the project will consume approximately 548,000 cubic meters of water per day. There are also concerns that since Kabul and Mes Aynak share the same water supply, chemicals used in the mining process may expose not only local villagers but also Kabul residents to water contamination. Copper mining produces toxic waste known as tailings, which are a slurry of pulverized rocks, chemical additives, and heavy metals. Tailings are typically disposed of in massive pits, or tailings dams, and pose an inherent environmental and health risk due to its toxicity. Improper management can also cause leaks either above or underground and impact the already stressed local water supply. Furthermore, heavy rains, winds, or flooding can rupture a tailings dam, thus allowing toxic waste to leak into nearby soil or water table. The original tailings dam site was found to have a high possibility of breach. However, although the site was moved to the Tobagia Desert, copper has also been found there, raising uncertainty regarding the ultimate placement of the tailings dam.
The concession is located on land traditionally used by indigenous nomadic tribes. Some land also belongs to those who fled the area due to the recent wars and conflicts, but are now slowly moving back to their ancestral homes. Five villages located in the concession area have already been resettled, and if the project moves forward, more villages will be involuntarily displaced. Because there was no community consultation process, the Afghan NGO Integrity Watch Afghanistan reported an increasing number of disputes regarding what constitutes adequate compensation and the validity of land titles. In fact, no public consultation took place, and no mechanism allowing for regular consultations have been established. Furthermore, the project developers did not develop an environmental and social impact assessment, and although a grievance mechanism exists on paper, it was never implemented on the ground. There have also been recurring concerns of the local government intimidating dislocated communities who opposed the project.

### Assessing Compliance

| Host Country Law and Regulations | Article 19 of the Environmental Law requires that affected communities must be meaningfully consulted at each stage of a project, and that the National Environmental Protection Agency (NEPA) cannot “reach a decision on any application for a permit” until there is demonstrable proof that project developers have informed the public. However, in the Mes Aynak case, the project developer did not conduct public consultations with communities.

| International Norms and Best Practices | According to the Mes Aynak mining contract, the project must comply with the World Bank Environmental and Social Safeguard Policy, the Equator Principles, and Voluntary Principles on Security and Human Rights.

The project failed to comply with World Bank Environmental and Social Safeguard Policies due to failures in conducting a proper Resettlement Action Plan and Resettlement Policy Framework (OP4.12). The World Bank has also documented problems in the resettlement process and safeguard compliance.

The failures to conduct a proper resettlement process and develop a functional grievance mechanism violates Principles 5 and 6 of the Equator Principles, respectively.

Mes Aynak’s mining contract calls for the application of the Voluntary Principles on Security and Human Rights. The document is broad and does not offer specific guidance, but it does call for companies to “consult regularly with...civil society to discuss security and human rights.” However, the longstanding secrecy surrounding the project caused by the government’s failure to disclose the mining contract, in addition to the failure to hold regular consultations with civil society and the public, reflects an inconsistency with these principles.

The resettlement process did not incorporate the principles of free, prior, informed consent, as no consultation took place.
Although the Afghan government has increasingly published many mining contracts, with the mining minister claiming in 2012 that “from now on....no contract shall be kept secret”\textsuperscript{cxcii}, the Mes Aynak contract was not published until 2015\textsuperscript{cxciii}. In fact, much of the controversy surrounding the Mes Aynak case stems from the lack of transparency, which was compounded by the long standing failure of the government to disclose the mining contract until several years later\textsuperscript{cxciv}. The lack of contract transparency in turn fueled other concerns regarding the disclosure of Chinese payments to the Afghan government\textsuperscript{cxcv}.

Today, there is an increasing international trend towards requiring project sponsors to disclose and publish mining contracts. Host country governments, companies, and other stakeholders are increasingly encouraging and recognizing the value of contract disclosure, with 27 governments now legally requiring contract transparency, and the IFC and European Bank for Reconstruction and Development requiring contract disclosure as a condition for project finance\textsuperscript{cxcvi}. According to industry experts, “the trend is clear: natural resource contracts are increasingly being disclosed and the sky isn’t falling. Rather, there is emerging evidence that contact disclosure improves trust and lays the groundwork for collaboration that benefits governments, companies and communities”\textsuperscript{cxcvii}. 
The Sasan Ultra Mega Power project is located in the province of Madhya Pradesh and bears a long history of violence and oppression on the region’s Scheduled Tribes, who are recognized under Indian law as the most socially disadvantaged groups in the country. Numerous NGO reports have documented Sasan UMPP’s poor treatment of Scheduled Tribes and local communities, many of whom still live outside the coal plant and trek through coal mines in order to collect traditional plants.
Background

The Sasan Ultra Mega Coal Power Project (Sasan UMPP) was built in the Singrauli district in Madhya Pradesh, which contains the largest coal reserves in India. It is a 3960 MW (6x660) pit-head coal power plant which will source coal from three adjacent coal mines: Moher, the Moher Amlori extension, and Chatrasal. The three adjacent coal mine blocks spread across 7,000 acres and collectively contain over 750 million tons of coal. The mines are expected to produce roughly 25 million tons of coal per year, and water is sourced from a dam near the Govind Vallabh Pant Sagar Lake. With the commissioning of its last unit in March 2015, it is now operating at full capacity. According to the project owner Reliance Power, the region has an “operating capacity of more than 10,000 MW and projects under construction totaling up to another 15-20,000 MW, making the region the largest hub for power generation in the country.”

Project Financing

In July 2012, Reliance Power secured $1.1 billion USD project financing from China Development Bank, China Exim Bank, and Bank of China to purchase a boiler, turbine, and generators from the power equipment manufacturer, Shanghai Electric Group. According to Reliance Power, the loan agreements for Sasan UMPP represent the largest project financing provided to an Indian project from a Chinese bank to date. The loans are financed on a non-recourse basis, maturing over thirteen years.

The project has received financing from the U.S Export-Import Bank and Clean Development Mechanism (CDM). IFC is also connected to the project via financial intermediary lending. Because of financial support from U.S. Export-Import Bank, in addition to indirect lending from the IFC, the project is required to comply with the IFC Performance Standards, OECD Common Approaches, and Equator Principles.
With a capacity of 3960 MW, the Sasan Ultra Mega Coal Plant is a massive coal plant with three adjacent coal mines. Spanning across 7000 acres, the coal plant and mines are approximately the same size as fifteen Olympic soccer fields.

Summary of Environmental and Social Impacts

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<thead>
<tr>
<th>Summary of Environmental and Social Impacts</th>
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<tbody>
<tr>
<td>Resettlement and Inadequate Compensation</td>
<td>Construction for Sasan UMPP required the relocation of four villages and one tribal area. Residents have reported that their homes and land were forcibly taken, with houses and streets even being demolished in the dead of night. Furthermore, some relocated residents and families continue to live in temporary housing since Reliance Power has not yet moved them to the resettlement colonies. Resettled communities were supposed to have been relocated to colonies in Surya Vihar, an unpopulated, barren area. Numerous reports have documented that colonies lack basic amenities, such as pumped water and schools, rendering them virtually unlivable. Another common problem is the failure to provide adequate compensation at or above the legal requirement for community land. In some cases, no compensation was provided.</td>
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<tr>
<td>Violence and Oppression</td>
<td>Numerous international and local NGOs, and even the U.S. Office of Inspector General of the U.S. Export-Import Bank, have documented how the development of Sasan UMPP has led to violence against local communities. For instance, one fact finding mission found that residents who refused to move due to inadequate compensation were intimidated, threatened, and disappeared by government officials. In other cases, residents who protested forced relocations were reportedly abducted and never found.</td>
</tr>
<tr>
<td>Poor Labor Safety and Hiring Standards</td>
<td>Unsafe labor practices have led to the deaths of nineteen people. Furthermore, due to the lack of appropriate safety equipment, workers were regularly exposed to toxic materials such as coal ash, which caused skin diseases among coal plant workers. Besides poor safety measures, many residents have reported extreme difficulty obtaining jobs despite company promises. In cases when local workers are hired, the company does not provide compensation in cases of injury or even death. For instance, according to multiple NGO reports, irregularities in worker time stamps allowed Reliance Power to claim that injuries and deaths occurred outside the project site. The company is alleged to have prioritized hiring contract workers from other provinces in order to make “it easy to cover accidents, as families do not reach Singrauli to look for lost love[d] ones until long after these incidents occur.”</td>
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</table>
Since the construction of the Rihand Dam in 1954 and subsequent discovery of coal deposits in the area, Singrauli residents have been repeatedly displaced involuntarily. Decades of rapid industrial and coal development since the 80s may have transformed the region into India’s energy capital, but it has also severely degraded the environment and impoverished indigenous communities. The Singrauli district is home to diverse indigenous “dalit” and “adivasis” communities. Also known as “Scheduled Tribes”, they are the most socially disadvantaged peoples in India. As a result, Sasan UMPP’s poor treatment of workers and indigenous communities has exacerbated the lingering trauma of recurring involuntary resettlement from previous projects, loss of forest-based livelihoods, forced disappearances, extreme pollution, and local corruption. Although the project’s ESIA states that “Scheduled Tribes (ST) population residing in the area have minimum dependence on the Minor Forest Produce for their sustenance”, NGOs have found this to be incorrect: even after relocation, many indigenous tribes continued to make “the long trek to the mine on foot, through the clear-cut forests and past their destroyed homes, in order to collect traditional plants”.

As a mega coal power plant, Sasan UMPP has intensified environmental pollution and health problems in the region. There are no publicly available reports on air quality near the coal conveyer belt, but local residents have reported that a heavy layer of coal dust covers nearby vegetation and that coal dust and ash can be overwhelming. Access to clean water is a serious problem since contaminants from ash ponds have seeped into the groundwater. According to one environmental lawyer, “When Reliance was planning to set up a plant in Singrauli, they knew that area already had severe poisoning and massive industrial pollution issues … Yet, they went ahead and set up their plant. They are adding to the damage, and not doing anything to control it.”

The Central Pollution Control Board (CPCB) is tasked to prevent, regulate, and reduce water and air pollution. It created the Comprehensive Environmental Pollution Index (CEPI) in order to rank and evaluate critically polluted areas across India. CEPI scores of 70 and above are considered extremely critically polluted. The CPCB ranked the Singrauli District as the 9th most Critically Polluted Area in India, with a Comprehensive Environmental Pollution Index score of 81.73. This led to the Ministry of Environment, Forest and Climate Change placing a temporary moratorium for projects in the Singrauli District in order to prevent further pollution. However, the moratorium was lifted in June 2011 even though the CPCB stated that pollution levels in Singrauli had increased to 83.35. Lifting the moratorium essentially allowed coal development to move forward. Picture above is the Sasan UMPP.
### Assessing Compliance

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<tr>
<th>Host Country Law and Regulations</th>
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<tr>
<td>The project violates key national laws and principles enshrined in the country’s Constitution. First, the <strong>Forest Rights Act</strong> codifies the rights of Gram Sabha[^xxiv], which includes people who primarily reside in the forest, depend on forest lands for their livelihood, or are a Scheduled Tribe[^xxv,^xxvi]. Approximately 946.58 hectares have been acquired from Dalit, Adivasi, and other Scheduled Tribes[^xxvii]. However, the project did not correctly observe the rights of Gram Sabha as their land was acquired without proper consent[^xxviii].</td>
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<td>The Ministry of Environment, Forest and Climate Change (MoEF&amp;CC) and Ministry of Coal developed a “<strong>Go – No Go Zone</strong>” categorization system for all of country’s forested areas. Mining projects which fall in forested “No Go” Zones are banned on environmental grounds. One of Sasan UMPP’s coal sources, Chatrasal coal mine was blocked from being developed in January 2012 by the MoEF&amp;CC since the mine fell in a “No Go” Zone. But because of a controversial intervention from the Prime Minister’s office, the Chatrasal coal mine received Stage I Forest Clearance in November 2012. Since then, Stage II Clearance remains pending[^xxix].</td>
</tr>
<tr>
<td>The <strong>Madhya Pradesh Rehabilitation Policy</strong> stipulates that one person in every displaced family must be employed in the project. Sasan Power’s Resettlement Action Plan also guarantees this. However, Sasan Power has hired predominantly migrant workers for both skilled and unskilled labor from neighboring districts and states[^xxxi].</td>
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<tr>
<th>International Norms and Best Practices</th>
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<tr>
<td>The <strong>IFC Performance Standards</strong>, <strong>OECD Common Approaches</strong>, and <strong>Equator Principles</strong> are required due to financing support from U.S. Export Import Bank.</td>
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<tr>
<td>Due to impacts on the livelihood of indigenous peoples, resettlement process, pollution, and labor violations, the project violates virtually all <strong>IFC Performance Standards</strong> (except Standard 6).</td>
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<tr>
<td>The project violates the <strong>OECD Common Approaches</strong> for failing to meet host country legal requirements[^xxxi].</td>
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<td>The project violates <strong>Equator Principle 3</strong> for failing to meet compliance with the IFC Performance Standards. It also violates <strong>Equator Principle 4</strong> for failing to produce a robust environmental and social management plan for Category A projects[^xxxi], and <strong>Equator Principle 5</strong> for not conducting public consultations in a culturally appropriate manner with all affected communities and stakeholders. The project also contravenes <strong>Equator Principle 6</strong> for failing to establish a functional grievance mechanism.</td>
</tr>
<tr>
<td>Furthermore, the project did not conduct meaningful consultations or obtain <strong>free, prior, informed consent</strong>. FPIC is also required under the <strong>IFC Performance Standards</strong>.</td>
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<tr>
<td>As referenced in the Lamu coal plant case, there is an <strong>international shift away from coal financing</strong>. Numerous multilateral, export credit, and private banks are developing policies to ban or curb their lending away from coal projects, such as the World Bank, European Bank for Reconstruction and Development, Brazilian National Development Bank, J.P. Morgan Chase, and Wells Fargo.</td>
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</table>
Ash ponds outside the coal plant are ineffectively contained, thereby exacerbating the region’s extreme air and water pollution. In this image, local cattle drink water from an ash pond.
The Yamal LNG project is a liquefied natural gas project with a capacity of 16.5 million metric tonnes. Being located in the Russian Arctic, the project raises significant concerns, such as the increased likelihood of shipping accidents, oil spills, noise pollution on marine life, in addition to increasing environmental degradation in the extremely fragile arctic region.
Background

The Yamal project is a liquefied natural gas plant in the Russian Arctic. As one of the largest gas reserves in the world, the liquefied natural gas (LNG) plant will have an annual capacity of 16.5 million metric tons. The project commenced construction in 2014 and is scheduled to be built in three phases, with operations slated to begin at the end of 2017 or early 2018. The project will exploit oil and gas in the South Tambey field and require three liquefaction trains, which are used to process and purify natural gas into a commercially viable form for transport. In the first phase, Yamal LNG will develop 68 wells and construct four LNG tanks, four gas turbines, water treatment facilities, and the first of the three liquefaction trains. The second phase will entail the construction of 29 additional wells, an LNG loading jetty, and a second LNG train. The third phase calls for the development of 40 more wells and the final liquefaction train. Currently, there is only one other natural gas project in Russia, Sakhalin II. Constructing Yamal LNG will allow Russia to double its LNG output by 2020.

In response to public pressure from Russian NGOs, Yamal LNG published the project’s environmental and social impact assessment (ESIA). However, the ESIA still contains significant gaps on the project’s impacts regarding climate change, cumulative impacts, and indigenous peoples, among others.

The project is being developed by JSC Yamal LNG, a joint venture by Novatek (50.1%), Total (20%), China National Petroleum Company (CNPC) (20%), and Silk Road Fund (9.9%). It is the first Belt and Road project in the Arctic.

Development of the Yamal LNG project would rely on the Northern Sea Shipping Route, which requires the use of ice breaking ships in order to access and navigate in winter. Currently, there is a lack of proven technologies that are able to operate and withstand extreme arctic conditions during the winter season.
**Project Financing**

Yamal LNG is a $27 billion USD project which required $18-19 billion USD in external financing. In 2014, project developer Novatek began conversations with international lenders, but Western sanctions against the company abruptly jeopardized the project. Although the project was able to raise some funds through Russian investors, lack of access to Western capital markets caused the project to stall.

In 2016, Yamal LNG was revived after securing financing China Development Bank and China Exim Bank. China Development Bank loaned $1.5 billion USD, and China Exim Bank provided $10.6 billion USD. Both loans are 15-year contracts. As of June 2017, the project is on schedule.

According to the ESIA, the project must observe the Equator Principles, OECD Common Approaches, World Bank Environmental and Social Safeguards, and IFC Performance Standards.

**Summary of Environmental and Social Impacts**

<table>
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<tr>
<th>Dredging</th>
<th>Dredging is the process of removing debris or soil in order to create or maintain waterways. It is an extremely environmentally disruptive process, as dredged material can become toxic, disturb marine life and the seabed, increase sedimentation and turbidity, and generally degrade water quality. In the case of the Yamal project, over 40 million cubic meters of soil must be removed in order to create a 50 km access channel to the port. The soil will be dumped in the Gulf of Ob, the longest estuary in the world. Moving this massive amount of dredged materials is unprecedented in the Russian Arctic. In addition, the creation of navigation channels in the area will cut through protective barriers in the estuary of the Ob River and allow for seawater intrusion.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Impacts on Marine and Arctic Biodiversity</td>
<td>The Yamal LNG project is located in the vast Yamalo Nenets Autonomous District (YNAD), spanning across 750,000 km of arctic tundra and continuous permafrost zones. In a recent national report submitted to the Convention on Biological Diversity from Russia, increased oil and gas exploitation in the region is negatively affecting the region’s biodiversity. There are eighteen protected nature areas in the region, one being the Ramsar-designated Islands in the Ob Estuary off the Kara Sea, about 500 km south of the project site. Ramsar sites are designated under the Convention on Wetlands of International Importance (also called the Ramsar Convention). It is the intergovernmental treaty that provides the framework for the conservation and wise use of wetlands and their resources. According to the Ramsar Secretariat, the Islands in Ob Estuary is “one of the richest water bird breeding and molting areas in the northern hemisphere.” According to the ESIA, six threatened bird species are present in the project area. Moreover, according to WWF Russia, although the ESIA identifies noise pollution as a negative impact to marine wildlife, it does not provide information on what measures will or should be taken to address it.</td>
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<tr>
<td>Shipping Accidents and Oil Spill Response Plan</td>
<td>As an LNG export center, the Yamal LNG project will inevitably increase the likelihood of liquefied gas, heavy bunker fuel, oil, and condensate spills, in addition to shipping accidents in the Arctic. However, the ESIA does not provide sufficient analysis or information on how Yamal LNG will manage or mitigate shipping accidents. Extreme weather and harsh physical conditions of the Yamal peninsula further complicate the project’s ability to effectively manage spills or accidents. Currently, there is a lack of proven technologies that are able to operate and withstand extreme arctic conditions during the winter season. The coldest days hover between 41 – 45 degrees Celsius below freezing, thus exacerbating the risks of permafrost from heave and thaw, snow cover, flood risks, and high wind pressure. In spite of these significant risks, Yamal LNG has not published an emergency response plan, as required by Russian laws.</td>
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</table>
**Impacts on Indigenous People’s Livelihoods and Culture**

The Yamalo Nenets Autonomous District (YNAD) is inhabited by the Nenets, nomads who rely on fishing and herding reindeer as the basis of their livelihood. The ESIA provides very limited information and analysis on how Yamal LNG intends on mitigating harmful impacts on indigenous peoples such as the Nenets.

**Assessing Compliance**

<table>
<thead>
<tr>
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<tr>
<td>Although the ESIA recognizes the likelihood of emergency spills and accidents, Yamal LNG has not developed a detailed emergency oil and chemical response plan. As a result, the project violates the <strong>Federal Law on the Continental Shelf of the Russian Federation</strong>, which requires the project sponsor to submit “Information about measures to prevent and eliminate the consequences of accidents” for a license.</td>
</tr>
<tr>
<td>The <strong>Law On Internal Waters, the Territorial Sea and The Contiguous Zone Of The Russian Federation</strong> further establishes the need for project developers to prepare a “plan for the prevention and elimination of oil spills.”</td>
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<table>
<thead>
<tr>
<th>International Norms and Best Practices</th>
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<tbody>
<tr>
<td>According to the ESIA, the project must observe the Equator Principles, OECD Common Approaches, World Bank Environmental and Social Safeguards, and IFC Performance Standards.</td>
</tr>
<tr>
<td>The ESIA’s failure to adequately prepare an oil spill response plan, and to consider impacts on indigenous peoples, shipping accidents, and climate change, violates the <strong>Equator Principles</strong> (per Principles 1, 2, 3).</td>
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<tr>
<td>For the same reason, the project violates the <strong>OECD Common Approaches</strong> per articles 11, 13, 26, 27, in addition to <strong>IFC Performance Standards</strong> 1, 3, 6, and 7.</td>
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<tr>
<td>Furthermore, the project does not comply with <strong>World Bank Environmental and Social Safeguards</strong> (OP4.01), for failing to fully consider the environmental and social risks outlined above.</td>
</tr>
<tr>
<td>The ESIA further fails to provide comprehensive analysis and management plans on key issues, such as addressing biodiversity, fishing, indigenous peoples, shipping accidents, and in particular, a robust oil and chemical spill response plan. Per international best practices, an EIA should address <strong>cumulative impacts and mitigation measures</strong>.</td>
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PART II:
BANK PERFORMANCE BASED ON GCG KEY PERFORMANCE INDICATORS

In 2014, the Chinese Banking Regulatory Commission (CBRC) published key performance indicators (KPI) to promote banks’ operationalization of the Green Credit Guidelines. They provide guidance on how banks should measure and assess their level of green credit implementation, even providing suggested environmental and social contract clauses, an appendix of clients and projects classified as Category A and B, and a suggested list of industries considered to be “high pollution, high emission, and overcapacity.”

These KPIs apply to all Chinese policy and commercial banks. The CBRC requires that banks use the KPIs to conduct an institutional self-assessment every year. However, banks are not required to publicly publish these self-assessments, nor are the KPIs required to be applied on a project level.

KPI metrics for Article 21 include the following:

- KPI 21.1: Bank Staff Capacity in Ensuring Compliance with Host Country Law
- KPI 21.2: Implementing Environmental and Social Risk Management
- KPI 21.3: Observance of International Practices and Norms
- KPI 21.4: Ensuring Alignment with International Practices
- KPI 21.5: Hiring Independent Third Parties to Resolve Local Conflicts

Article 21’s overall objective is to help banks “strengthen the environmental and social risk management for overseas projects to which credit will be granted.” For the purposes of this report, we use Article 21’s KPIs as a rubric for measuring implementation of Article 21 in the aforementioned projects. In this way, we can evaluate and compare each bank’s performance for a project.

In doing so, the goal of this analysis is to evaluate the strength and quality of the KPIs as a meaningful metric system in helping banks to accurately identify and address environmental and social risks, and by doing so, to ultimately offer recommendations as to how these KPIs can be used to improve environmental and social compliance of a project “on the ground.”
**KPI 21.1: Compliance with Host Country Law**

KPR 21.1 states, “The banking institutions shall ensure the staff conducting overseas project financing acquire sufficient knowledge of law and regulations in the host countries concerning environmental protection, land, safety and health and gain sufficient experience of the environmental and social risk management in overseas projects.

Where necessary, with the experts’ support, the bank shall make appropriate judgment to the environmental and social risk management of the projects to be granted credit, and the risk management willingness and capacity of the project initiator.”

<table>
<thead>
<tr>
<th>Project</th>
<th>Meet</th>
<th>Barely Meet</th>
<th>Fail to Meet</th>
<th>Unclear</th>
</tr>
</thead>
<tbody>
<tr>
<td>APRIL Pulp and Paper Mills</td>
<td></td>
<td></td>
<td>China Development Bank, ICBC, Ping An Bank, China CITIC, Bank of Communications, Agricultural Bank of China, China Construction Bank</td>
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<tr>
<td>Bandung HSR</td>
<td></td>
<td></td>
<td>China Development Bank</td>
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<tr>
<td>Hambantota Port</td>
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<td>China Exim</td>
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<tr>
<td>Lamu Coal Plant</td>
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<td>ICBC</td>
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<td>Mes Aynak</td>
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<td>China Development Bank, China Exim</td>
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<td>Sasan UMPP</td>
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<td>China Development Bank, China Exim, Bank of China</td>
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<tr>
<td>Yamal LNG</td>
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<td></td>
<td>China Development Bank, China Exim</td>
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This KPI intends to ensure that bank staff have sufficient knowledge of host country law and regulations. However, in each of the seven case studies, we found no publicly available evidence that banks were successfully ensuring that their staff had adequate knowledge of host country laws in order to appropriately assess environmental and social risks. Because project sponsors violated at least one host country law or regulation in each project, this suggests that banks either currently do not possess, or have not yet developed, sufficient institutional mechanisms or processes for ensuring their staff are essentially capable of verifying borrower reports of legal compliance.

For instance, in the case of Bandung HSR, the project violated six Indonesian laws prior to construction. In the case of APRIL, the company violated at least seven Indonesian laws throughout its lifetime. The hugely controversial Sasan UMPP also violated at least four laws and regulations throughout its development and operations, and in the Hambantota Port, the project failed to conduct public consultations communities according to local regulations. In addition, the Yamal LNG case did not follow Russian laws regarding the development of an emergency response plan, and the Lamu coal plant did not conduct public consultations according to Kenyan law.

The common failure to observe host country laws reflects a common challenge for banks – ensuring compliance with host country law can be difficult. There is no easy or fast solution for conducting due diligence. For example, even if a bank hires an expert to conduct legal due diligence, banks must still have some internal expertise in order to properly evaluate the quality of outside experts and their analysis, in addition to establishing processes to ensure that clients actually comply with local laws.

Chinese banks’ lack of in-house expertise on local legal environments is further exacerbated by the fact that Chinese banks generally do not engage with host country NGOs who can offer valuable information on local laws and context,
in addition to independent monitoring of project sponsor behavior. In four out of the seven case studies, local and international NGOs wrote letters to alert Chinese banks of serious environmental and social concerns. However, no Chinese bank ever responded. A simple first-step solution towards improving staff awareness of environmental and compliance problems would be to engage NGOs and respond to public inquiries for information.

Furthermore, another key challenge with ensuring host country compliance is that governments and borrowers cannot always be relied upon to provide all relevant and key information regarding project risks. As a result, bank staff who lack knowledge of local context and laws may be unable to verify the accuracy of government or borrower claims.

In the Mes Aynak case, for instance, MCC, stated in Chinese media that it was not aware of the Mes Aynak archaeological site until only after construction had already commenced. However, the Buddhist ruins have been publicly documented since at least the 1960s, and archaeologists have regularly visited the site since 2004.

In addition to ensuring staff knowledge of host country laws, this KPI also looks at the ability of the bank to assess the “willingness and capacity of the project initiator” to manage environmental and social risks. However, it is very difficult to “truth-test” the willingness and capacity of a borrower to uphold environmental standards and laws without having an independent perspective on the company. This too is another example of how Chinese banks could benefit from engaging knowledgeable NGOs.

For example, had Chinese banks been willing to engage with NGOs like WALHI, Eyes on the Forest, Banktrack, or the Environmental Paper Network, they might have known that APRIL, despite its corporate social responsibility pledges, was still violating environmental laws. In contrast, the banks Santander and ABN AMRO cut financing to APRIL in February 2015 and March 2015, respectively, after NGOs informed them of the company’s broken promises. Both banks have developed and published their own set of environmental and social policies, and by engaging with stakeholders, gained a valuable source of independent information about their client, which ultimately informed their decision to terminate financing.

In sum, Chinese banks will be much better placed to “ensure the staff conducting overseas project financing acquire sufficient knowledge of law and regulations in the host countries,” as required by KPI 21.1, if they develop more robust internal country expertise or trainings, in addition to being willing to engage with knowledgeable NGOs.
Implementing “whole procedure management” means implementing a comprehensive environmental and social risk management system (ESRM) and the Guidelines require ESRM for both domestic and overseas lending. Articles 15-20 of the GCG focus on various components of an ESRM system, including due diligence, compliance examination, credit approval, contract management, and post-loan management.

By referencing the GCG’s procedure management, the KPI confirms that Chinese banks are indeed required to review and assess their domestic and overseas investments under the same ESRM. Based on the projects’ impacts, however, none of the banks met this KPI.

Although it is not possible to examine how each banks’ internal ESRM system worked (or did not work) in the seven case studies, what is apparent is the end result – seven projects which violated host country laws and international norms. This suggests that either the banks’ ESRM systems were not implemented, or were themselves deficient.

For example, in the Sasan UMPP case, Reliance did not provide compensation to workers who were injured on site due to lack of safety equipment, and neither did the company provide compensation to the families of nineteen workers who died on the job. According to one of the GCG’s KPIs (KPI 19.3 relates to loan disbursement), Chinese banks should suspend or cancel their loans in response to such serious allegations; however, we did not find evidence of this occurring. In fact, we were not able to find any public evidence that Chinese banks suspended or cancelled loans in response to a client’s failure to uphold host country laws or international standards in any of our cases.

In addition, several cases raise the question of whether and how Chinese banks apply their own environmental and social policies and procedures when there are other co-financiers who also demand adherence with international standards. For example, because the Sasan project received financing from international peers such as Mizuho Bank, Standard Chartered and the US Export-Import Bank, it was required to comply with the Equator Principles, IFC Performance Standards, and the OECD Common Approaches on Environment. The Yamal LNG project committed itself to international environmental and social standards prior to receiving Chinese financing. For the Lamu coal plant, the IFC Performance Standards are required as a condition of African Development Bank’s partial risk guarantee.
Compared with the Chinese financiers, these international institutions have a longer track record in overseas financing, more fully developed ESRMs, and larger environmental teams. However, as evidenced by each of the projects’ poor environmental performance, having an established ESRM is a necessary, but not a stand alone condition for ensuring borrower compliance with relevant standards.

So the question is: are Chinese banks doing their part to require and promote adherence to local laws and international norms? Unfortunately, it appears Chinese banks are, in fact, not doing their fair share, and based on our case studies, if higher international norms and standards are required in a Chinese financed project, it is because of involvement from another financial institution.

All of the cases which require borrowers to comply with higher sustainable banking or financing standards are not due to Chinese bank involvement. For example, according to the Lamu project’s ESIA, it appears ICBC did not require any additional or higher environmental or social standards. The borrower would be required to comply with the IFC Performance Standards if it received financial support (via a partial risk guarantee) from the African Development Bank, not ICBC. Furthermore, in the Mes Aynak case, although the mining contract required compliance with World Bank environmental and social policies, the requirement appears to have been recommended by the World Bank, not Chinese banks, since the World Bank was serving as an advisor to the Afghan government in promoting environmental and social capacity for the Aynak concession at that time. As such, the role of Chinese banks in requiring World Bank standards is doubtful.

In transactions with large international financing consortiums such as these, there may be added complexity in deciding “whose environmental standards apply,” which bank is taking the lead on environmental risk management, and who is responsible for monitoring compliance and requiring corrective action of borrowers. At this time, however, these cases demonstrate that Chinese banks do not appear to be the driving force in requiring borrowers to adopt or comply with international environmental standards.
KPI 21.3: Observance of International Practices and Norms in Overseas Investments

KPI 21.3 states: “The banking institutions shall promise in public that appropriate international practices or international norms will be followed as far as such overseas projects are concerned, such as:

- Make promise to adopt “Equator Principles”;
- Sign and join the “Global Compact” initiated by the United Nations;
- Join the United Nations Environment Programme Finance Initiative (UNEP FI)
- Sign the UNEP Statement of Commitment by Financial Institutions on Sustainable Development.”

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This KPI obligates banks to commit to follow international practices and norms in their overseas investments. Some of the Chinese banks involved in our case studies have publicly signed on to the international standards mentioned in the Indicators. For example, CDB and ICBC have signed the Global Compact, and CDB, ICBC, and Ping An Bank are members of UNEP FI.

Following international norms is at the heart of Article 21, yet KPI 21.3 identifies four international norms that vary widely in terms of relevance and potential for managing environmental and social risk at the project or transactions level.

Only one, however, the Equator Principles (EP), is designed to be applied on the transaction-level. The Equator Principles involves a detailed set of procedures and standards, largely for project finance lending. Based on the IFC Performance Standards, the EPs outline clear technical and procedural standards which borrowers must uphold, and (assuming banks comply with the EPs) consequences for what happens when such standards are breached. Only two Chinese banks have committed to the Equator Principles: Industrial Bank and Bank of Jiangsu. No Chinese bank with significant overseas lending has adopted the EPs.

Although about half of the banks covered in this report have adopted either the United Nations Global Compact, the United Nations Environment Programme Finance Initiative (UNEP FI), or the UNEP Statement of Commitment by Financial Institutions on Sustainable Development, these three norms are not well-suited to reflect whether Chinese banks are adopting international norms and standards on a transaction level. All three norms are vague and aspirational, especially the Global Compact. While the Compact’s ten simple commitments are admirable, they lack specific, industry-specific guidance for companies’ environmental or social performance. They therefore provide little utility for banks in making decisions on financing overseas projects.
The United Nations Environment Programme Finance Initiative (UNEP FI) is specific to the financial sector, but the Initiative is more of “club,” a resource for banks seeking to learn about a range of sustainability issues. Although such venues provide valuable educational opportunities for banks, they offer little relevance when it comes to ensuring specific transactions meet minimum environmental and social performance standards. Similarly, the UNEP Statement of Commitment by Financial Institutions on Sustainable Development, which UNEP FI banks must sign to become a member, is broad and lacks transaction-specific standards and obligations.

While statements like UNEP FI and the Global Compact help point banks in the right direction, the CBRC should modify KPI 21.3 by deleting reference to the Global Compact and UNEP FI. Instead, it should reference other existing or emerging international norms – such as free, prior, informed consent, “no go zones” in or near UNESCO Heritage or Ramsar sites, requiring contract transparency, and banning the financing of coal projects abroad. These norms would be helpful for banks considering whether to extend credit and how to manage risks for particular projects. Such an amendment would better fulfill the intent of the KPIs, which are to ensure that overseas projects are enriched and improved upon by the observance and adoption of international practices and norms.

In sum, although Chinese banks may indeed be signing onto some standards, the ones they are currently endorsing tend to be the least robust and do little to ensure that banks’ overseas projects are actually meeting international expectations. In doing so, banks are choosing to pursue “easy commitments” that are less effective managing credit risk and less likely to minimize the environmental and social impacts caused by their financing activities.
This KPI aims to increase banks’ institutional knowledge and capacity in ensuring that their overseas investments align with international practices. Based on case studies’ impacts, however, Chinese banks are lagging in implementing good international practices.

The case studies suggest that Chinese banks particularly struggle with several international best practices, including those related to transparency (see PART iii).

One area of concern relates to the quality of Environmental and Social Impact Assessments, which were a serious problem in four out of our seven cases studies. For instance, in the Bandung HSR case, the EIA for the massive infrastructure project was developed in just seven days. Despite what should have been considered a fatal flaw in the EIA process, CDB (which evaluates environmental and social risks across departments) accepted the EIA as a valid document in the loan application, allowing the project to move forward.

Similarly, in the Lamu coal plant case, ICBC moved forward with the transaction despite the fact that the ESIA contained significant gaps and did not include public consultations as required under Kenyan legal requirements. In this case, it is unclear whether or not ICBC was made aware of the EIA’s inadequacy, whether an ICBC consultant failed to alert the bank, or whether the bank proceeded with the loan in breach of its own policies, which require valid EIAs to be included with the loan application. In both cases, it appears that the environmental and social impact assessments were either shoddily drafted or not properly reviewed. These cases beg the question of whether Chinese banks have staff on hand with the expertise and knowledge to differentiate between high or low quality ESIs, in addition to actually assessing the information presented in the document. Because ESIs are crucial documents to help bank staff understand the environmental, social, financial, and reputational risks of a project, it is imperative that banks require clients to submit high quality ESIs.

Another international norm that Chinese banks seem to have particular difficulty in implementing and upholding is Free, Prior, and Informed Consent (FPIC). FPIC is an established international principle, and is recognized in the IFC.
Performance Standards and UN Declaration on the Rights of Indigenous Peoples. In the seven case studies, FPIC was the most commonly violated international practice, as exemplified in the Bandung HSR, Mes Aynak, Lamu coal plant, Sasan UMPP, and APRIL pulp and paper projects. Given the significant consequences of failing to obtain free, prior, informed consent from local communities, banks should consider strengthening their institutional capacity in this regard, as clients and host country governments cannot always be relied upon in ensuring that FPIC is incorporated appropriately, especially in controversial resettlement cases.

Two of the case studies, the Lamu and Sasan coal plants, also point to a major area in which the Green Credit Guidelines could be strengthened: climate change. Climate change is one of the most pressing global environmental issues of our time, and any bank sustainability effort that fails to address it is missing a major opportunity. Within the field of sustainable banking, there is a wide range of climate-related lending policies and practices that international banks are adopting. Some of the most common, emerging policies include financing restrictions for the coal sector, which is the single largest source of human-made greenhouse gas emissions.

An increasing number of banks like Deutsche Bank, BNP Paribas, Société Générale, Crédit Agricole, Standard Chartered, JPMorganChase and others have committed to reduce or end financing for new coal fired power plants. These commitments vary in quality and detail. Furthermore, an OECD Member Export Credit Agency (ECA) agreement requires that export credit agencies restrict coal power plant financing, and when financing is provided, they must notify and demonstrate to other OECD member ECAs that an evaluation of less carbon-intensive energy alternatives has been carried out, and that such alternatives are demonstrated as not viable; export credit agencies must further demonstrate that the proposed project is compatible with the host country’s national energy policy and climate mitigation policy and strategy.

These initiatives increasingly point towards a global trend away from overseas coal financing. Chinese banks now stand as the top players in global coal finance, with four private Chinese banks (China Construction Bank, ICBC, Bank of China and Agricultural Bank of China) ranked in the top 20. As part of their commitment to upholding international norms, Chinese banks should end financing for new coal-fired power plant and mining projects, and adopt and move beyond the OECD coal power financing restrictions.

Finally, another emerging international norm is contract transparency, especially for resource extraction projects. Many companies and governments are already publicly reporting on the revenues generated by extractive projects, but according to the Extractive Industries Transparency Initiative (EITI): “The benefits of contract disclosure are becoming increasingly evident: transparency can lead to increased investment stability, improved revenue collection and enhanced trust between all parties. It can ultimately lead to more balanced and sustainable deals”. Requiring borrowers to disclose the contracts between companies and host governments, particularly with respect to environmental, community, labor, and other obligations, would enhance the durability of these deals and help banks mitigate risks associated with overseas extractive projects.

KPI 21.4 is aims to ensure that overseas Chinese lending aligns with good international social and environmental practices. These case studies reflect that Chinese banks and regulators should focus on adopting international norms related to ensuring transparency and contract disclosure, Free, Prior and Informed Consent, high quality Environmental and Social Impact Assessments, and phasing out financing for the coal sector.
This KPI essentially aims to ensure that, if a bank has already disbursed a loan to a project whose environmental or social risks is creating public controversy, the bank hires an independent third party to investigate. Each of the case studies indeed involved environmental and social impacts that spurred controversy, but based on publicly available information, it is not known whether or to what extent banks hired third parties to look into those disputes. As such, it is unclear if banks met this KPI.

Although hiring third parties can be helpful, over-relying on a third party to conduct an ex-post investigation on a controversial project is not necessarily an effective approach to resolving local conflicts. For instance, in all these case studies, many of the environmental and social risks could have been prevented or mitigated early on by requiring borrowers to conduct proper stakeholder consultation and upholding the principle of Free, Prior and Informed Consent. By listening to the concerns affected communities, companies can modify project design or timetables, increase community compensation and benefits, and take other steps to prevent conflict. Companies that uphold FPIC may ultimately decide not to pursue projects that fail to gain a social license to operate. As such, while hiring third parties can be beneficial in managing conflict resolution, assessing a bank’s performance based on the number of third parties it has hired does not actually measure, let alone encourage, bank’s ability to prevent and resolve conflicts between clients and affected communities. It merely indicates the number of third parties the bank has hired. Furthermore, the KPI does not allow space for nuance, such as explaining whether the hiring of a third party investigator ultimately improved environmental and social compliance or led to a decrease in grievances.

An alternative strategy banks can use for dealing with social conflict is to require borrowers to establish a project-level community grievance mechanism. Both the IFC performance standards and Equator Principles require grievance mechanisms for projects that pose high social or environmental risks/impacts on an ongoing basis. When designed well, these mechanisms can provide an accessible, culturally appropriate venue for communities to raise disputes and to have them resolved.
For their own part, banks can also reduce public controversy by increasing its own scrutiny of borrower-provided reports and data. For instance, in the Mes Aynak case, MCC hired a consultant to assist in developing a resettlement plan, but the consultant only engaged a small number of affected people, which in turn contributed to widespread disappointment and discontent regarding Chinese investment in the copper mine. In addition, banks can prevent and potentially resolve social conflict by seeking out and being receptive to community and NGO concerns about a project. As discussed earlier, in four out of seven cases, NGOs attempted to flag key environmental and social risks to banks early on, but no bank ever responded to concerns.

It is important to note that when NGOs reach out to banks, they tend to be keenly interested in supporting bank management of environmental and social issues. In their letter to CDB, WALHI West Java noted that, “As China continues to invest in our country, we hope that Chinese investment can in fact be on mutually favorable terms.” In writing to CDB, China Exim, and the Silk Road Fund, Russian organizations did not call for an end to the project, but instead stated that they hoped to encourage Yamal LNG to draw upon the highest international standards in avoiding environmental impacts, and would “welcome a proactive and productive partnership with China Exim Bank and other Chinese stakeholders.”

Interestingly, optional indicators in the GCG KPI already ask banks to report on the number of interactions and communication events of the institution with media and environmental NGOs, but given the lack of disclosure of KPI self-assessments, the public remains in the dark as to whether these kinds of interactions are documented and investigated within banks.

In sum, this KPI could be more meaningful if instead of simply measuring the hiring of third-parties to investigate, it is developed into a more comprehensive measurement of banks’ problem-solving systems, which takes into account banks’ capacity for employing both preventative and remedial solutions. For example, it could also measure the number of projects that establish grievance mechanisms, and track the outcomes of borrower and bank engagement with the public, both prior to and during project implementation.
PART III:
STRENGTHENING THE KPIS

Five years after the publication of the Green Credit Guidelines, Chinese banks are falling short in fulfilling the GCG’s mandate to comply with host country law and international standards in overseas lending. In particular, banks continue to struggle in localizing their environmental and social risk assessments to host countries’ legal system, and still have a long way to go in building institutional capacity, understanding, and applying international norms and standards. The publication of the GGC’s Key Performance Indicators in 2014 were a welcome step in fostering better compliance with the Guidelines. As a well-known management adage states, “What gets measured, gets managed” – meaning the mere collection and tracking of data within an organization spurs internal conversations, management attention, and better performance on that data. At the same time, implementation of the GCG can be strengthened in two key ways:

First, a few KPIS should be re-focused in order to make them more useful to the Guideline’s goal of upholding international best practice in overseas lending. In particular, KPI 21.3 on international practices and norms should not focus on vague statements such as the UN Global Compact or the UNEP Financial Initiative statement, but rather on project specific norms such as Free, Prior and Informed Consent, and the creation of effective project-level grievance mechanisms. In particular, the CBRC could make a major contribution to averting climate change by promoting Chinese bank adherence to international norms which curb financing for the coal sector. Similarly, the KPI regarding the hiring of independent third parties to resolve local disputes could be improved by emphasizing ways to create a robust system which can take both preventative and remedial measures when conflicts may emerge throughout a loan cycle.

Second, these case studies, as well as our 2014 report, demonstrate that on multiple levels, banks have significant struggles in communicating and engaging with the public, which undermines the implementation of the GCGs. Based on our analysis, there are a number of things the CBRC could do to improve public communication and engagement in the Chinese banking sector.

**Promote better bank-level disclosure**

Requiring banks to conduct a self-assessment is a welcome step in the right direction, as it is a way that the CBRC can promote stronger implementation even if the GCG itself is not legally binding. However, they are not disclosed to the public. Requiring banks to disclose their self-assessments and information on their clients and projects could significantly help ensure bank accountability in implementing the GCG. The agency should also clarify that that the GCG requirements regarding internal controls and information disclosure apply to overseas investments, not just domestic lending.

The CBRC should also increase the usefulness of the institution-level information that banks provide to the public. For example, one KPI regarding information disclosure requires that banks “publish institution’s green credit report/corporate social responsibility (CSR) report/sustainability development report and disclose to stakeholders the information concerned”, including “institution’s strategy and policies on green credit”. Although many banks now publish corporate sustainability reports, very few have published their actual environmental and social policies. The only Chinese bank in this report to have published its institutional, environmental policies is China Exim Bank.

**Promote international norms in project-level disclosure**

Chinese banks do not provide enough project-level disclosure, which is a major limitation to the efficacy of the GCGs. One KPI requires the banks to publish a “list of clients classified as Category A”; this is a good start but other international financiers go much further. For example, the World Bank, IFC, the Asian Development Bank, and African Development Bank disclose their lending decisions publicly and post-project EIAs on their websites. And although the CBRC provides helpful suggestions for incorporating client commitments in loan covenants, the agency should further
encourage banks to disclose these environmental loan covenants for projects. Publicly disclosing such commitments would not only be of great help to communities, who would then know what environmental commitments borrowers are obligated to uphold; but it would also encourage banks to follow through on their environmental and social commitments.

Finally, banks should promote better public disclosure by their clients. One international norm, which has been adopted by the IFC and the Equator Principle banks, require clients to consult and disclose project environmental documents locally in the appropriate language and cultural context well before construction occurs. Banks should also require that companies disclose to the community other project documents at least 90 days in advance, such as resettlement plans or social and environmental action/management plans (or other commitments or changes the company promises to make to ensure that they will meet specific standards).

Encouragingly, the GCG KPIs provide banks and regulators with an additional tool for evaluating performance and promoting stronger compliance; they also help Chinese banks sector become more sophisticated in assessing and regulating their environmental and social impacts abroad. However, our findings point towards a continued failure of banks to fully implement the GCG in overseas investments.

At this time, the KPIs remain a blunt instrument in encouraging green credit implementation on a project level, let alone across a bank’s entire lending portfolio. More comprehensive disclosure would allow regulators and researchers to better verify and study the information provided in bank self-evaluations. Improving the KPIs and developing additional supporting documents, like the KPIs annex materials, could foster better environmental performance from the Chinese banking sector.
Implications for Belt and Road Investments

Given the immense geographical, political, and economic scope of the Belt and Road Initiative (BRI), the Chinese banking sector should learn from past overseas experiences in order to meet the challenges and opportunities of implementing BRI. As discussed in this report, BRI’s proposed economic corridors traverse through some of the most politically fraught and environmentally sensitive regions in the world. Thus, the capacity of banks to adequately identify and preferably prevent – and if not, then mitigate – risks early on will be crucial for influencing the success or failure of investments.

As China prioritizes the BRI, Chinese banks are expected to serve “as the backbone for financial cooperation”, with “domestic commercial banks serv[ing] as the follow up driver for commercial cooperation”. As such, Chinese banks should recognize their role and impact as influential drivers of both sustainable and non-sustainable investments, and make a concerted effort to promote development that is sustainable both in principle and practice.

In this report, the selected case studies exemplify new challenges and pitfalls that may be associated with BRI investments. For example, the BRI’s emphasis on supporting international development via infrastructure investment poses some potential challenges. Although the model of development vis-à-vis infrastructure did indeed foster economic and industrial growth in China, that growth is now largely understood to have been uneven, sometimes resulting in “ghost cities” which are not former boom towns but cities that have yet to come to life. Although large, unprofitable infrastructure programs on a provincial level can be kept alive by the central government in China, host country governments may not be able to afford to indefinitely support projects with limited financial returns. In particular, the Bandung HSR and the Hambantota Port demonstrate the potential pitfall of failing to fully consider the lack of local demand for infrastructure projects, resulting in not only environmental and social conflicts, but financially unfeasible projects which saddle host country governments with immense foreign debt.

As referenced in the One Belt, One Road Vision Statement, there is indeed an infrastructure gap in Asia. However, that should not lead to the misguided assumption that all infrastructure projects will have beneficial economic or development impacts. In the case of the Bandung HSR, the Indonesian government at one point cancelled the project, citing the project’s high cost and lack of demand; instead, the Indonesian government called for the development of a medium speed train. However, CDB’s offer to forego the requirement of a sovereign risk guarantee, an unusual decision for a project of this scale, in essence allowed the Indonesian government to shift all financial risk to Chinese developers. Of course, doing so enabled China to continue with plans of constructing a high speed rail, rather than the medium speed train proposed by the Indonesian government. This example reflects a dynamic where Chinese interest in cultivating demand for large infrastructure projects may not necessarily align with the local realities of the actual kinds of infrastructure needed by host countries.

In the same vein, as a sleepy beach town, Hambantota had no need for an international port. Since its opening, the Hambantota Port has not led to any meaningful economic growth to the region. Instead, the port (and other Chinese financed infrastructure projects such as the infamously empty Mattala Rajapaksa International Airport) have mired Sri Lanka in Chinese debt. In 2016, Sri Lanka sought a $1.5 billion USD loan from the International Monetary Fund in order to help the country repay its swelling foreign debt, a significant amount of which is owned to China.

Given the initiative’s massive scale and scope, Chinese banks and investors will need to consider the climate and carbon impacts of their BRI investments, especially in the coal sector. Although China is making progress domestically in curbing emissions, the same cannot be said of its overseas investments. Both the Lamu and Sasan UMPP coal projects reflect a treacherous disconnect between China’s commitment to fighting climate change at home versus abroad. In particular, as the One Belt, One Road Vision document identifies energy infrastructure as a key area for cooperation, Chinese banks ought to
consider the long-term impacts of coal investment in “locking in” countries to a fossil fuel based energy economy.

Furthermore, when financing the export of coal technologies overseas, banks should consider whether such projects support or jeopardize a host country’s ability to meet its Nationally Determined Contributions (NDC) targets under the Paris Agreement of the United Nations Framework Convention on Climate Change. According to analysis from China Dialogue, the gap between China’s approaches to climate change at home and abroad has led to concerns that China will “export its carbon emissions as it moves up the global value chain, threatening any fragile international progress on emissions reduction.” China has already developed stringent standards in regards to domestic coal financing, and so applying those standards to overseas investments could be a first step towards ensuring banks are not complicit, let alone active, in financing projects which hamper international efforts to fight climate change.

Lastly, perhaps the most pressing challenge facing Chinese banks is the lack of public communication channels. Given the high profile of the BRI, Chinese investors will be judged not only on their environmental and social performance, but by their ability to work with affected communities and civil society groups. The BRI hopes to unite the world through networks of mutual economic self-interest and “people to people bonds”, but this cannot be accomplished without meaningful communication with local communities, civil society groups, and other stakeholders.

In each of our case studies, open channels of communication with affected stakeholders could have prevented or at least mitigated negative impacts. Local communities and organizations have attempted to communicate their concerns to Chinese financiers in at least four projects discussed in this report. However, no bank ever responded to their concerns. If Chinese banks are to succeed in fulfilling their sustainable finance policy obligations, creating accessible public channels of communication will be a critical first step towards building a green – and not brown – Belt and Road.
POLICY RECOMMENDATIONS

As China encourages banks to boldly increase their project lending in Belt and Road countries, both banks and the CBRC should act decisively to strengthen compliance with Article 21 of the Green Credit Guidelines. Ensuring that Belt and Road projects adhere to relevant laws and uphold international best practice has benefits for Chinese banks, host countries, local communities, and China’s image abroad.

Recommendations for Chinese Bank Regulators

General Recommendations

- Establish public channels of communication, including specific staff or departments to manage public inquiries or requests for information.
- Develop supporting documents to foster GCG compliance, such as common definition of terms.
- Require banks to publicly publish their institutional environmental and social financing policies, as well as a list of current clients and their environmental and social obligations or loan covenants.
- Publish policies which set clear thresholds and limitations for curbing financing away from high carbon, high emission investments overseas in the energy sector

Recommendations for Improving KPIs

- Publish banks’ KPI self-evaluations.
- Promote Chinese bank adherence to the international norm of phasing out coal financing.
- Confirm that KPIs applying to risk management, internal controls and information disclosure apply equally to overseas investments.
- Refocus KPI 21.3 and 21.4: Rather than encourage banks to sign onto statements such as the UN Global Compact or UNEP Financial Initiative, encourage them to adopt stronger international banking standards such as the Equator Principles, and international best practices such as FPIC.
- Adjust KPI 21.5 by emphasizing robust ex-ante public consultation as a way of addressing controversial projects, and the development of project grievance mechanisms.

Recommendations for Chinese Banks

- Establish public channels for stakeholder engagement, including specific staff or departments to manage public inquiries or requests for information.
- Improve project due diligence by conducting site visits, communicating with project stakeholders, including local people, and seeking independent information about borrower environmental management systems and practices.
- Require borrowers to publish project ESIA within 80 days of completion, and to ensure that ESIA are conducted according to international best practice.
- Require borrowers to establish a project level grievance mechanism and redress fund for high environmental and social risk investments
- Formally adopt international banking standards such as the Equator Principles, and adopt international best practices such as FPIC and phasing out of financing for the coal sector.
- Publish KPI self-evaluations; the text of all institutional-wide environmental and social policies, and a list of current clients and their environmental and social obligations or loan covenants.
- Uphold international best practice in requiring clients to disclose environmental and social information to communities.
APPENDIX 1:
EVOLVING INTERNATIONAL NORMS AND STANDARDS

International norms and best practices are constantly evolving. This appendix provides a brief overview of the most cutting edge standards and trends applicable to the international banking sector.

Environmental and Social Impact Assessments (ESIA)
International best practices require that an environmental and social impact assessment should take into account cumulative impacts and be conducted in a transparent and participatory manner.

Resources
- “Principles of environmental Impact Assessment Best Practice”, International Association for Impact Assessment in cooperation with Institute of Environmental Assessment, UK
- “Biodiversity in Impact Assessment”, International Association for Impact Assessment, July 2005
- International Best Practices Principles Series, International Association for Impact Assessment

Free, Prior, and Informed Consent
Free, prior, and informed consent (FPIC) is codified under the United Nations Declaration on the Rights of Indigenous Peoples. It provides a framework for ensuring that indigenous peoples are: free from intimidation or coercion from companies or governments in making decisions; given sufficient time to consider projects prior to any construction or development; informed about all potential project impacts; and have the right to consent or reject a project.

Institutions such as the International Finance Corporation also require clients to follow FPIC for indigenous peoples and groups which are “separate from those of the mainstream society or culture”. FPIC is also referenced in Chinese policies governing overseas investments, such as the Guidelines for Social Responsibility in Outbound Mining Investments, published by the China Chamber of Commerce for Minerals, Metals, and Chemicals.

Today, it is considered international best practice to apply FPIC principles to all project affected communities.

Resources
- “IFC Performance Standards on Environmental and Social Sustainability”, IFC, January 1, 2012

Information Disclosure and Transparency
Transparency is a critical tool in fostering good governance and fighting corruption. The majority of multilateral financial institutions have developed varying levels of requirements regarding access to information and transparency policies. For instance, the Asian Development Bank is required to post online draft EIAs for Category A projects at least 120 days before Board consideration, in addition to resettlement plans and a project’s updated or final EIAs. The Equator Principles require bank clients to, at minimum, post an online summary of ESIA information and GHG emissions on a project level. Furthermore, the OECD Common Approaches require that environmental and social impact information be made public at least 30 days prior to final commitment to grant official support. Although
many financial institutions can further improve their information disclosure and transparency practices, it is generally considered common practice for banks to publicly disclose environmental, social, and financing information regarding their project financing and corporate loans well in advance of decision-making points, and often in locally relevant languages.

**Resources**

- “Recommendation of the Council on Common Approaches for Officially Supported Export Credits and Environmental and Social Due Diligence (‘The Common Approaches’), OECD Council, April 6, 2016

In addition to disclosing key environmental and social documents, there is an increasing recognition of contract transparency as an emerging international norm. For instance, the Extractive Industries Transparency Initiative (EITI) encourages contract disclosure, and during an EITI sponsored event with government, corporate, and civil society stakeholders, contract transparency was noted as a best practice linked to improving investment stability, improved revenue collection, and enhanced trust.

**Resources**

- “Open Contracting Partnership: Global Principles”, Open Contracting Partnership

**International Shift Away from Coal and Other Fossil Fuels**

The increasing public outcry over the banking sector’s large role in financing climate change has led to an international shift away from public and private sector coal and other fossil fuel financing. Institutional public financiers such as the World Bank, European Investment Bank, European Bank for Reconstruction and Development, U.S. Export-Import Bank, and most OECD-member export credit agencies have pledged to restrict coal power plant projects except in rare cases. The Brazilian National Development Bank has also committed to no longer fund coal or oil power plants.

Private banks such as Bank of America, Credit Agricole, Natixis, Citigroup, Goldman Sachs, Société Générale, BNP Paribas, Morgan Stanley and Wells Fargo have also developed coal policies. According to an analysis conducted by BankTrack, although some banks have reduced their exposure to the coal sector, four Chinese banks (Bank of China, China Construction Bank, ICBC, and Agricultural Bank of China) are among the world’s top ten private bank financiers of coal.

**Resources**

- “The Coal Test: Where Banks Stand on Climate at COP 21”, BankTrack, December 2015

**Establishing “No-Go” Zones in or near internationally recognized landmarks, such as UNESCO World Heritage or Ramsar Wetlands Sites**

In light of increasing threats to World Heritage Sites, especially from extractive industries, in 2013 the World Heritage Committee adopted Decision 37, which calls on “all States Parties to the Convention and leading industry stakeholders, to respect the ‘No-go’ commitment by not permitting extractives activities within World Heritage properties, and by making every effort to ensure that extractives companies located in their territory cause no damage to World Heritage properties, in line with Article 6 of the Convention”. The decision was supported by the International Union for Conservation of Nature (IUCN) and International Council on Mining and Metals (ICMM).

Private banks and companies have adopted policies which establish various levels of “no-go” zones to protect internationally recognized regions. For instance, HSBC has adopted a policy that precludes financing to projects...
which may result in a World Heritage Site being downgraded to “in danger”, or threaten a Ramsar designated area.

In 2014, seven private banks also pledged not to finance a massive coal terminal located just outside the Great Barrier Reef. Even some Chinese state-owned enterprises, such as Sinohydro, have designated UNESCO World Heritage Sites, Ramsar Wetlands, and habitats of endangered species as “no-go” zones.

**Resources**

- “Respecting World Heritage Sites”, International Union for Conservation of Nature
- “Sinohydro Environmental Policy”, Sinohydro

**Grievance Mechanisms**

The obligation of business enterprises to address and remedy grievances among affected and potentially affected communities is codified in the Guiding Principles on Business and Human Rights. Principle 29 states that operational level grievance mechanisms must perform two functions:

>First, they support the identification of adverse human rights impacts as a part of an enterprise’s ongoing human rights due diligence. They do so by providing a channel for those directly impacted by the enterprise’s operations to raise concerns when they believe they are being or will be adversely impacted. By analysing trends and patterns in complaints, business enterprises can also identify systemic problems and adapt their practices accordingly;

>Second, these mechanisms make it possible for grievances, once identified, to be addressed and for adverse impacts to be remediated early and directly by the business enterprise, thereby preventing harms from compounding and grievances from escalating.

Most public financial institutions have their own project level grievance mechanisms and/or require clients to have such redress mechanisms. Multilateral banks such as the World Bank, the African Development Bank, Asian Development Bank, European Investment Bank, European Bank for Reconstruction and Development, and the Inter-American Development Bank have each developed various forms of inspection panels, ombudsman offices, accountability mechanisms, and/or compliance review panels to ensure access to remedy among project affected communities. The IFC also requires clients to establish grievance mechanisms for projects and operations which “involve ongoing risk and adverse impacts on surrounding communities”. In an effort to support clients develop productive, legitimate grievance mechanisms, the IFC has published a series of notes and best practices on the matter. Significantly, grievance mechanisms must be easily accessible by affected and potentially affected communities.

Furthermore, numerous national development banks, development finance institutions, and export credit agencies have established various channels to ensure project accountability. Examples include Brazilian Development Bank, Export Development Canada, U.S. Export-Import Bank, Japan Bank for International Cooperation, Japan International Cooperation Agency, Nippon Export and Investment Insurance, Netherlands Development Finance Company, and the U.S. Overseas Private Investment Corporation. Although the majority of grievance mechanisms among public and private banks still require significant improvement in offering meaningful remedy, the increasing adoption of such accountability mechanisms indicate a growing recognition in the international banking sector of the importance of resolving affected communities’ concerns.

**Resources**

APPENDIX 2:
GREEN CREDIT GUIDELINES KPIs

Part I: Qualitative Performance Indicators

<table>
<thead>
<tr>
<th>Responsibilities of the Board of Directors</th>
<th>Project</th>
<th>Meet</th>
<th>Barely Meet</th>
<th>Fail to Meet</th>
<th>N/A</th>
</tr>
</thead>
</table>

**Article 7** The board of directors or supervisory board of a banking institution is responsible for developing green credit development strategy, approving the green credit objectives developed by and the green credit report submitted by senior management, and monitoring and assessing the implementation of green credit development strategy.

**Objective:** Ensure the effective setup of green credit strategy and objectives

**Core Indicators:**

2.7.1 The board of directors approves the strategy to support green, low-carbon and recycling economy, to strengthen environmental and social risk management, and to improve institution’s environmental and social performance.

2.7.2 The board of directors approves annual and medium-to-long term objectives of implementing green credit strategy.

**Objective:** Ensure the effective monitoring and implementing of green credit strategy

**Core Indicators:**

2.7.3 The board of directors shall, based on its due responsibility, monitor the implementation of green credit strategy and ensure that its requirements and objectives are met.

(1) The board of directors shall, based on the approved green credit strategy and goals, make requirements and responsibility to the management team for the reporting.

(2) The board of directors shall appoint an ad hoc committee to monitor the implementation of the green credit strategy and the achievement of its goals.

(3) The board of directors should be equipped at least one member with expertise in green credit.

(4) The audit committee of the board of directors shall invite third-party auditing firms or commission bank’s internal auditing department to conduct a specific auditing for environmental and social risks management to some typical projects selected by sample.
(5) The salary committee of the board of directors shall strengthen monitoring to make sure that the implementation of the green credit be appropriately reflected in the overall performance evaluation of the senior management and other related employees.

**Responsibilities of the Senior Management Team**

**Article 8** The senior management of a banking institution shall, pursuant to the resolutions of the board of directors or supervisory board, develop the green credit objectives, have in place relevant mechanisms and processes, define clearly the roles and responsibilities, conduct internal checks and appraisal, annually provide report to the board of directors or supervisory board on the development of green credit, and timely submit relevant reports to competent supervisory authorities.

**Objective:** Ensure the effective setup of senior management mechanism necessary for implementing green credit strategy

**Core Indicators:**

2.8.1 The senior management shall develop the strategy to support green, low-carbon and recycling economy, to strengthen environmental and social risk management, and to improve institution’s environmental and social performance.

2.8.2 The senior management shall set annual as well as medium-and-long term goals of implementing green credit strategy. The goals should be itemized and implemented by geographical and functional business units.

2.8.3 The senior management shall approve the polices and procedures of implementing green credit strategy.

2.8.4 The senior management shall well define the responsibilities of geographical and functional business units for implementing green credit strategy.

2.8.5 The senior management shall conduct internal control and performance appraisal relevant to the key objectives of green credit strategy.

2.8.6 The senior management shall report to the board of directors periodically (at least once each year) the implementation of green credit strategy.

**Dedicated Green Credit Team**

**Article 9** The senior management of a banking institution shall assign a senior officer and a department and configure them with necessary resources to organize and manage green credit activities. Where necessary, a cross-departmental green credit committee can be set up to coordinate relevant activities.

**Objective:** Ensure dedicated officer and department to implement green credit strategy and configure with necessary resources

**Core Indicators:**
<table>
<thead>
<tr>
<th>Dedicated Green Credit Team</th>
<th>2.9.1</th>
<th>The senior management shall develop the strategy to support green, low-carbon and recycling economy, to strengthen environmental and social risk management, and to improve institution’s environmental and social performance.</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>2.9.2</td>
<td>The senior management shall set annual as well as medium-and-long term goals of implementing green credit strategy. The goals should be itemized and implemented by geographical and functional business units.</td>
</tr>
<tr>
<td>Optional Indicator(s)</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>2.9.3</td>
<td>A cross-departmental green credit committee can be set up to coordinate relevant activities.</td>
</tr>
</tbody>
</table>

### CHAPTER3: POLICY, SYSTEM AND CAPACITY BUILDING

#### Policy Development

**Article 10** Banking institutions shall, as per national environmental protection laws and regulations, industrial policies, sector entry policies, and other applicable regulations, establish and constantly improve the policies, systems and processes for environmental and social risk management and identify the directions and priority areas for green credit support. As for industries falling within the national “restricted” category and industries associated with major environmental and social risks, they shall customize credit granting guidelines, adopt differentiated and dynamic credit granting policies, and implement the risk exposure management system.

**Objective:** Develop concrete polices to support green, low-carbon and recycling economy, to strengthen environmental and social risk management, and to improve institution’s environmental and social performance

**Core Indicators:**

3.10.1 The banking institutions shall formulate relevant policies on the directions and priority areas for green credit support

3.10.2 The banking institutions shall formulate relevant policies on the environmental and social risk management, including process and operation procedure.

3.10.3 As for industries falling within the national “restricted” category, associated with major environmental and social risks, and having been granted significant lending amount, the banking institutions shall customize credit-granting guidelines (please refer to Appendix I for the industries recommended to develop customized guidelines), adopt differentiated and dynamic credit granting policies, and implement the risk exposure management system.

3.10.4 The banking institutions shall formulate relevant policies on fulfilling corporate environmental-and-social responsibilities and on improving institution’s environmental and social performance.
| Categorized Management | **Article 11** Banking institutions shall develop client environmental and social risk assessment criteria, dynamically assess and classify client environmental and social risks, and consider the results as important basis for credit rating, access, management and exit. They shall adopt differentiated risks management measures concerning loan investigation, review and inspection, loan pricing and economic capital allocation.

Banking institutions shall prepare a list of clients currently faced with major environmental and social risks, and require these clients to take risk mitigation actions, including developing and having in place major risk action plans, establishing sufficient, effective stakeholder communication mechanisms, and finding a third party to share such risks.

**Objective:** Develop concrete policies to support green, low-carbon and recycling economy, to strengthen environmental and social risk management, and to improve institution’s environmental and social performance

**Core Indicators:**

3.11.1 The banking institutions shall define the contents of environmental and social risks of clients concerned and formulate the (benchmarking) standard of environmental and social risk appraisal to the clients.

3.11.2 The banking institutions shall develop categorization standard and classify the clients according to their environmental and social risks:

<table>
<thead>
<tr>
<th>Category A: Clients whose construction, production, and business activities may dramatically change the environment status quo and bring irreversibly adverse environmental and social results. The clients, who run the development and operation of the following projects, shall be categorize as A in principle:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Nuclear power station; large-scale hydropower station and water resources projects; resource extractive projects; large-scale infrastructure projects in environmental and social sensitive area; large-scale infrastructure projects in minority nationality residence; large-scale industrial projects in the neighborhood of populous residence or water supply sources.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Category B: Clients whose construction, production, and business activities have adverse environmental and social risks but largely reversible through mitigation measures. The clients, who run the development and operation of the following projects, shall be categorize as B in principle:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Petroleum refining, coking and nuclear fuel processing; chemical material and product manufacturing, ferrous metal smelting and rolling processing; non-ferrous metal smelting and rolling processing; nonmetallic mineral products; thermal power generation, heat power generation and supply, gas generation and supply; large-scale infrastructure and building; long-distance transportation (including pipeline transport), intra-city and inter-city rail-transit.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Category C: Clients whose construction, production, and business activities have little environmental and social risks.</th>
</tr>
</thead>
<tbody>
<tr>
<td>(Please refer to Appendix II for the industrial sector classification)</td>
</tr>
<tr>
<td>3.11.3</td>
</tr>
<tr>
<td>3.11.4</td>
</tr>
<tr>
<td></td>
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<td></td>
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<tr>
<td></td>
</tr>
<tr>
<td>3.11.5</td>
</tr>
</tbody>
</table>

**Green Finance Innovation**

**Article 12** Banking institutions shall create a mechanism that encourages green credit innovation. Banking institutions shall promote innovation in green credit business process, products and services under the premises of effective control of risks and sound commercial viability.

Objective: Encourage green credit innovation
Core Indicators:
<table>
<thead>
<tr>
<th>Article 13</th>
<th>Banking institutions shall improve E&amp;S performances of its own operations, put in place relevant systems, emphasize green credit awareness raising, standardize business conducts, promote green office and improve resources efficiency.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Objective: Improve environmental and social performance of its own operations</td>
<td></td>
</tr>
<tr>
<td>Core Indicators:</td>
<td></td>
</tr>
<tr>
<td>3.13.1</td>
<td>Enhance green credit concept education and promote green action involved by all staff:</td>
</tr>
<tr>
<td>(1) Integrating green credit concept into the institution's core value;</td>
<td></td>
</tr>
<tr>
<td>(2) Developing and implementing the institution's social volunteer action plan and encourage staff to actively participate in environmental and social activities organized by the institution or other social organizations.</td>
<td></td>
</tr>
<tr>
<td>3.13.2</td>
<td>The banking institutions shall develop relevant policies and establish corresponding mechanism to standardize business behavior and consciously safeguard consumers' interest.</td>
</tr>
<tr>
<td>3.13.3</td>
<td>The banking institutions shall develop plan and strengthen communication and interaction with community where the institution is located to promote community development.</td>
</tr>
<tr>
<td>3.13.4</td>
<td>The banking institutions shall promote green office and raise the level of intensive management through:</td>
</tr>
<tr>
<td>(1) Establishing internal environmental footprint management program, benchmarking the consumption of electricity, water, paper &amp; gasoline and setting quantified saving target;</td>
<td></td>
</tr>
<tr>
<td>(2) Recycling the waste, such as waste paper, waste battery, waste lighting utensil, and waste furniture;</td>
<td></td>
</tr>
</tbody>
</table>
### Capacity Building

**Article 14** Banking institutions shall strengthen green credit capacity building, establish and improve green credit labeling and statistics system, improve relevant credit management systems, enhance green credit training, develop and employ related professionals. Where necessary, they can hire an eligible, independent third party to assess environmental and social risks or acquire related professional services by means of outsourcing.

**Objective:** Build and strengthen the capacity of the institutions to implement green credit

**Core Indicators:**

<p>| 3.14.1 | The banking institutions shall strengthen green credit capacity building and take the green credit knowledge and expertise requirements into account of the new professional and managerial positions. |
| 3.14.2 | The banking institutions shall establish labeling system to identify clients’ environmental and social risk category, which shall be integrated into banking institutions’ credit management system, IT system and client statistics system. |
| 3.14.3 | According to the regulatory requirements, the banking institutions shall establish and conduct green credit statistics system. |</p>
<table>
<thead>
<tr>
<th>Section</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>3.14.4</td>
<td>The banking institutions shall strengthen staff capacity building, develop green credit training programs, cultivate and recruit relevant professionals, through:</td>
</tr>
<tr>
<td>(1)</td>
<td>Considering and cultivating multi-disciplinary education and working background and experience of the staff so that the technical, economic and social knowledge for promoting energy-saving and environmental protection can be effectively supplemented among staff;</td>
</tr>
<tr>
<td>(2)</td>
<td>Enhancing the circulation, communication and sharing of knowledge and information on environmental and social responsibilities, through the ways of developing internal website and interactive platform, organizing on-site lectures and video training, etc.</td>
</tr>
<tr>
<td>(3)</td>
<td>Integrating green-credit related courses into employee’s orientation and on-job training program.</td>
</tr>
<tr>
<td>(4)</td>
<td>Providing green credit training courses to newly appointed member of the board of directors, the board of supervisory and the senior management team;</td>
</tr>
<tr>
<td>(5)</td>
<td>Collecting and summarizing green credit cases for study and discussion, as a way to make green credit training more focused and effective;</td>
</tr>
<tr>
<td>(6)</td>
<td>Cultivating and hiring relevant professionals according to the development priority of institutions’ green credit strategy.</td>
</tr>
<tr>
<td>3.14.5</td>
<td>The bank shall enhance team buildup to form collective actions working on green credit:</td>
</tr>
<tr>
<td>(1)</td>
<td>Establishing environmental and social risk management team to lead the environmental and social risk management of the institution and equipping for the functional departments or business units with dedicated (for large-scale institutions) or adjunct (for small-and-medium institutions) staff for environmental and social risk management;</td>
</tr>
<tr>
<td>(2)</td>
<td>Establishing a cross-departmental team responsible for the research, development and promotion of green credit products, consisting of members from relevant departments of research &amp; development, corporate banking, risk management and credit management.</td>
</tr>
<tr>
<td>(3)</td>
<td>Establishing a cross-department team responsible for improving the institution’s own environmental and social performance, consisting of members from relevant departments of public relations, risk management, corporate banking and credit management.</td>
</tr>
<tr>
<td>3.14.6</td>
<td>Where necessary, the bank shall assess the environmental and social risks of the clients in the following categories, through commissioning to qualified and independent third-party or other effective outsourcing services:</td>
</tr>
</tbody>
</table>
Due Diligence

### Article 15

Banking institutions shall strengthen due diligence in credit granting. The scope of due diligence on environmental and social risks shall be defined according to characteristics of the sector and region in which the client and its project is located, so as to ensure the due diligence is complete, thorough and detailed. Where necessary, the banking institutions can seek for support from an eligible, independent third party and competent authorities.

**Objective:**
Strengthen due diligence on environmental and social risk to banking institution’s clients and their projects.

**Core Indicators:**

<table>
<thead>
<tr>
<th>4.15.1</th>
<th>The banking institutions shall define relevant system and procedure to make sure that environmental and social risk assessment be integrated, as an important part, into the process of due diligence before making credit-granting decision.</th>
</tr>
</thead>
<tbody>
<tr>
<td>4.15.2</td>
<td>The banking institutions shall ensure that employees conducting due diligence are equipped with required knowledge and expertise of environmental and social risks. They can, with the support from experts if necessary, make appropriate judgment on the extent of the environmental and social risks of the firms and projects to be granted credit.</td>
</tr>
</tbody>
</table>
| 4.15.3 | The banking institutions shall define the scope of due diligence on environmental and social risks according to characteristics of the sector and region in which the client and its project is located:  
  (1) Labor and working condition;  
  (2) Explosive and chemical management;  
  (3) Pollution prevention and control;  
  (4) Community health, safety and security;  
  (5) Land acquisition and involuntary resettlement;  
  (6) Biodiversity conservation and sustainable management of living natural resources  
  (7) Indigenous peoples  
  (8) Cultural heritage  
  (9) Supply chain  
  (10) Clients’ environmental and social risk assessment and management system |
<table>
<thead>
<tr>
<th>Article 4.15.4</th>
<th>The banking institutions shall develop and use standardized environmental and social risk due diligence checklist customized for different industrial sectors and for different types. A supplementary checklist is required for uncommon clients.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Article 4.15.5</td>
<td>The banking institutions shall well compare the environmental and social risk information provided by the clients with that acquired from other resources (such as supervisory authorities, industrial association, credit-rating agencies, regulators, media, and communities) so that the bank can accurately assess client’s environment and social risks.</td>
</tr>
<tr>
<td>Article 4.15.6</td>
<td>Based on the comprehensive, in-depth and in-detail assessment of client’s environmental and social risks, the banking institutions shall make overall evaluation on the client’s willingness, capacity and track-record of its environmental and social risk management and make preliminary classification of client’s environmental and social risk category.</td>
</tr>
<tr>
<td>Article 4.15.7</td>
<td>For those clients and projects in which environmental and social risks are difficult to identify for their complexity and severity, the banking institutions can seek for support from an eligible, independent third party and competent authorities.</td>
</tr>
</tbody>
</table>

**Compliance Examination**

**Article 16** Banking institutions shall examine the compliance of clients to whom credit will be granted. As for environmental and social performance, compliance checklist and compliance risk checklist shall be developed according to the characteristics of different sectors, so as to ensure compliance, effectiveness and completeness of the documents submitted by the clients, and make sure they have paid enough attention to related risk points, performed effective dynamic control, and satisfied the requirements on substantial compliance.

**Objective:** Strictly examine the environmental and social risks of clients and their projects to ensure compliance both in documentation and in substance

**Optional Indicators:**

<table>
<thead>
<tr>
<th>Article 4.16.1</th>
<th>The banking institutions shall define relevant system and procedure to integrate environmental and social risks into, as an important part, the compliance examination.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Article 4.16.2</td>
<td>The banking institutions shall ensure that employees examining the compliance are equipped with sufficient knowledge and expertise of environmental and social risks. They can, with the support from experts if necessary, make appropriate judgment that projects to be granted credit meet the compliance requirement both in documentation and in substance.</td>
</tr>
<tr>
<td>Compliance Examination</td>
<td>4.16.3</td>
</tr>
<tr>
<td>---</td>
<td>---</td>
</tr>
<tr>
<td>4.16.4</td>
<td>According to the characteristics and severity of the environmental and social risks the clients and their project will face, the bank shall require clients to submit compliance examination documents. The bank shall review the documents and ensure that they meet the compliance requirement in formality with authoritativeness, completeness and following related legal procedures. The compliance documents may include but not limit the following contents:</td>
</tr>
<tr>
<td></td>
<td>(1) Industrial sector policies and market access standards, including the implementation of retaining “high-pollution, high-emission and overcapacity” projects (please refer to Appendix IV for details) and of eliminating outdated industrial capacities.</td>
</tr>
<tr>
<td></td>
<td>(2) Project examination, approval and filing</td>
</tr>
<tr>
<td></td>
<td>(3) Preliminary review or approval of land use</td>
</tr>
<tr>
<td></td>
<td>(4) Environmental impact assessment, including the impacts to the community and communication with impacted communities. The bank shall pay more attention to the authenticity, representativeness, compliance in procedures, and validity of the community involvement.</td>
</tr>
<tr>
<td></td>
<td>(5) Social stability risk assessment</td>
</tr>
<tr>
<td></td>
<td>(6) Energy-saving evaluation and energy-saving monitoring results of national and provincial level energy-saving enterprises</td>
</tr>
<tr>
<td></td>
<td>(7) Safety production and sanitation/health standard implementation</td>
</tr>
<tr>
<td></td>
<td>(8) Urban planning examination</td>
</tr>
<tr>
<td></td>
<td>(9) Other important compliance requirements</td>
</tr>
<tr>
<td>Article 17</td>
<td>Banking institutions shall strengthen credit approval management, and define reasonable level of credit granting authority and approval process according to the nature and severity of environmental and social risks faced by the clients. Credits may not be granted to clients whose environmental and social performance fails to meet compliance requirements.</td>
</tr>
<tr>
<td>---</td>
<td>---</td>
</tr>
<tr>
<td><strong>Objective:</strong> Strengthen credit-granting approval management and implement risk-mitigation measure to address clients' environmental and social risks</td>
<td></td>
</tr>
<tr>
<td><strong>Core Indicators:</strong></td>
<td></td>
</tr>
<tr>
<td>4.17.1</td>
<td>The environmental and social risk management team of banking institutions shall conclusively indentify the nature and severity of environmental and social risks faced by the clients, and then classify them into applicable category and manage the risks in a dynamic way.</td>
</tr>
<tr>
<td>4.17.2</td>
<td>To clients classified as Category A or Category B, the environmental and social management team shall prepare a written assessment which can be referred by credit-granting and other related departments. The environmental and social risk assessment shall cover:</td>
</tr>
</tbody>
</table>

(1) the potential environmental and social risk points of clients/projects;  

(2) proposed follow-up measures for clients (or projects) to manage environmental and social risks;  |
(3) A comprehensive evaluation to client/project’s environmental and social risk status

<table>
<thead>
<tr>
<th>4.17.3</th>
<th>Based on the clients’ environmental and social risk category, the banking institutions shall establish differentiated credit-granting procedure and permission:</th>
</tr>
</thead>
<tbody>
<tr>
<td>(1)</td>
<td>The banking institutions may go through regular credit-granting procedure for clients classified as Category C in terms of environmental and social risks.</td>
</tr>
<tr>
<td>(2)</td>
<td>The banking institutions shall suspend credit-granting procedure for those clients classified as Category A or B and with a negative assessment given by environmental and social risk management team.</td>
</tr>
<tr>
<td>(3)</td>
<td>For Category B clients with a positive assessment given by the environmental and social risks management team, the credit granted for medium-and-long term projects, such as project financing, fixed-asset loan, shall be approved by at least branch-level and above.</td>
</tr>
<tr>
<td>(4)</td>
<td>For Category A clients with a positive assessment given by the environmental and social risk management team, the credit granted for medium-and-long term projects, such as project financing, fixed-asset loan, shall be approved by headquarters who enjoy the highest credit-granting limit.</td>
</tr>
</tbody>
</table>

| 4.17.4 | The credit applications for supporting green, low-carbon and recycling economies enjoy priority for approval under the same conditions with other projects. |

**Optional Indictors:**

<table>
<thead>
<tr>
<th>4.17.5</th>
<th>For Category A or B clients and their projects to which the banking institutions set to grant credit, the following risk-mitigation measures are recommended to be adopted:</th>
</tr>
</thead>
<tbody>
<tr>
<td>(1)</td>
<td>Require clients to raise the capital ratio;</td>
</tr>
<tr>
<td>(2)</td>
<td>Require clients to issue medium-and-long term corporate bond (enterprise bond);</td>
</tr>
<tr>
<td>(3)</td>
<td>Require clients to add technology-improvement projects and investment-transformation scheme related to energy-saving, environmental protection and safety production.</td>
</tr>
<tr>
<td>(4)</td>
<td>Require to control effectively project’s assets, cash flow and operation rights.</td>
</tr>
<tr>
<td>(5)</td>
<td>Require projects to be covered by construction-in-process insurance and insurances offsetting environmental and social risks, such as engineering liability insurance, environmental liability insurance, product liability insurance. At the appropriate time, the lender(s) shall be the beneficiary enjoying highest priority in insurance compensation.</td>
</tr>
</tbody>
</table>
### Contract Management

**Article 18** Banking institutions shall, by improving contract clauses, urge their clients to strengthen environmental and social risk management. As for clients involving major environmental and social risks, the contract shall provide for clauses that require them to submit environmental and social risk report, state and avow that they will strengthen environmental and social risk management, and promise that they are willing to be supervised by the lender; the contract shall also provide for clauses concerning the remedies banking institutions can resort to in the event of default on environmental and social risks made by the clients.

**Objective:** Leverage binding contract clauses to urge clients to strengthen environmental and social risk management.

**Core Indicators:**

| 4.18.1 | In credit-granting contracts with clients of Category A or Category B, a separate article is required to urge clients to strengthen environmental and social risk management. |
| 4.18.2 | In addition to credit-granting contract, a supplementary contract concerning strengthening environmental and social risk management is required for Category A clients. |

A template of contract concerning environmental and social risk management is provided in Appendix V for your reference.

### Disbursement Management

**Article 19** Banking institutions shall enhance credit funds disbursement management and regard how well clients have managed environmental and social risks as important basis for credit funds appropriation. As for projects to which credit is granted, all stages, including design, preparation, construction, completion, operation and shutdown shall be subjected to environmental and social risk assessment. Where major risks or hazards are identified, credit funds appropriation can be suspended or even terminated.

**Objective:** Leverage credit funds disbursement management to urge clients to strengthen environmental and social risk management.

**Core Indicators:**

| 4.19.1 | The banking institutions shall regard how well clients have managed environmental and social risks as important basis for credit funds appropriation. |
| 4.19.2 | Credit funds appropriation can be suspended or even terminated where major risks or hazards are identified. |
4.19.3 The banking institutions shall attach importance to and enhance credit funds disbursement management of project construction. They shall develop system and procedure of project fund disbursement and management so as to ensure that the following requirements can be implemented:

1. The banking institutions shall not disburse fund in advance to support startup preparation and construction, if the projects fail to get approval of required assessments in terms of environmental impact, safety production and vocation health.

2. Where the design, construction and operation of the facilities for environmental protection, safety production, and vocation health fail to run simultaneously with the project, the banking institutions shall suspend the fund disbursement for main project construction, until such simultaneity is met.

3. The banking institutions shall not disburse operation fund to a project that is ready to be put into production, if it fails to get approval of assessment of environmental impact, safety production and vocation health for the completion of the project.

Post-loan Management

Article 20 Banking institutions shall strengthen post-loan management. As for clients involving potential major environmental and social risks, relevant and pertinent post-loan management actions shall be developed and implemented. They shall watch closely the impact of national policies on the clients’ operation, step up dynamic analysis, and make timely adjustment to asset risk classification, reserve provisioning and loss write-off. They shall establish and improve internal reporting system and accountability system concerning major environmental and social risks faced by the clients. Where major environmental and social risk event occurs to the client, the banking institution concerned shall timely take relevant risk responses and report to competent supervisory authorities on potential impact of said event on itself.

Objective: Take comprehensive measures to enhance post-loan management to clients involving potential major environmental and social risks.

Core Indicators:

4.20.1 For clients classified as Category A in terms of environmental and social risks, the environmental and social risk management team in bank’s headquarters shall develop specific post-loan management measure, including but not limited to the following requirements:

1. Require clients to report, at least once every six-month, system of environmental and social risk management and implementation of risk-response scheme.
<p>| | |</p>
<table>
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<tr>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>(2)</td>
<td>Loaner shall, at least once every six-month, make on-site examination to client’s system of environmental and social risk management and implementation of the risk-response scheme.</td>
</tr>
<tr>
<td>(3)</td>
<td>Where necessary, loaner may invite qualified and independent third-party to make examination and evaluation to the client’s system of environmental and social risks and implementation of risk-response scheme.</td>
</tr>
<tr>
<td><strong>4.20.2</strong></td>
<td>For clients classified as Category B in terms of environmental and social risks, the branches of the banking institutions shall, under the supervision of headquarters’ environmental and social risk management team, develop specific post-loan management measures, including but not limited to the following requirements:</td>
</tr>
<tr>
<td>(1)</td>
<td>Require clients to report, at least once every year, system of environmental and social risk management and implementation of risk response scheme.</td>
</tr>
<tr>
<td>(2)</td>
<td>Loaner shall, at least once every year, make on-site examination to client’s system of environmental and social risk management and implementation of the risk-response scheme.</td>
</tr>
<tr>
<td>(3)</td>
<td>Where necessary, loaner may invite qualified and independent third-party to make examination and evaluation to the client’s system of environmental and social risks and implementation of risk-response scheme.</td>
</tr>
<tr>
<td><strong>4.20.3</strong></td>
<td>Watch closely the impact of national policies on the clients’ operation, step up dynamic analysis, and make timely adjustment to asset risk classification, reserve provisioning and loss write-off.</td>
</tr>
<tr>
<td>(1)</td>
<td>To the clients failing to meet the national environmental and social standards, the banking institutions shall take alarm, and downgrade their category in terms of environmental and social risks if said risks are worse off.</td>
</tr>
<tr>
<td>(2)</td>
<td>In sensitivity analysis, the banking institutions shall consider the impacts on the project’s cash flow of such factors of levying environmental and resource tax and fees, raising the existing duties, or increasing resource prices.</td>
</tr>
<tr>
<td>(3)</td>
<td>In macroeconomic or industrial sector stress tests, the banking institutions shall integrate into environmental and social risks as an important risk driving forces.</td>
</tr>
<tr>
<td>(4)</td>
<td>The banking institutions shall reserve special provision for high-environmental and high-social risk industries.</td>
</tr>
</tbody>
</table>
4.20.4 Establish and improve internal reporting system and accountability system for significant environmental and social risks. Where major environmental and social risk event occurs to the client, the banking institution concerned shall timely take relevant risk responses and report to competent supervisory authorities on potential impact of said event on itself.

**Overseas Project Management**

**Article 21** Banking institutions shall strengthen the environmental and social risk management for overseas projects to which credit will be granted and make sure project sponsors abide by applicable laws and regulations on environmental protection, land, health, safety, etc. of the country or jurisdiction where the project is located. The banking institutions shall make promise in public that appropriate international practices or international norms will be followed as far as such overseas projects are concerned, so as to ensure alignment with good international practices.

**Objective:** Strengthen the environmental and social risk management for overseas projects to which credit will be granted.

**Core Indicators:**

4.21.1 The banking institutions shall ensure the staff conducting overseas project financing acquire sufficient knowledge of law and regulations in the host countries concerning environmental protection, land, safety and health and gain sufficient experience of the environmental and social risk management in overseas projects. Where necessary, with the experts’ support, the bank shall make appropriate judgment to the environmental and social risk management of the projects to be granted credit, and the risk management willingness and capacity of the project initiator.

4.21.2 The banking institutions shall implement whole procedure management to the environmental and social risks of projects to be granted credit.

4.21.3 The banking institutions shall make promise in public that appropriate international practices or international norms will be followed as far as such overseas projects are concerned, such as:

- Sign and join the “Global Compact” initiated by the United Nations;
- Sign and join the United Nations Environment Programme Finance Initiative (UNEP FI);
- Sign and join the UNEP Statement of Commitment by Financial Institutions on Sustainable Development.

4.21.4 The banking institutions shall make in-depth understanding of international best practice of the assessment and control of environmental and social risks for international financing projects and ensure alignment with good international practices in essence.
| **Overseas Project Management** | **4.21.5** | The banking institutions shall hire qualified and independent third-party to make assessment and examination of environmental and social risks to the overseas financing projects which arouse disputes in terms of their said risks. |

**CHAPTERS: INTERNAL CONTROLS AND INFORMATION DISCLOSURE**

**Internal Control**

**Article 22** Banking institutions shall incorporate green credit implementation into the scope of internal compliance examination, and regularly organize and carry out internal auditing on green credit. Where major deficiencies are identified, investigation shall be conducted to determine whom to be held accountable as per applicable regulations.

**Objective:** Strengthen internal control and examination to the green credit implementation

**Core Indicators:**

| **5.22.1** | The banking institutions shall define the examination scope of internal control to green credit implementation: |
| (1) | Support green, low-carbon and recycling economies, strictly retain the lending to “high pollution, high emission and overcapacity” projects (exclude technology transformation and upgrade projects) as well as to outdated industrial capacity. |
| (2) | Require clients to strengthen environmental and social risk management so as to strictly control various credit risks |
| (3) | Examine institution’s environmental and social performance |

| **5.22.2** | The banking institutions shall enhance the examination of internal control and compliance to manage significant environmental and social risks |
| (1) | For industries and/or areas which are identified by related environmental protection and safety production authorities as priorities for addressing law and regulation violation, the banking institutions shall conduct specific internal control examination based on the client risk evaluation. |
| (2) | For clients and/or projects which are identified by related environmental protection and safety production authorities as existing significant law and regulation violation activities, and to which the banking institutions have extended lending, the banking institutions shall conduct specific internal control examination. |
| (3) | The banking institutions shall conduct specific internal control examination periodically to projects classified as Category A. |
| (4) | The banking institutions shall conduct internal control examination periodically, by sample, to projects classified as Category B. |
| 5.22.3 | The banking institutions shall integrate the green credit system, procedure and implementation performance into the contents of internal auditing and conduct specific auditing as necessary. |
| 5.22.4 | For significant problems unearthed by internal control compliance examination or internal auditing, the banking institutions shall take action to require related departments or branches/sub-branches to make correction and improvement. For individuals who are to blame for the deficiencies, the banking institutions shall keep on the file and make them take responsibility and report to the regulator if those are member of senior management. |

**Check and Evaluation**

**Article 23** Banking institutions shall establish effective green credit appraisal and evaluation system and reward and penalty system, and have in place incentive and disciplinary measures, so as to ensure sustained and effective offering of green credit.

**Objective:** Strengthen green credit appraisal and evaluation

**Core Indicators:**

5.23.1 The banking institutions shall integrate green credit indicators into the overall performance appraisal and evaluation system and conduct related review periodically to relevant functional and geographical business units, including:

   (1) Appraisal and evaluation indicators relevant to business function;

   (2) Appraisal and evaluation indicators relevant to environmental and social risk management;

   (3) Appraisal and evaluation indicators relevant to institution’s own environmental and social performance.

5.23.2 The banking institutions shall enhance the application and management of green credit evaluation results and establish reward and penalty system, thus optimizing credit structure, improving the quality of services, and facilitating the transformation of development mode.

5.23.3 The banking institutions shall publish within the institution or communicate with specific stakeholders the green credit evaluation indicators and appraisal results.
<table>
<thead>
<tr>
<th>Information Disclosure</th>
<th><strong>Article 24</strong> Banking institutions shall make public their green credit strategies and policies, and fully disclose development of their green credit business. As for credit involving major environmental and social risks, the banking institutions shall disclose relevant information according to laws and regulations, and be subjected to the oversight by the market and stakeholders. Where necessary, an eligible, independent third party can be hired to assess or audit the activities of banking institutions in performing their environmental and social responsibilities.</th>
</tr>
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<tbody>
<tr>
<td>Objective: Strengthen green credit appraisal and evaluation</td>
<td></td>
</tr>
<tr>
<td><strong>Core Indicators:</strong></td>
<td></td>
</tr>
<tr>
<td>5.24.1 The banking institutions shall publish institution’s green credit report/corporate social responsibility (CSR) report/sustainability development report and disclose to stakeholders the information concerned:</td>
<td></td>
</tr>
<tr>
<td>(1) Institution’s ideology, value, vision and goal of its environmental and social performance</td>
<td></td>
</tr>
<tr>
<td>(2) Institution’s strategy and policies on green credit</td>
<td></td>
</tr>
<tr>
<td>(3) Institution’s progress of supporting green, low-carbon and recycling economies and of strictly retaining “high-pollution, high-emission and overcapacity” projects (excluding technology transformation and upgrading projects) and outdated industrial capacities.</td>
<td></td>
</tr>
<tr>
<td>(4) The quantified impacts of energy conservation and emission reduction contributed by institution’s support to green, low-carbon and recycling economies, such as data of total amount of energy saved, reduced amount of pollutant from CO2, SO2, COD (Chemical Oxygen Demand), and nitrogen oxides.</td>
<td></td>
</tr>
<tr>
<td>(5) A list of clients classified as Category A</td>
<td></td>
</tr>
<tr>
<td>(6) The progress and activities of institutions to improve its own environmental and social performance</td>
<td></td>
</tr>
<tr>
<td>5.24.2 The banking institutions shall disclose relevant information of credit-granting progress to projects with significant environmental and social impacts, according to laws and regulations, and subject to the oversight of the market and stakeholders.</td>
<td></td>
</tr>
<tr>
<td>5.24.3 The banking institutions shall keep communication and interaction with stakeholders through various effective ways so that the banking institutions can improve its environmental and social risk management by accepting suggestions and opinions developed by the stakeholders.</td>
<td></td>
</tr>
<tr>
<td>5.24.4 The banking shall hire qualified and independent third-party to conduct assessment or auditing to institution’s implementation of environmental and social responsibility.</td>
<td></td>
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</tbody>
</table>
### CHAPTER 6: MONITORING AND EXAMINATION

#### Self-Assessment

Article 26 Banking institutions shall, pursuant to the provisions hereof, perform overall green credit evaluation at least once every two years, and submit the self-evaluation report to CBRC.

Objective: Ensure the green credit be thoroughly, systematically and persistently carried on

Core Indicators:

<p>| | |</p>
<table>
<thead>
<tr>
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<tbody>
<tr>
<td>6.26.1</td>
<td>The banking institutions shall establish a cross-departmental green credit evaluation team and if necessary, invite external expert to join the task force. The banking institutions shall perform overall green credit evaluation at least once every two years and submit the self-evaluation report to CBRC.</td>
</tr>
<tr>
<td>6.26.2</td>
<td>The banking institutions shall, according to the evaluation results and guiding opinions from the regulator, develop rectification and improvement measures to sustainably strengthen the weak link of the green credit implementation and increasingly raise the green credit performance.</td>
</tr>
</tbody>
</table>
### Part II: Quantified Evaluation Indicators

#### Core Indicators:

<table>
<thead>
<tr>
<th>Balance</th>
<th>Changes during the year</th>
<th>Growth year over year</th>
<th>NPL Ratio</th>
<th>Units</th>
<th>Proportion to Total Loans</th>
</tr>
</thead>
<tbody>
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</tbody>
</table>

1. Credit to projects and services of environmental protection and emission reduction

2. Credit to emerging strategic industries of energy saving & environmental protection, and new energy, new energy automobile

3. Total amounts of said two items

4. Credit to industries related to "high-pollution, high-emission and overcapacity" (excluding loans to the part of technology transformation)

5. Credit to the enterprises related to obsolete industrial capacity

6. Credit to the enterprises violating law and regulations on environmental protection

7. Credit to the enterprises violating safety production

8. Emission Reduction of CO2 Equivalent of every RMB 100 million loan

<table>
<thead>
<tr>
<th>Year-end Number</th>
<th>Volume at the end of previous year</th>
<th>Changes during the year</th>
<th>Growth year over year</th>
</tr>
</thead>
</table>

9. Development of Main e-banking Business

<table>
<thead>
<tr>
<th>Transaction Amount</th>
<th>Changes during the year</th>
<th>Growth year over year</th>
<th>Numbers of Clients Opened Account (00,000)</th>
<th>Substitution Ratio of Transaction Number</th>
</tr>
</thead>
</table>

#### Optional Indicators:

<table>
<thead>
<tr>
<th>Year-end Number</th>
<th>Volume at the end of previous year</th>
<th>Changes during the year</th>
<th>Growth year over year</th>
<th>Percentage of total employee</th>
</tr>
</thead>
</table>

10. Carbon emission (tons) per person of employee generated during business activities

11. Average power consumed by employee (kw-h)
<p>| | | | |</p>
<table>
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</thead>
<tbody>
<tr>
<td>12.</td>
<td>Female members in middle-and-senior management team</td>
<td></td>
<td></td>
</tr>
<tr>
<td>13.</td>
<td>The disability in the employee</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>III. Green Credit Training and Education</strong></td>
<td>14.</td>
<td>Hours of green credit training per employee in a year</td>
<td></td>
</tr>
<tr>
<td></td>
<td>15.</td>
<td>Hours of green credit training per new employee in a year</td>
<td></td>
</tr>
<tr>
<td></td>
<td>16.</td>
<td>Hours of green credit training per middle-and-senior manager</td>
<td></td>
</tr>
<tr>
<td><strong>IV. Interaction with the Stakeholders</strong></td>
<td>17.</td>
<td>Number of interaction and communication events of your institutions with media and environmental NGOs</td>
<td></td>
</tr>
</tbody>
</table>

**Appendices:**

1. Industrial Sectors Required to Develop Credit Policy;
2. National Economy Code for Projects and Clients Classified as Category A & B;
3. Dynamic Assessment to Clients' Environmental and Social Risk Management;
4. Suggested List of Industries related to “high-pollution, high-emission and overcapacity”;
5. Suggested Contents of Environmental and Social Risk Management Contract


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(This letter was sent to all Chinese banks associated with APRIL, including Agricultural Bank of China, Bank of China, Bank of Communications, CITIC Industrial Bank, China Construction Bank, China Development Bank Industrial and Commercial Bank of China, Ping An Bank, Shanghai Pudong Development Bank, and Wing Lung Bank. Full list can be found here: https://www.banktrack.org/company/april/#popover-financiers)**


**Friends of the Earth Interview with Hemantha Withanage: Center for Environmental Justice, conducted on June 14, 2017.**


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xii “India’s plans for LAPSSET: A nascent developmental initiative”, UNCTAD. http://unctad.org/en/events/India%20-%20LAPSSET


xii “ICBC%20Arranges%20Financing%20for%20the%20Largest%20Power%20Plant%20Project%20in%20Eastern%20Africa; ‘ICBC to provide USD 9 mln export credit


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LAMU COAST CONSERVATION:
A Case Study Understanding Community Participation in Lamu Spatial Plan

Field Practicum Report for Master of Sustainable Development Practice Degree

Brenda Lugano

Supervisory Committee: Renata Serra and Jamie Kraft

May 2021
Table of Contents:

Abstract.......................................................................................................................... 4
1. Introduction.................................................................................................................. 5
2. Contextual Information............................................................................................... 6
   a. Geographic Context................................................................................................. 6
   b. Key Historical Facts................................................................................................ 6
   c. Uniqueness of Lamu............................................................................................... 7
   d. Lamu’s Development Challenges......................................................................... 10
   e. WWF in Lamu......................................................................................................... 11
3. Conceptual Framework............................................................................................... 12
4. Objectives.................................................................................................................... 13
5. Methods....................................................................................................................... 14
   a. Literature Review
   b. Survey
   c. Informant interviews/ informal meetings during site visit
6. Analysis and deliverables........................................................................................... 15
   a. Literature Review Results
      i. LAPSSET Plan.................................................................................................. 16
      ii. Lamu Spatial Plan......................................................................................... 18
      iii. Spatial Plan Case Studies............................................................................ 23
      iv. Lamu’s Development In The Larger Context Of Kenya .................. 25
      v. Lamus Plans Updates.................................................................................... 27
   b. Research Results
      i. Quantitative Findings..................................................................................... 28
      ii. Qualitative Findings..................................................................................... 31
7. Discussion and cross-scale consideration................................................................. 33
8. Conclusion.................................................................................................................... 34
9. Recommendations....................................................................................................... 35
10. References.................................................................................................................. 35
11. Appendix.................................................................................................................... 40
   a. Survey
Figures and Tables:

**Figure 1:** Geography Map of Kenya .................................................................6

**Figure 2:** Lamu Location in Kenya........................................................................8

**Figure 3:** Lamu County Ecosystem Map.............................................................9

**Figure 4:** Mangrove map of Lamu Archipelago ...............................................9

**Figure 5:** Conceptual Framework .......................................................................12

**Table 1:** Objectives ............................................................................................13

**Figure 6:** Lamu County Wards ..........................................................................15

**Figure 7:** LAPSSET Corridor Project Map ..........................................................16

**Figure 8:** LAPSSET Components in Lamu County ............................................17

**Figure 9:** Natural Assets, Ecosystem Services (Benefits),
and Current Trends in Benefit in Lamu County ....................................................19

**Figure 10:** Potential Impacts of LAPSSET on Key Natural Assets
in Lamu County .........................................................................................................19

**Figure 11:** Map of Opportunity Areas in Lamu County .......................................22

**Figure 12:** The Concept of Integrated Spatial
and Energy Planning (ISEP) ...................................................................................24

**Figure 13:** Conceptual Scheme of Cohesive, Sustainable
Development in Regional and Urban Areas ............................................................23

**Figure 14 (a – j):** Community Survey Quantitative Results ..............................29-30

**Table 2:** Stakeholder/ Key Informants Results ....................................................31
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Abstract

Lamu Old Town is one of the oldest and best-preserved Swahili settlements in East Africa. Located just off the coast of Kenya, it has retained its traditions and ways of life for centuries. The discovery of oil off the coast of Pate, a Lamu island, is expected to significantly impact this coastal area, especially in conjunction with associated large-scale infrastructure development (as planned in the Lamu Port-Southern Sudan-Ethiopia Transport (LAPSSET) project). Oil exploration efforts have sparked debate in Lamu, where many residents are concerned about environmental, heritage, and cultural impact. This report describes my project, which aims to contribute to WWF efforts to encourage greater community involvement in the implementation of the Lamu Spatial Planning. Specifically, I aim to understand community perceptions and their current involvement in the spatial plan and the LAPSSET Project using literature, surveys, and a site visit. The results found that low levels of participation of the Lamu County government in LAPSSET work reflect down to the community level, as community members were found to have low engagement and a somewhat negative perception of the project. Kenya has the ambition to have local spatial plans but hasn’t put enough resources to manage such a venture, despite efforts to involve community members.
1. Introduction:

Throughout most of the last two thousand years a succession of port towns has come into being, flourished, and declined on the East African coast. These towns have looked out onto the Indian Ocean, on which sailed the ships carrying the goods they traded, profiting from the fortunate alternation in the monsoon winds. Many of the inhabitants of these towns, or their ancestors, originated in the lands to the north (Arabian Peninsula, China, India, and South-East Asia) with which this commerce was carried out (Ghaidan, 1975).

Lamu Old Town is the oldest and best-preserved Swahili settlement in East Africa (Ominde et al., 2020). Located just off the coast of Kenya, it has adhered to its old way of life, and the town itself is much as it was a century ago (Ghaidan, 1975). Lamu has been a favorite for tourist groups with its pristine beaches and historic landmarks. At present, however, this beautiful tourist destination is at risk. The discovery of oil off the coast of Pate, a Lamu island, is projected to have a significant impact on the area. This project has sparked debate in Lamu, where many residents are concerned about environmental and cultural impact on their livelihoods and their land (Praxides, 2019).

The town of Lamu dates back to the 12th century, and both its physical appearance and character have changed very little, being spared the serious societal disruption, which so often accompany western influences and domination (Ghaidan, 1975). In December 2001, the town was listed as a UNESCO World Heritage site due to its rich Swahili, tangible and intangible heritage and its continued occupation through time (UNESCO, n.d.). Its outstanding architecture and general artistic traditions also distinguish it from similar settlements along the East African coast (Deisser et al., 2016).

Lamu has suffered from an improper management of its heritage, general neglect, and political intrigues (Mabulla, 2000). The ecology is also highly susceptible to anthropogenic agents of deterioration (Deisser et al., 2016). The planned construction of a port in the Lamu Archipelago (serving a substantial part of East Africa, including Southern Sudan, Ethiopia, and Kenya) poses a further threat to Lamu’s heritage. The rush for land by potential investors is an early manifestation of this threat. The emerging Lamu Port-Southern Sudan-Ethiopia Transport (LAPSSET) corridor is expected to be the home of a massive port with 32 berths, an oil refinery managed by Tullow Oil, and three airports. It will also serve as a key terminus for a connecting railway line, pipeline, and a highway network (Deisser et al., 2016).

Recent years have seen an increase in the development of private properties along the coast of Kenya. As a result, the ability of local communities to access spaces that were once open to the public is limited, and often most of the public beaches are crowded due to inadequate capacity control. There is an urgent need to develop strategies that ensure that local and indigenous communities continue to enjoy the coastal environments while preserving these areas’ socio-cultural, economic, and ecological functions.
Being from Kenya, I have always heard about the remote island of Lamu. I would jealously examine photos of my sister on her trip to the island with her friends. The remoteness of Lamu makes it much harder to reach compared to other coastal cities in Kenya. It was always my wish to make it there. When I heard of oil development off the coast of the Lamu archipelago, I was surprised. I thought that oil extraction would surely have a big impact on Lamu island, which has rich historical importance. I have always been interested in conservation work and wanted to know what conservation efforts were being put into place in Lamu to prepare for oil extraction activities and development related to that. This is why I chose to do my research in Lamu.

2. Contextual Information:

a. Geographic Context

An equatorial country, Kenya has highly varied geographical features, which range from snow-capped mountains to deserts to savanna grasslands (see Figure 1). The northern area of Kenya borders Ethiopia and Sudan. The area is characterized by its semi-arid bush-covered plains as well as highland plateaus. The most northern tip of Kenya is desertic, extending to the shores of Lake Turkana. Located directly south is Tanzania, and Uganda is directly to the West. Lake Victoria is located on the border between Kenya, Uganda, and Tanzania. Kenya's coastal region is in its Southeast and boasts long stretches of beach along the Indian Ocean. Somalia borders Kenya on the eastern side (The Geography of Kenya, n.d.).

Figure 1: Geography Map of Kenya (World Map, n.d.)

b. Key Historical Facts

Northern African people, who were Cushitic-speaking, moved into the area that is now Kenya beginning around 2,000 BC. During the first century AD, Arab traders began frequenting the
Kenyan Coast. By the eighth century, both Arabs and Persians settled along the coast because of Kenya’s proximity to the Arabian Peninsula. Nilotic and Bantu peoples moved into the inland region during the first Millennium, and they now comprised three-quarters of Kenya’s population (Boddy-Evans, 2020).

During this period, Eastern Africa was exporting ambergris, leopard skin, gold, and mangrove poles for ship-building around the Gulf (Sayer, 1999). Arab traders brought pottery, beads, and cloth along with their Islamic religion and customs. Many Arab and Persian sailors and merchants married local Bantu women and set up trading in the flourishing towns, and farmed the fertile Coastal soil. The Swahili culture and language grew from this marriage of cultures (Sayer, 1999). The coastal towns in Kenya flourished during the 14th and 15th centuries, with the busy seaborne trade helping to create a common culture expressed in language, architecture, and dress. “The arrival of the Portuguese in 1497 changed the patterns of coastal trade forever” (Sayer, 1999).

The language of Swahili is a mixture of Bantu and Arabic and it was developed for trade between the different peoples (Sayer, 1999). Trade between Southern Arabia and what is now Kenya has existed for centuries, but the traders usually remained along the coastline. Arab and Swahili Caravans later penetrated into Kenya’s inland area in the 19th century in search of ivory. In 1498 the Portuguese arrived on the coast of Kenya and eclipsed the control that Arabs had had on the coast. The Portuguese eventually gave way to Islamic control under the Imam of Oman in the 1600s. The United Kingdom later established its influence in the 19th century.

European powers first divided East Africa into spheres of influence during the Berlin Conference of 1885. The British government established control over East Africa and opened the fertile highlands to white settlers soon after (Ominde et al., 2020). Even before Kenya was established as a British colony in 1920, settlers were given a voice in the government, but Africans were prohibited from direct political participation until 1944. A rebellion arose among the people of Kenya from October 1952 to December 1959 against British colonial rule. The rebellion led to an increase in African participation in the political process. In 1957 the first direct elections for Africans to the Legislative Council of Kenya took place. On December 12, 1963, Kenya became independent and joined the Commonwealth a year later (Kenya Embassy, n.d.). Kenya is a multi-party democracy, administratively divided into 47 counties. The country is governed by the National Government and 47 county governments (Embassy of the Republic of Kenya in Japan, n.d.)

### c. Uniqueness of Lamu

Lamu County has a land area of 6.273 KM squared and covers a strip of Kenyan northeastern coastal mainland and the Lamu Archipelago, which consists of numerous Islands. Lamu Island is the most well-known Island of the Lamu Archipelago (See Figure 2). Lamu has a population of 101,539 according to the 2009 census and has four main indigenous communities, which are the Bajuni, Sanye, Aweer (Boni), and Orma. The largest of the groups is the Bajuni who trace
their origins primarily to Bantu and Arab descent. The Bajuni community primarily derives their livelihoods on fishing, farming, and tourism since Lamu is a tourist hot spot. The Sanye and Aweer communities are primarily hunters and gatherers and live off the forest resources and farming. The Orma communities are pastoralists (Save Lamu, n.d.).

Figure 2: Lamu Location in Kenya (Google maps, n.d.)

Lamu has a rich ecological and cultural diversity, which is why it was recognized as a UNESCO world heritage site. It is widely recognized for its rich marine ecology and a significant breeding ground of turtles and various types of fisheries, including prawns (Republic of Kenya, 2018). The archipelago possesses an extensive system of creeks, channels, and mangrove forests, teeming with biodiversity (See Figure 3 and 4). The mainland area consists of forests and grasslands that are habitat to diverse wildlife, including birds and primates (Republic of Kenya, 2018).

The character of Lamu town has changed very little over the centuries. It has narrow, winding streets that only accommodate donkey and pedestrian traffic. Lamu’s architecture and urban structure demonstrate the confluence of different cultures that have come together over 700 hundred years from Europe, India, and Arabia (Ominde et al., 2020). Lamu population is predominantly Muslim, with other groups from throughout the Kenyan coast diversifying the area’s religious makeup. Men can be found wearing full-length robes known as khanzus, and women cover themselves in the black dress that is common in Islamic cultures. Lamu archipelago area is famously known as an exotic location and attracts backpackers and many other tourists from around the world.

Many of Lamu’s natural assets are already on a steep decline due to human pressures. Mangroves and terrestrial forests are diminishing rapidly in terms of quantity and condition. Kenya has lost 40% of its mangroves in the last 30 years, with most of it located in Lamu County, which hosts 70% of Kenya’s total mangrove stock (Bello, 2016). Water sources like rivers and aquifers, as well as marine fish stocks, are also being rapidly depleted and degraded. Perhaps the greatest threats affecting Lamu’s natural assets are the clearing of habitats for the
The LAPSET corridor project, which is already under construction (WWF, 2016). It will be described in further detail below.

**Figure 3:** Lamu County Ecosystem Map (Republic of Kenya, 2015)

**Figure 4:** Mangrove Map of Lamu Archipelago (Bello, 2016)
d. Lamu’s Development Challenges

LAPSSET is the new development planned for Lamu county. LAPSSET is a development corridor project. Corridor development projects occur when governments choose a geographic area identified as a priority for investment and accelerate economic growth and investment in that area. The LAPSSET development plan is already being implemented, with the ongoing construction of the port in Lamu County. The new Lamu port has been hailed as an economic game-changer in the region. October 20th, 2018 is the date of the commissioning of operations of the first berth at the Lamu Port. The Lamu Spatial Plan, which precedes LAPSSET development, is the coordination of practices affecting spatial organization. The practice of spatial planning is synonymous with the practice of urban planning but at larger scales. The Spatial Plan is especially important in the context of Lamu, where LAPSSET development is to take place.

Since the inception of LAPSSET, most of the Lamu community has opposed the new oil development plans (Save Lamu, n.d.). The community has become increasingly concerned about the potential adverse health and environmental impacts of the projects, as well as inadequate compensation for the land acquired for the projects (Save Lamu, n.d). Lamu residents have threatened to block the port’s commissioning until all the community’s grievances are fully addressed (Praxides, 2019). The Lamu Community Platform, a group bringing together various community-based organizations and activists, demanded that the national government engage the local community on the sharing of resources, the allocation of jobs, and all direct and indirect revenue collected from the LAPSSET Project. “The community claims that a clear formula should be designed so that both the county and the community can get their share of revenue just as in Turkana, Kenya where oil is being extracted as well” (Kazungu, 2019).

Initially, there were plans for a Coal Power Plant near the coastal town of Lamu as well. Critics claimed that the plant would have dire economic and health effects on locals. The power station, which would be backed by the Chinese, would have increased the country’s greenhouse gas emissions by 700%, according to an activist (BBC News, 2019). Construction of the coal power plant was recently halted by Kenyan judges when it was discovered that authorities had failed to do a thorough environmental assessment (BBC News, 2019). Activist groups such as Save Lamu and Lamu Youth Alliance, who protested the decision to proceed with the power plant’s construction, contributed to this decision (Kazungu, 2019).

It is estimated that 4,000 fishermen would be directly affected by the LAPSSET dredging activities taking place at the proposed port (Kazungu, 2019). It is evident that the government has not taken into adequate consideration the already infringed community livelihoods of fisheries, farming, and tourism under the agenda of the country’s economic growth and infrastructure development. Many other issues are sure to present themselves with the exploration of oil in the Lamu archipelago in addition to those brought on by the LAPSSET Corridor that is currently being constructed. Newly planned infrastructure in the area is
expected to cause rapid growth of the area’s population, resulting in more urbanization and land use issues, including pressure on natural resources already strained by current demands. Major concerns surround skewed and biased compensation plans for land acquired for oil and gas assets and infrastructure, as well as the unjust displacement of people (Kazungu, 2019).

Oil and gas activities can affect land-use systems along the fragile coastline as well. This would be detrimental for many reasons, considering the fundamental importance of crop farming, fishing and tourism to local livelihoods, and the crucial role of conservation areas to preserve marine ecosystems. A disaster, such as an oil spill, would destroy crops and damage the soil’s quality and productivity used for farming along the coast (Wang et al, 2017). The oil would contaminate water that is used for domestic purposes such as drinking. Oil could settle on beaches and kill organisms that live and settle on the ocean floor as well as bottom-dwelling organisms such as crabs (Wang et al, 2017). Oil would endanger the fish that are commercially valuable in Lamu.

Mangrove forests would also be affected in the event of oil spills from exploration, production and transportation activities, especially in the Lamu-Mombasa mangrove stretch (Ministry of Energy and Petroleum, n.d.). Mangroves help to counter the effects of climate change, as they serve as carbon sinks that sequester large quantities of carbon. Mangroves support highly productive offshore fisheries and also create a conducive habitat for inshore finfish and crustaceans (Bello, 2016). Unfortunately, mangrove forests have already started to be cleared to create space for the LAPSSET Corridor (Republic of Kenya, 2018).

e. WWF in Lamu

WWF, which stands for World Wide Fund for Nature is a global organization with branches in various countries. The branch in Kenya is an affiliate of World Wide Fund for Nature International. WWF has worked in Kenya for over 55 years. WWF Kenya had a big hand in contributing to Lamu Spatial Plan and LAPSSET development. It is important to note their involvement in both endeavors. The tasks that particularly notable are listed below.

For the Lamu Spatial Plan they:

- Provided technical support towards the spatial planning work,
- Provided financial resource mobilization for the process,
- Provided stakeholder engagement support to get views of the public towards the plan preparation process,
- Provided sensitization of the county leadership towards the benefits of the plan, and
- Mapped out the critical ecologically significant areas to help in negotiating and securing the critical biodiversity areas in the plan.

For LAPSSET development they:

- Mapped out of the critical ecologically significant areas to help in negotiating and securing the critical biodiversity areas in the plan,
• Supported technical meetings with the experts and professionals to draft the plan,
• Researched conservation areas within the corridor and influenced securing of these areas in the plan, and
• Reviewed environmental and social impact studies and provided expert opinions to the LAPSSET authority to help in decision making (Nathan Kiti of WWF Kenya).

Given the role played in the Lamu Spatial Plan by WWF Kenya, it was an obvious choice to work with them and contribute to their efforts to understand the communities current involvement in its implementation.

3. Conceptual Framework

My practicum’s main goal is to contribute to an ongoing process, led by WWF and other organizations, to monitor and evaluate the community’s perceptions and involvement in the Lamu Spatial plan and in the LAPSSET development plan, as well as assess the government and other stakeholders’ roles in these two development processes (See Figure 5).

Specifically, my research involved three stages. The first step was gaining an understanding of the community’s and other stakeholders’ participation in putting together the spatial plan and what has happened in Lamu since the drafting of the spatial plan. The second step involved conducting a survey to understand the community’s perception and involvement in the spatial plan and LAPSSET plan. The third step involved conducting interviews with key stakeholders (other than the community) to understand their involvement in the drafting and implementation of the spatial plan and LAPSSET plan. The second and third step were also informed by a site visit to Lamu from January 4th to 8th, 2021.

Figure 5: Conceptual Framework
An analysis of the information compiled generated the primary findings of this research, which is described in this report. These findings will inform the final report to be presented to WWF on the degree to which the Lamu community is involved in the implementation of the Lamu Spatial Plan implementation. WWF will also use this report, together with their own evaluation studies, to understand the degree to which other stakeholders, separate from the community, are involved in both the spatial plan and LAPSSET plan.

4. Objectives

In the matrix below (Table 1), I list the objectives of this research, key questions to be answered and the information I sought to generate through this study. The methods used to achieve those objectives are explained in the methods section below. The questions for objectives 2-4 in the matrix served to guide development of the survey that was implemented in Lamu.

<table>
<thead>
<tr>
<th>Objectives</th>
<th>Problem to resolve, information to generate or question(s) to answer or task to accomplish.</th>
<th>Objectives</th>
<th>Problem to resolve, information to generate or question(s) to answer or task to accomplish.</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Understand the involvement of the community and stakeholders in putting together the Lamu Spatial Plan (LSP)</td>
<td>What measures were taken to ensure the involvement of the community and other stakeholders in the development of the LSP?</td>
<td>2. Contribute to WWF’s mission by enhancing the understanding of the community’s perception of the LSP or the LAPSSET plan</td>
<td>How much do community representatives know about the LSP and LAPSSET project? What aspects of the LSP and LAPSSET project are viewed more favorably than others, if at all?</td>
</tr>
<tr>
<td>3. Contribute to WWF’s mission by enhancing the understanding of the community’s involvement in the implementation of the Lamu Spatial Plan and the LAPSSET plan</td>
<td>Did community representatives voice any concerns regarding the LSP or LAPSSET plan? Where those concerns addressed? Is the community representative currently employed on any work related to LSP or LAPSSET plan?</td>
<td>4. Understand stakeholder/ key informants (not including the community in objectives 1 and 2) involvement in both the LSP and LAPSSET project Ex: gov people, contractors, NGO workers</td>
<td>What input did the stakeholder provide on the: • LSP • LAPSSET project? Did the stakeholder refer to community participation when they provided input on these plans? If yes, what type of participation was referred to?</td>
</tr>
</tbody>
</table>
5. Become familiar with Lamu and the sites relevant to the spatial plan and LAPSSET plan.

| What is the full scope of my research? |
| What impressions are gained by observing the LAPSETT plan sites? |
| What are the areas of Lamu that gave Lamu its title as a UNESCO World Heritage site? |

Table 1: Objectives

5. Methods

a. Literature Review

My Lamu research began with a literature review that covered relevant topics. Due to restriction on traveling during summer 2020, I spent a lot of time learning about my site remotely through reading a wide variety of literature and documents on the Lamu Spatial Plan, including grey literature, WWF documents, LAPSSET documents, and peer-reviewed literature.

b. Survey

The second and third stage of my project, as described in my conceptual framework, involve conducting a survey of community members and stakeholders. Due to my inability to travel to the research site during Summer and most of Fall 2020 due to COVID-19, I conducted the survey through local enumerators and survey supervisor recommended by WWF staff. My survey instrument was developed based on objective 2-4 mentioned in the matrix above, and included a mix of qualitative and quantitative questions. The survey was administered to 60 Lamu community members and 16 other stakeholders or key informants. Section A through C of the questionnaire is applicable to Lamu community members, while section D targeted other stakeholders and key informants. The participants were encouraged to provide as many responses as they wanted for the open-ended questions. The survey instrument is found in the appendix to this report.

Community members were selected randomly throughout Hindi Ward (See Figure 6). The Ward was specifically chosen because the LAPSSET plan will have an important impact there. The survey team divided themselves and covered different areas of ward. The community members surveyed included housewives, herders, fishermen, saleswomen, farmers, business owners, a student and a retired chief. Other stakeholders surveyed included employees from the county headquarters, WWF, Kenya Port Authority, Kenya Post, Kenya Power and Lighting Company, and different construction companies such as H-Young, Mosmos Construction and Northern
Liberty. Representatives from other organizations, including Red Cross and World Vision, were also included.

Figure 6: Lamu County Wards (Lamu County government, 2018). The survey was carried out in Hindi Ward.

c. Informant interviews/ informal meetings during site visit

From January 4th to 8th 2021, I was fortunate enough to visit Lamu for a short site visit, even during the global COVID-19 pandemic. Exercising considerable caution, I spoke with a few key stakeholders and became familiar with the site. Throughout my visit, I was able to interact with community members and was able to understand the culture of Lamu better. More importantly, I was able to grasp the scale of Lamu and take pictures for my research.

6. Analysis and Deliverables

a. Literature Review Results

Based on my extensive literature review, this section presents, respectively: the LAPPSET plan, the Lamu Spatial Plan, key findings from the analysis of four spatial plans case studies, and updated information on Lamu’s plans and Lamu’s development in the context of Kenya.
i. LAPSSSET Plan

The LAPSSSET (Lamu Port-Southern Sudan-Ethiopia Transport) Corridor Program is one of East Africa’s largest and most ambitious infrastructure projects, bringing together Kenya, Ethiopia, and South Sudan. The project is part of Kenya Vision 2030 Strategy, the long-term national development strategy to transform Kenya into an industrializing, middle-income country by 2030 (LAPSSSET Corridor Program, 2017). The mega project consists of seven key infrastructure projects, including:

1. A new 32 berth port in Lamu, Kenya
2. An Interregional highway from Lamu to Isiolo (Kenya), Isiolo to Juba (South Sudan);
3. A production oil pipeline from Lamu to Isiolo and Isiolo to Addis Ababa (Ethiopia);
4. International standard gauge railway lines from Lamu to Isiolo, Isiolo to Juba, Isiolo to Addis Ababa, and Nairobi to Isiolo;
5. 3 International airports in Lamu, Isiolo, and Lake Turkana, Kenya;
6. 3 resort Cities in Lamu, Isiolo, and Lake Turkana;
7. And a multipurpose High Grand Falls Dam along the Tana River in Kenya (See figure 7 and 8)

![Figure 7: LAPSSSET Corridor Project Map (LAPSSSET 2019)](image_url)

The following objectives are the ones that LAPSSSET sets to achieve in Lamu:

- **Economic** – Support the development of the port and surrounding special economic zone (SEZ) so that Lamu can act as both a place where products are manufactured and as a hub for exporting and importing goods.
- **Economic - Transform the national, regional, and local economies** by putting in place the right infrastructure and investment mechanisms to enable new economic sectors to thrive in Lamu.
• **Social** - Support communities in Lamu so that they can either continue with their existing livelihood or gain new skills to access the many new job opportunities that the development of Lamu will offer.

• **Social** – Develop the proposals for Lamu by fully engaging with the local community and other stakeholders to develop Lamu in an inclusive way.

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**Figure 8:** LAPSSET Components in Lamu County (WWF n.d.)

- **Environment** – Protect Lamu’s natural assets, including its marine and terrestrial habitats, wildlife, and landscapes, while enabling managed access to these areas for the local community and visitors to the area.

- **Environment** – Minimize impacts on the natural resources by developing urban areas in a green and compact way that promotes a mix of uses, efficient land use, public transport, and livability.

- **Tourism** – Establish Lamu as one of the major magnets for tourism in Kenya by diversifying and increasing the tourist offer and protecting and enhancing the Lamu’s cultural heritage.
• **Security** – Improve security in Lamu by improving the quality of life of existing residents and designing to promote inclusion and incorporate appropriate security measures (LAPSSET Corridor Program, 2017).

**ii. Lamu Spatial Plan**

The Lamu Spatial Plan aims to conserve the environmentally sensitive areas within the island. It also serves to create infrastructure that links settlements within the island and the mainland. Guidelines that promote sustainable growth of the peripheral areas surrounding Lamu Old Town are included to maintain the viability of the heritage status. With Lamu Old Town heritage in mind, the spatial plan additionally includes major commercial services to meet the growing need and population growth. The spatial plan aims to help to guide future development, use, and conservation of land and resources in the county for 10 years.

Other important topics covered in the spatial plan are:

- Why it is important to take natural capital into account within the Lamu Spatial Plan, in order to secure the long-term economic prosperity and human well-being in Lamu;
- What are the most important natural assets in Lamu, and what benefits do the assets provide to the county’s economy, business and people;
- What is the status of Lamu assets, particularly which are declining and why, and how this is putting the benefit provide at risk;
- What are the practical measures that could be taken moving forward with the Lamu Spatial plan and how to protect and enhance critical natural assets in the most cost-effective way (WWF, 2016).

Lamu’s natural assets are shown below (See Figure 9). Many of the benefits provided by Lamu’s natural assets are jeopardized by this infrastructural project, with the possible exception of crop farming and livestock grazing, which could increase with the expansion of population and agricultural activity. Timber, wood fuel, water, and commercial marine fish species are sectors that are considered to be at very high risk. This is a source of much concern since the benefits from the listed natural assets are critical to sustaining healthy diets, livelihoods, and incomes in Lamu (WWF, 2016).

Unless important measures are taken, LAPSSET will have a significant long-term deleterious effect on Lamu’s natural assets (WWF, 2016). The Lamu Spatial Plan estimates that the impacts will include:

1. Direct loss of natural assets in areas cleared for construction of the port, roads, railway, airport, resort town, oil refinery, fishing port, and new urban and industrial areas.
2. Direct loss of natural assets over due to wider development that LAPSSET would attract and/or require, such as new settlements, industries and infrastructure.
3. Indirect impacts caused by increased pollution and extraction of water, food, fuel, and raw materials by a much larger population.
Figure 9: Natural Assets, Ecosystem Services (benefits), and Current Trends in Benefit in Lamu County (Source: WWF 2016)

Geographic Information System (GIS) analysis suggests that over 150,000 ha of intact habitats (mainly mangroves, forests, coral reefs, and seagrass beds) could be lost due to LAPSSET. Below is a table showing the impact expected on natural areas (See figure 10) (WWF, 2016).

<table>
<thead>
<tr>
<th>NATURAL ASSET</th>
<th>CURRENT EXTENT IN LAMU (HA)</th>
<th>PRIMARY DIRECT IMPACTS (HA LOST)</th>
<th>SECONDARY DIRECT IMPACTS (HA LOST)</th>
<th>TOTAL POTENTIAL LOSS (HA)</th>
<th>TOTAL POTENTIAL LOSS (AS % OF LAMU’S TOTAL STOCK)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Forests</td>
<td>265,552</td>
<td>292</td>
<td>1,342</td>
<td>1,634</td>
<td>26%</td>
</tr>
<tr>
<td>Grasslands</td>
<td>6,400</td>
<td>292</td>
<td>1,342</td>
<td>1,634</td>
<td>26%</td>
</tr>
<tr>
<td>Shrub lands</td>
<td>323,588</td>
<td>26,496</td>
<td>76,555</td>
<td>103,051</td>
<td>32%</td>
</tr>
<tr>
<td>Wetlands</td>
<td>227</td>
<td>11</td>
<td>82</td>
<td>93</td>
<td>41%</td>
</tr>
<tr>
<td>Mangroves</td>
<td>25,209</td>
<td>202</td>
<td>9,261</td>
<td>9,464</td>
<td>38%</td>
</tr>
<tr>
<td>Seagrass beds</td>
<td>30,049</td>
<td>1,098</td>
<td>6,509</td>
<td>7,707</td>
<td>26%</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>651,025</strong></td>
<td><strong>35,275</strong></td>
<td><strong>117,307</strong></td>
<td><strong>152,583</strong></td>
<td><strong>23%</strong></td>
</tr>
</tbody>
</table>

Figure 10: Potential Impacts of LAPSSET on Key Natural Assets in Lamu County (WWF 2016)
Drafting of the spatial plan included the participation of community members and other stakeholders such as the country government, WWF, heritage groups, cultural groups, tourism groups, natural environment groups, biodiversity groups, LAPSSET Authority, and other LAPSSET companies. Meetings were held in different areas in Lamu County, including Mkomani Ward, Sheilla Ward, and Hindi Ward. The community members were given the opportunity to share the resources/strengths, and potentials of the ward as well as the challenges (WWF, 2015). Interventions were also explored to deal with the challenges presented. Below are lists of the items mentioned by each ward. The items that were mentioned more than once are at the top of the list.

Resources/ Strengths and Potentials:
- Cultural heritage *
- Tourism
- Mangrove forests
- LAPPSET/coal power Plant
- Historical sites
- Good collaboration of people
- Sand dunes
- Strong winds- wind power
- Fertile soils
- Enough food for livestock during the rainy season
- Ocean- open beach
- Availability of land for both farming and livestock keeping
- The LAPSSET project and the coal power Plant
- There are forests- terrestrial and marine
- There are community groups
- Salt pans
- There is a big hospital in Mokowe- not used well
- There is an ice Plant, although it is run down
- Availability of Administration offices
- Fishing
- There is human capital

Challenges:
- Land grabbing *
- Poor roads *
- Insecurity * (short sea wall also contributes to insecurity; less tourists)
- Fishing grounds have been encroached on *
- Poor solid waste disposal/ Pollution *
- Water scarcity *
- Neocolonialism- by Europeans in the hotel industry where it was indicated that most local residents don’t benefit from the local tourism as all logistics are planned ahead by the hotel owners.
- Kenyan media depicting Lamu in a negative way
• Drug menace
• Poor stormwater drainage
• Roaming of donkeys at night
• Unemployment
• Marginalization - Shella is the least beneficiary with a 2 Million budget only
• Electricity problems
• Opinions of the people brought out through public participation are not used
• Inadequate health & educational facilities
• Lack of market and holding ground for farmers
• No cold storage (for farmers and fishermen)
• Human-wildlife conflicts
• Livestock-farmers’ conflicts
• Environmental degradation

Interventions:
• Purchase land with limits
• Build sea walls
• Tourist information center - to be easily guided; tourist police
• Heritage preservation
• Advertisement and marketing of Lamu beaches
• Donkey movement should be controlled/restricted - to curb hygiene; design a place to hold them
• Modern fishing techniques
• Proper Planning
• Drug lords to be sanctioned/ no bonds to curb drug menace (WWF, 2015).

The issues that were raised, especially regarding conservation, were directly or indirectly incorporated in the Lamu Spatial Plan (See Figure 11) (WWF, 2015). The plan was later taken to other stakeholders involved in the spatial plan before finalization of the plan.
Figure 11: Map of Opportunity Areas in Lamu County (Lamu CSP, 2017).
iii. Spatial Plan Case Studies

As part of my research, I explored four other spatial plans to compare with the Lamu Spatial Plan. The spatial plans are in the countries of Australia, Spain, China, and South Africa. I chose these spatial plans because they offered different outlooks on how spatial plans can be used in different contexts, and variation in terms of their focus and their goals. These four plans were purposefully selected for representing a varied sample within spatial plans. Below I will explore the documents briefly and highlight their uniqueness and concepts that they introduced about spatial planning different from the Lamu Spatial plan.

Australia’s spatial plans are part of a highly formalized and regulated system (Stoeglehner, 2020). The spatial plans are part of the Spatial Planning Acts in nine provinces. The concept of integrated spatial and energy planning (ISEP) is a concept that was introduced in Australia in the last decade. ISEP focuses on the interrelations between spatial structures and the possibility to shape the energy transition (Stoeglehner, 2020). This approach aims to reach the goal of Sustainable Development Goal 7, which aims to provide clean and affordable energy. The spatial plans are also designed to affect all other SDGs directly or indirectly as energy supply is one of society’s basic infrastructures (Stoeglehner, 2020). The figure below (See Figure 12) illustrates how the spatial dimensions of energy supply and energy demand can be described and linked with each other by the concept of energy-efficient spatial structures (Stoeglehner, 2020). Stoeglehner adds that the approach is designed to find the most suitable areas and sites for energy infrastructure while promoting feasible investments and clean energy technologies.

**Figure 12:** The Concept of Integrated Spatial and Energy Planning (ISEP) (Stoeglehner, 2020)
Spatial planning in Spain offers a slightly different method than the one explored above. The paper by Nogues et al. proposes a rigorous framework that is a reliable and robust methodology to assess spatial plans’ efficiency to improve regional sustainability. The methodology was applied to Cantabria, a northern Spanish region that was elaborating its first Regional Spatial Plan (PROT). The methodology proposed a conceptual framework that differentiated the main dimensions of sustainable development for spatial planning (social, economic, and environmental) and added territorial as a fourth component (Nogués et al., 2019). Territorial was added as a component that will significantly impact sustainability at a local and regional level and related with the spatial dimension of the previous three (See figure 13). The inclusion of territory adds spatial equity, efficiency, and cohesiveness in connection with the three main dimensions of sustainability (Nogués et al., 2019). Nogués et al. adds that this fourth dimension’s inclusion is usually omitted in the past by ecological and environmental economists because of their unfamiliarity with spatial planning problems. The methodology was designed to be applied in different countries and regions as a tool to assist in the evaluation and monitoring of spatial plans aimed at achieving sustainable development.

![Figure 13: Conceptual Scheme of Cohesive, Sustainable Development in Regional and Urban Areas (Nogués et al., 2019)](image)

In China, spatial planning has become a more policy-based approach where hierarchical governments struggle to achieve local interests (Wang, 2016). The case study focuses on the Jiangsu region along the Yangtze River (JSYR) plan which covers the cities and counties along the Yangtze River in Jiangsu province. The plan is a hybrid plan that includes economic and land use planning to integrate strategy into the region. The plan successfully promoted economic growth and infrastructure construction but was not successful in reducing regional economic disparity (Wang, 2016). The interaction of government entities was particularly interesting in this case. The spatial plan in this context was used by the provincial government to guide and
control development but was also a contested arena where municipal governments were lobbying and bargaining for their own interests (Wang, 2016). The spatial plan outcomes were subject to the politics between the two-tier governments as the provincial government had to rely on the municipal governments for plan implementation. This resulted in the provincial governments’ spatial policy framework of integrating fragmented territorial policies being implemented selectively by municipal governments with their own development priorities. The actual sustainability of spatial development in the JSYR plan was thus ignored (Wang, 2016).

Finally the South African example explores the efficacy of spatial plans in the context of the global South. Using the Cape Town Spatial Development Framework (CTSDF) as a case study, the article by Odendaal et al (2016) evaluated spatial planning’s efficacy in relation to current city-building dynamics. The CTSDF employed a hierarchical classification of vehicular and public transport routes and nodal designations, with the assumption that this would predict the scale and form of public and private investment in those places. The CTSDF also reinforced the notion of a predictable and ordered city (Odendaal et al., 2016). This method did not give enough attention to the issue of informality (including job creation, trading, and housing), which compromised the efficacy of the CTSDF according to Odendaal et al (2016). It also highlighted the problem of a design-led versus an evidence-based approach which would have focused on informality. The design led approach should have had a monitoring and evaluation component to track outcomes (generated evidence) in order to make necessary adjustments over time. This South Africa case study showed that spatial concepts are not enough as they need to also be attuned to the workings of the market, the formal and informal economies (Odendaal et al., 2016).

The spatial plans explored above provided different insights about spatial planning. Some new ideas were brought forth by the Australian and Spain examples, while issues within spatial planning were revealed with the China and South Africa examples. The examples educated me on the complexities and differences of spatial plans, which are context specific. While the Australian and Spain examples are completely different from the LSP there is something that can be learned from the China and South African examples. The China case is a reminder of how important it is for Kenya and Lamu municipal government to work together to ensure that the spatial plan is successful. The South African example stresses out the importance of planning with informality in mind, which is also evident in Lamu County, and the importance of M&E to track outcomes for the area and LAPSSET.

iv. Lamu’s Development in The Larger Context Of Kenya

The LAPSSET project is central to Kenya’s national development strategy Vision 2030, which is designed to transform Kenya into a new industrial country, thus achieving a “middle-income status” (Enns, 2017). It is without a doubt that a development corridor like LAPSSET will fuel growth, increase exports, and ultimately spur poverty alleviation (Kuhlman et al., 2011). While this might be the goal perceived as the benefits of large corridors like LAPSSET it doesn’t always work out as planned. Recent research has found that megaprojects interactions with host countries have resulted in socio-political tensions that emerge due to infrastructural
developments associated with the corridors (Enns, 2017, 2018; Kirschner et al., 2015; Lesutis, 2019b, 2019c; Mosley et al., 2016). Large-scale, while often benefiting economically advanced groups, can result in the exclusion of vulnerable populations, further exaggerating existing socio-economic differences (Lesutis, 2019a). Lesutis (2019a) detailed look at the LAPSSET corridor has shown that through the ideal of “modernity,” development corridors can ascribe value on some lives more than others.

In the case of the LAPSSET, northern Kenya has emerged as a new frontier for development in the country (Mosley et al., 2016). The dynamic of including historically marginalized spaces and people into circuits of capital is noticeable (Lesutis, 2019a). This would be a significant change in the region. The region was previously viewed as marginal zone with low economic productivity that functioned as a buffer zone between Kenya and the political instability regions of neighboring countries by colonial authorities and urban elites (Donham et al., 1986). Since independence, northern Kenya was perceived as “empty” and “underutilized,” which made it stay in the periphery until now (Mosley & Watson, 2016). This is exemplified by the statement made by the Prime Minister in 2009 in which he stated that “The railway line has defined Kenya. The rest of the country was neglected; the [northern Kenya] was just an empty space on the map” (Elmi et al., 2013). The region was also depicted as wild, lawless, and external to the “nation proper” due to past violence and insecurity (Cormack et al., 2018; Mwangi, 2006; Whittaker, 2015).

The Kenyan state no longer seeks to just contain its unstable northern regions but to “transform” and “open up” frontier areas and incorporate them into the state development strategy (Lesutis, 2019a). Despite economic interests and changing attitudes, Lesutis (2019a) claims that “northern Kenya continues to be perceived as a potential source of violence and conflict that can be triggered by the growing natural resource industry and the social competition that emerges over the access to these resources and benefits of industry.” The high modernism character of the LAPSSET project also brings in another dimension. It aims to transform Lamu’s landscapes, where pastoralism has been the most suitable livelihood in the region (Fratkin, 1997; Scott, 1998). Despite these pastoralist interests, policymakers have shown to neglect their needs when planning to embark on large-scale infrastructural development (Idris, 2011).

In agreement with the discourse above, national politicians and bureaucrats cast Northern Kenya as both abundant in underutilized land and resources while being ‘backward’, ‘unexploited’, and ‘empty’ (Chome, 2020). This is in an attempt to attract investments in mineral extraction, physical infrastructure, and agricultural commercialization. Chome (2020: 312) adds that politicians and bureaucrats’ framing of ‘underutilized’ land appears to ‘caste the state and its elites as heroes who will transform the region in a new way’. This has created tensions in Lamu regarding land ownership, which had been informal in the area. Now there is a demand for the formalization of land claims as land grabbing has become a threat in the county.

While Lamu County might be going through an unfamiliar set of circumstances, oil exploration is not new to Kenya. Commercially viable oil was discovered in Turkana, Kenya, in the year 2012. Turkana is in arid country inhabited predominantly by pastoralists. Low political
participation and weak governance frameworks have caused displacement from land, exposure to environmental hazards, and exclusion from decision-making and benefit-sharing arrangements (Mkutu et al., 2019). Communities have aired their grievances against investors and the state through protests and disrupting company operations. Participation and recognition have been recurring issues in the area as decisions are being made remotely in Nairobi (Mkutu et., 2019).

Social and cultural change have emerged as major concerns in Turkana and Lamu in relation to oil development. Fears have been expressed in Turkana about urbanization, cars, and threats to their culture and way of life. Similarly, the predominantly Muslim Bajuni people believe that LAPSSET’s modernization may not only pose a threat to Lamu’s ecological diversity, but also the livelihoods of its ‘indigenous’ people (Chome, 2020). It’s also argued that new development also impacts peoples’ identities in northern Kenya as it alters existing everyday relations with the physical environment (Kochore, 2016; Lesutis, 2019a).

v. Lamu’s Plans Updates

In my summer research, I drew on news articles to put together an updated and informative picture related to the Lamu Spatial plan and LAPSSET development. The articles informed me about the relationship of planned development with Lamu’s historical sites, Lamu’s World Heritage status, and jobs available to the community. I was also able to gather current information about what had been already developed, and what is in process of being developed, as part of the LAPSSET Plan.

LAPSSET construction first started with the first three berths of the Lamu port in 2018. The three berths are projected to be finished this year. According to the Kenya Transport Principal Secretary Irungu Nyakera, “The government was determined to complete the construction of a second port in Lamu to supplement the port of Mombasa” (Ringa, 2017). Dredging of the channel, building a cofferdam and causeway, and land reclamation also started in 2017. Nyakera also notes the importance of the port as it will provide services to Kenya, but also to the landlocked countries of Ethiopia and South Sudan.

The Lamu Port South Sudan Ethiopia Transport (LAPSSET) Corridor Project is seen as a threat to key archaeological sites and monuments in Lamu County, according to the National Museums of Kenya (NMK). They also expressed the concern that many of the archaeological sites and monuments are on the verge of destruction. It seems that despite the efforts of the NMK and the Lamu County government to secure the sites, they are still being targeted for development by individual people and private developers (Kazungu, 2019). According to the Coast Region Assistant Director in charge of sites and monuments, Athman Hussein, some parts of Lamu county, are already being affected by ongoing encroachment. He also adds that monitoring archaeological sites and monuments in the region has become a challenge as many of them are in remote areas far from Lamu Old Town (Kazungu, 2019).

Lamu residents are also concerned that the ongoing construction of the multi-billion LAPSSET corridor is violating their rights to cultural life according to a news report on the Nation
newspaper. The residents noted that the Indian Ocean’s ongoing dredging for the port’s construction had destroyed mangrove forests, coral reefs, and sea grass, which are fish and turtle nesting areas (Lwanga, 2017). The residents also noted that the dredging has led to dwindling amounts of fish, affecting the cultural and socio-economic lives of residents who solely depend on fishing for their livelihood. An issue surfaced concerning restoration when an environmentalist mentioned that before initiation of the LAPSSET project, “UNESCO made recommendations on fishing plans, planting mangroves, and the need to survey coastal morphology and protection of the universal value of Lamu including tourism and culture” (Lwanga, 2017).

There is also a concern that pollution will put Lamu Old Town’s World Heritage status at risk. Pollution is rapidly undermining the efforts to preserve the cultural richness of the historical town (allAfrica, 2018). Lamu Old Town was warned by UNESCO about pollution being caused by a growing number of motorcycles. It also banned the town’s motorcycles, which causes the county government to have to set aside specific zones for motorcycles. The county government is trying to ensure that keeping Lamu on the heritage list is not a burden for the islanders while also making sure that the tourist gem is not removed from the UNESCO World Heritage List (allAfrica, 2018).

Perhaps one of the most shocking articles focused on Lamu youth who are shying away from the very jobs that LAPSSET development promised to provide for them. The project is estimated to have the capacity to create over 200,000 jobs for unemployed youths across the country (Kazungu, 2018). The Kenyan authorities originally claimed that LAPSSET would significantly contribute to local economic growth and “positively impact the livelihoods of over 15 million people living in northern Kenya” by providing jobs and enterprise opportunities (LCDA, 2016). The national government’s plan was to give first priority for employment to the youth in Lamu County, but there is an issue of many shying away from the jobs or quitting shortly after employment. According to the Nation news report, only 50 youth out of 1,200 working in the ongoing construction were from Lamu. One of the residents from Lamu Old Town pointed out that the construction site, Kililana, is too far from the island, and the work requires long hours every day. The youth are unwilling to travel the distance or work long hours with little pay (Kazungu, 2018). Some youth also seem to work on the project for a short amount of time in order to earn enough cash to buy something and then quit (Kazungu, 2018).

b. Research Results

i. Quantitative Findings

The Lamu community survey results are displayed below. Of the 60 participants, 35 were male, and 25 of them were female. Each pie chart illustrates the number of people who answered yes or no to that particular question. Respondents were given the option not to answer or to indicate they were unsure. The questions ask about respondents’ familiarity with LSP, thoughts about LSP and LAPSSET, concerns expressed about LSP and LAPSSET, and involvement in either initiative. The key findings can be summarized as follow:
Figure 14 (a - j) Community Survey Quantitative Results

a) 64% of participants were not familiar with the LSP compared to 30%.
b) 88% of participants said they did not express concern over the LSP compared to 8% who did.
c) 63% of participants said they did not express concern over LAPSSET compared to 33% of participants.
d) 73% of participants didn’t wish that additional conservation effort were included in LAPSSET, while 23% did.
e) 70% of participants were not aware that they could be involved in LSP implementation, while 25% did.
f) 92% of participants were not currently involved in LSP implementation, while 2% were.
g) 49% of participants expressed that they wouldn’t like to be involved in LSP implementation compared to 41% who would.
h) 50% of participants did not know about employment with LAPSSET compared to 47% who did.
i) 53% of participants expressed that they would not want to participate in LAPSSET work, while 42% did.
j) 92% of participants said that they didn’t know anyone who is currently involved in LAPSSET work compared to 5% who did.

The stakeholder/ key informants survey focused on the involvement that different companies, government offices, and organizations had on the LSP and LAPSSET plan. The table (See Table 2) includes the response from 9 individuals who were surveyed that worked for the different companies. Their answers reflected their company’s involvement in the LSP and LAPSSET projects. I also posed specific questions of whether they referred to community participation and suggested conservation efforts to be included in the LSP or LAPSSET project. The stakeholder/ key informants surveys were mainly qualitative but below I report the quantitative results as follows:
### Table 2: Stakeholder/Key Informants Results

<table>
<thead>
<tr>
<th>Company</th>
<th>Input on LSP</th>
<th>Input on LAPSSET</th>
<th>Referred to community participation?</th>
<th>Suggested conservation efforts for LSP</th>
<th>Suggested conservation efforts for LAPSSET</th>
</tr>
</thead>
<tbody>
<tr>
<td>H Young</td>
<td>No</td>
<td>Yes</td>
<td>No</td>
<td>No</td>
<td>No</td>
</tr>
<tr>
<td>Mosmos Construction</td>
<td>No</td>
<td>Yes</td>
<td>No</td>
<td>No</td>
<td>No</td>
</tr>
<tr>
<td>Northern Liberty</td>
<td>No</td>
<td>Yes</td>
<td>No</td>
<td>No</td>
<td>No</td>
</tr>
<tr>
<td>Postal Office</td>
<td>No</td>
<td>No</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Kenya Power and Lighting</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>County Headquarters</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>No</td>
</tr>
<tr>
<td>WWF</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Red Cross</td>
<td>No</td>
<td>No</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>World Vision</td>
<td>No</td>
<td>No</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**ii. Qualitative Findings**

This section of qualitative results combines the research results from the survey and my trip to Kenya. My trip helped me conclude my research and complement the learnings from my literature review and survey findings. Certain themes emerged in the answers to the survey questions and the informal interviews during the site visit. These themes include limited knowledge and involvement in LSP and LAPSSET, the perceived threats of LAPSSET, the benefit of LAPSSET to the community, and expectations and hopes from LAPSSET project. The thematic analysis was done on the qualitative components of all the interviews (the community survey, informal stakeholder interview, and stakeholder/key informant survey), and the results are differentiated by category of respondents.

1. **Limited Knowledge and Involvement on LSP and LAPSSET**

One of the notable themes that were evident in the qualitative findings of the survey is that many residents had no knowledge of key aspects of the LSP and LAPSSET. They also wished they would have been involved in both endeavors if they had had the chance.

Concerning the LSP residents commented that:

“*They should have sought people’s concerns and educated them about it before it started.*”

“*Would have liked to be given a chance to participate in the discussion so that they could have also contributed to the LSP.*”

“*Since I am unaware and have no idea of the LSP, I have no idea of what they were trying to accomplish.*”

Concerning the LAPSSET plan, residents commented that:
“Should have been given information and the opportunity to be involved in whatever they are doing.”

“Would have loved to be involved in the decision-making process.”

The thoughts and concerns above reflected the quantitative survey findings indicating how much the residents wanted to be involved in the LSP plan (42%) and the LAPSSET project (42%). The involvement didn’t just include working but receiving information and contributing to the LSP and LAPSSET with their ideas.

The qualitative responses also revealed that a lot of residents were confused about what the LSP was. Most of them thought that they were being asked about the LAPSSET project and answered accordingly. It was clear that this was the case because the participant had already expressed that they had no idea what the LSP was. The LSP’s answers also didn’t match up with what the LSP sets out to do but were directed to LAPSSET.

2. **The threat of LAPSSET project**

Residents saw the LAPSSET plan as threat to their cultural life and key archeological sites and monuments. Many residents voiced that they were worried about LAPSSET’s impact on the environment. A number of residents were also aware of mangrove trees being cut for LAPSSET and expressed that more mangrove trees need to be planted. One surveyed resident expressed additional concerns by saying:

“There needs to be compensation to those whose lands have been taken to pave way for LAPSSET project.”

The quote above shows how residents are unhappy about losing their land and not being compensated for it.

One of the stakeholders interviewed in my Lamu trip also brought up this topic. He expressed that he didn’t feel as though heritage was perceived as important by the Kenyan government. He knows that LAPSSET poses a big threat to Lamu Old Town’s UNESCO heritage title but sees no hope that the title will be able to withstand current developments. Another interviewed stakeholder also expressed similar sentiments as he explained how much has already changed due to the port’s construction. Specifically, there was a large concern about the dredging process as sand, and anything else that came in the vicinity would be sucked up and shredded into pieces. There are some concerns about the impact on the cultural heritage resulting from LAPSSET even though the proposed port site is not in the World Heritage site’s vicinity (Mwenje et al., 2019). The theme of LAPSSET posing a threat to Lamu and its community was also evident from the secondary literature that I reviewed in earlier stages of my research.

3. **Limited benefits from LAPSSET project**

My informal meetings with local stakeholders explored the issue of community members feeling like they won’t benefit from the LAPSSET project. They expressed that residents simply felt that the port wasn’t for them and would not help them at all. One of the stakeholders
added that the local government isn’t involved in LAPSSET planning or decisions. All the decisions are made in Nairobi.

In the survey, one resident expressed that:

“There is an issue of locals not being considered as first priority.”

The quote refers to how they feel as LAPSSET development is happening in their area, but they are not included in the process. This revelation sadly shows why Lamu County residents haven’t been involved in the project and feel like they will not benefit from the project.

4. **Expectations and hopes from LAPSSET project.**

When asked what they favored about the LAPSSET project, many community members responded with the same answers. The popular answers were that they liked the project’s economic aspect and that it will provide jobs for Lamu County and other Kenyan residents.

The information provided from one of the key informants was quite telling. The informants were employees at H Young, Mosmos Construction, and Northern Liberty are all construction companies that are doing the infrastructure work for new roadways and highways. H Young is working on the first tarmac roadway connecting Lamu to neighboring counties. The Postal Office, Kenya Power, and Lightning, and County Headquarters are all government offices. You can see from the results that Kenya Power and Lightning and County Headquarters, and WWF were all involved in both the LSP and the LAPSSET plan. The three entities are also the only ones to suggest conservation efforts in the LSP and LAPSSET plan. The county headquarters also added that they also create job employment for Lamu residents on the LAPSSET project.

7. **Discussion and cross-cutting considerations**

This research sheds light on the limitations to the level of involvement that communities may have in spatial planning and large development projects affecting their lives. We can see that Lamu is a place that holds rich culture and heritage that residents want to preserve. Residents were especially worried about the threat to heritage, environment, land, and way of life because of the development plan. Unfortunately, a lot of decisions concerning their home are being made by outsiders who are not making a serious effort to solicit their input, which brings a lot of concern regarding their livelihoods and way of life.

The research results also showed a limited knowledge of the LSP and its purpose among the 60 community members. Most residents had more knowledge about the LAPSSET plan than they did the LSP. They also didn’t have high participation rates in the LSP and LAPSSET implementation, although residents would like to participate in both endeavors. Unfortunately, while they did recognize the potential for economic benefits from LAPSSET, community members didn’t know how to get involved. The county headquarters intentions to involve community members were evident, but limitations seem to be an issue.
The LAPSSET project will surely have a significant economic impact on the region but might continue to be seen as a threat and of no benefit to residents since they have no say in what is happening and have very little involvement in the development of the project.

The Lamu Spatial Plan is part of a big initiative by Kenya’s government to get a spatial plan done in all of Kenya’s counties. So, in essence, the Lamu Spatial Plan is part of a big puzzle. Evaluating community and stakeholder involvement in the spatial plan helped in understanding how well the local government and WWF were in including them. This information will provide insights to WWF and perhaps others regarding the serious challenges associated with the implementation of spatial plans that seek to involve local stakeholders in the process. As has been discussed earlier, community and stakeholder involvement should encompass various stages of the process, specifically, an initial period when local stakeholders are informed about the process and its intentions, a planning stage integrating inputs from local stakeholders into the development of the Spatial Plan, and finally an implementation stage when the spatial plan is carried out and monitored to track emerging outcomes. Clearly, experiences to date have generated many important lessons in Lamu, providing WWF and the local government an opportunity to share what they have learned with other counties preparing to do their spatial plans. The information will then help other counties to avoid potential pitfalls by including the local community to a greater degree during the stages described above: informational, planning, implementation and monitoring and evaluation.

8. Conclusion

Community perceptions and participation are key inputs in determining the success and sustainability of large development initiatives and infrastructural endeavors such as the LSP and the LAPSSET plan in Lamu, Kenya. Failure to ensure communication and participation by all stakeholders can jeopardize the prospects and future of Lamu Old Town, which wants to uphold its UNESCO status. The LSP and the LAPSSET plan will have major impacts on the conservation of natural resources and the social and cultural heritage of the region. This study shows that low levels of participation of the Lamu County government in LAPSSET work reflect down to the community level, as community members were found to have low engagement and a somewhat negative perception of the project. Despite efforts to involve community members in spatial plans, the reality is much more complex. Kenya has the ambition to have local spatial plans but hasn’t put enough resources to manage such a venture. WWF and other local community organizations would require more support for adequate community involvement in the spatial plan. Since Lamu county is not the first to experience disruptive changes brought on by oil development, it can benefit from lessons learned in Turkana, where residents have often blocked oil activities because they felt ignored.

According to the spatial plan examples studied early in the report, the context and situation that the spatial plan is applied to matters. This applies to informal settlements or government entities working in unison. For men, women, households, or communities to assert their rights, they must first be knowledgeable and able to communicate effectively to negotiate for a share
of the resources (UNDP, 2003). On the same note, the Lamu community needs to be knowledgeable about the Lamu Spatial Plan and LAPSSET development. More so, participation has to be active, free, and meaningful otherwise, frustration and mistrust will taint and undermine the development process (UNDP, 2003). The people’s voices and involvement are vital to development processes that sustain the natural and cultural heritage that make Kenya unique in eastern Africa and the world.

9. Recommendations

Above all, the findings of this research highlight the importance of getting greater involvement of residents in Lamu County in both the LSP and the LAPSSET plan. So far, WWF has done a good job of establishing a process of involving community members in its process. This process merely needs to expand and include more residents as well as disseminate information about the LSP. Perhaps flyers, information boards, and text messages could be utilized as a practical way to raise awareness. In Kenya, most residents already use their phones to perform mobile banking so utilizing their phone to disperse information would be very effective. The LAPSSET authority would benefit from the residents also being aware of what is happening in the region in relation to the project. Periodic meetings with community members would potentially help to improve communication regarding the status of these important projects and provide community members with an opportunity to share their concerns.

10. References


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WWF. (n.d).
11. Appendix

Survey

SECTION A: DEMOGRAPHIC INFORMATION (Please don’t put name of person)

1. Gender
   a) Male ( )
   b) Female ( )

2. What is your age bracket?
   a) 18-24 ( )
   b) 25-45 ( )
   c) 45-60 ( )
   d) 60 years and above No table of figures entries found. ( )

3. Exact area of residence in Hindi Ward?

4. What is your occupation(s)?

SECTION B: COMMUNITIES PERCEPTION OF LAMU SPATIAL PLAN (LSP) AND LAPSSET PROJECT

1. Are you familiar with the LSP?
   Yes ( )
   No ( )

2. To the best of your knowledge, what does the LSP seek to accomplish?

3. What aspects of the LSP do you particularly like?

4. To your knowledge, is something important lacking in the LSP?
   Yes ( )
   No ( ) (SKIP TO QUESTION 5 IF THEY ANSWER NO)
   a. If so, what do you believe should be included in the LSP?

5. Have any community members (including yourself) expressed concern regarding the LSP?
   Yes ( )
   No ( ) (SKIP TO QUESTION 6 IF THEY ANSWER NO)
   a. What concerns have been expressed regarding the LSP?
   b. If concerns were expressed, do you think these concerns have been or are being addressed?
6. Has any community members (including yourself) expressed concern regarding the LAPSSET Plan?
   Yes ( )
   No ( ) (SKIP TO QUESTION 7 IF THEY ANSWER NO)
   a. What were the concerns expressed over the LAPSSET Plan?
   b. If concerns were expressed, do you think the concerns were addressed to a satisfactory or acceptable point?
      Yes ( ) (SKIP TO QUESTION 7 IF THEY ANSWER YES)
      No ( )
      i. If not, please explain why:

7. Are there any additional conservation efforts that you would have liked to be included in the LAPSSET Plan?
   Yes ( )
   No ( ) (SKIP TO QUESTION 8 IF THEY ANSWER NO)
   a. If yes, what are those efforts that you would have liked to be included in the LAPSSET Plan?

8. What aspects of the LAPSSET Plan do you particularly like?

SECTION C: COMMUNITIES INVOLVEMENT IN THE LAMU SPATIAL PLAN (LSP) and LAPSSET Plan.

1. To your knowledge, are there any employment opportunities associated with the LSP for community members?
   Yes ( )
   No ( ) (SKIP TO QUESTION 2 IF THEY ANSWER NO)
   a. If yes, what are the employment opportunities associated with the LSP?

2. To your knowledge, have community members (including yourself) participated in work related to the LSP?
   Yes ( )
   No ( ) (SKIP TO QUESTION 3 IF THEY ANSWER NO)
   a. If so, what kind of work have they participated in related to the LSP?

3. Are you aware if community members (including yourself) can be involved in the implementation of the LSP?
   Yes ( )
   No ( ) (SKIP TO QUESTION 4b IF THEY ANSWER NO)
   a. If yes, how can a community member be involved in the LSP implementation?

4. Are you currently involved in the implementation of the LSP?
Yes (  )

No (  ) (SKIP TO QUESTION b IF THEY ANSWER NO)

a. If yes, how are you involved in the implementation of the LSP? (FINISH HERE)

b. If not involved, would you like to be involved in the implementation of the LSP?
   Yes (  )
   No (  ) (SKIP TO QUESTION 5 IF THEY ANSWER NO)
   i. If yes, In what way would they like to be involved in the implementation of the LSP?

5. To your knowledge, are there any employment opportunities associated with the LAPSSET Plan for community members (including yourself)?
   Yes (  )
   No (  ) (SKIP TO QUESTION 6 IF THEY ANSWER NO)
   a. If yes, what are the employment opportunities associated with the LAPSSET Plan?

6. Are you aware if community members (including yourself) can be involved in work related to the LAPSSET Plan?
   Yes (  )
   No (  ) (SKIP TO QUESTION 7 IF THEY ANSWER NO)
   a. If yes, how can a community member be involved in the LAPSSET Plan implementation?

7. To your knowledge, have community members (including yourself) participated in work related to the LAPSSET Plan in the past?
   Yes (  )
   No (  ) (SKIP TO QUESTION 8a IF THEY ANSWER NO)
   a. If so, what kind of work have they participated in related to the LAPSSET Plan?

8. Are you, or any other community member you know, currently involved in work related to the LAPSSET Plan?
   Yes (  )
   No (  ) (SKIP TO QUESTION b IF THEY ANSWER NO)
   b. If yes, how are you involved in the implementation of the LAPSSET Plan? (FINISH HERE)
   c. If not involved, would you like to be involved in the implementation of the LAPSSET Plan?
      Yes (  )
      No (  ) (FINISH HERE IF THEY ANSWER NO)
i. **If yes**, In what way would they like to be involved in the implementation of the LAPSSET Plan?

SECTION D: STAKEHOLDER (KEY INFORMANT) INVOLVEMENT IN THE LAMU SPATIAL PLAN (LSP) AND LAPSSET PROJECT (Ex: government people, contractors, companies, etc. NOT INCLUDING community members that were questioned on the questions in section A and B)

2. What company or organization do you work for? *(Please don’t record name of person)*

3. Did you (or the government entity/NGO/company that you present) provide any input on the:
   - Lamu Spatial Plan (LSP) and/or
   - LAPSSET project
   - Yes ( )
   - No ( )
   a. What was the input provided on:
      i. Lamu Spatial Plan?
      ii. LAPSSET project?

4. Did you (or the government entity/NGO/company that you present) refer to community participation when they provided input on these plans (mentioned in question 1)?
   - Yes ( )
   - No ( )

5. Are you (or the government entity/NGO/company that you present) currently involved in the implementation of
   - Lamu Spatial Plan or
   - LAPSSET plan?
   - Yes ( )
   - No ( )

6. Were there any conservation efforts that you (or the government entity/NGO/company that you present) suggested for the Lamu Spatial Plan?
   - Yes ( )
   - No ( ) *(SKIP TO QUESTION 5 IF THEY ANSWER NO)*
   a. **If yes**, what were those conservation efforts that you suggested?

7. Are there any conservation efforts being taken in your efforts on the LAPSSET project?
   - Yes ( )
   - No ( ) *(FINISH THERE IF THEY ANSWER NO)*
   a. **If yes**, what conservation efforts are you undertaking on the LAPSSET project?
Investigating how Development Corridors Interact with the Sustainable Development Goals in East Africa

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<th><em>International Development Planning Review</em></th>
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**Abstract:** Investment in infrastructure and industry has reached record levels across the global South, leading to claims that the world is at the dawn of a fourth industrial revolution. This claim is reflected in the central position that infrastructure and industry occupy in the Sustainable Development Goals (SDGs). Sustainable Development Goal 9: Industry, Innovation and Infrastructure has been described as fundamental to the achievement of the 2030 Agenda for Sustainable Development. With this in mind, it is important to investigate how Goal 9 interacts with other SDGs. Informed by SDG interactions literature, this article considers emerging trade-offs between Goal 9 and other SDGs in East Africa – where infrastructure and industry are dominating development planning and financing. Based on in-depth, qualitative research along two new ‘development corridors’ in East Africa, we highlight the complexities and nuances of SDG interactions and offer insights into why certain SDGs are often prioritised over others.
1. Introduction

The UN recently stated that we are ‘at the dawn of a fourth industrial revolution’, with investment in infrastructure and industry reaching record levels across the global South (UNCTAD 2019, v). As global development actors collaborate with national governments to unveil ambitious plans for infrastructure and industrial development, investors are turning to these sectors as lucrative financial opportunities. The ‘global infrastructure turn’ and ‘new industrial revolution’ are particularly obvious in East Africa, where mega-infrastructure projects and industrial strategies dominate national and regional development plans. New multi-donor platforms – such as the Programme for Infrastructure Development in Africa and the Emerging Africa Infrastructure Fund – have been established to promote infrastructure and industrial investment across the continent. At the same time, China is playing an increasingly prominent role in developing infrastructure and industry in East Africa through its Belt and Road Initiative (BRI).

In addition to boosting economic growth and generating foreign direct investment, investment in infrastructure and industry is central to the UN’s Sustainable Development Goals (SDGs). There is a growing consensus in global development circles that infrastructure and industry are foundational to all three pillars of sustainable development, including economic, environmental and social sustainability. Neither infrastructure nor industry were explicitly referenced in the Millennium Development Goals (MDGs), which preceded the SDGs. Yet, during the MDG-era, infrastructure and industry were recognised as central to the elimination of poverty and to the achievement of sustainable development (UNHabitat 2015). Today, infrastructure and industry feature prominently in the SDGs, with the 2030 Agenda for Sustainable Development outlining an ambitious vision of sustainable transport systems, quality and resilient infrastructure and inclusive industrialisation to be realised by 2030 (UN 2015).

In fact, the UN suggests that all 17 SDGs are underpinned by infrastructure and industrial development (UNOPS 2019). Goal 9 explicitly refers to building resilient infrastructure, promoting inclusive industrialisation and fostering innovation (UN 2015). However, infrastructure and industry are also said to play a critical role in the achievement of other goals. For example, it is believed that progress toward Goal 9 will support the achievement of Goals 1, 2 and 8, as infrastructure development and industrialisation drive job creation, which in turn helps address poverty, improve food security and better livelihoods (UNHabitat 2015). Similarly, achieving Goal 6 – ensuring availability and sustainable management of water – and Goal 7 – ensuring access to affordable, reliable, sustainable and modern energy – requires investment in infrastructure. Thus, progress toward Goal 9 is promised to contribute to Goals 6 and 7 as well.

Yet, investing in infrastructure and industry can have negative implications for sustainable development. Infrastructure is directly linked to Greenhouse Gas (GHG) emissions. Linear transport infrastructure, such as roads, railways and pipelines, are one of the largest and most consistent factors contributing to deforestation (Rudel et al. 2009). Research also increasingly links the global infrastructure turn to biodiversity loss (Ermgassen et al. 2019). Furthermore, the construction of mega-infrastructure projects and re-zoning for industrialisation disrupts and displaces rural communities, linking infrastructure- and industry-led development to human rights concerns (UNHR–HBF 2018). These and other negative impacts threaten to undermine progress toward the 2030 Agenda, causing the UN to ask: ‘What kind of infrastructure is being developed and whose needs will it serve? Who may lose out in the process? How will it affect our development pathway?’ (UNHR–HBF 2018, 7). This article contributes to discussions around these questions by engaging with trade-offs between Goal 9 and other SDGs in East Africa.

In discourse, all parts of the 2030 Agenda are deemed to be of equal importance and no single goal is meant to be prioritised. However, in practice, national and regional development actors
prioritise certain aspects of certain goals. Trade-offs are ‘inevitable given that no country is in a position to meet all goals and targets immediately and difficult policy choices and prioritisation cannot be avoided’ (Donoghue and Khan 2019, 7). Thus, although the SDGs were designed to be ‘integrated and indivisible’ (UN 2015), there is a clear trend whereby SDGs concerned with economic growth carry greater impetus than those that promote environmental protection and social inclusion (Kopnina 2015). In this article, we engage with further evidence of this trend by reflecting on progress toward Goal 9 in East Africa and on trade-offs associated with pursuing this goal through development corridors. We argue that in addition to aligning with outdated assumptions that privileging the pursuit of economic growth will reduce inequality and poverty, the prioritisation of Goal 9 in East Africa also reflects the interests of influential development actors. Our analysis makes use of in-depth, qualitative data to highlight the complexities and nuances of SDG interactions and to provide additional insights into why certain SDGs are prioritised over others.

This article proceeds with a review of the literature on SDG interactions, which is concerned with synergies and trade-offs between SDGs. The next section provides background information about Goal 9 of the 2030 Agenda globally and within East Africa. Before proceeding with our analysis and discussion, we provide more information about the research design and methodology behind this article. This includes contextual information about our case studies of the Lamu Port–South Sudan–Ethiopia Transport (LAPSSET) Corridor in Kenya and the Central Corridor in Tanzania. We then analyse discourses of sustainable development attached to LAPSSET and the Central Corridor as well as the development implications of both corridors in practice – based on the experiences and perceptions of people who live along each corridor. Before concluding, we discuss the synergies and trade-offs revealed by our analysis and reflect further on what our analysis suggests about why Goal 9 is being prioritised over other SDGs in East Africa.

2. Synergies and trade-offs between SDGs

The 2030 Agenda was adopted by the UN General Assembly in 2015. The agenda is meant to serve as a comprehensive blueprint for all countries – developed and developing – as they work to achieve sustainable development at a global scale. The agenda is underpinned by 17 goals and 169 targets aimed at tackling complex and interlinked global challenges that stand in the way of sustainable development, including those related to poverty, inequality, climate change, environmental degradation and conflict. According to the UN, the SDGs are ‘an integrated, indivisible set of global priorities for sustainable development’ (2014, 18), which depart from their predecessors, the MDGs, by balancing the economic, environment and social dimensions of sustainable development (UN 2015).

Despite claims about the integrated and indivisible nature of the SDGs, the 2030 Agenda has been critiqued for glossing over incompatibilities between certain goals (Nilsson et al. 2016). For example, some approaches to improving energy access (Goal 7) contradict Goal 13 by accelerating climate change. Similarly, the adverse impacts of sustained economic growth (Goal 8) on terrestrial ecosystems (Goal 15) and ocean, sea and marine resources (Goal 14) are well-established. As the International Council for Science (ICSU 2017) argues, a lack of internal consistency in the SDG framework means that progress in some areas may come at the expense of progress in others. This leaves planners and policymakers to ‘cherry-pick’ priority goals without necessarily being able or willing to mitigate the trade-offs (Machingura and Lally 2017).

Thus, policymakers require access to systematic research into interactions between SDGs to support development planning at the national and regional level. In response, an emerging field of research is committed to investigating SDG interactions in support of policymakers. This
research aims to provide policymakers with answers to the question ‘If we make progress on A, how does it affect our ability to make progress on B?’ by mapping and assessing synergies and trade-offs between different goals (Weitz et al. 2018).

Frameworks have been produced to help guide the way people think about SDG interactions (Le Blanc 2015; Nilsson et al. 2016; Pradhan et al. 2017; Nerini et al. 2018; Scharlemann et al. 2019; Weitz et al. 2018). For example, Nilsson et al. (2016) propose a seven-point scale that helps policymakers ‘map out, score and qualify’ interactions between SDGs (Figure 1). Weitz et al. (2018) developed an approach for making use of this framework. This approach involves a three-step process of collaborative analysis, where scientists, representatives of government and other stakeholders work together to score interactions between goals within their own context – ending up with a cross-impact matrix (Figure 2). This matrix is meant to prioritise action toward SDGs and their targets, based on interactions between goals in certain contexts.

To date, most research on SDG interactions has occurred at the conceptual level. This has involved collecting evidence from academic papers to map synergies and trade-offs or having experts make assessments about interactions between SDGs. Although this approach is a useful starting point for understanding SDG interactions, it has limitations as well. Theories and models explaining interlinkages between different goals are often incomplete; the empirical data needed to assess SDG interactions using theories or models is not always available; and, even when data is available, it may only be relevant to very specific contexts (Breuer et al. 2019).

In response, there is a need to continue developing aggregate knowledge on SDG interactions through different research approaches and sources of information (Nilsson et al. 2016). ‘This could achieve the dual goals of knowledge collection: overcoming the limitations of the existing single frameworks whilst also serving as a crucial instrument for policy-makers that would be able to select and consider evidence more closely related to their specific case’ (Breuer et al. 2019, 17). In contributing to these goals, our analysis demonstrates the value of in-depth qualitative case studies to knowledge about SDG interactions (Fader et al. 2018). This approach remains underrepresented in the literature, despite the fact that in-depth qualitative case studies help reveal the complexities and nuances of SDG interactions in different geographical contexts and across different scales of governance. In-depth qualitative case studies are also useful for uncovering insights into why certain goals and targets are prioritised over others, which is an issue that has also received less attention in the literature (Breuer et al. 2019).

3.0 Goal 9: Industry, Innovation and Infrastructure
The 2030 Agenda lays out an ambitious vision of sustainable transport systems, quality and resilient infrastructure and sustainable industrial development for all by 2030 (UN 2015). This vision is embedded in Goal 9 – ‘build resilient infrastructure, promote inclusive industrialisation and foster innovation’ (UN 2015). There are 8 Targets and 12 Indicators to guide and measure progress toward Goal 9, as outlined in Figure 3.

The relationship between Goal 9 and other SDGs is complex and contested. It has been suggested that Goal 9 is a vital ‘enabler’ of all other goals (UN-HABITAT 2015). According to some, Goal 9 directly supports the achievement of Goals 1, 2 and 8 because infrastructure and
industrialisation drives job creation, contribute to sustainable livelihoods and reduce poverty and hunger (UN-HABITAT 2015). UNOPS argues that ‘the environmental benefits of infrastructure are manifold’, as investment in ‘sustainable infrastructure assets can help to address climate and natural disasters, reduce greenhouse gas emissions and contamination, manage natural capital, and enhance resource efficiency’ (2019, 8). Yet, others suggest that Goal 9 is negatively correlated with several SDGs, including Goals 1, 2, 4, 6, 8, 11–13, 15 (Pradhan et al. 2017). These contradictory opinions reflect the limited empirical evidence that exists on how Goal 9 interacts with other SDGs in practice, as well as how Goal 9 plays out in specific contexts.

3.1 Goal 9 in East Africa

Over the past decades, industrialisation levels have remained comparatively low on the African Continent and poor access to energy and transport infrastructure continues to hinder economic growth across the continent (Mead 2017). Approximately 60% of Africa’s population still lacks access to modern infrastructure, which isolates rural communities, hinders access to healthcare, education and jobs and impedes local economies (OSAA 2015). A recent report suggests that Goal 9 remains one of the biggest development challenges in almost every African subregion (SDG Centre for Africa 2019). Achieving Goal 9 in Africa by 2030 will require leveraging additional resources, creating new partnerships and developing innovative financing mechanisms (World Bank 2019). According to the African Development Bank (AfDB), an additional US $130–170 billion per year is needed to bridge Africa’s infrastructure deficit (AfDB 2018; Africa50 2016).

Even though progress toward Goal 9 across the African Continent lags behind what is needed to achieve the goal by 2030, there has recently been a resurgence of interest in infrastructure and industrialisation. PwC South Africa projects that annual global infrastructure spending will reach US $5.3 trillion by 2020, up from US $4.3 trillion in 2015 (Temkin 2016), as governments and development banks implement aggressive infrastructure development programmes and investors come to see these programmes as lucrative investment opportunities.

Renewed global interest in infrastructure and industry in Africa is particularly notable in East Africa. The United Nations Economic Commission for Africa ranked East Africa as the fastest growing subregion on the continent and attributed this trend to strong investment in infrastructure (UNECA 2019). East Africa’s infrastructure boom is linked to the growing presence of China in the region: China is now the single largest financier of East African infrastructure, financing one in four projects and constructing one in two projects (Edinger and Labuschage 2018). Recent discoveries of oil and gas, as well as significant deposits of minerals and rare earths, have also increased investor demand for transport infrastructure and connectivity – as has agricultural expansion and intensification (UNECA 2019). Combined, these trends have amplified infrastructure investments and driven forward new infrastructure projects, resulting in significant progress toward Goal 9.

Much of the new investment in infrastructure and industry in East Africa is being directed at development corridors. Development corridors are the clustering of industrial activities along a physical backbone of transport infrastructure (Healey 2004). They consist of vast networks of railways, roads, pipelines, ports and other transport infrastructure built to connect sites of (potential) commodity production to global markets. As corridors develop around backbones of infrastructure, it is intended that hub towns, industrial areas, special economic zones and border posts will also emerge and expand along corridor routes (Hope and Cox 2015). In this regard, development corridors are seen as an ideal way to achieve Goal 9, as they simultaneously promote infrastructure and industrial development. Furthermore, although often built with the needs of the private sector in mind, transport infrastructure along development corridors is shared-use, providing the public with new and improved forms of mobility. Thus, in addition to
attracting new investments in infrastructure and industry, development corridors are promised to stimulate rural development, supporting the achievement of other SDGs.

Although development corridors are not a new concept, they have re-emerged as a development spending priority in East Africa. This is partly due to the rediscovery of regional spatial planning as a guiding principle of development in the region (Schindler et al. 2018; Enns and Bersaglio 2019). As a result, development corridors have come to be seen as an effective tool for reorganising economies to address under/uneven development. At the same time, new sources of financing for infrastructure projects have emerged. China has been eager to participate in the financing and construction of East Africa’s new corridors as these projects fit neatly with China’s own plans for global infrastructure expansion through the BRI. However, other actors are also actively involved in mobilising finance and knowledge for infrastructure-led development, including the United States, South Africa, other emerging economies, new multi-donor platforms and the private sector.

It is widely believed that East Africa’s new development corridors have a decisive role to play in the achievement of Goal 9, as well as the overarching 2030 Agenda. For example, Kenya and Tanzania’s most recent reports on SDG implementation suggest that corridor projects are delivering the SDGs (GoK 2017; URT 2019). Corridors are not only linked to the achievement of Goal 9, but to other goals as well. As Kenya’s President Uhuru Kenyatta recently explained:

[China’s] Belt and Road Initiative gives our continent the opportunity to make a paradigm shift... It will be a win-win situation when our people have the skills, assets and financing necessary to participate in the development of the infrastructure corridors that will enhance connectivity, support trade and reduce the cost of doing business between our countries... We will all win when the economic corridors we develop hasten industrialization... (China Daily, 2017, para. 4, 10, 13, as cited by Renwick et al. 2018, 15-16).

Similarly, Tanzania’s Minister for Finance and Planning explained that the new Central Corridor ‘will improve transport, mobility, accessibility, safety and quality of service delivery to the community along the corridor thus linking production areas to markets. I am quite sure that this loan agreement [for the corridor] will generate a lot of smiles for the people and business community’ (Mpango 2017, 2–3).

In discourses surrounding development corridors in East Africa, corridor projects are clearly framed as an essential tool for achieving the 2030 Agenda. It is only recently that researchers have speculated and begun to demonstrate that development corridors come with new hazards and risks for communities, ecosystems and livelihoods (Baxter et al. 2017; Enns et al. 2019). From this perspective, East Africa’s infrastructure boom is not without trade-offs when it comes to the pursuit of Goal 9 and other SDGs.

4.0 Interactions between Goal 9 and other SDGs in East Africa

4.1 Research methodology

In this section, we use two qualitative case studies to illustrate how progress toward the achievement of Goal 9 in East Africa interacts with other development goals. These case studies focus on two new development corridors: (1) the Lamu Port–South Sudan–Ethiopia Transport (LAPSSET) Corridor, which connects the Port of Lamu to northern Kenya, Ethiopia and South Sudan and (2) the Central Corridor, which links Burundi, Rwanda, Uganda and the Democratic Republic of Congo (DRC) to the Port of Dar es Salaam via central Tanzania.
Given that LAPSSET and the Central Corridor span thousands of kilometres, focused study areas were identified along each corridor as a necessary practicality. In Kenya, research activities focused on a segment of LAPSSET between Isiolo Town in central Kenya and Moyale Town on the country’s northern border with Ethiopia. The study area traverses three counties (Isiolo, Marsabit and Samburu) and includes some of the first completed components of the LAPSSET corridor – the Isiolo-Moyale Highway and the Isiolo International Airport. Other projects along this part of the corridor are in the inception or implementation phase, such as a resort city, a Standard Gauge Railway (SGR) and power transmission lines.

In Tanzania, research activities focused on a segment of the Central Corridor between Manyoni Town in the central part of the country and Tabora Town to the east. This part of the corridor spans two regions (Singida and Tabora) and three districts (Manonyi, Itigi and Uyui). Projects planned for this segment of the corridor include upgrading an existing railway to SGR and constructing a new road between Manyoni and Tabora, called the Nyahua-Chaya Road. During the time of the research, parts of the Nyahua-Chaya Road had been completed while others where in the midst of construction. The SGR project is still in the planning stages.

Similar methods were used to gather data for both case studies, including Key Informant Interviews (KIIs), Focus Group Discussions (FGDs) and a Policy Delphi process. KIIs were conducted with representatives from civil society, NGOs and all levels of government and FGDs were arranged among rural communities along both corridors. In Kenya, FGDs involved representatives from Rendille, Samburu and Turkana communities. In Tanzania, FGDs were held in Nyamwezi, Nyaturu and Sukuma communities. However, the research team tried to engage with diverse participants along both corridors, including people of different ages, ethnicities, identities and genders. In total, 255 people participated in this study, including 43 key informants, 167 FGD participants and 45 experts involved in the Policy Delphi process that aimed to validate findings, co-produce policy recommendations and identify priority research areas. These experts included representatives from civil society, NGOs and all levels of government.

4.2 LAPSSET
4.2.1 LAPSSET in discourse

Construction began on LAPSSET in 2012, with most components of the corridor planned for completion by 2030. While the corridor was conceived decades ago, a resurgence of interest in investing in infrastructure and recent discoveries of oil and gas in the region made the project feasible. So far, LAPSSET spans nine counties across northern Kenya, including Lamu, Garissa, Marsabit, Isiolo, Meru, Laikipia, Samburu, Baringo and Turkana. The corridor has also improved accessibility and connectivity between Kenya, South Sudan and Ethiopia. However, the long-term ambition is that LAPSSET will form a land bridge between Kenya and Cameroon, linking the east and west coasts of the continent via an expansive network of transport infrastructure.

LAPSSET consists of a 500-metre wide corridor for transport infrastructure, overlaid by a 50-kilometre wide economic corridor for industrial and agricultural investment (LCDA 2016). The transport corridor includes multiple components, including: a crude oil pipeline, a highway network, SGR, electrical power lines and fibre optic cables. In the wider economic corridor, various development zones have been planned. These include: tourist resort cities, special economic zones, export processing zones, and agricultural growth zones. Each zone is meant to attract further investment to the corridor. The construction of dams near the corridor has also been proposed and planned to supply electricity and water to development zones like resort cities.
The Kenyan government has gone to great lengths to attract investment in LAPSSET. As of 2017, the corridor had an investment budget equivalent to half of Kenya’s GDP (REPCON 2017). The amount of investment being directed toward LAPSSET reflects the significant development potential attached to the corridor. The government says that LAPSSET is playing a critical role in the development of the nation’s infrastructure and process of industrialisation in line with the achievement of Goal 9 (GoK 2017). LAPSSET is also a flagship project of Kenya’s Vision 2030 – Kenya’s national development plan that aims to transform Kenya into a newly industrialised, middle-income country by 2030. The government anticipates that the corridor will inject between 2–3% of GDP into the national economy annually, contributing a total of 8–10% of Kenya’s annual GDP when investments in the development corridor come to fruition (LCDA 2016).

Both the direct and indirect impacts of LAPSSET are most acutely experienced in northern Kenya – a region that has historically been marginalised and cut off from the rest of Kenya. Proponents of LAPSSET promise that the corridor will ‘open up 70% of the country that has been uninvested in since independence’ and transform northern Kenya into ‘the country’s next growth frontier’ (Standard Reporter 2015). It is also said that the corridor will ‘positively impact the livelihoods of over 15 million people living in northern Kenya’ (LCDA 2016, 17). Transhumance pastoralism – which involves sustaining herds by moving them to seasonal sources of pasture and water – remains the predominant livelihood activity across northern Kenya. By some estimates, pastoralism is practiced by over 85% of the population in the region traversed by LAPSSET. The Government of Kenya envisions that LAPSSET will enhance pastoralist livelihoods by improving cross-border and rural-urban livestock marketing routes (LCDA 2016). LAPSSET is also promised to create scope for new investments to support the livestock industry, such as the construction of abattoirs and new dams in strategic locations (LCDA 2016).

4.2.2 LAPSSET in practice

Although LAPSSET is yet to be completed, portions of the corridor are already operational. The study area selected for this research includes some of the first operational components of the corridor, such as the new highway from Isiolo to Moyale, the Isiolo International Airport and the new Moyale border crossing. Even at this early stage of operation, participants reported that the corridor is making it significantly easier and faster to travel and transport livestock to markets (Goal 9). As one participant explained:

In the past, when you start going from here to Isiolo, you say you are going to Kenya, because we did not feel part of Kenya. It used to take three days to get from Moyale to Nairobi, often sitting on the rails on top of the lorry with livestock. And, when you finally reached Nairobi after three days, what you were selling was not even livestock: You were selling carcasses (Interview, Civil Society Representative, Marsabit, July 2017).

Estimates suggest that pastoralism currently contributes to about 13% of Kenya’s GDP, with most of these earnings being generated in northern Kenya (IRIN 2013). As LAPSSET improves connectivity, it is anticipated that the contribution of pastoralism to the nation’s GDP will increase – reducing long-standing inequalities between northern and southern Kenya (Goal 10) and improving pastoralist livelihoods across the north (Goals 1 and 8).

Another notable impact of LAPSSET is improved security (Goal 16) and better access to health services and education (Goals 3 and 4). Specifically, participants said that acts of banditry have decreased for those travelling in the area as police can now use the Isiolo-Moyale Highway to respond quickly. Access to health services and education has also improved with the completion
of the new highway as the number of public transit vehicles on the road has increased. As one woman explained, ‘The best thing about the new road is it has improved our ability to access to emergency services and transport and education, especially for mothers and their children’ (FGD 1, Isiolo-Moyale Highway, July 2017). Notably, although easier to access, many of these services are still too expensive for pastoralists to make use of regularly.

Another frequently cited benefit of development corridors is that they create new employment opportunities (Goal 8). Some participants reported benefiting from casual labour opportunities – including manual labour for men, like digging ditches, laying pavement, levelling the ground and clearing brush, and domestic labour for women, like cleaning and cooking. Casual labourers reported receiving between US $3–5 per day, which is above the poverty line for rural Kenya (KNBS, 2018). However, these jobs were short-term and highly insecure. Participants were also critical of their working conditions, explaining that workers were not provided with training or safety equipment and that women experienced sexual abuse and harassment.

Although claims about the number and quality of jobs created directly by LAPSSET were debated by participants, most believe that LAPSSET was indirectly enabling them to diversify their livelihood portfolios. Many stated that new economic opportunities had emerged since the completion of the highway, explaining ‘The road has improved businesses for women: tourist vehicles come more often to collect beadwork on market days’ (FGD 3, Isiolo-Moyale Highway, July 2017) and ‘We used to be just livestock keepers, but now we are business people too’ (FGD 5, Isiolo-Moyale Highway, July 2017). These new opportunities and markets are enabling people to supplement their livestock-keeping activities and generate additional income.

Despite these benefits, participants discussed a range of negative impacts associated with LAPSSET. Negative impacts on land were discussed the most frequently and widely (Goal 15). Substantial amounts of land are needed for transport infrastructure development along LAPSSET, as well as for other projects tied to the corridor. The process of securing and acquiring land along the corridor began in 2012 and is still underway as of 2019. In 2016, 28,500 hectares were secured by the LAPSSET Corridor Development Authority (LCDA) for construction. Later, in 2018, LCDA and the National Land Commission of Kenya signed a Memorandum of Understanding for the acquisition of a further 197,000 hectares. This land, which includes private, community and public land, is being ‘land banked’ so that access is guaranteed as corridor construction progresses (LCDA 2016). Furthermore, as sections of LAPSSET have been completed, new investors and land speculators have arrived to grab land within investment zones along the corridor. Fences and structures are being erected as people lay claim to this land, and land values along the corridor are increasing.

Growing interest in land along LAPSSET was worrisome to participants. They were concerned with the lack of recognition for their land rights and with how future growth along the corridor would impact their access to and control over land. Participants reported being displaced during construction without compensation. By law, landowners must be consulted and compensated by the government if their land is acquired for public use, such as infrastructure projects. However, a complicating factor is that LAPSSET is primarily being built on community land, which is often unregistered. Although those residing on unregistered community land should be informed about the redesignation of their land and fairly compensated, it does not appear that this routinely happened in practice.

Participants were also concerned about the fragmentation of pastoral rangelands (Goals 13 and 15). Certain LAPSSET projects will have major impacts on the quality and quantity of land available to pastoralists, as in-tact ecosystems are fragmented. For example, if the proposed
Crocodile Jaws Dam at Oldonyiro proceeds, it will flood thousands of hectares of grazing land upstream and transform large tracts of land downstream into irrigated, agricultural land. This, in turn, is anticipated to draw additional agribusiness investments in horticulture, mango and sugar cane, among other cash crops, to Isiolo County in particular (LCDA 2016). Similarly, the SGR planned for development along the Isiolo-Moyale Highway will impact the mobility of pastoralists and their livestock, as well as wildlife. For pastoralists who depend on access to contiguous rangelands for their livelihoods, the negative impacts of the new investment climate promised through LAPSSET could be experienced over the course of multiple generations.

Finally, as more transport vehicles move along the corridor, rural communities in northern Kenya face new health and safety risks (Goal 3). Government representatives and community members reported that Sexually Transmitted Diseases (STDs) were on the rise along the Isiolo-Moyale Highway. As one community leader explained, ‘There are more STDs than before … People now come from all different backgrounds and communities were not prepared for this type of rapid social change and interaction’ (FGD 8, Isiolo-Moyale Highway, July 2017). Furthermore, quickly moving vehicles on the highway and a lack of speed humps and safe crossing points, such as tunnels or flyovers, are hazardous to people, livestock and wildlife. Indeed, almost every community-level participant along the Isiolo-Moyale Highway has lost livestock to road crossing accidents since the highway was completed -- and at least one person in every community has been killed during road crossing accidents as well.

4.3 The Central Corridor
4.3.1 The Central Corridor in discourse
The Central Corridor links the landlocked countries of Burundi, Rwanda, Uganda and the Democratic Republic of Congo (DRC) to the Tanzanian Port of Dar es Salaam on the Indian Ocean. It is a multi-modal transport route, consisting of five components: port facilities, inland waterways, roads, railways and one-stop border crossings. The aim of the Central Corridor is to reduce transport costs by 30% among the countries involved by providing Burundi, Rwanda, Uganda, DRC and the Tanzanian interior with an efficient transport route to the Indian Ocean. The Central Corridor is managed by an intergovernmental organisation, called the Central Corridor Transit Transport Facilitation Agency (CCTTFA). The AfDB, European Union, TradeMark East Africa, Japan International Cooperation Agency, New Partnership for Africa’s Development and Kuwait Fund are just some of the key financiers of Central Corridor projects.

The Central Corridor was established in 2006, but initial progress was stalled by a lack of investment. Only recently has the corridor made progress in improving connectivity and transportation, as major new investments from bilateral and multilateral actors have materialised. At the time of this study, the corridor was developing quickly with new projects securing financing and beginning construction across central Tanzania and the Great Lakes region. The renewed interest and investment in the Central Corridor can be attributed to two key developments. First, new mining investments throughout the Great Lakes region have increased demand for efficient and reliable transport and energy infrastructure. Second, the Central Corridor received an additional boost when Uganda decided to export crude oil through Tanzania rather than Kenya. Following a US $3.5 billion investment in the oil pipeline, portions of the Central Corridor that were previously seen as low priority became viable.

The Tanzanian government sees the Central Corridor as central to the country’s achievement of Goal 9 and its own national development vision, Vision 2025, which aims to transform the country into a semi-industrialised, middle-income nation by 2025. The transport infrastructure being built as part of the Central Corridor is promised to ‘unlock’ the ‘underexploited’ potential of extractive industries in the Great Lakes region, as well as the commercial agricultural potential of central
Tanzania (World Bank 2017). As these industries develop, exports will increase and transit demand through the Port of Dar es Salaam is projected to increase from 5.0 million tons in 2015 to 14.87 million tons by 2030 (World Bank 2017). This, it is hoped, will contribute to growing Tanzania’s economy and improving the economic performance of the entire Great Lakes region.

At the same time, proponents of the Central Corridor suggest that the corridor will contribute to socio-economic development and poverty reduction at a large scale. Small-scale and subsistence farming are the predominant livelihood strategies in central Tanzania, where farmers primarily grow maize, cassava, millet, groundnuts, sunflower, finger millet, pigeon peas, tobacco, cotton and rice (Perfect and Majule 2010). It is expected that the Central Corridor will link these farmers to new value chains while providing more reliable, efficient forms of transport to market centres. The Central Corridor is also promised to attract new investments in agriculture, aquaculture and tourism – creating new opportunities for wage labour and economic diversification and driving rural productivity gains.

4.3.2 The Central Corridor in practice

Although it will be a number of years before the Central Corridor is complete, portions of the corridor are already operational. During this research, participants were quick to explain that the new Nyahua-Chaya Road has made it significantly easier and, in some cases, cheaper for them to travel and transport goods to market (Goal 9). As participants explained:

People can move a lot better than before. Transport is easier in terms of going somewhere and returning quickly. In the past, people used to be killed by lions when walking or waiting on the road. There are more buses now and more bikes than before (FGD 4, Nyahua-Chaya Road, April 2018).

When travelling to Tabora, people used to go by train. They would go one day and return the next. But now they can go and return the same day. The fare is much lower now as well. It used to be TSh 14,000 to take a train and pay for accommodation in Tabora, but now it costs only TSh 5,000 by car (FGD 7, Nyahua-Chaya Road, April 2018).

Men in particular reported travelling more regularly than in the past – often to Tabora or Dodoma – for business purposes or to visit family and friends.

In addition to being able to travel easier, participants said that buyers are now more willing to travel to remote villages to purchase agricultural products. Nearly every village along completed portions of the Central Corridor noted growing demand and better prices for their produce as a result, explaining:

Since the road, more and more people are planting pigeon peas because more buyers are coming. There is also an increase in cash crops compared to before … It used to be difficult to sell goods. Now trucks come regularly to buy products and take them to market. The price received has increased significantly … The price has increased from TSh 70,000 to TSh 200,000 per 120/130 Kgs of pigeon peas (FGD 9, Nyahua-Chaya Road, April 2018).

Participants also said that growing demand and better prices are creating new opportunities in existing value chains. A number of participants explained that there are now more ‘middle men’ in their villages. These individuals – usually young men – are paid to collect and store produce from villages on behalf of business people in distant urban centres. In this sense, the Central
Corridor is not just enhancing farmers’ access to markets, it is also creating new income-generating opportunities for some (Goal 1).

The Central Corridor is also supporting farmers in diversifying their livelihood portfolios (Goal 8). Entrepreneurs have started to open small businesses, restaurants and hotels to service travelers using the corridor. Participants said that investors are also coming to their villages with business propositions and, as a result, new markets are emerging. For example, one man said:

Farmers’ empowerment organisations have been started to encourage the growing of sunflowers. More and more traders are coming to buy the sunflower seeds for oil. Singida is now known for sunflowers and business is growing. Due to that sensitisation, many in this area are recognising this as a good opportunity and sunflower farms are being established (FGD 2, Itigi District, April 2018).

District-level authorities also stated that they are finding ways to support their constituents in accessing emerging markets. For example, Itigi District Officers said that the district plans to provide incentives to encourage farmers to increase their production of sustainably-sourced forest products, such as honey and fruit oils, which will be marketed and sold through road-side stands (FGD 2, Itigi District, April 2018).

Much like the case of LAPSSET, there was less positivity about the employment opportunities generated directly by the Central Corridor (Goal 8). Participants noted that higher paying and secure employment opportunities created by construction, such as vehicle drivers or machine operators, were usually taken by ‘outsiders’ from elsewhere in Tanzania. The opportunities available to them were short-term and involved tasks such as clearing forests, digging ditches, or moving construction materials. They were paid between TSh 6,000 and 10,000 per day for casual labour. Although technically above the national poverty line of TSh 36,482 per adult per month (World Bank 2015), participants claimed that food prices increased significantly during construction of the Nyahua-Chaya Road making it harder for them to feed their families at this rate of pay. As one man exclaimed: ‘It was better that you go home without eating, otherwise your wife will think you have a concubine, because you are bringing home such little money after each day’s work’ (FGD 7, Nyahua-Chaya Road, April 2018). Participants also noted problems with working conditions, including no contracts, delayed payment and redundancy without remuneration.

Negative impacts associated with the Central Corridor extend beyond employment opportunities and labour standards. Again, land was a recurring issue (Goal 15). While most farmers that lost land along the corridor were provided compensation, the compensation process lacked transparency and information about resettlement procedures was poorly communicated. Community members in one village described the compensation process as ‘compensation by force’ (FGD 3, Nyahua-Chaya Road, April 2018), as armed guards escorted them away from from TanRoads officers before they were permitted to open sealed envelopes containing their money. In other cases, farmers were told that their land was being acquired for the Nyahua-Chaya Road immediately and, thus, should no longer be used for agriculture, but more than three years passed before construction started or compensation was provided. As a result, farmers lost multiple growing seasons because they were afraid to plant on land that might soon be taken.

Furthermore, no compensation was provided for loss of customary land, cultural or sacred sites or areas that provide ecosystem services (Goal 15). As one participant explained: ‘We have a village forest. But we only get compensated for murram [taken from our land], not for trees. We were told that this is a national project for the public good, but trees were felled and used by
people in the construction camps’ (FGD 6, Nyahua-Chaya Road, April 2018). Another local
government official reiterated this concern saying: ‘Construction is taking place in village forest
reserves, which includes a wetland. … One of the environmental risks is that the forest will cease
to function as a carbon sink and source of ecosystem services because of corridor construction’
(FGD 5, Uyui District, April 2018). In addition to conflicting with provisions of Tanzania’s
Environmental Management Act of 2004 (Section 5(2)(f) and 88(2)(c)), the lack of consideration
and compensation for village forests during construction of the Nyahua-Chaya Road is
incongruent with national and global development goals related to the sustainable management
of forests and terrestrial ecosystems.

Finally, the Central Corridor has created new health challenges (Goal 2). Moving vehicles, few or
poorly placed caution signs and the lack of speed humps and safe cross points along the Nyahua-
Chaya Road were all raised as problems created by the new infrastructure. It was also reported
that certain health issues are on the rise along the corridor, such as STDs. As one local
government official explained, ‘STIs may be increasing … There is also a lack of STI data in the
district. The risk of STIs was already high, but now it is increasing, especially because of truck
drivers’ (FGD 1, Manyoni District, April 2018). These health risks disproportionately impact
already marginalised individuals and groups in society, such as the elderly, women and children.

5. Discussion
East Africa’s new development corridors are clearly congruent with the achievement of Goal 9.
Development corridors drive the upgrading and retrofitting of existing infrastructure and the
development of new infrastructure, increasing the proportion of the rural population who lives
within 2 km of roads in line with Targets 9.1 and 9.4. Corridors also facilitate large and small-scale
industrialisation, in line with Targets 9.2 and 9.3. Furthermore, development corridors support
Target 9.a by increasing official development assistance plus other official flows directed at
infrastructure. Even though the burden of transport infrastructure provision and maintenance has
fallen on governments in the past, the development corridor model attracts new types of
stakeholders to contribute resources and knowledge to infrastructure development, including
private sector actors and less conventional donors – a point that we return to shortly.

Looking beyond Goal 9, new development corridors in East Africa provide useful insights into the
complexities and nuances of SDG interactions. New development corridors have synergies and
trade-offs when it comes to making progress toward SDGs other than Goal 9. The UN, as well as
other governmental and multilateral development actors, have been quick to highlight the
synergies between Goal 9 and the overarching 2030 Agenda. For example, it has been suggested
that Goal 9 will contribute to reducing extreme poverty (Goal 1); enhancing the ability of agriculture
and food systems to deliver on food security, nutrition and sustainability objectives (Goal 2);
creating new employment and entrepreneurship opportunities (Goal 8); and mitigating rural-urban
migration pressures through better rural-urban linkages (Goal 11) (UN 2017). Our analysis of
LAPSSET and the Central Corridor evidences some of these claims. However, it also reveals a
number of trade-offs that result from infrastructure-led development.

For example, LAPSSET and the Central Corridor demonstrate that the relationship between
Goals 9 and 1 is complex and non-linear. Our findings show that both corridors are creating new
economic opportunities (Goal 1, Target 1.1) and improving access to basic services (Goal 1,
Target 1.4). Yet, the corridors are simultaneously decreasing peoples’ control over land and
natural resources, which works against the achievement of Goal 1, Target 1.4. Furthermore, lost
access to and control over land and natural resources reduces peoples’ exposure and
vulnerability to economic, social and environmental shocks and disasters, hampering progress toward Goal 1, Target 1.5. Thus, in East Africa, key trade-offs exist between Goals 9 and 1.

Additionally, there are trade-offs between Goal 9 and SDGs related to environmental sustainability. For example, LAPSSET and the Central Corridor are contributing to the degradation of land and natural resources, like rangelands in northern Kenya and forests in central Tanzania. There is a paradox here. On the one hand, changing land use for the purpose of infrastructure development and industrialisation has the potential to deliver certain economic and social benefits. On the other hand, it leads to the decline of human welfare and drives biodiversity loss by altering ecosystem functions. This presents a challenge for decision-makers as they must navigate between corridor development (Goal 9) and maintaining the ability of ecosystems to provide for humans and non-humans both now and in the future (Goal 15).

Another trade-off between infrastructure and industrialisation goals and environmental goals relates to climate change. The UN argues that new investments in infrastructure and industrialisation will reduce carbon emissions, particularly in the global South (UN 2015). Yet, LAPSSET and the Central Corridor raise questions about this claim. In both cases, the construction of new highways has been prioritised, followed by new SGR and pipeline projects. These types of infrastructure encourage – rather than reduce – the use of fossil fuels and are directly linked to GHG emissions and soil/water contamination. Moreover, much of the industrial development planned for these corridors is not climate-friendly. Oil and gas development and industrial agriculture are high-emission industries that underpin both corridors. Thus, once again, new development corridors leave decision-makers to negotiate the achievement of Goal 9 and action to combat climate change (Goal 13).

Tensions between economic growth versus social inclusion and environmental sustainability in relation to Goal 9 reflect wider tensions across the SDGs. Many have commented on the incompatibility of economic, social and environmental goals within the 2030 Agenda (ICSU 2015; Kopnina 2015; Machingura and Lally 2017; Spaiser et al. 2017). For example, after a thorough review of the SDGs, ICSU concluded that the goals were not ‘internally consistent’ and that conflicting relations between the goals were being overlooked or downplayed (ICSU 2015). Similarly, the Overseas Development Institute argues that progress toward the achievement of certain economic goals is ‘cancelling out’ progress toward certain environmental goals (Machingura and Lally 2017, 10). Kopnina (2017) suggests that when goals come into conflict with one another, those that sustain economic growth are more likely to be prioritised than those that promote social and environmental sustainability.

This aligns with our analysis in this article, as the economic objectives of new development corridors appear to trump concerns about the environment and social equity. Plans for infrastructure and industrialisation are a top priority of the Government of Kenya and the Government of Tanzania. As a result, new development corridors are being constructed at a rapid pace, even though these mega-infrastructure projects contradict environmental and social development goals at the subnational level, as well as goals related to climate change at national, regional and global levels. The prioritisation of Goal 9 over goals supporting social inclusion and environmental sustainability is aptly demonstrated by a recent court case in Kenya. In 2018, the High Court of Kenya ruled that the Government of Kenya had violated both national environmental law and people’s fundamental human rights during construction of the Lamu Port – a key component of the LAPSSET Corridor – and ordered that compensation be paid for damages to the livelihoods of local fishing communities. The prioritisation of Goal 9 can partly be explained by the persistence of neoliberalism as a guiding force in development planning and policymaking in East Africa: Even though more credence is being paid to investing in ecological and social
sustainability, the myth that privileging economic growth through competitive market conditions will inevitably reduce inequality and poverty remains pervasive.

The prioritisation of Goal 9 in East Africa is also reflective of how this goal aligns with the interests and priorities of key donors and investors. China’s BRI aligns neatly with Kenya and Tanzania’s own visions for infrastructure- and industry-led development. Given the amount of resources that China has committed to the BRI and the number of BRI-relevant projects in the East Africa, China is clearly playing an important role in fueling progress toward Goal 9 in countries like Kenya and Tanzania (Shah 2016). For example, China’s Exim bank will lend Tanzania US $7.6 billion to finance the construction of the SGR along the Central Corridor. However, other less-traditional bilateral actors have also been keen to participate in the region’s infrastructure boom. For example, the Kuwait Fund for Arab Economic Development has provided loans for Central Corridor projects while the Government of South Africa has signed various agreements with the Government of Kenya to support investment in LAPSSET. In this regard, emerging geopolitical interests and trends may contribute to the realisation of Goal 9 in East Africa, but they also contribute to trade-offs between this goal and other SDGs.

Finally, infrastructure- and industry-led development appeal greatly to the private sector, and this further explains why Goal 9 has been prioritised in East Africa. The potential for increasing private sector participation in SDG implementation is greater in some sectors than others. As UNCTAD explains:

Infrastructure sectors, such as power and renewable energy (under climate change mitigation), transport and water and sanitation, are natural candidates for greater private sector participation... [whereas] other SDG sectors are less likely to generate significantly higher amounts of private sector interest, either because it is difficult to design risk-return models attractive to private investors ... because they are at the core of public service responsibilities and highly sensitive to private sector involvement (e.g. education and health care) (2019, xxvii).

In Kenya and Tanzania, the private sector is playing a key role in financing development corridors and, in doing so, supporting the achievement of Goal 9. For example, a joint venture between Tullow Oil Kenya, Africa Oil Kenya and Total Oil will finance the oil pipeline along LAPSSET while a similar venture between Tullow Oil Kenya, Total Oil, CNOOC Limited and the Governments of Tanzania and Uganda will finance the oil pipeline along the Central Corridor.

This final point is important, as it suggests that it is not just national governments that need to be held accountable for trade-offs between SDGs that result from progress toward Goal 9. Rather, donors and investors are also contributing to the prioritisation of Goal 9 over other goals, such as those that promote environmental protection or social equity. The implication is that local and national authorities are left to accept or mitigate trade-offs without adequate resources, as the same level of finance is not made available for SDGs with lower returns on investment. As Mhlanga et al. (2018) explain, the private sector primarily engages with SDGs that are most ‘material’ or ‘relevant’ to their business strategy. The same is also true of governments that may seek financial and/or geopolitical returns on investment, which is why China often exhibits a willingness to finance mega-infrastructure projects that align with the BRI while demonstrating relatively little concern for the environment or social responsibility.

6. Conclusion
Nearly five years into the 2030 Agenda, growing awareness about the ‘internal inconsistency’ (ICSU 2017) of the SDGs is motivating efforts to understand synergies and trade-offs between different goals and targets. Research into SDG interactions demonstrates that progress toward one goal can set back progress toward others. In response, researchers have developed frameworks aiming to help policymakers ‘map out, score and qualify’ interactions between goals (Nilsson et al. 2016). These frameworks have facilitated collaborations between researchers, planners and policymakers and other stakeholders to anticipate interactions between SDGs and to prioritise action toward certain goals and targets in response (Weitz et al. 2018). As important as these frameworks are for shaping high-level discussions about possible SDG interactions, there is a need to continue developing aggregate knowledge on actual interactions and on why certain goals are prioritised in certain contexts (Breuer et al. 2019).

In response, this article engages with in-depth, qualitative data from East Africa to reveal the complexities and nuances of SDG interactions on the ground. Through case studies of two development corridors – LAPSSET in Kenya and the Central Corridor in Tanzania – we analyse emergent synergies and trade-offs between Goal 9 of the 2030 Agenda and other SDGs. For example, even though LAPSSET and the Central Corridor are associated with new economic opportunities (Goal 1, Target 1.1) and improved access to basic services in some areas (Goal 1, Target 1.4), they are also associated with decreased control over land and natural resources (Goal 1, Target 1.4); increased exposure and vulnerability to economic, social and environmental hazards (Goal 1, Target 1.5); and the degradation of land and other natural resources (Goal 15) as well as oceans, seas and marine resources (Goal 14). In these ways, progress toward Goal 9 through LAPSSET and the Central Corridor is negatively impacting progress toward other SDGs in Kenya and Tanzania.

In line with broader trends, our analysis also demonstrates that in East Africa Goal 9 is being prioritised over goals supporting social inclusion and environmental sustainability. We argue that this is due to at least two factors: First, discourse surrounding development corridors in East Africa demonstrate an adherence to outdated assumptions that privileging economic growth will have trickle-down effects that inevitably reduce inequality and poverty. Second, relatively new influential actors in the region see development corridors as lucrative investment opportunities from a financial and geopolitical perspective. This is particularly true of China, which is playing a major role in delivering Goal 9 in East Africa by financing and developing corridor projects that align with the BRI while demonstrating less concern for issues related to environmental or social sustainability (Shah 2016). These dynamics are pertinent to growing concerns about ‘What kind of infrastructure is being developed [through Goal 9] and whose needs will it serve?’ (UNHR-HBF 2018, 7). Ultimately, trade-offs between SDGs are not simply a result of internal inconsistencies: They reflect ideological tensions and political struggles being played out on a global stage through the 2030 Agenda.

As a final note, some trade-offs emerging with progress toward Goal 9 in East Africa may be difficult to undue, like biodiversity loss, ecosystem fragmentation, and GHG emissions – not to mention emergent public health problems and rising tensions over land use and access along corridor routes. Yet, many of these trade-offs may be possible to address if taken seriously during the early stages of project planning. During the planning stages of development corridors, affected communities could be given the chance to collaborate with natural and social scientists, local governments and policymakers to plan corridors in ways that minimize negative environmental and social impacts. Institutional and policy mechanisms could be established to ensure that affected communities have more control over land, natural resources, and compensation/resettlement procedures. Decent working conditions and equal employment opportunities could be guaranteed; strategies for ‘greening’ the production, transport, and
processing of raw materials could be implemented; and further due diligence could be required of donors, investors and contractors.
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<table>
<thead>
<tr>
<th>Interaction</th>
<th>Name</th>
<th>Explanation</th>
</tr>
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<tbody>
<tr>
<td>+3</td>
<td>Indispensable</td>
<td>Inextricably linked to the achievement of another goal</td>
</tr>
<tr>
<td>+2</td>
<td>Reinforcing</td>
<td>Adds the achievement of another goal</td>
</tr>
<tr>
<td>+1</td>
<td>Enabling</td>
<td>Creates conditions that further another goal</td>
</tr>
<tr>
<td>0</td>
<td>Consistent</td>
<td>No significant positive or negative interactions</td>
</tr>
<tr>
<td>-1</td>
<td>Constraining</td>
<td>Limits options on another goal</td>
</tr>
<tr>
<td>-2</td>
<td>Courting</td>
<td>Clashes with another goal</td>
</tr>
<tr>
<td>-3</td>
<td>Canceling</td>
<td>Makes it impossible to reach another goal</td>
</tr>
</tbody>
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Suggested seven-point scale of SDG interactions (Nilsson et al. 2016)
Example cross-impact matrix: Green indicates positive interactions, red negative interactions, and shading and chevrons indicate score. 'Interaction scores relate to the impact of progress towards the target listed on the left on progress towards the target listed along the top. Thus, while progress towards Target 1.3 would somewhat promote progress towards Target 1.5, progress towards Target 1.5 would have a stronger positive effect on Target 1.3' (Weitz et al. 2019, 2).

53x49mm (300 x 300 DPI)
## SUSTAINABLE DEVELOPMENT GOAL 9
Build resilient infrastructure, promote inclusive and sustainable industrialization and foster innovation

<table>
<thead>
<tr>
<th>Target</th>
<th>Indicator</th>
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<tbody>
<tr>
<td>9.1 Develop quality, reliable, sustainable and resilient infrastructure, including regional and transborder infrastructure, to support economic development and human well-being, with a focus on affordable and equitable access for all</td>
<td>9.1.1 Proportion of the rural population who live within 2 km of an all-season road 9.1.2 Passenger and freight volumes, by mode of transport</td>
</tr>
<tr>
<td>9.2 Promote inclusive and sustainable industrialization and, by 2030, significantly raise industry’s share of employment and gross domestic product, in line with national circumstances, and double its share in least developed countries</td>
<td>9.2.1 Manufacturing value added as a proportion of GDP and per capita 9.2.2 Manufacturing employment as a proportion of total employment</td>
</tr>
<tr>
<td>9.3 Increase the access of small-scale industrial and other enterprises, in particular in developing countries, to financial services, including affordable credit, and their integration into value chains and markets</td>
<td>9.3.1 Percentage share of small-scale industries in total industry value added 9.3.2 Percentage of small-scale industries with a loan or line of credit</td>
</tr>
<tr>
<td>9.4 By 2030, upgrade infrastructure and retrofit industries to make them sustainable, with increased resource-use efficiency and greater adoption of clean and environmentally sound technologies and industrial processes, with all countries taking action in accordance with their respective capabilities</td>
<td>9.4.1 CO₂ emission per unit of value added</td>
</tr>
<tr>
<td>9.5 Enhance scientific research, upgrade the technological capabilities of industrial sectors in all countries, in particular developing countries, including, by 2030, encouraging innovation and substantially increasing the number of research and development workers per 1 million people and public and private research and development spending</td>
<td>9.5.1 Research and development expenditure as a percentage of GDP 9.5.2 Researchers (in full-time equivalent) per million inhabitants</td>
</tr>
<tr>
<td>9.a Facilitate sustainable and resilient infrastructure development in developing countries through enhanced financial, technological and technical support to African countries, least developed countries, landlocked developing countries and small island developing States</td>
<td>9.a.1 Total official international support (official development assistance plus other official flows) to infrastructure</td>
</tr>
<tr>
<td>9.b Support domestic technology development, research and innovation in developing countries, including by ensuring a conducive policy environment for, inter alia, industrial diversification and value addition to commodities</td>
<td>9.b.1 Percentage of medium and high-tech manufacturing value added in total value added</td>
</tr>
<tr>
<td>9.c Significantly increase access to information and communications technology and strive to provide universal and affordable access to the Internet in least developed countries by 2020</td>
<td>9.c.1 Percentage of population covered by a mobile network, by technology</td>
</tr>
</tbody>
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Targets and Indicators for SDG 9: Targets specify the goals while indicators represent the metrics to track whether these targets are achieved (UN 2015).
Map of LAPSSET and the Central Corridor in East Africa: Note: This map does not show the East Africa Crude Oil Pipeline in Tanzania, which is planned to follow the Central Corridor route from Uganda to Singida, where it will diverge and proceed to the Port of Tanga north of Dar es Salaam.
Compliance with Environmental and Social Safeguards by Large Infrastructure Projects: The Case of Lamu Port and Associated Road Infrastructure Projects Implemented under LAPSSET

Philip M. Omenge1*, Dr. Justus B. Aungo, PhD2, Zachary K. Maritim3, James Okumu3 & Siro Abdallah3

1 Egerton University, P. O. Box 536 - 20115, Egerton-Njoro, Kenya.
2 University of Nairobi, P. O. Box 83732-80100, Mombasa, Kenya.

* Correspondence ORCID ID: https://orcid.org/0000-0001-8847-5067; email: philipomenge@gmail.com

ABSTRACT

The study evaluated compliance with environmental and social safeguards during the implementation of Lamu Port and associated road infrastructure projects implemented under LAPSSET in Lamu County. The study employed a mixed-method approach in collecting primary and secondary data. This comprised of key informant interviews, focused group discussions, and field observations for primary data and document analysis of; i) the LAPSSET Corridor Feasibility Study report, ii) Strategic Environmental Assessment (SEA) report, and iii) the Environmental and Social Impact Assessment (ESIA) Reports for Lamu Port and associated infrastructure, ESIA’s of Lamu Port access road and Garsen-Witu-Lamu Highway. Descriptive statistics and geospatial analysis were used to synthesise and interpret the data collected. Results show that the project safeguards meant to deter alteration of marine water quality, pollution of marine flora and fauna, protection of livelihoods of the fishing community, preservation of tangible and intangible heritage were not implemented. The study further established that compensation of project-affected persons pre-determined as exposed to effects of the project like landowners for loss of arable land was done while loss of grazing fields and watering grounds for pastoralists were not compensated. Overall, the location of the chosen borrow pit sites for the extraction of construction materials was inappropriate with about 25% of the borrow pits being in close proximity to homesteads. Rehabilitation of borrow pits was minimal; less than 10% of disused borrow pits had been rehabilitated. Inadequate budget and lack of
enforcement by government agencies were cited as the main cause of poor compliance.

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**INTRODUCTION**

Environmental and social safeguards are a global normative standard that is meant to ensure the assessment and management of environmental and social risks of a proposed project, inform and consult with stakeholders and compensate project-affected persons (PAPs) (Dann & Riegner, 2019). Safeguards support the integration of environmental and social risks into project decision-making and provide a framework for consultation and disclosure (Passoni et al., 2016). Environmental and social safeguards therefore are critical measures designed to prevent and mitigate undue harm from development activities (World Bank, 2005). Such measures include addressing environmental and social issues relating to a proposed development, respecting the rights of indigenous and local communities, stakeholder participation, and enhancing local social benefits (Rajamani, 2011). The procedural component of the safeguards provides for consultation with PAPs, while distribute component of the safeguards provides for equitable sharing of project benefits with those affected by the project (Kirchherr et al., 2017). Proponents of projects have a greater responsibility of managing environmental and social risks associated with their projects and hence must fully implement the national environmental and social safeguard framework of the host country (Passoni et al., 2016).

Large-scale infrastructure projects more often than not generate significant environmental and social issues which negatively affect the timely implementation of the projects (Fadhil et al., 2018). Such projects attract serious environmental and social concerns from conceptualisation through implementation (Eccleston and March 2011). Large-scale infrastructure projects often result in sociocultural, economic, and environmental impacts exacerbated by the loss of livelihoods brought about by the alteration of the environment and the repossession of land (Onditi, 2018). Whereas social safeguards provide for consultation of PAPs throughout the life of the project while ensuring PAPs benefit from the project (World Bank, 2016), large-scale infrastructure projects in...
many cases, are faced with the challenge of inadequate consultations (Kamau & Khsiebi, 2022; Onditi, 2018; Le, 2016). Poor and inadequate consultations with PAPs contribute to delays in the timely implementation of large infrastructure projects (Kamau & Khsiebi, 2022) and results in legal battles brought about by land rights, fair allocation, and compensation (Onditi, 2018).

The Lamu Port South-Sudan Ethiopia (LAPSSET) Corridor is a formidable megaproject (Kamau & Khsiebi, 2022; Aalders et al., 2021; Mahn et al., 2021: Fadhil et al., 2018) designed to connect Kenya, South Sudan, and Ethiopia and eventually form a land bridge across the entire Great Lakes region from Eastern Coast of Africa (Lamu) to Western Coast (Douala) Cameroon (Enns, 2017). This megaproject consists of the deep-sea port at Manda Bay, Lamu County in Kenya, a network of highways, oil pipelines, standard gauge rails, resort cities, international airports, and multipurpose High Grand Falls Dam (Le, 2016; DCP Kenya, 2019; Aalders, 2021). Whilst the LAPSSET programme was subjected to Feasibility Study (Le, 2016), Strategic Environmental Assessment (SEA) (DCP Kenya, 2019) and Environmental and Social Impact Assessments (ESIA) for its project components (Le, 2016), its implementation has in the past run into headwinds (Kamau & Khsiebi, 2022).

Implementation of the programme components has not been without legal battles (Chome, 2020., DCP Kenya, 2019; Onditi, 2018; Kitu Cha Sheria, 2014) due to myriad issues and concerns including environmental sensitivities and effects on local communities (DCP Kenya, 2019; Fadhil et al., 2018; Le, 2016). Implementation of LAPSSET Corridor components is at different stages of completion (Aalders, 2021). The first three berths of the Lamu deep sea port will be complete by the end of year 2021, pending the completion of associated support infrastructure (Kamau & Khsiebi, 2022). Also completed are the dual carriage port access road and C112- Garsen-Witu-Lamu Highway, critical road infrastructure for evacuating cargo in and out of the port. The implementation of safeguards documented in the Environmental and Social Management Plan (ESMP), an output of ESIA of these projects, is meant to mitigate against adverse environmental and social impacts of projects implemented under the LAPSSET Corridor. Yet, there has not been any detailed study conducted to document how proposed safeguards for LAPSSET projects were being implemented. Against this backdrop, this study sought to contribute to bridging this knowledge gap.

**MATERIALS AND METHODS**

**Study Area**

The study was conducted within the LAPSSET Corridor Programme core area in Hindi and Basuba Wards of Lamu County in Kenya. It covered three LAPSSET Corridor projects, specifically the first three berths of Lamu port and associated infrastructure, the Lamu Port Access Road, and the Garsen-Witu-Lamu Highway. The study area also covered the borrow site for construction materials for the three projects. Lamu Port is located within Basuba Ward in Manda Bay, home to a diversity of marine species (Shinn & Clarke, 2020). Lamu Port Access Road is located within Basuba Ward and forms the boundary between the Hindi and Mukoye Locations. Garsen-Witu-Lamu Highway traverses through the two wards of Hindi and Basuba; materials borrow sites were located within the Hindi, Mkunumbi, and Witu areas (Figure 1).
Study population and sampling design

The sampling design was the technique or procedure adopted in selecting the study sample (Kothari, 2004). The sampling procedure used in this study involved defining the study population, determination of the sampling frame, selecting the sampling technique, determination of the sample size and executing the sampling process. The sampling design ensured the study sample was not haphazardly selected in order to avoid and or minimise bias as much as practically possible (Bluman, 2017). The study sample for this study was from primary and secondary sources.

Elements of the study population from primary data sources were State Agencies (National and County level) relevant to the implementation of the LAPSSET Corridor Programme, Non-Governmental Organizations (NGO) active within the study area, Project Affected Persons (PAPs) and Beach Management Units (BMU). Elements of the study population from secondary data sources were ESIA reports for projects implemented under LAPSSET.

The sampling frame from primary data sources comprised of Government Officers responsible for environmental and safeguards matters from...
LAPSSET Development Authority (LCDA), National Environment Management Authority (NEMA), Kenya Wildlife Service (KWS), National Museums of Kenya (NMK), Kenya National Commission for UNESCO (KNATCOM), Kenya Ports Authority (KPA), Kenya National Highway Authority (KeNHA), Kenya Forest Service (KFS), County Commissioner (CC) Lamu, and Deputy County Commissioner (DCC). Respondents from NGOs responsible for environmental and safeguards matters, specifically WWF-Kenya, Save Lamu and Coastal Oceans Research and Development in the Indian Ocean (CORDIO) East Africa. Representatives of PAPs, specifically, Pastoralists, Farmers and Business Communities, and Contractors of the three LAPSSET projects and suppliers of construction material. BMU officials, specifically from Munguni BMU, Kipungani BMU, Matondani MBU, Shela BMU and Amu BMU. The sampling frame from secondary data sources comprised ESIA reports for Lamu Port and associated infrastructure, Lamu Port Access Road and Garsen-Witu-Lamu Highway. A purposeful sampling technique was used to select the study sample from primary data sources (Kothari, 2004). Purposeful sampling sampled Government Officers responsible for environmental and safeguards matters, respondents from NGOs responsible for environmental and safeguards matters, and representatives of PAPs and BMU officials. This sampling technique ensured information-rich sample for the purposes of the study was obtained (Sandelowski, 2000). The entire study population (N) for secondary data sources formed the sample size (n) to ensure sample size sufficiency that reflected variations in the study population.

Primary Data Collection

Key informant interviews and FGDs were employed to collect qualitative data on the status of implementation of safeguards for the first three berths of Lamu port and associated infrastructure, the Lamu Port Access Road and the Garsen-Witu-Lamu Highway. Field observations at material borrow sites and discussions with land leasers of borrow sites and operators of borrow pits generated both qualitative and quantitative data on the status of implementation of safeguards for material borrow sites. Key informant interviews and FGDs collected qualitative data on the implementation status of safeguards that were designed to protect PAPs and the local community from marginalisation while at the same time addressing sociocultural and political issues.

The data collected specified which safeguards had been implemented and which were yet to be implemented. Further information on safeguards proposed to protect the terrestrial and marine environment, archaeological, historical, and cultural sites and protection of material borrow sites were collected. Twenty-four key informant interviews and nine FGDs were conducted. The key informant interview technique was applied as described by Ali et al. (2013), while FGDs were conducted as described by Mishra (2016). Participants of the key informant interviews comprised State Agencies implementing the LAPSSET Corridor Programme, the County Government of Lamu and NGOs active within the study area. State Agencies representatives who participated in the key informant interviews were as follows: LCDA, NEMA, KWS, NMK, KNATCOM, KPA, KeNHA, KFS, CC) Lamu and DCC.

Data Collection

Data was collected from primary and secondary sources (Kumar, 2011). Primary data sources were key informant interviews, focused group discussions (FGDs), and field observations at material borrow sites, while secondary data sources were documents for LAPSSET Corridor Programme.
LAPSSET headquarters, BMU, specifically Munguni BMU, Kipungani BMU, Matondani MBU, Shela BMU and Amu BMU, Pastoralists, Farmers and Business Community, and Contractors of the three LAPSSET projects and their suppliers of construction material specifically ballast.

Field observations were carried out at material borrow sites in Hindi, Mkunumbi, and Witu. Borrow pits in each location were counted and their number was recorded. The location of each borrow pit was captured using a handheld Geographical Positioning System (GPS) device, and latitudes and longitudes were recorded. Information on operators of each borrow pit was obtained from landowners who had leased borrow sites, and their names were recorded. The acreage of each borrow pit was obtained from landowners who had leased borrow sites and was recorded. The status of use of the borrow pits, whether active or abandoned, was recorded. Land use adjacent to each borrow pit and its proximity to homesteads was recorded. The safety of each borrow pit, whether fenced off or not fenced off from unauthorised access was recorded. The rehabilitation status of each borrow pit, whether rehabilitated, rehabilitation in progress, backfilled, or not rehabilitated, was recorded.

Secondary Data Collection

Secondary data sources were documents for the LAPSSET Corridor, specifically Feasibility Study and SEA Study reports, ESIA Reports for the first three berths of Lamu Port and associated infrastructure, Lamu Port access road, and Garsen-Witu-Lamu Highway. Qualitative data on environmental and social safeguards proposed for implementation during the execution of the LAPSSET Corridor Programme as a whole and projects implemented under LAPSSET Corridor in specific was collected. Content analysis, an intensive data extraction method from secondary sources that generate an enormous amount of qualitative data, was used (Isaac & Micheal, 1995). Information was extracted on safeguards proposed to protect PAPs, specifically the fishing community, farming community comprising landowners and pastoralists, and the business community. Further, the safeguards were designed to protect both terrestrial and marine flora and fauna from adverse negative impacts of projects. Likewise, the safeguards were also to cushion the local community from marginalisation with respect to employment at the

RESULTS AND DISCUSSION

The aim of this study was to assess the status of the implementation of environmental and social safeguards documented in the ESMPs of the ESIA of three LAPSSET projects. Various safeguards were proposed in the ESMP for Lamu Port, associated road infrastructure projects and material borrow sites to protect PAPs from adverse negative impacts from the implementation of the projects. Identified PAPs were mainly the fishing community, which was organised in Beach Management Units (BMUs), the farming community comprising landowners and pastoralists, and the business community. Further, the safeguards were designed to protect both terrestrial and marine flora and fauna from adverse negative impacts of projects. Likewise, the safeguards were also to cushion the local community from marginalisation with respect to employment at the
Lamu Port and associated facilities due to a lack of required skills. With respect to archaeological, historical and cultural sites and local tourism, the safeguards proposed aimed at preserving local culture from dilution provide pathways for collecting and preserving artefacts encountered and preserving both tangible and intangible heritage while at the same time promoting, enhancing and diversifying. Table 1 is a presentation of safeguard measures that were to be implemented to mitigate the potential negative effects of the adverse impacts predicted.

Table 1: Safeguards proposed to mitigate predicted potential negative impacts of Lamu Port and associated infrastructure

<table>
<thead>
<tr>
<th>Thematic area</th>
<th>Identified Impacts</th>
<th>Proposed Safeguards</th>
</tr>
</thead>
</table>
| Water quality | Deterioration of marine water quality due to water column turbidity and sedimentation | • Installation of silt curtains to secure the marine construction area  
• Monitoring of marine water turbidity and sedimentation |
| Mangroves | Reduction of local mangrove cover due to mangroves clearing | • Re-planting of mangroves in other areas to replace the areas that are cut to pave the way for the project  
• Minimising acreage of mangrove to be cleared  
• Planting of mangroves in adjacent areas to replace cleared ones |
| | Destruction of fish spawning grounds due to mangroves clearing | |
| Fisheries | Loss of local fisheries due to degradation of fishery grounds (destruction of corals and seagrass beds) | • Minimising coral reef habitat loss by applying careful controls on boundaries during the dredging process  
• Financial compensation to fishers  
• Restoration of degraded coral reefs and seagrass beds |
| | Encroachment on local fishing grounds displacing artisanal fishers from traditional fishing grounds and landing sites | • Empowering local fishermen to move to deep waters by offering training on deep-sea fishing methods and provision of fishing gears and vessels that can enable them to venture into other more distant deep-water fishing grounds  
• Providing modern fish landing sites with adequate infrastructures such as power, access roads and cold rooms or ice-making plants to the local fishing community |
| | Encroachment on sea routes used by local fishers from Faza, Kizingitini, Matondoni, Kiunga, Mkokoni, Kiwayu, Dodori and Chandani, especially Mkanda fisher due to dredging of the Manda channel | • Demarcating safe passageways for small fishing vessels away from those used by ships destined in and out of the Lamu Port  
• Allocation of specific sea routes for small vessels used by the local community |
| | Encroachment on community marine conservation area- Iweni at the entrance of the Manda channel due to dredging | • Shortening the dredging period to minimise associated negative impacts  
• Dredging and offshore dumping operations to be during dry periods when no buoyant water would enhance surface transport of the turbid discharge |
<table>
<thead>
<tr>
<th>Thematic area</th>
<th>Identified Impacts</th>
<th>Proposed Safeguards</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Landownership</strong></td>
<td>Restriction and/or loss of sea routes and access to mangrove resources in Shella, Magogoni and Ndununi areas during port construction</td>
<td>• Negotiation with the affected fishing community for appropriate compensation</td>
</tr>
<tr>
<td></td>
<td>• Allocation of specific sea routes for small vessels</td>
<td></td>
</tr>
<tr>
<td><strong>Archaeological, historical sites</strong></td>
<td>Displacement of landowners at Kililana area for Port related infrastructure construction</td>
<td>• Preparation and implementation of a Resettlement Action Plan (RAP)</td>
</tr>
<tr>
<td></td>
<td>• Livelihood restoration measures for affected landowners</td>
<td>• Monitoring compensation for land compulsory acquired for the project</td>
</tr>
<tr>
<td></td>
<td>• Protection of the world heritage site</td>
<td></td>
</tr>
<tr>
<td></td>
<td>• Conservation of traditional cultures of the Lamu people</td>
<td></td>
</tr>
<tr>
<td><strong>Induced risks</strong></td>
<td>Competition for opportunities due to the influx of migrant workers</td>
<td>• Employment priority to be given to local people</td>
</tr>
<tr>
<td></td>
<td>• Priority training for local people to ensure they are competitive</td>
<td>• Provisions of scholarships for local youths to fast-track their training</td>
</tr>
<tr>
<td></td>
<td>• HIV/AIDS Programs for construction Voluntary Council and Testing (VCT)</td>
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<tr>
<td></td>
<td>• Peer Counseling</td>
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<td>• Availability of VCT services</td>
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<tr>
<td></td>
<td>• HIV/AIDS outreach programs during operation</td>
<td></td>
</tr>
<tr>
<td><strong>Marine Water Quality</strong></td>
<td>Oil spills</td>
<td>• Upscale use of OSMAG and related oil spill contingency plans currently in Mombasa to cover Lamu Port</td>
</tr>
<tr>
<td></td>
<td>• Demarcate passageways for small fishing vessels away from those used by ships</td>
<td></td>
</tr>
<tr>
<td></td>
<td>• Training of fishing boat coxswains on navigation and sea safety</td>
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**Marine Water Quality**

To safeguard the quality of marine water within Manda Bay and its environs, the ESMP proposed that the site where the first three berths of the Lamu port were to be constructed were to be secured with silt curtains within a defined radius from the active construction site. Further, monitoring of specific
water quality parameters was to be carried out at pre-determined locations and at a prescribed frequency throughout the construction period to check the effectiveness of deployed silt curtains in mitigating the spread of turbidity plumes. Key Informant Interviews with BMUs and Save Lamu stated clearly that no silt curtains were deployed nor water quality monitoring was carried out. Further, CORDIO East Africa stated that proposed mitigation measures were not implemented, and if they were, the measures were ineffective.

An interview with LCDA stated clearly that no water quality monitoring was carried out. Lack of and or poor implementation of mitigation measures that were proposed in the ESMP meant that marine waters within Manda Bay were directly exposed to pollution. This finding was consistent with that of Thoya et al. (2022), who, in their study of the development of the ports of Lamu and Bagamoyo, concluded that port development would degrade ecosystems and reduce water quality due to dredging and port operations. In the absence of appropriate measures to mitigate the spread of turbidity plumes due to dredging activities, a reduction in marine water clarity was likely due to increased turbidity (Manap & Voulvoulis, 2016). Turbidity increases sediment loading hence shifting marine water quality (Orth et al., 2006). Suspended sediments reduce primary productivity by limiting light penetration into the water column (Olalekan, 2020). Increased sedimentation results in the degradation of local seagrass (Walker & McComb, 1992; Duarte, 2002; Short, 2003) and contributes to the loss of seagrass vegetation (Erfemeijer & Lewis 2006). While seagrass vegetation enhances carbon burial and preserves sediment carbon stocks (Marbà et al., 2015, p. 299), its loss leads to erosion of carbon stores (Marbà et al., 2015, p. 301) hence negating the deployment of blue carbon strategies (Marbà et al., 2015, p. 296). While disposal of dredge spoil poses a significant challenge, poorly planned and managed dredging can result in the death of coral reefs (Olalekan, 2020).

**Marine Flora and Fauna**

The construction of Lamu port and allied infrastructure had the potential to negatively affect marine flora and fauna. Consequently, it was proposed that marine flora and fauna were to be protected from adverse impacts of port construction activities by the installation of silt curtains during dredging works. The silt curtains were to be deployed around the working area to contain and or minimise the dispersal of turbidity plumes. Other safeguard measures proposed included the use of intrinsic dredging techniques, the selection of a short dredging period in relation to tidal currents, the time of the year, and the dredging period. Likewise, dredging and offshore dumping operations were to be done during dry periods when marine waters were less buoyant.

The BMU members from Mungini BMU, Kipungani BMU, Matondani MBU, Shela BMU and Amu BMU) described the state of marine flora and fauna. Many from the fishing community indicated that these safeguards were either not implemented or, if they were, then the safeguards were not adequate; hence their performance in protecting marine flora and fauna from adverse impacts was poor. Our findings explain and support the finding of previous studies carried out by Kamau and Khiebi (2022), Thoya et al. (2022) and Wanderi (2019). In their research, Kamau and Khiebi (2022, p. 62) noted that local people reported dredging to have inhibited local fishermen from accessing the deep sea while it destroyed their traditional fishing grounds; it polluted the ocean and destroyed corals. This could only happen in a scenario where safeguard measures were not deployed. Thoya et al. (2022, p 7) documented that the development of Lamu and Bagamoyo ports caused the degradation of coral reefs and mangroves, while the dredging was done at the port area and channel resulted in increased sedimentation, which most likely contributed to coral reef degradation and damage in the vicinity of Lamu and Bagamoyo Ports.

Wanderi (2019) documented that the initial impacts of the Lamu Port development had started to be noticed and were now being felt in the fragile marine ecosystem. Wanderi maintained that dredging and deepening of the channel coupled with the clearing of mangroves and reclamation of fishing areas, fish spawning grounds, and fish landing sites had not only increased the danger of violent marine waves that was disturbing marine life breeding patterns but also threatened marine flora and fauna as a whole, denied local community their
livelihoods besides threatening the balance between culture and nature (Wanderi, 2019, p. 19). Dredging reduced the clarity of marine water (Pastor et al., 2020) due to increased turbidity and created sediment plumes (Todd et al., 2014, p. 4-5) which negatively impacted marine flora and fauna.

Mangrove ecosystems were to be shielded from adverse impacts by minimising cleared areas and replacing all cleared mangroves through targeted mangrove planting in selected adjacent areas. This safeguard was implemented. Only 1.5 hectares of the projected 2 hectares were cleared. Further, both KFS and local CSOs were actively involved in mangrove planting in adjacent creeks. However, our finding on implementing this safeguard differed from that reported by Wanderi (2019), who stated that large swathes of mangrove forests were cleared during the construction of Lamu Port.

**Fishing Community**

Besides farmers and pastoralists, another group of PAPs that was identified was the fishing community, notably those who derived their livelihoods from fishing activities and fish value addition. The fishing community was to be cushioned from adverse impacts of the construction of the first three berths of Lamu Port and associated infrastructure project by first being monetarily compensated for lost livelihoods, being enabled to explore alternative and new fishing sites in deep sea through targeted training, provision of modern fishing equipment, modernisation of landing sites and construction of fishing ports. Our findings indicated that none of these safeguards had been implemented.

During the FGDs, all BMU officials who participated categorically stated that the lack of implementation of these safeguards continuously impacted negatively on the fisherfolk economically, socially and their overall wellbeing. Each BMU stated that their livelihoods were diminishing as their daily fish catch had dwindled. Findings from earlier research on the impacts of LAPSSET projects on the fishing community done by Chome (2020), Le (2016), Thoya et al. (2020) and Fadhil et al. (2018) were consistent with our findings. However, finds from the work by Wanderi (2019) differed from our findings. Chome (2020) noted that negative impacts that could arise from the implementation of LAPSSET projects, if not avoided, eliminated, or appropriately mitigated had the potential to wipe out not only Lamu’s ecological diversity but also the livelihoods of its indigenous population. Likewise, Le (2016) noted that while the livelihoods of local communities in Lamu heavily depend on natural resources, if no proper measures are taken, these natural resources could be severely threatened by the Lamu Port construction.

Equally, Thoya et al. (2022, p 7) who studied the development of the ports of Lamu in Kenya and Bagamoyo in Tanzania, found out that these two ports were located were essential fishing grounds. Furthermore, these ports displaced fishers from their traditional fishing grounds and forced them to find alternative fishing grounds. Thoya et al. (2022) concluded that the development and implementation of the two ports negatively impacted the marine environment, polluted fishing grounds and reduced the livelihoods of the fishing community. Le (2016) documented that Lobster Fishermen in Lamu had complained of a sharp decline in catch from a high of 20 to 30 kilograms to a record low of 1.5 kilograms, indicating a sharp decline in fish catch due to the development of Lamu port. Fadhil et al. (2018) concluded that the environmental impact of the LAPSSET project was costly in terms of pollution of the sea and other facets of the environment. Our findings, however, differed from that of Wanderi (2019).

According to Wanderi, the assertion by BMUs that they had neither received targeted training nor been provided with modern fishing equipment was inaccurate. Wanderi (2019) observed that in response to litigations concerning LAPSSET and in the spirit of addressing current and future concerns, LAPSSET Authority had not only mainstreamed community participation in their projects but also collaborated with local BMUs. The collaboration had seen the role of training programmes for artisanal fisherfolk and provided them with modern fishing gear (Wanderi, 2019, p. 20). Marine environments support diverse and significant fishing communities’ the majority of whom fishing is their lifetime source of livelihood (Rees et al., 2013). Marine fisheries not only provide employment to millions of people but also
significantly contribute to food security (Bennett et al., 2021).

Coastal communities in Kenya depend on fisheries and other coastal resources for their livelihoods, particularly in Lamu, Kilifi and Kwale Counties (Ochiewo et al., 2020, p.106). Reduced access to coastal fishing areas is increasingly being experienced as a result of an array of issues, including port development (Rodden, 2014; Souza & Oliveira, 2010). Whereas coral reefs and mangroves are the most preferred fishing habitats for the Lamu fishing community, most of these fishing habitats are within a ten-kilometre radius of Lamu Port (Thoya et al., 2022). Considering that port development has a direct negative effect on marine habitats, in the absence of implementation of appropriate mitigation measures, it therefore follows that the development of the Lamu port has the potential to directly affect fish habitats negatively.

Farmers and Pastoralists

To safeguard potential impacts that could arise from the compulsory acquisition of land to construct Lamu port and associate infrastructural projects under LAPSSET, it was proposed that all affected landowners be compensated. To inform who was to be affected and what and how the affected parties were to be compensated, a Resettlement Action Plan (RAP) was first to be prepared and then implemented. Our findings showed that, indeed, the RAP was prepared and implemented as was envisaged. The RAP worked well in ensuring displaced landowners were compensated for the land they lost to the project. All affected landowners had been compensated; however, women and children displaced at the household level were disadvantaged when the head of the household who is mainly male spent the proceeds from the compensation for other purposes besides resettling the affected family members.

Onditi (2018) observes that the livelihoods of most of the communities living along the LAPSSET Corridor are nature-based and hence revolve within the confines of pastoralism, fishing, hunting, gathering, eco-tourism, and substance farming. This notwithstanding, it is argued that LAPSSET projects have continued to create anxiety among locals on potential forced resettlements while opening loopholes for land grabbing (Le, 2016, p.118; Onditi, 2018, p. 5; Chome, 2020, p.317). At the same time, displaced landowners were compensated under RAP. Pastoralist communities who lost access to traditional livestock grazing and watering areas were not compensated as the RAP was silent on pastoralist compensation. This finding mirrors that of Chome (2020), who alluded that LAPSSET had generated diverse anticipations that had precipitated socio-economic challenges that had contributed to farmer-herder conflicts over water and land-based resources. LAPSSET infrastructure projects are viewed from the pastoralist eye as an obstacle to the livelihoods of pastoralists and hence the reason for the chaotic movement of pastoralists that is creating conflict between pastoralists and infrastructural mobility (Aalders, 2020).

It is, however, argued that if designed differently, LAPSSET presents an opportunity to improve the livelihoods of the pastoralist community through the modernisation of the livestock industry and creating linkages to lucrative markets (Onditi, 2018, p. 7). In light of environmental and social safeguards, deliberate efforts have to be made to minimise project social conflicts (Mohamad et al., 2022) by embracing a culture of continuous stakeholder engagement and meaningful consultations with the aim of addressing emerging challenges as the implementation of LAPSSET progresses.

Local Community Marginalization

Disproportionate competition between the already economically marginalised and poorly educated local community and incoming economic migrants could further marginalise the local community. To mitigate this, targeted training for youths from the local community was to be initiated and sustained through the LAPSSET project cycle to build the capacity of the local community to be competitive in the job market while at the same time cushioning locals from marginalisation with respect to employment due to lack of pre-requisite skills. This safeguard was implemented through the operationalisation of the LAPSSET Corridor Scholarship Scheme for local community youths. Through this scheme, local youths received funding to pursue education and training in tertiary institutions. However, beneficiaries of the
scholarship scheme who had graduated from various institutions of higher learning were yet to secure employment in the new port and associated facilities.

Findings from previous studies by Chome (2020) and Aalders (2020) concur with our findings. Chome (2020) documented that students from Lamu had benefited from government scholarships courtesy of LAPSSET in their preparation to take up future employment opportunities that were to be generated by LAPSSET projects. Aalders (2020) stated that LAPSSET was providing incentives not only to semi-nomadic pastoralists to modernise but most importantly, to mobilise capital that would spur employment opportunities for educated children from pastoralist communities.

**Terrestrial Flora and Fauna**

Construction of road infrastructure projects under LAPSSET was predicted could negatively affect terrestrial flora and fauna. To mitigate the potential negative impacts on terrestrial flora and fauna, targeted planting of trees in public spaces was to be done to offset those that could be lost during the construction of the two roads and parts of the Lamu port. Further, the establishment and gazettement of wildlife corridors were envisaged to safeguard wildlife movement. Whereas these safeguards were supposed to be implemented simultaneously with project implementation, none of them had been implemented. This finding concurs with the findings from the studies of Owino (2019) and Mkutu (2021). Owino (2019) investigated the effects of LAPSSET on the communities in Isiolo County and found that the Isiolo-Marsabit-Moyale Road, one of the highways constructed under LAPSSET, was a physical barrier that negatively affected the movement of wild animals from conservancies in neighbouring counties of Samburu and Laikipia to those in Isiolo. Samburu, Isiolo, and Laikipia Counties are home to a significant number of community wildlife conservancies (Mkutu, 2021).

Owino’s findings alluded that the Government of Kenya failed to set aside wildlife animal corridors as a safeguard measures for the safe movement of wildlife (Owino, 2019, p. 55). Failure to gazette wildlife corridors has resulted in depressed movement and dispersion of wildlife resulting in a declining population of buffalos at the Buffalo Springs National Reserve. Likewise, Mkutu (2021) observed that the Isiolo-Moyale Road had blocked elephant movements near the National Buffalo Reserve. Restricted movement of the animals will, over time, lead to inbreeding and weakening of the gene pool, a consequence of interfering with access to water sources, breeding, and lactating sites (Mkutu, 2021, p. 31). Like many infrastructure corridors, LAPSSET is a corridor encompassing a network of transport infrastructure projects whose development was to meet growing human population needs; however, the project faced the difficult challenge of encroaching on traditional wildlife areas (Okita-Ouma et al., 2016).

Manyara (2021) observed that implementing Lamu Port and other associated infrastructure projects under LAPSSET could potentially result in environmental and social impacts that could negatively affect wildlife and biodiversity in general. Manyara’s concern was the institutional and capacity challenges faced by the institution mandated to monitor and coordinate environmental matters NEMA. Manyara maintains that such challenges have curtailed NEMA’s effectiveness in enforcing mitigation measures to minimise potential negative impacts. Lack of oversight from NEMA was arguably the underlying reason behind the poor or no implementation of safeguards proposed to mitigate negative impacts from various LAPSSET projects, including terrestrial flora and fauna. Bastille-Rousseau et al. (2018) state that the development of transport corridors such as LAPSSET negatively impacts wildlife and their ecosystems. Whereas it is not possible to eliminate the ecological impacts of infrastructure projects on wildlife, mitigation of the impacts is critical in reducing their effects on ecological systems (Clevenger & Huijser, 2011).

Road construction and use affect not only biotic components of the ecosystem but also abiotic components and ecological systems (Coffin, 2007; Seiler, 2001). In terrestrial ecosystems, the ecological effects of roads resonate substantial distances from the actual road, besides creating habitat fragmentation and ensuing fragmentation (Trombulak & Frissell, 2000). Road development has both direct and indirect effects on biota.
(Bennett, 1991; Trombulak & Frissell, 2000). Roads directly affect plants and animal populations by obliterating the ecosystems in their path (Coffin, 2007; Trombulak & Frissell, 2000). Roads, once constructed and in use, become barriers and filters to the movement of some animals (Richard et al., 1998), causing fragmentation (Underhill & Angold, 2000), making areas adjacent to infrastructure hostile to wildlife as they are disturbed environments (Seiler, 2001; Trombulak & Frissell, 2000). However, biodiversity offsets enhance environmental values in scenarios where development is planned despite obvious detrimental environmental impacts (Kiesecker et al., 2010).

Archaeological Historical and Cultural Sites

LAPSSET projects, from their sheer size and footprint coupled with proximity to Lamu World Heritage Site, were seen as a major threat to the existence of the World Heritage site besides potential negative impacts on both the tangible and intangible heritage. Comprehensive Heritage Impact Assessment (HIA) and Archeological Impact Assessment (AIA) for all sites for projects under LAPSSET were to be carried out, and findings and recommendations from the assessment studies were implemented. Further, procedures and protocols were to be developed and documented to guide the collection, conservation, and protection of artefacts encountered during project implementation. This could protect archaeological, historical, and cultural sites and our heritage as the LAPSSET project implementation progresses. Whereas HIA was carried out, the recommendation that its findings be adopted as an annex to ESMP of the ESIA report for the Lamu port to ensure implementation of recommendations was not done. International best practices envisage that the implementation of large-scale infrastructure projects ensures the protection and preservation of tangible and intangible cultural heritage (Mohamad et al., 2022, p.231).

However, the study found that the safeguard on AIA was not implemented; and no AIA was carried out for any of the sites of the three LAPSSET projects. Further, no procedures were developed nor protocols put in place that contractors could deploy to collect, preserve and hand over to NMK encountered artefacts. Key informant interview with the Curator Lamu Museum revealed that archaeological remains were uncovered during the opening up of the port access road, including building foundations, tombs, and human skeletons. In the absence of an AIA prior to project implementation and documented procedures and protocols on the handling of an encountered material of archaeological importance, the encountered archaeological material could not be secured and preserved for posterity. These findings, to a large extent, explain the findings of works by Wanderi (2019), Bekker et al. (2015) and Kamau and Khiebi (2022). Wanderi (2019) concluded that LAPSSET was a major threat to the conservations of Lamu Old Town. Kamau and Khiebi (2022) describe the fears of local people regarding the consequences of Lamu Port development ranging from cultural assimilation and dilution as a result of the influx of migrant workers from other parts of the country into Lam to the eventual destruction of Lamu Town as UNESCO World Heritage Site.

These fears can be attributed to the lack of implementation of mitigation measures to safeguard both the tangible and intangible heritage. While confirming that a Heritage Impact Assessment was carried out prior to the implementation of the LAPSSET project, Bakker et al. (2015) cautioned that the LAPSSET project had many direct and indirect potential impacts on the setting of the World Heritage property and on its cultural and natural heritage. Further, Wanderi (2019) observed that the failure of the proponent of LAPSSET to fully disclose possible negative impacts of LAPSSET on the local culture and on the outstanding universal value of the Lamu World Heritage site and the meaningful involvement of the local community in the design phase of the project resulted in the project being challenged in court.

Sociocultural and Political Issues

The ESMP for the construction of the first three berths of Lamu Port and associated infrastructure was proposed to safeguard sociocultural and political issues as well as a well-defined benefit-sharing system with the community. To implement the compensatory mechanism, the Lamu Port Steering Committee was to be instituted and involved in the decision-making process, a clear policy on community consultation and involvement

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was to be developed, natural resource-related conflicts were to be addressed before initiating any project, and establishment of community grievance redress mechanism and integration of community development projects. Our findings were that none of these safeguards had been implemented. This finding concurred with that of Kamau and Khsiebi (2022) and Thoya et al. (2022). Kamau and Khsiebi (2022), reporting on how local people were involved in participatory communication, found that local community involvement in participatory communications needs assessment was minimal. Thoya et al. (2022), in their work, found out that the Lamu fishing community leadership felt that they were excluded from Lamu port governance issues as they were not adequately consulted and fully involved during the planning process for the port.

**Borrow Sites for Construction Materials**

Gravel, ballast, and boulders used in the construction of Lamu Port and associated road infrastructure projects were sourced from local farms in the Hindi area and its neighbourhood. The ESMP stipulated that borrow pits be located away from human settlement areas, be fenced to stop authorised access and be rehabilitated once material extraction was complete to protect landowners from adverse negative impacts of gravel and other construction materials extraction from the borrow site. Contrary to the safeguards requirement of locating borrow pits away from human settlement areas, 25% of the borrow pits in Hindi were located in close proximity to settlement areas as shown in figure 2. This clearly showed that this safeguard was not implemented as envisaged. A borrow pit located adjacent to a residential area was a safety hazard, a security risk, and a potential mosquito breeding area as it collected and retained stormwater whenever it rained. Local residents were exposed to the risk of incidences of unsuspecting people and livestock falling into the open borrow pits. Also, the borrow pits were potential hideouts of criminals and those preparing to conduct acts of lawlessness. Due to this, the security and safety of local residents were being compromised. When it rained, the open borrow pits collected stormwater runoff which could accumulate to form small ponds. The ponds were not only a safety risk to local residents and livestock alike but also mosquito breeding areas.

**Figure 2: Land use adjacent to borrow pits**

None of the nine borrow pit operators had fenced any of the open borrow pits (both those active and inactive) from unauthorised access. This exposed local residents and their livestock to the risk of falling into the open pits. Whereas material extraction was concluded in most of the borrow pits, less than 10% of the borrow pits in Hindi and Witu areas were fully rehabilitated (Figure 3 and Figure 4).
4). The lack of rehabilitation of disused borrow pits denied the land owner the opportunity to make economic use.

**Figure 3: Rehabilitation status of borrow pits for each operator**

![Graph showing rehabilitation status](image)

**Figure 4: Distribution of borrow pits in Hindi, Mkunumbi and Witu areas and their status of rehabilitation**

![Map showing distribution](image)

**Source:** generated from field data
The ambitious plan of successive governments of the Republic of Kenya to expand, upgrade and modernise the country’s road infrastructure has, over time seen an increase in demand for road construction material all over the country (Kiptum & Ndiema, 2019). The ongoing implementation of LAPSSET corridor projects which include, among others, a network of highways (Le, 2016; Aalders et al., 2021; Mkutu, 2021), has resulted in increased demand for gravel, ballast, and other road construction materials. While borrow pits are sources of road construction materials such as gravel and aggregates (Steenbergen, 2017), an increase in road construction activities in developing countries has seen an increase in abandoned borrow pits and associated risks (Nwachukwu et al., 2017). Whereas abandoned borrow pits can be of some incidental positive use such as holding stormwater that can be useful in dry spells for watering livestock, among other domestic uses, such borrow pits pose serious threats such as the drowning of children playing around them (Kiptum and Ndiema, 2019).

CONCLUSIONS

The research provided insights into the state of implementation of safeguards for the first mega infrastructure projects being implemented in Kenya under the LAPSSET Corridor Programme. Result deduced poor or no implementation of the safeguards. This situation can be concluded to have been brought about by various factors including (i) poor or lack of supervision and enforcement from relevant agencies such as NEMA, LCDA, KPA, KFS, KeNHA and NMK; (ii) lack of environmental and social consciousness of the contractors; and (iii) lack of adequate budget specifically for safeguards implementation.

ACKNOWLEDGMENTS

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Voicing participation in large-scale infrastructural projects: A contextualization of participatory communication in Lamu Port, Kenya

Michael Mwangi Kamau1* and Alex Kubasu Khsiebi2

1Department of Journalism and Mass Communication, Faculty of Arts and Social Sciences, University of Nairobi, Kenya.

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This study argues that, although public participation is a mechanism of connection and collective struggle, its practice lacks strong operational foundation. A re-conceptualization of participation as a planning and social reform tool is expounded through examination of how project affected people in the Kenya Lamu Port project, voiced their participation concerns. Lamu Port is a key infrastructural project in the Lamu Port - South Sudan - Ethiopia Transport Corridor Project (LAPSSET). LAPSSET is one of the biggest and costliest projects in Africa. It suffered major completion delay and by November of 2021, only three of the 32 berths were functional. Four objectives were pursued: describe how the local people understand participatory communication, determine what people ‘voice’ their participatory concerns, expound how the local people voice their participation concerns and explain the challenges of participation. A mixed method approach was used where key informants and a sample of 385 residents were studied. Data were analyzed using descriptive techniques and thematic analyses. Key findings were that, it is not the quantity of participation that matters in safeguarding community and individual interests, but the quality and voicing strategies that are adopted by the participants. Similarly, not all communication and participation agenda by projects implementers are perceived as genuine and reflective of community’s’ interest. It is recommended that, people who fight for community rights should be recognized and empowered via mechanism such as legislations and regulations. Participation gives a community surveillance power on matters that affect it and is an encounter process.

Key words: Communication style, participatory communication, social influence, infrastructural project

INTRODUCTION

All people are called to take full part in their affairs (Cornwall, 2008; Stokke and Törnquist, 2013). People involvement in matters that affect them is valued because it safeguards and enhances the citizens’ rights, provides spaces for voicing concerns, and is a setting for learning and understanding, and is a governance structure that guarantees public opinion. From classical democratic theories individual participation in matters that affect them is regarded as a virtue, a right, a civic duty and a method of ensuring private interest are not neglected. It is also a

*Corresponding author. E-mail: drmwangikamau@gmail.com.

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Table 1. Level of political participation.

<table>
<thead>
<tr>
<th>Participation level</th>
<th>Hierarchy of participation</th>
<th>Role</th>
<th>Activity</th>
</tr>
</thead>
<tbody>
<tr>
<td>14</td>
<td></td>
<td>Holding political Office</td>
<td></td>
</tr>
<tr>
<td>13</td>
<td></td>
<td>Being a candidate for office</td>
<td></td>
</tr>
<tr>
<td>12</td>
<td></td>
<td>Soliciting for party fund</td>
<td>Gladiator</td>
</tr>
<tr>
<td>11</td>
<td></td>
<td>Attending strategy meeting</td>
<td></td>
</tr>
<tr>
<td>10</td>
<td></td>
<td>Contributing time for campaign</td>
<td></td>
</tr>
<tr>
<td>9</td>
<td></td>
<td>Attending political meeting</td>
<td></td>
</tr>
<tr>
<td>8</td>
<td></td>
<td>Making monetary contribution</td>
<td>Transition</td>
</tr>
<tr>
<td>7</td>
<td></td>
<td>Contacting public officer/leader</td>
<td></td>
</tr>
<tr>
<td>6</td>
<td></td>
<td>Wearing a button/sticker</td>
<td></td>
</tr>
<tr>
<td>5</td>
<td></td>
<td>Attempting to influence others into voting</td>
<td>Spectator</td>
</tr>
<tr>
<td>4</td>
<td></td>
<td>Imitating political discussion</td>
<td></td>
</tr>
<tr>
<td>3</td>
<td></td>
<td>Voting</td>
<td></td>
</tr>
<tr>
<td>2</td>
<td></td>
<td>Exposing self to political stimuli</td>
<td></td>
</tr>
<tr>
<td>1</td>
<td>Total apathy</td>
<td></td>
<td>Apathetic</td>
</tr>
</tbody>
</table>

Political involvement. (modified by author from Dowse and Hughes, political sociology copyright 1972 John Wiley & sons Ltd p. 290.

sine qua non of democracy, Dowse and Hughes (1972). Citizens must be allowed a voice; be informed, consulted, be free in their towns and villages, to manage their own purely local interests. Participation empowers and protects the community from what is called impersonal bureaucracies. Whereas participation is viewed as a right and as a virtue, in reality majority of people are not interested in participating in matters that concern them. Writers such as Beierle (2002), Chambers (1997), Mefalopulos (2005), Kesby (2005), Dowse and Hughes (1972), Ball (1978) and Holden (1974), take low view of the capabilities of masses for self-government in participation or their desire for it, arguing that most people are too eager to give their burden of making decisions to those willing to do so. Hill (1974, 149) typcast individuals as apathetic persons, spectators, and gladiators and argue that it takes real effort, or shock of specific events before people change their behavior from one kind of role to another. He argues that about 60% of populations in most societies play a spectator role, 30% are always apathetic and don't know a thing about major issues concerning their society and lastly only 10% of population are actively engaged in matters of public concern. That a majority of citizens are apathetic to matters of concerns to them is a serious irony and indicates that how to actualize peoples' participation remains an unsettled discourse. McClosky (1968) defines public participation as voluntary activities by which members of society share and get involved directly or indirectly in the formation of public policy. It is engaging the public in decision-making and giving full consideration to public input in making that decision. Table 1 illustrates how participation (political) is visualized and the scope and extent of participation.

As seen in Table 1, 14 levels of political participation are identifiable starting from the lowest, 1, to the highest level, 14. Level one captures the apathetic that are unaware literally of the political part of the world around them. Levels 2-6 constitute spectator activities. Levels 7-9 are transition activates and levels 10-14 are the gladiator activities. From table 1, one can see that there is a diminishing involvement of people as one goes up the participation ladder. It is observed that, people may, for one reason or another, fail to participate at all, whether by choice or because of factors beyond their control. Take the case of a voter, it is one of the least active form of participation since it requires minimal commitment which ceases one a vote is cast and is restricted by the frequency of elections. Ascending the hierarchy of participation is not easy for it involves costs in terms of time, energy and resources. At each participation level, fewer people are able or are prepared to make the necessary investments to enable them move to the next level. From this observation participation in any engagement or project is seen as a consequence of social, psychological and political circumstances associated with involvement. Arnstein (1969) ladder of participation is also illustrative of the participation process (Table 2).

As shown in Table 2, eight levels of participation are arranged in a ladder pattern with each rung corresponding to the extent of citizen’s power in determining the end-product. The bottom rung are manipulation and therapy and represent the non-participation. ‘Citizen Control’ is at the top of the ladder. In the manipulation rung, the citizens are misled into believing they are being given power in the name of their participation. They are placed in rubber stamp advisory committees in order to give their support. At this level, participation is a power relations vehicle for the power holders (Table 2).
Table 2. Arnstein’s participation ladder.

<table>
<thead>
<tr>
<th>Level</th>
<th>Participation role</th>
<th>Participation category</th>
</tr>
</thead>
<tbody>
<tr>
<td>8</td>
<td>Citizens control</td>
<td></td>
</tr>
<tr>
<td>7</td>
<td>Delegated power</td>
<td>Citizen control</td>
</tr>
<tr>
<td>6</td>
<td>Partnership</td>
<td></td>
</tr>
<tr>
<td>5</td>
<td>Consultation</td>
<td></td>
</tr>
<tr>
<td>4</td>
<td>Informing</td>
<td>Tokenism</td>
</tr>
<tr>
<td>3</td>
<td>Placation</td>
<td></td>
</tr>
<tr>
<td>2</td>
<td>Therapy</td>
<td>Non participation</td>
</tr>
<tr>
<td>1</td>
<td>Manipulation</td>
<td></td>
</tr>
</tbody>
</table>


Under the therapy strung, the citizens are projected as the problem and the participation is to cure citizens' pathologies. The informing level, participation is largely one way, from officials to citizens with no feedback channels. The participation strung, people are perceived as statistical abstraction, participation is measured by how many came or how many answered a questionnaire. Power holders gather evidence that they have gone through the requirements of involving people. Placation involves some degree of influence. A few people are appointed to the board of committee or authority, but the people are not the majority in the boards. Under partnership rung the citizen negotiate better deals and they can even veto decisions, at this stage there are structures such as joint policy boards, planning committee and mechanism of resolving impasse. Delegated power ensures that there is some level of autonomy and the citizens are given power to manage some function. Finally, under the citizens' control rung, the citizens govern a programme or institution and are in charge of the programme. Individuals need to understand and internalize why they should participate in projects. The participations models are useful tools which illustrate the participation concepts and its processes. What we can infer from table one and table two is that, participation is about giving man equal consideration and equal opportunity in matters that affect him and his community. From Aronstein’s formulation, citizen participation is a categorical term for citizen power. It is the redistribution of power that enables the have-not citizens, presently excluded from the political and economic processes, to be deliberately included in matters that affect them. It is the strategy that empowers the have-nots to have a say in determining how information is shared, goals and policies are set, tax resources are allocated, programs are operated, and benefits like contracts and patronage are parcelled out. It is a process that induce social reform through empowerment of the people and which Hill (1974) cautions as a difficult process for “the work of representation and social reform would not be handed down to the citizens by the existing elites.”

When examined from the point of implementers, the hierarchy of participation models helps us to visualize the role of management in project implementation. Those charged with management roles are supposed to operate in a manner that is considerate of the social dynamics and public good. This requirement creates the initial space of participation and is considered as defining good development practice and policy. Seen this way, participation is a mechanism of connection where change is aligned to the collective struggle (Kesby, 2005). When Project Affected Persons (PAPs) participates in projects designs and implementation it leads to more widely accepted decisions and better governance (Mansbridge, 1995; Bohmann and Rehg, 1997). However, we, like Lefebvre (1991) and Long and Vander (1989), infer that, any new space that is created for participation bears traces of social relations. These relations animate the ‘people’s practices’ that constitute everyday forms of participation in development. Kohn (2000) cautions that spaces created by the powerful may be discursively bounded to permit only limited citizen’ influence, colonizing interaction and stifling dissent. While ‘rules’ of free exchange and ideals of mutual understanding inform the creation of spaces for participation, inequalities of status, class and social position are often reproduced and affect how people participate in matters that affect them. What is needed is an exploration of the intersect between invitation by project implementers and demand for participation as well as an examination of how these spaces for citizen participation are occupied, negotiated and voiced.

From the foregoing, participation can’t occur unless there is communication. People need clear and accurate information in order for them to keep community life under surveillance. This surveillance is what empowers the people to probe and expose those engaged in social vices such as corruption and abuse of power. Citizens
need to observe what is happening with accuracy, discuss it and evaluate it in the light of their own interest and that of their community. This is what we are calling 'voicing participation'. Such voicing is dependent on the way the messages are transmitted, structures and 'the rule of the game' of participation. These rules illustrate the factors enabling or stifling the public voices. Indeed, Servaes et al. (2005) argues that, under participatory models, information becomes knowledge only when people are able to interpret it in their own context to derive meaning.

Mefalopulos (2008) posits that when community members within a project area are not involved, they tend to become more suspicious of project activities and are less prone to support them. The involvement of stakeholders in defining development priorities has advantage of giving the outside experts valuable insights into local reality and knowledge that ultimately lead to more relevant, effective, and sustainable project design. Chambers (1983) exposes the Achilles heel of very many development agencies; they come in seeking to change things before they first understand the perspectives of the locals. Hertogh (2008) argues that any development initiative that ignores the stakeholders’ views set itself on the path of its downfall. Servae and Malikho (2005) argue that participatory communication necessitates listening. We add that one cannot listen if there are no voices to listen to. Indeed, the African Development Bank encourages its staff to utilize a “participatory approach” in their day-to-day operations (ADB, 2001). Mazzei and Scuppa (2006) argue that, most World Bank supported projects have in the past few decades, witnessed a major acceptance after involvement of PAPs in their implementation and design. Deakin (2001) argues that, the social, economic, and environmental prosperity of a nation lies in its ability to properly plan its infrastructural development, capable of withstanding the test of time and versatile enough to allow for the rapid societal transformations.

Kenya has many development projects. For instance, Vision 2030 is a long-term development blueprint which aims to transform the country into a newly industrializing middle-income country by year 2030. Such endeavors is not easy to achieve for as the World Bank (2014) observes, in developing countries post-world war II planning period there have been far more development project failures than those which succeeded.

The Kenyan Lamu Port is part of the seven key infrastructural projects that form what is generally called: the Lamu Port - South Sudan - Ethiopia Transport Corridor Project (LAPSSET) estimated to cost a total of 2.5 trillion Kenya shillings. As of June 2019, LAPSSET had missed its initial completion deadline of July 2017 (LAPSSET, 2016). The causes of the delay of the Lamu Port project range from unavailability of adequate funds (Ngala 2020), pulling out of the project by investors and governments (Muchira, 2019), terrorist attacks in Lamu County, (Watkins, 2015) legal tussles (Kiganda, 2017), and organized protests by residents on allegations of failure by the implementers to engage fully the community in the project area. This mega project consists of seven key infrastructure projects. It incorporates a new 32 berths port at Lamu Port Project and Interregional Highways. The other elements of the project are the crude oil pipeline, an interregional standard gauge railway line, international airports, three Resort Cities and the construction of a multipurpose High Grand Falls Dam along the Tana River (GoK, 2017). This Paper explores how the local community in Lamu voiced their participation concerns for the Lamu port project.

**Problem statement**

The Kenyan Government’s desire to transform the country from a developing nation to an industrialized nation is faced by myriads of problems and obstacles. Amongst these obstacles is the inability of the country’s large scale infrastructural projects to chart conducive paths for participations which would enable and enhance smooth projects implementation and projects completion. For example, LAPPSET project was supposed to have been completed in 2007, five years down the line, only three berths of the 32 berth are complete and operational. The setbacks for the Lamu Port project began when a high court ruling on 30 April 2018, (Mohamed Ali Badi vs. Attorney General & 11 others, 2018) affirmed the local Lamu communities’ grievances against the project. The judges stated that the owners of the Lamu Port project failed to conduct proper and effective public participation, by not providing the residents with adequate information as required by law. They also castigated them on their refusal to recognize and consider the fisher community’s traditional fishing rights and rights to a clean and healthy environment. The Lamu Port Project was found culpable of failing to demonstrate that the residents of Hindi Ward were furnished with sufficient and relevant information leading to the conception of the project that would allow them to fully participate in the project before implementation commenced. The respondents violated the residents’ rights to access information on the Project. As a result, the court ordered the project proponents to craft a demonstrably effective programme to disseminate information on the project as part of the public participation legal requirements, specifically on the areas that affect residents of Lamu County and in addition, the affected local communities were to be compensated with Ksh. 1.76 billion, owing to the adverse effects brought about by the construction the Lamu Port. Failure to conduct proper and effective public participation was cited as a big problem.

The development agenda of the country is jeopardized whenever the development projects face obstacles and derailments due to issues that can be sorted at planning, and implementation phases of projects. A re-conceptualization about how participation can be
imagined as a planning tool, as an engine of reform and as a decentralizing decision making tool to the grass-root and peoples’ loci is needed. This reconceptualization is not easy because participation constitutes a terrain of contestations in which relations of power between different actions shapes and reshapes the spectrum of people’s actions. In ‘participation spaces’ societal rupture occurs and this rapture need to be understood for it contains important insights about how this instrument of empowerment can be harnessed. This paper argues that, understanding how a community voice its participation concerns is a critical element that illustrates insightful perspectives about how local communities define what participation is and how it affects the environment. Such an understanding would give impetus of the much needed acceleration of participatory development agenda in Kenya. Indeed, the Lamu Port project’s legal loss in (Mohamed Ali Badi vs. Attorney General & 11 others, 2018), is a living testimony that, project implementation in Kenya needs rethinking in matters of ‘participation’. The legal loss has become a beacon that marks the ruined landscape of Lamu Port project’s dented history that will remain as a constant reminder that ignoring or lack of involvement of the grassroots in matters that affect them in any development agenda is a rich source for project implementation resistance and an obstacle that undermine development agenda of community and country.

Objective of the study

The study had the following objectives:

1. Describe how the project affected persons (PAPs) understand participatory communication at the Lamu Port project.
2. Determine what issues project affected persons’ voice as their participatory concerns for Lamu Port project.
3. Determine how the project affected persons voice their participation concerns as occasioned by the Lamu Port Project.
4. Explain the participation challenges that are faced by project affected persons of the Lamu Port project.

Research questions

The study was guided by the following research questions:

1. How do the project affected persons (PAPs) understand participatory communication at the Lamu Port project?
2. What issues project affected persons’ voice as their participatory concerns for Lamu Port project?
3. How do the Project affected persons voice their participation concerns at the Lamu Port Project?
4. What participation challenges do project affected people face at the Lamu Port project?

Materials and Methods

Study site

The Study was conducted in Hindi Ward, in Lamu West Sub-County, Lamu County in Kenya. The inhabitants of this region are mainly fisher folk communities, subsistence farmers, small scale business people and a small number of pastoralists (Ngala, 2020). The 32 berths Lamu Port is located in Hindi Ward, Lamu West constituency (Figure 1).

Research approach

The research used a mixed method approach. To determine how the local voiced their participatory concerns in the context of large-scale infrastructural projects, Lamu Port is studied. The data were obtained from both primary and secondary sources. The primary data sources were collected from key informant interviews and 385 residents of Hindi ward via research questionnaire. Secondary data were drawn from published literature. The study target population was the 10,039 residents of Hindi Ward. The data for the paper were extracted from a MA thesis titled: Participatory communication in Kenya’s large-scale Infrastructural Development Projects’ Planning & Implementation: A case of Lamu Port in Hindi Ward, Lamu West Sub-County, Kenya, by Author 2. The first author was the project supervisor for the said work. The conceptualization of the paper was done at a World Wide Fund (WWF) funded research validation workshop held on 2-9 September 2021, Mombasa, Kenya, where the first author was a key mentor in the theme of academic writing and publication.

Sampling procedure

Purposive sampling was used for qualitative data and Yamane (1967) formula used to determine the study sample size:

$$n = \frac{N}{1+Ne^2}$$

Where:
- n - The desired sample size (when Population is ≤ 10,000).
- N - Total population. Hindi Ward population was 10,039, (KNBS, 2013).
- e - accuracy level required Standard error is 5%

n = 385

Data collection

Document analyses and direct interviews were deployed. The unit of analysis was the individual who was reached through survey questions. Six key informants were interviewed, they included: Representative from LAPSSSET, Government of Kenya Official working in the Ministry of Transport and Public Works, Security person/OCS LAPSSSET Police Station, leader of Save Lamu lobby group and a development communication expert.

Data analysis

Data were analyzed using descriptive techniques. Frequency tables, figures, charts and percentages were used in analysis of the
quantitative data. The qualitative data were analyzed through deduction of the meanings of concepts gathered from the narrations and explanations obtained from both the key informants and respondents. The analysis of qualitative data involved coding and organizing data into themes in line with the study’s objectives.

RESULTS AND DISCUSSIONS

The study set out to contextualize the discourse of participation by exploring how participatory communication is understood by Project affected persons (PAPs) at a large infrastructural project (the Lamu Port project). The study set out to answer four research questions as follows: how do the Project affected persons (PAPs) understand participatory communication at the Lamu Port project? What issues do Project Affected Persons voice as their participatory concerns for Lamu Port project? How do the Project affected persons voice their participation concerns at the Lamu Port Project? What participation challenges do project affected people face at the Lamu Port project?

Voicing participation concerns by local people at Lamu port Project

The study had sought to understand and conceptualize how the LAPSET Project of the Lamu Port affected the local people and how they voiced their concerns about the Lamu port project. To situate the debate, we started by analyzing the demographic statistics of the respondents.

Respondents’ demographic information

47% of the respondents were female and 53% male, which reflected good gender representation. The six key informants were male. 37% of the respondents had attained secondary school education, 35% had primary school education and 21% of respondents had attained tertiary education. According to the Lamu County Spatial Plan (2016) the County has adequate school facilities corresponding to the settlement pattern. Education status
of community is important following Muigua (2014) argument that, that education is a key enabler of participation (Figure 2). As can be seen from the figure 2, seven in ten of the respondents of this study had attained primary and secondary education and two in ten had college and university education.

**Age:** The majority of respondents fell under the age category of 18-30 and 30-45, 33% and 35% respectively. 23% of the respondents were in the category 45-60 years and about 10% of the respondents were above the age of 60 years. 42% of respondents were farmers. Hindi area falls within the agriculture zone in Lamu County. Other occupations included business owners 22%, employed 19%, fishers 9% and others 10%.

**Voicing participation in the Lamu Port Project**

To explain how project affected persons voice their concern, the study explored the question: how do the project affected persons understand participatory communication at the Lamu Port project? From this question, respondents gave their opinion as follows:

**Involvement in participatory communication**

There was little involvement of the local community in participatory communications needs assessment, only four in ten (36%) responded in the affirmative to having been involved while six in ten (64%) indicated that they were not engaged. The study then sought to understand what this participatory communication meant and how the respondents voiced its meaning. The answers were as varied as they could get, they varied from economic variables, social and cultural variables, political variables and psychological variables. First, participation was understood as a mechanism of ‘provision of equal opportunity’. The term opportunity here referred to the personal benefit that accrues to an individual. Locals wanted the LAPSET project of Lamu Port to give them employment opportunities as well as opportunities to start businesses and trade within the port. A respondent stated:

‘To participate for me, means my personal interests are catered for and I am given an opportunity to work either as an employed person at the port or I am given an opportunity to do business with and within the port’ (Respondent no 23).

Secondly, participation was defined as economic empowerment, issues like giving the local people school and colleges’ scholarships, soft loans to start small-scale businesses as well as societal benefits like provision of access roads networks and building of market places. Thirdly, participation was understood to mean ‘political acceptance’. Participation was equated to local politicians and elites’ approval or disapproval of projects. The residents of Hindi wards placed high premium on local leaders’ decisions on what projects meant for the community and for individuals. This observation sits well with the literature of participation which typecast individuals as apathetic persons, spectators and gladiators and goes on to argue that it takes real effort, or shock of specific events before people change their behavior from one kind of role to another and that a majority of citizens are apathetic to matters of concerns to them. Fourthly, participation was understood to mean preservation of cultural rights. There were fears that the port of Lamu would bring about cultural assimilation and dilution due to influx of population from all over the country and from the world. Participation therefore was equated to the safeguarding of cultural norms and traditions and rites. A respondent captured the issue as follows:

‘Let the Port (Lamu Port) be built as long as our cultural inheritance, beliefs and traditions are left intact, let our cultural traditional sites be preserved, and lets the way we do our rite of passage be respected and not be treated as backward, let foreigners come with respect and dignity’, (Respondent 38).

Clearly, the issues raised went beyond cultural preservations to psychological factors such as the fear of cultural degradation. Fifthly, local people understood participation to mean interpersonal communications and relationships between the project implementers and the local people. It was stated that participation is sharing of information among the stakeholders of a given project. A respondent stated:

‘For me participation is that process where the project..."
Table 3. Local people’s involvement in Lamu port project.

<table>
<thead>
<tr>
<th>Level of adoption and deployment of participatory communication</th>
<th>No extent (%)</th>
<th>Little extent (%)</th>
<th>Moderate extent (%)</th>
<th>Great extent (%)</th>
<th>Very great extent (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Local community was involved in Lamu Port project designing and initial stages.</td>
<td>27</td>
<td>27</td>
<td>28</td>
<td>2</td>
<td>6</td>
</tr>
<tr>
<td>Local community is involved in Lamu Port project implementation on a regular basis.</td>
<td>29</td>
<td>32</td>
<td>28</td>
<td>6</td>
<td>5</td>
</tr>
<tr>
<td>Local community was informed of the impacts on Lamu Port project on their livelihoods.</td>
<td>22</td>
<td>28</td>
<td>27</td>
<td>13</td>
<td>10</td>
</tr>
<tr>
<td>Implementers of Lamu Port conduct participatory communication whenever there is conflict.</td>
<td>27</td>
<td>32</td>
<td>24</td>
<td>11</td>
<td>5</td>
</tr>
<tr>
<td>Lamu Port project implementers took seriously locals’ peoples’ views and proposals.</td>
<td>24</td>
<td>28</td>
<td>30</td>
<td>9</td>
<td>9</td>
</tr>
<tr>
<td>Local people were engaged on Lamu Port corporate social responsibility (CSR) decisions.</td>
<td>26</td>
<td>32</td>
<td>25</td>
<td>10</td>
<td>5</td>
</tr>
<tr>
<td>All engagement with Lamu Port project implementers was based on free, prior and informed consent.</td>
<td>28</td>
<td>28</td>
<td>24</td>
<td>13</td>
<td>7</td>
</tr>
<tr>
<td>Lamu Port Project implementers conducted regular monitoring of communities affected by the project</td>
<td>30</td>
<td>29</td>
<td>28</td>
<td>6</td>
<td>7</td>
</tr>
</tbody>
</table>

Source: Author’s compilation

implementers avail to me the plans of the project, the reports of the impacts of the project on my community and disclosure of how I benefit from the project in a language that I UNDERSTAND’. Respondent 124

From respondent (124), the concept of being heard, of being listened to and of being treated as important in matters that concern an individual is brought to fore. An inference can be made from the comments of no 124 that, slowly the community is awakening and soon or later something new is cooking and the concepts of people’s rights and especially the environmental right have become part of what project designers will have to think about and deal with. Sixthly, participation was understood to mean, effective participation of locals in matters that affect them. Access to primary reports on the economic, environmental and cultural impact of the project. It also included elements of inclusion and equality of treatment of local people on matters of their concern. A respondent said:

‘participation is to be in (where the decision is made) when important decision is being taken, including being taken to places where they go to benchmark…the local has rights just like the politicians who always do the benchmarking for projects’ respondent 96.

From respondent 96, participation carries the meaning of equal treatment for all people affected by the Project. The statement implies that implementers of Lamu port seemed to favor politicians’ in terms of involvement. It is them (politicians) that were taken to workshops and conferences and benchmarking tours. Indeed, 54% of respondents indicated that they were not meaningfully involved in the Lamu Port project design. 59 and 56% of the respondents indicated that they were not meaningfully involved in resolving conflict occasioned by the project and neither did the project owners obtain free, prior and informed consent respectively (Table 3). As can be seen in Table 3, the implementers of Lamu Port project stand accused of a myriad of issues. For instance, 8 in 10 (82%) respondents said that they were not involved meaningfully in the design and planning of the Lamu project. A similar number said that they were not meaningfully involved in resolving conflict occasioned by the project and neither did the project owners obtain free, prior and informed consent respectively (Table 3). As can be seen in Table 3, the implementers of Lamu Port project stand accused of a myriad of issues. For instance, 8 in 10 (82%) respondents said that they were not involved meaningfully in the design and planning of the Lamu project. A similar number said that they were not informed about how the projects would impact their lives and livelihood. Equally, 8 in 10 (82%) and 80% of the respondents said that there was little commitment to local peoples’ views and that the implementation of the Lamu project was not based on free, prior and informed consent respectively. 29% of the respondents felt the community did not fully understand the complexity of issues that arose from the lamu port project. And 25% of the respondents felt that the community is used symbolically to show appearance of participation. 84% of the respondents felt that the local community did not understand the Lamu Port project itself. Only 14% of the respondents felt the community was informed and consulted and therefore understood the project design.
and operation. A paltry 2% indicated that the community contributed adequately and that they bore a high responsibility in the project (Figure 3). Figure 3 indicates how the local people perceived their participation at the Lamu port project. It was generated from a sample of 385 respondents of the study. Column six indicates that only 2% of respondents thought the local people were meaningfully involved in the Lamu Port project. The findings in Table 3 and Figure 3 give credence in support of the typology of participation as provided by Arnstein (1969) that the majority of Project affected Persons (PAPs) are not meaningfully involved in projects design and implementation and whenever they are involved their involvement is cosmetic and without consequences. As seen in Table 4, in level 1, communities are manipulated, as they do not understand issues that confront them. Specifically, they do not get feedback regarding problem analysis and actions taken. In level 2, communities are used as needed (decoration) because their participation is incidental. In other words, external providers to support their cause indirectly use them. In level 3, communities seem to have been given a voice, yet in real sense, they have little choice concerning the subject matter as they are not allowed to formulate and express their opinions and ideas freely. In level 4, communities are provided with complete, accurate information regarding the project and are made to understand why their involvement and participation is required. In level 5, external agencies do the project design and operation, communities clearly understand the process, with their opinions being considered actively. In level 6, communities have a high-degree of responsibility and contribute ideas and opinions before implementation despite decisions being initiated externally. Indeed, one respondent stated as follows:

We have seen these people (project implementers) come here and pick a few hangs-on and turn- coats/spanner boys and girlfriends (sycophants) and take them to what they call project meetings, pay them some pocket money and then they say citizens are involved…we know their
game, they carry (take) the community as foolish, and we will not allow it and the local administration like the District Officers, local Chiefs and some community leaders, know this things (flaws). All people must be involved if the whole community is to get full benefit from this port (Lamu Port). Respondent 41.

Respondent 41 is quite blunt in the assessment of what citizens’ participation is and what the respondent’s opinion was on the flaw in selecting those who were to participate. Clearly, the respondent see those selected for participation as not representative of community arguing that they are selected on basis of cosmetic participation and for personal benefits. The respondent goes on to blame project owners as well as community and government officials in the flaws found in participation process. The key finding here is that, not all participation and communication by project implementers is perceived as genuine and beneficial to societal needs. The paper finds that the respondents have clarity of what genuine participation was. They were clear on the extent they would like to be involved in the project design and implementation. Indeed, the finding in this section sits well with the argument of Beierle and Crayford (2002) who described public participation as "any of several ‘mechanisms’ that are deliberately institutionalized in a bid to involve the lay public or their representatives in administrative decision making." The duo argues that over and above town meetings and public hearings that have defined the public-participation paradigms there is need to expand its view to account for context, process and results that are dialogic as opposed to monologic. Similarly, the findings align well with Cox (2006) who defined public participation as "the ability of individual citizens and groups to influence decisions through: access to relevant information; public comments to the agency that is responsible for a decision; the right, through the courts to hold public agencies and businesses accountable for their decisions and behaviors." This view by Cox (2006) describes precisely the three rights espoused in a participatory process, namely: the right to knowledge (openness) the right of standing (answerability) and the right to comment (voice). In most instances, descriptions of public participation are steeped in bureaucratic processes that in a way negate the very purpose of participation. The following section carries on with this discourse and highlights the issues the local people identify as constituting their key concerns for participation, their voicing strategy and participation challenges.

The issues respondents’ voice as their key concerns, voicing strategy and participation challenges

Large-scale infrastructure projects affect a variety of stakeholders in different degrees. This diversity of effects, calls for effective 'listening of the variegated voices. Indeed, Servaes and Malikha (2005) argue that such listening builds trust, reduces the social distance between communicators and ensures smooth exchange of information and feedback. From this background, the study explored the question: what issues do project affected persons voice as their participatory concerns for Lamu Port project? The respondents identified many issues that constituted their voice. They included issues of how the Lamu Port affected: Peoples’ Livelihoods, ecosystem, fisheries activities and challenges they faced as occasioned by the project, (Table 5 highlights the issues). As can be seen in Table 5, the Lamu Port project has real effects on peoples’ livelihoods and their environment. The effects are both positive and negative. Table 5 also captures the challenges encountered by the local people, the challenges addressed our last question which was: What participation challenges do project affected people face at the Lamu Port project? From Table 5, the respondents gave a mixed bag of effects of Lamu port on their livelihood and environment. Negative effects were listed as follows: First, dredging was said to inhibit local fishermen from accessing the deep sea and also destroyed fishing grounds; second, pollution of the ocean via various port activities; third, coral destruction; fourth, destruction of Lamu Town as UNESCO heritage site. On the contrast it was felt that the construction of the Lamu Port would enhance the ecosystem of the region and would create both national and local wealth. From Table 4, the key informants ably explained how the Lamu port project affected the livelihood of people and the environment. The issues listed in Table 5 capture the complexity of participation process and sit well with the literature of participation. For instance, Balit (1999) described participatory communication as a process whose intention is to achieve a common understanding among all participants, then, have them act on the basis of the consensus achieved as opposed to its representation as a static model. Thus, participatory communication is present in all stages of any development project.

Melkote (1991) states that in its own nature, there can never be a predetermined prescription for a common channel, message or models to be followed in a participatory communication but instead a constant search for the most suitable format based on the prevailing circumstances and culture. Tufte and Mefalopulos (2009) connect participatory communication to issues of dialogue, which allows the sharing of information, perceptions and opinions among the various stakeholders and thereby facilitates their empowerment. The most important issue in participatory communication is an assessment that provides an avenue to jointly identify and define key issues deemed important by stakeholders, assist to jointly establish a common place where all stakeholders feel comfortable to share their views, ask questions and seek clarifications on the project, provide a
**Table 5.** Summary of Issues 'voiced' as effects of Lamu Port Project.

<table>
<thead>
<tr>
<th>Item</th>
<th>Stakeholder</th>
<th>Effects on PAPs</th>
<th>Ecosystem</th>
<th>Fisheries</th>
<th>Challenges</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>LAPSSET Representative /KPA</td>
<td>Reduced income, less fish, Job creation, tourism promotion, Improved transport network, improved social amenities, Scholarships to locals, Employment opportunity.</td>
<td>Dredging- Made the ocean deep, inhibits access to the deep sea</td>
<td>Limited access to fishing grounds</td>
<td>Lack of sensitization on how to manage compensation money</td>
</tr>
<tr>
<td>2</td>
<td>Officer of Lamu county/Planning Department</td>
<td>Reduced volume of fish, reduced income, real estate boom</td>
<td>Dredging- Disturbed and destroyed fishing and fish breeding grounds, destruction of corals</td>
<td>80% of locals depend on fisheries</td>
<td>Delay payment of compensation money</td>
</tr>
<tr>
<td>3</td>
<td>Leader Save Lamu lobby</td>
<td>Reduced income, Reduction of grazing land</td>
<td>Interfered with fishing grounds, clearing of the mangrove forests, fear of destruction of Lamu as a UNESCO heritage site</td>
<td>Majority depend on fishing</td>
<td>Conflict between port security personnel and local people freedom movement, Cultural assimilation and dilution, lack of consultation of the effect of the project on UNESCO world heritage site, Land compensation was not adequate</td>
</tr>
<tr>
<td>4</td>
<td>Development experts Conservationist</td>
<td>Reduced income, Population influx, fear of prices of food going up</td>
<td>Destruction of sea turtle species, destruction of community conservation areas, Environmental degradation (excavation &amp; construction), Dredging increased turbidity hindering visibility of fishermen in locating fish, Blockage of wildlife corridors, Pollution of the ocean, wildlife habitat loss, Soil sedimentation, Mangrove clearance, Lack of proper rehabilitation of borrow pits, Loss of biodiversity around port site, pollution from oil spills, siltation affects corals sea weed, fish and sea grass, destruction of turtle grazing land</td>
<td>Fishing has become very costly</td>
<td>Navy scares away the fishermen, something that had not been happening previously</td>
</tr>
<tr>
<td>5</td>
<td>Development communication Experts</td>
<td>Value of land went up, Employment opportunities</td>
<td>Enhanced conservation of the ecosystem</td>
<td>Migration of fish due to destruction of corals</td>
<td>Undue influence from local and international investors for land acquisition for speculative purposes</td>
</tr>
<tr>
<td>6</td>
<td>Security officer /OCS Lapsset police station</td>
<td>Improved security (deployment of specialized forces, Like Rapid Deployment Unit (RDU) conflict between security officers and the local community</td>
<td>Migration and influx of many people to the area, thereby degrading the environment and causing increased crime, Oils spills from vessels/ ship.</td>
<td>Restriction of fishing within shipping channels, security zones</td>
<td>influx of Drugs, increase of crime, Land grabbing, conflict between Marine police and PAPS/ residents, Discrimination of the locals in employment opportunities, Noncompliance with Environmental impact assessment</td>
</tr>
</tbody>
</table>
platform to assess needs, problems, inherent risks, opportunities and solutions, support both project owners and stakeholders to prioritize issues for change and reconcile different perceptions. Erkul et al. (2016) argues that participatory communication is a process by which community concerns, needs, and values are incorporated into government and corporate decision-making. As such, public participation can be practiced by actively engaging stakeholders, citizens and communities on matters affecting their lives.

Media platforms used in voicing participation concerns and strategies used

To understand how the Project affected persons conceive and understand participatory communication, the study posed the question: How does the project affected persons’ voice their participation concerns at the Lamu Port Project? From the results obtained, both the Lamu Port Project’s Affected People (PAPs) and Lamu Port Project Implementers used many platforms to voice their participation concerns. The platforms included the following: Public Barazas (gathering), mass media institutions, courts, politicians, community meetings, religious leaders and community elders.

Public barazas

They were the most preferred platform of voicing peoples’ concerns. Barazas are formal and informal meetings organized at the grassroots where members of a community congregate to canvass issues affecting them. They are widely accepted as the most preferred communication platform in development projects. The preference may be attributed to community’s perception of ownership of these meetings. Despite the Barazas being the most preferred by the local people project implementers decried the complexities involved in their planning. A key informant put it as follows:

“Hosting public barazas was an expensive affair for the simple reason that all participants needed to be reimbursed their transport costs incurred to the venue of the meeting including subsistence costs. Back in 2010 during the design of the project, cheaper options such as social media and even radio were not as popular. Now in Lamu we have more than three radio stations that we use to communicate with community members.”

Figure 4 indicates the respondents’ preferences of voicing platforms. As can be seen from Figure 4, it is easy to identify the strategies that were deployed to voice the participatory concerns. The most preferred voicing platform was public baraza followed by radio broadcast, then what was referred to as community arenas (these are places that offer local people opportunity to meet and talk about their issues, such as, neighborhood and village meetings). From Figure 4, the project managers and implementers were not among the popular platforms of voicing concerns. Similarly, worth of mention is the deployment of court platform, even though the respondents did not identify it as a major platform for voicing their concerns, and indeed, it was listed among the least preferred category; it was the deployment of the court platform that yielded the most significant impact on the governance and the implementation process of the Lamu port project. It is from the court process that, the interests and concerns of PAPs were articulated and enforced via compensations and other legal redresses. We also note that, even though the fishermen constituted only 9% of the occupation affected by the Lamu Project, the fishermen were the ones who took the entire project to court to enforce their rights. The court ruling set a major precedent to all would-be large scale infrastructure developers to always heed to the voices of the minority in society. Clearly, it can be inferred that, it is not the quantity of participation but the quality of participation and the right selection of voicing strategy that counts in yielding results of PAPs concerns. Court petition was among the least of preferred avenue of voicing (classified among the ‘others’ of participatory platforms) yet one of

Figure 4. Respondents voicing platforms.
The y-axis is the count of respondents and X- axes is type of platform.
the strongest platform in yielding results. Other strategies used to voice peoples’ concerns included: participating in public meetings called by stakeholders, participating protest, forming and joining local lobby groups. Such strategies enhanced the local people’s voices. Village elders, politicians, teachers and faith leaders were used as channels of air concerns. Filing complaints with officials in various levels of government was another technique of voicing. Agitating for meeting, placement of radio announcement, newspaper announcement, neighborhood meetings, joining protests/picketing/riots, seeking and applying for employments/ and agitating for reservations of employment opportunities for local people were also used as voicing strategies.

**Barriers to voicing that are connected to voicing strategies**

Only 14% of the respondents felt that the community was informed and consulted during the design and implementation of the Lamu Port Project. 8 out of 10 respondents did not have a grasp of the project and its implications and were therefore unlikely to participate and voice their concerns. In addition, language barrier was identified as a major challenge of voicing participation. Most respondents preferred Swahili language 82%, English 12% vernacular languages 10%. Despite the preference of Swahili as the language of choice for respondents, majority of communication outputs and inputs for the Lamu port project by both the government and the project implementers were done via the English language, (Figure 5). Other participation barriers/factors that the respondents identified included geographical remotesness, culture and marginalization in decision making. 44% of the respondents felt that remoteness was the factor that hampered their participation, while 38% felt language barrier was their hindrance, 28% attributed marginalization in decision making as their hindrance, while 24% attributed culture as their hindrance to participation in the Lamu Port project. From Figure 6, several factors are identified as possible impediment to public participation. For instance, remoteness referred to the distance that needed to be covered by a local person if she/he needed to attend to a scheduled participatory meeting. For instance, holding a participatory meeting at the Lamu Island meant that people living in the mainland had to hike a boat-ride to access the meeting and vice versa for the people living in the Island whenever a meeting was held at the mainland. This was cited as costly and an impending factor for participation. Cultural values and tradition were also cited as barriers to voicing. It was stated that gender was a major issue when it came to voicing concerns. Women were for instance, discouraged from addressing public gathering. Married women were culturally forbidden to contradict their husbands in public arena. Failure of Lamu port project implementers to provide information in Swahili and/local languages greatly affected participation of the community: to expect the PAPs to adapt to the languages used by project implementers and policy makers is to ask too much from them. It is the project implementers who should go to the people and speak their development agenda in a language the locals understand. Conflict between the security personnel manning the Lamu port was also cited as a major barrier to voicing their concerns. There were a lot of mistrust between security personnel, project implementers and the local people. Another barrier was that participation was not a priority for many respondents. One respondent stated as follows:

‘Getting concerned with issues of the ocean and the port (Lamu Port) is not my priority, it (participation) cannot give me food for my children and even if I participate or not the government will go ahead and implement its agenda anyway—only God can help the poor. (Respondent 330)

The statement by respondent number 330 indicates a
sense of lack of faith on the process of participation at the Lamu port. It is a statement of feeling of powerlessness by PAPs when faced by a big government project like the Lamu port. From it we learn that peoples’ attitudes and frustrations are issues that inhibit respondents’ power to voice their concerns. Peoples’ participation in matters that concern them requires what Pope Francis (2021) calls ‘attention, time and willingness to encounter others and sensitivity to what troubles them’.

Conclusions

The participation discourse is complex and affects all spheres of peoples’ life. The paper has demonstrated that participation is about social relations, it animates peoples’ thoughts and practice in matters that concern them especially via the development agenda. Participation creates spaces where PAPs can voice their concerns. The voicing is a powerful mechanism that gives citizens surveillance power to probe and expose abuses and vices of development agenda, the voicing is also connected to people’s collective struggle. The authors argue that, perhaps the sabotage of the participation agenda in many projects are connected to the fear of this ‘citizens’ power’ - what is generally called the ‘legitimate liability concerns’ that discourage reporting of errors and mistakes by people leading and managing projects. The paper demonstrates that, large-scale project owners can only muffle but not silence the voices of project affected persons (PAPs) in the areas of intervention. The papers’ findings point to new vocabularies of public participation; public participation is about encounter- a call for openness, courage and willingness of managers of projects to let themselves to be challenged by the presence and stories of others. Public participation is about listening to what others have to say, it is about building rapport, being sensitive to the questions of project beneficiaries or stakeholders, it is about enrichment by the variety of voices encountered in project implementation. This is what Pope Francis (2021) say is a process of change in which true encounter open up new and unexpected possibilities. It is not about offering prepackaged solutions but it is about learning to listen to the voices of the people caught in the spectrum of the development agenda. Public participation is about discerning new ways and new paths that empowers the people by making room for their voices and letting their perspectives shutter project implementers’ barricades of certainty and perhaps what they call good intention of projects wired via their pre designed solution which may sometimes make them closed and deaf to the issues the people yearn and consider important. By successfully petitioning against the loss of their livelihoods to the LAPSSET Corridor Development Authority and by winning the court case, the fishermen of Lamu have demonstrated that, peoples’ voice is a powerful weapon of change.

RECOMMENDATIONS

It is clear that voicing of both individuals’ and communities’ right is a critical component of project design. Thus, exploring and examining how spaces for citizen participation are occupied, negotiated, voiced and mediated demands an analysis of how projects implementers creates these spaces. Similarly, an understanding about what spaces are available for the citizens and how the citizens voice their issues should be considered as an important planning tool. Therefore, the study makes the following recommendations:

1. Desirous of success, any large-scale infrastructure projects must incorporate voicing strategies in their design and Implementation. Specific budget components for participation should be made compulsory for all large scale infrastructural projects. In Kenya, both the National Parliament of central government and County Assemblies of devolved governments should pass legislation specifying the magnitude and scope of community participation for large scales projects. Community should be empowered via participation legislation to even assume control and management of some functions of projects.

2. Community participation is both a governance and an environmental issue. It is complex, multidimensional process which cannot be addressed by project owners and selected few alone. It needs interdisciplinary and dynamic perspectives. Project owners must conduct adequate and effective participatory communication that incorporates the local communities’ voices. Such ‘voices’ are critical in identification of both environmental and livelihood concerns ‘By law, large infrastructural projects should be compelled to use a certain per cent of the local human and material resources from their area of intervention and operation as a way of harnessing local peoples’ needs and rights.

3. All large infrastructural projects should review their public policies to avoid the ‘routine’ of making plans as guided by externalities largely defined by government and donors but instead they should align their projects to the local peoples’ needs and priorities especially at the grassroots. People who fight for community rights should be empowered and be recognized as community heroes. Legislations on award of state medals in Kenya and in other countries should have specific consideration for community heroes.

4. In Kenya, public participation in matters that affect people is a constitutional requirement. There is need for creation of an institution that would ensure compliance to this participation right. Similarly, a coordination ministry should be created at the national level to enforce this right.
The study recommends that to enhance voicing of participation concerns, then Like Servaes and Malikhao (2005) argue, participatory information only becomes knowledge when the recipients of that information interpret it in their own context. Project implementers must align their projects’ objectives to be in line with recipients’ needs through the emblematic of horizontal communication which would emphasize on the redistribution of power to bring change to the status quo. If change is for people, then the people must assume control of the change they want. It is the systems of governance that need to be changed and be made people oriented. Meaningful horizontal communication should be made compulsory for large scale infrastructural projects via international laws, state laws and local governments’ legislations.

The study highlighted a heightened consciousness of project affected persons on how they relate with large infrastructural projects. Specifically, it is demonstrated that, there is need of reshaping and restructuring of the development paradigm in order to incorporate peoples’ voices. These peoples’ voices should reflect both the community interest and individual interests. It is inferred that, incorporating the agenda of creating collective spaces in project management is a good practice which give life and support the agenda of community solidarity. Such an activity is no longer a cosmetic proclamation but reclamation of local peoples’ concepts of sustainable livelihood and their sovereignty. It is a power movement that will continue to alter the contours of the development agenda.

CONFLICT OF INTERESTS

The authors have not declared any conflict of interest.

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