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HAKJ  
CENTRE

# BEACONS OF CONFLICT

Land irregularities within the settlement schemes of  
Kwale County



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**BEACONS OF CONFLICT:**

**Land irregularities within the settlement schemes of Kwale County  
April 2013**

**Haki Centre**

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*Phelix Lore*

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## **ABBREVIATIONS**

|            |   |
|------------|---|
| ACT!       | Act Change Transform  |
| CHRGG      | Centre for Human Rights and Good Governance                                 |
| GoK        | Government of Kenya   |
| KCSSP      | Kenya Civil Society Strengthening Programme                                 |
| LSPD       | Land Peace and Security for Development                                     |
| MCMCR      | Muslim Centre for women and Children Rights                                 |
| MoL        | Ministry of Lands   |
| NLC        | National Land Commission  |
| SAFE Coast | Supporting Active Participation in Fair and Peaceful Elections at the Coast |
| SFT        | Settlement Fund Trustees  |
| USAID      | United States Agency for International Development                          |

## EXECUTIVE SUMMARY

The coastal region of Kenya is one of the areas that have reported the highest number of land grievances since independence in 1963. The region is home to several settlement schemes, multinational corporations in agribusiness, national parks and reserves, plantations and ranches. Kwale County, hosting the Ramisi Sugar Company, titanium and iron mining investments among others, is riddled with land grievances. Land grievances in settlement schemes of the County have been like a ticking time bomb. The community's grievances include the lack of title deeds, land grabbing, unlawful issuance of land/title deeds to government officials and lack of adequate information that could facilitate acquisition of relevant documentation. Political campaigns and incitement through careless public utterances exacerbates the situation with every election season. Popular political parties continue to raise hope among disgruntled residents with empty promises of dealing with land grievances across the region.

The National Land Commission (NLC) is yet to put its house in order, granted the commission is the single most promising effort towards the operationalization of land reforms in the region. The first challenge the NLC faced was the failure by the government to allocate the commission enough funds for the 2012/13 financial year.

Haki Centre has been working towards the achievement of *enhanced community access to land tenure at the Coast* which was a key objective of SAFE Coast Project. The organization conducted a needs assessment in six settlement schemes within Kwale County and identified Kinarani/Godoni and Ramisi Phase IIA Squatter's Settlement Schemes as those that required urgent attention. Haki Centre has since completed a social audit of the 2 settlement schemes. The organization spearheaded the participatory action oriented social audit on land with a team of 70 social auditors drawn from affected communities. The decision to undertake a social audit was informed by the persistent public outcry over the settlement process which was allegedly marred with irregularities. The social audit was thus meant to identify real conflict triggers and quell tensions related to land possession and occupancy – an emotive issue in the coastal region.

The participatory audit process was undertaken in four distinct phases. First, there was collection of relevant information from the Ministry of Lands (MoL) as well as stakeholders in the area. Second, formal and informal meetings with key informants and beneficiaries were conducted. Third, social accounting and book keeping exercises were undertaken with selected community representatives; and fourth, a public hearing forum was held where the findings were presented to beneficiaries and government representatives.

The social audit report is divided into two sections. In the first section, the report provides an introductory background of the organization and an overview of Kwale County as well as the status of settlement schemes in the County. In the second section, the report gives an outline of the audit and goes on to describe the methodologies employed and the social accounting and book keeping undertaken during the process. The second section also covers the findings as well as recommendations.



## PART ONE

### 1.0 BACKGROUND INFORMATION

#### 1.1 ORGANIZATIONAL BACKGROUND- HAKI CENTRE

Haki Centre is a human rights organization working within the coastal region of Kenya. It was formed to sensitize the coastal communities on their rights and to empower them to overcome the social and cultural hurdles that hinder them from enjoying full legal and human rights.

The idea of forming an organization to spearhead the struggles for human rights within the coastal region was initiated in 2006. By then, there were fewer local organizations working to promote the enjoyment of human rights. Most of the organizations were either international or national organizations (with representatives or branch offices). In most cases, these organizations applied the savior model where the coastal communities were not involved in the planning of their programmes. Additionally, the few available CSO's were headed by older folks, thus giving no chance to the younger members of the society.

It was during this time (in 2006) that a group of young and energetic human rights activists from the Coast and North Eastern Provinces of Kenya came together to form an organization with the aim of promoting the progressive realization of human rights in the region by ensuring communities' ownership and active engagement in the struggles for justice, good governance and equity. Initially, the organization was called, Centre for Human Rights and Good Governance (CHRGG). This name did not resonate well with the coastal communities since it sounded more elitist and complicated for the locals. In the year 2009, the name was changed to Haki Zetu Centre which is a local phrase meaning "Our rights".

In the year 2012, the organization merged with a sister organization called Muslim Centre for women and Children Rights (MCMCR), giving birth to Haki Centre. This was necessitated by the fact that there was need for a stronger NGO to focus on youth and women issues at the coast.

#### **Goal of the organization**

The goal of the organization is to enhance constitutionalism and good governance through awareness creation and people's participation.

#### **Mission of the organization**

Promoting social justice by enhancing community participation in sustainable development processes

#### **Vision of the organization**

An empowered society that upholds human rights, justice and equity



## Specific Objectives

Haki Centre has 4 main objectives under the current strategic plan 2012 – 2017. They are:

- ❖ ***Strategic objective 1:*** To enhance the capacity of the coastal communities to hold individuals and institutions responsible and accountable for their action by 2017;
- ❖ ***Strategic Objective 2:***To promote a culture of human rights amongst coastal communities by ensuring access to justice and rule of law by 2017;
- ❖ ***Strategic objective 3:***To promote awareness on Economic and social cultural rights for sustainable development by 2017; and
- ❖ ***Strategic objective 4:*** To significantly strengthen the institutional and financial capacity of Haki Centre by 2017.

## 1.2 KWALE COUNTY PROFILE

The coastal region of Kenya has 6 counties namely: Kwale, Kilifi, Mombasa, Taita Taveta, Tana River and Lamu. Kwale County borders Taita Taveta to the west, Kilifi to the North West, Mombasa and Indian Ocean to the east. It also extends from Shika Adabu in the south, to Kinango and then southwards to Lunga-Lunga on the border with Tanzania. The county has an area of 8960km<sup>2</sup> with an estimated projected population of 649,931 persons (2009 census). Kwale County is mainly dominated by the Digo and Duruma communities. These people belong to the Mijikenda ethnic group of the Coast region of Kenya. Other tribes found in the county include the Kambas, Arabs and Indians though in a very small proportion compared to the Digos and Durumas. The county Governor is Hon Sallim Mvurya, serving his first term in office.

Kwale County has four major topographical features namely; the coastal plain, the foot plateau, the coastal uplands and The Nyika plateau. The coastal plain is a narrow belt that varies in width from 3km to 20km. The coastal plain lies below 30m above the sea level and extends 10kms inland. The feature, which is the coastline in Kwale District, covers about 250km. The Foot Plateau, which is behind the Coastal Plain, lies at an altitude of between 60 and 135 metres above the sea level. This zone is composed of Jurassic and sandy hills consisting of Magarini sands. The Coastal Uplands, commonly known as Shimba Hills, rises steeply from the foot plateau to an altitude of 150 metres to 462 metres above the sea level. They are composed of the Mazeras sandstones. The hills include the Shimba Hills (420m), Tsimba (350m) and Dzombo (462m). This is an area of medium to high agricultural potential. The Nyika Plateau, also referred to as the hinterland, rises gradually from about 180 metres to 300metres on the western boundary of the district. The region is underlain by basement rock system. The main activity here is livestock rearing. Kwale County has monsoon type of climate; it's hot and dry from January to April with the coolest period falling between June and August. Rainfall comes in two season's i.e. short rains are experienced from October to December while the long rains run from March to June/July. The county has an average rainfall ranging from 400- 1200mm. Most of the areas experience long rains for farming with the exception of Samburu division.

The main rivers and streams in Kwale County are Marere, Mwaluganje and River Ramisi. Rivers Marere and Mwaluganje have been harnessed to provide piped water. Kwale is a very important county for small scale farmers from the inland areas of Golini, Kinango, Mkongani, Mwaluphamba, Tiribe and many others for the sale and transport of their produce. Among other farm products, the county in general produces oranges, pawpaws, mangos, bixa, coconuts, a variety of vegetables and cereals. The colorful city of Mombasa can be seen from Golini due to its high altitude. Past Kwale is Shimba Hills Hotel and Mwaluganje Elephant Sanctuary running along the KWS (Kenya Wildlife Service) strip.

### 1.3.1 Livelihood zones in Kwale

The above constituencies have four livelihood zones.

- i. **Livestock farming** - in the hinterland of Kinango, Samburu and Lungalunga. Income in the livelihood is approximately 27% from firewood collection/ charcoal and 20% from livestock production.

- ii. **Mixed farming** - spreads in the entire district with cash crop farming being the main income source at 22% and 18% from livestock production.
- iii. **Fisheries livelihood** - mainly along the coastal line and fishing is estimated at 60% of total income and approximately 11% from petty trade.
- iv. **Formal employment /tourism livelihood** found mainly in Diani and urban centers. In this livelihood, casual labor, formal employment and small business constitute 40 %.

### 1.3 BACKGROUND OF THE SOCIAL AUDIT PROJECT

Social Audit is an in-depth scrutiny and analysis of the working of any public utility vis-à-vis its social relevance. Land social audits are therefore a form of social advocacy where communities are involved in auditing settlement scheme processes. The social audit process involves performance assessments of the settlement scheme process in terms of its social, environmental and community impacts based on the views of stakeholders.

The need to undertake a social audit on land was necessitated by public outcry on the flawed process of settling squatters in the settlement schemes. The contentious issues were many and varied since the entire exercise was clouded by irregularities. It was purported that immigrant communities were allocated land before the indigenous communities could be settled. Furthermore, it was alleged that land officials felt *their time to eat* had come and allocated themselves and their cronies' plots much to the disappointment of the more deserving. Moreover, there were claims that community members were not properly represented and the settlement process was not sufficiently inclusive of all stakeholders. Furthermore, there were reports of delays in the issuance of title deeds after full payment for land acquired.

It was in light of the alleged irregularities in settlement schemes that Haki Centre sought to undertake the land social audit in Kinarini/Godoni of Kwale County to determine the magnitude and nature of irregularities involved in the process since some of these issues are potential sources of conflict among communities. The social audit process was supported by USAID, Pact and ACT! through the SAFE Coast Project which is under Kenya Civil Society Strengthening Programme (KCSSP).

**Project Goal:** Active Participation in a Fair and Peaceful Election at the Coast.

**Target Objective:** Enhanced Community Access to Land Tenure at the Coast.

**Key activities:** The main activities included implementers induction workshop and undertaking two participatory action oriented social audit on land in Kwale County.

#### Expected Results

- Improved transparency and accountability in land administration and management;
- Reduction of violent conflicts related to land ownership within the settlement schemes;
- Increased collection of title deeds by settlement scheme beneficiaries from the Ministry of Lands;

- Increased awareness among community members to abstain from selling land after settlement which creates a cycle for squatters;
- Consensus between communities and the Ministry of Lands on peaceful redress to land grievances.

#### **1.4 BACKGROUND OF SETTLEMENT SCHEMES IN KENYA**

Independence historians indicate that the fight to gain internal governance from the British was mainly triggered by land grievances. There was discontent among people about the occupation of their land by foreign settlers. The independence government also identified agriculture as the economic mainstay of the country. Therefore, it was important that the majority of the people be allocated pieces of land which would support crop and animal husbandry. On the other hand, the white settlers were not ready to let go land without sufficient compensation for the developments they had undertaken on their huge tracks of land.

In order to meet the demands of the white settlers, it was agreed that people were to be settled and the compensation would be financed by loans from the British government, the World Bank and other multilateral and bilateral agencies. The loans would facilitate compensation for white settlers while Africans would access the fund to repossess their land back. This then became the logical beginning of the settlement schemes in Kenya.

The Government of Kenya (GoK) established an agricultural fund which was managed by the Settlement Fund Trustees (SFT) to effectively manage the grants and loans from the World Bank and other agencies. The core mandate of SFT was to spearhead settlement programme in Kenya. The trustees were established under the Agriculture Act, Cap 318, Laws of Kenya mandated to manage the fund and to purchase any land for resale purposes. SFT was used to purchase land and sub-divide it to beneficiaries who were expected to pay back the money at the rate of six and a half per cent as interest rate per year. The GoK uses SFT to settle different categories of the landless poor people.

Despite the fact that the coastal region has been the major beneficiary of SFT programme, local communities are yet to be meaningfully settled, which consequently raises eyebrows from observers and agitates the communities. Actually, the settlement process has failed to inspire the confidence of a majority of local Coastals. Very few settlement schemes (if any) are free from alleged irregularities. It is feared that if unresolved, the situation may degenerate into socio-economic instability.

#### **1.5 SETTLEMENT SCHEMES IN KWALE COUNTY**

Table 1 classifies land in Kwale County as per MoL – Department of land adjudication and settlement. From the table, it is still clear that the government holds huge tracks of land and it is this very land where squatters have settled. The government thus adopted the concept of settlement schemes to settle the squatters.

Table 1: Types of Land in Kwale County

| Type of land  | Area in Km <sup>2</sup> |
|---------------|-------------------------|
| Government    | 2,696                   |
| Freehold      | 34                      |
| Registered    | 753                     |
| Trust         | 1,536                   |
| Unregistered  | 3,238                   |
| Area of water | 65                      |
| <b>Total</b>  | <b>8,322</b>            |

Kwale has been a major beneficiary of the Settlement Fund Trustees programme. It has a total of 25 settlement schemes being implemented in the area. Table 2 outlines the settlement schemes which have been undertaken in Kwale.

Table 2: Schemes in Kwale County

| Scheme number | Name of scheme    | Number of schemes | Year established | Area(Ha) | No. of plots | Status                              |
|---------------|-------------------|-------------------|------------------|----------|--------------|-------------------------------------|
| 1             | Diani             | 475               | 1978             | 798      | 674          | Registered                          |
| 2             | Tembo spring      | 468               | 1968             | 302      | 31           | Registered                          |
| 3             | Ukunda            | 466               | 1978             | 601      | 124          | Registered                          |
| 4             | Shimoni           | 470               | 1996             | 2647     | 674          | Registered                          |
| 5             | Sabharawal        | 467               | 1995             | 120      | 23           | Registered                          |
| 6             | ShimbaHills       | 771               | 1996             | 25       | 44           | Registered                          |
| 7             | Ramisi            | -                 | 1995             | 80       | 67           | Registered                          |
| 8             | Kinondo/Chale     | 778               | 1995             | -        | 220          | Registered                          |
| 9             | Vanga/Majoreni    | 777               | 1996             | 52       | 36           | Registered                          |
| 10            | Gazi              | 785               | 1996             | 4        | 8            | Registered                          |
| 11            | Mwabungo          | 770               | 1996             | 125      | 125          | Unregistered                        |
| 12            | Shimoni village   | 769               | 1995             | 1700     | 1411         | Unregistered                        |
| 13            | Majoreni          | -                 | -                | -        | 21           | Unregistered                        |
| 14            | Ng'ombeni/Mawe    | -                 | 1996             | 350      | -            | Nullified by the DSPAC in 2005      |
| 15            | Matuga            | 472               | 1995             | 5385     | -            | Nullified by minister in March 2007 |
| 16            | Golini            | 469               | 1994             | 440      | -            | Nullified by minister in March 2007 |
| 17            | Tumbe             | 786               | 1994             | 135      | -            | Nullified by minister in March 2007 |
| 18            | MrimaBwiti        | 850               | 2006             | 4360     | 1485         | Unregistered                        |
| 19            | Magaoni           | 868               | 2006             | -        | 681          | Unregistered                        |
| 20            | Waa               | 869               | 2007             | 47       | 22           | Unregistered                        |
| 21            | Ramisi phase 1    | 880               | 2007             | -        | 827          | Unregistered                        |
| 22            | Ramisi phase 11A  | -                 | 2008             | -        | -            | Unregistered                        |
| 23            | Ramisi phase 11B  | -                 | 2008             | -        | 1628         | Unregistered                        |
| 24            | Mbuguni phase 1   | 490               | 2008             | 636      | -            | Unregistered                        |
| 25            | Mbuguni phase 11A | 490               | 2008             | -        | -            | Unregistered                        |

The aim of the settlement scheme program was to solve the historical outstanding issue of squatters in the coastal region. However, the settlement schemes have become more of problems than solutions. All the 25 schemes are having outstanding complications. Local communities have filed cases in courts of law to challenge the processes.

## **1.6 FACTORS FUELING GRIEVANCES – A COMMUNITIES PERSPECTIVE**

From interactions with local communities, Haki Centre realized that the key issues that have escalated the problem include:

- Most personnel in the district land office are not local indigenous people but are from upcountry. The District Commissioner, who is often not an indigenous person, chairs the powerful District Land Committee, which has more often than not been purportedly manipulated to endorse the decisions and actions of the chair.
- Some prominent government officials and other elites collude with local politicians and agents to identify vacant plots. Title deeds/allotment letters are then issued without the knowledge of original owners. The fraudulent allocations have resulted in regular problems of double allocation in some plots hence causing complications.
- The rich and powerful people have in certain occasions convinced the less privileged and probably illiterate land owners into selling their plots very cheaply.
- Some people have developed a habit of buying a small portion of land, and then stake a claim on the neighboring land. A good number of these people are well connected even within the government. As a result, determination of court cases delay while unlawful land occupants develop acquired property. This practice is common in the south coast, where one would purchase a small plot and expands the boundaries exponentially before having it registered. Eventually, owners of adjoining land suffer with reduced plot sizes.
- Some locals are in the habit of colluding with the local land committee in the settlement process. They are allocated plots and then sell the plots to willing buyers, mostly the upcountry tycoons. Common cases in the scheme are those of ‘professional squatters’. These are persons who sell their allotted land and go squatting in other peoples land waiting for another allocation.

## **PART TWO**

### **2.1 PARTICIPATORY ACTION ORIENTED SOCIAL AUDIT – THE CASE OF KINARINI AND GODONI SETTLEMENT SCHEME**

#### **2.1.1 BACKGROUND OF KINARINI-GODONI SETTLEMENT SCHEME**

Settlement schemes have been an integral part of Kenya’s land tenure system. The main purpose of establishing settlement schemes is to maintain some form of public control of the process of settling people either to stimulate agricultural production or to establish human settlement so as to constantly address the problem of landlessness. The Kinarini-Godoni Settlement Scheme was established in Kwale Town and its beneficiaries were the squatters around Kwale Town.

The settlement scheme was established in 2010 and was under Kwale Town Council. Apart from settling squatters, the scheme also aimed at planning Kwale Township. The process was spearheaded by the town council of Kwale in close coordination with the MoL. The scheme was expected to settle over 850 squatters.

#### **2.1.2 METHODOLOGY**

Participatory action oriented social audit on land is not an event but a process. A successful social audit requires time and commitment due to the enormity of the tasks involved and the challenges that face the process. To make matters worse, MoL officials who are the main providers of information needed for the audits are not always willing to give information. Haki Centre reached the decision to carry out the social audit in the Kinarini Godoni squatter settlement scheme because on the one hand, it was one of the most recent and controversial schemes and on the other hand, the community members were willing and ready to support the process. In order to establish the facts in Kinarini Godoni Settlement scheme, a mixture of methodologies were employed. These comprised of:

##### ***1. DEFINING AUDIT BOUNDARIES***

###### ***Informal Meeting with Key Informants***

Several informal meetings were conducted within Kwale town including one with MoL officials, the Kwale town clerk and community leaders. The meetings were very important in providing the exact picture of what happened during the distribution process. It was through these meetings that Haki Centre established that there were several irregularities to warrant a social audit. The organization received mixed reactions and information from these sources. The administrators were quick to report that the process was very successful whereas community leaders felt that the process was neither transparent nor fair.

##### ***2. PREPARATION ACTIVITIES AND IDENTIFYING STAKEHOLDERS***

###### ***a. Meeting with Scheme Beneficiaries***

Haki Centre conducted a total of 5 meetings with scheme beneficiaries with the aim of gathering information on the settlement scheme. It was also meant



to ensure community participation and ownership. It was during the preparatory meetings that social auditors and enumerators were chosen. Additionally, the participants also discussed and proposed the venue for the book keeping exercise. The discussions also helped highlight the concerns of those who were against the process all together. The preparatory meetings thus emerged as consultative and inclusive.

**b. Meeting with scheme committees**

In addition, the Center also managed to meet with the settlement committee members. We had two formal meetings with the committee members. The purpose of these meetings was to inform them of the process and to get as much information as we could from them. During our meetings with them, they did not admit any irregularities in the process or wrong doing in their part; in fact they heaped blame on the community members claiming that they were ignorant and indifferent to the process.

The chairperson of the settlement committee pointed out that the community members were not appreciative of the efforts put in the process. It was reported that most of the community members out of past experiences, did not take the process seriously and that they did not believe that they will be issued with the plots. Community members only started believing that the process could be beneficial when the first batch of allotment letters were issued.

### ***3. SOCIAL ACCOUNTING AND BOOK-KEEPING AND PUBLIC HEARING***

Social accounting, book-keeping and public hearing for the Kinarini/Godoni Settlement scheme were undertaken by Haki Centre organization. The organization, trained a group of 30 social auditors from the Kinarini Godoni Settlement scheme. The training and the social audit process took a period of 5 days commencing on the 26<sup>th</sup> November to 1<sup>st</sup> December 2012. The process included an in-depth scrutiny of the settlement process visa-a-vie the laid down procedures.

40 enumerators were divided into 2 groups of 20 people each. These groups undertook field verification processes at Kinarini A and Kinarini B locations respectively. They also interviewed beneficiaries to establish facts and also collect information. The social accounting and book keeping workshop was done in 5 days as outlined below

#### **Day One**

Day-1 was for climate setting: participants got opportunity to be introduced to the organization, the program and stakeholders in general. The enumerators also set the norms. Sessions included introduction by the participants, welcoming remarks. The participants were then informed of the task ahead, their role and expectations. Participants were concerned about possible opposition but were positive.

#### **Day Two**

The participants were taken through new legislations on land, which govern the management and administration of land. The topics covered included Introduction to Social Audit; Social Audit under the County Government; Land in the new Constitution; and Administration and management of Land.

### **Day Three**

The enumerators were taken through the settlement scheme process and topics covered included Land Acquisition Procedure; Step by step Procedures of Settlement Scheme and Collection of Land Audit Information.

### **Fourth Day**

The enumerators got an opportunity to collect information, which entailed going to the ground to collect raw data and fill questionnaire through several methods.

#### **2.1.6 Interviews**

The enumerators interviewed beneficiaries using structured questions. The enumerators did a total of 32 interviews in the 2 schemes and community members. These interviews were meant to establish personal grievances, their nature and magnitude and finally how best the respondents thought the grievances could be addressed. A total of 20 people filled questionnaires which were designed to seek information on affected plot number, nature of complaint and possible solutions. Those who were interviewed recorded statements out of their own will.

The interviewees made several complaints against land allocation process and also against the people who were charged with the responsibility of leading the process. The complaints indicated the extent of irregularities in the allocation process. In most cases, people pointed fingers at the chairman of the settlement committee who they said was working out of personal interest and sometimes under the influence of powerful individuals. It was reported that he performed most of the activities including squatter identification alone without the help of the community members.

### **Fifth Day**

The fifth day was the public accountability forum – a public meeting where enumerators presented their findings to stakeholders. The enumerators presented findings to the beneficiaries and at the end of every presentation the committee members had a chance to respond to the issues raised. The beneficiaries were also given a chance to ask questions which were then answered by the committee members.

#### **2.1.7 FINDINGS**

The enumerators interviewed a total of 82 community members who were beneficiaries of the settlement process and the following issues emerged.

##### ***1. Plot With Shared Individuals***

It was established that a total of more than seven plots (7) are shared with different people including plot No 42, plot No 195, plot No 223, plot No 240, plot No 404, plot No 759 and plot No 431.

## ***2. Plots Which Are Smaller In Size***

It was established that some plots were smaller than the others. Six (6) plots were found to be under this category including plot No.239 which measures 15 X 16 meters, plot No 100, plot No 101, plot No 102, plot No 106 measuring 90X40 Meters, and plot No 62.

## ***3. Houses on Road Reserve***

It was realized that over 20 houses were on road reserves. The participants expected these houses to be cleared to facilitate construction of roads. However, the bone of contention is that the owners of these houses were not given alternative plots hence having nowhere to move to.

## ***4. Houses within the Public Utility Plots***

It was also established that some people were still occupying the plots set aside for public utilities including a primary school and a stadium. In this case, some were given alternative plots while others were not. Again those who were given alternative plots are yet to be shown their plots since they only have plot numbers. Those under this category include plot No525, plot No645, plot No137, and plot No 476.

## ***5. Plots With Developments But Allocated To Other People***

It is a normal practice that during picking process, proper structures should be identified before allocation. This is necessary to enable those who have done developments not to lose their investments. It was found out that over 12 plots were allocated to new people despite some having permanent structures. These included plot No 106, plot No 84, plot No 154, plot No 102, plot No 233, plot No143, plot No207, plot No149, plot No 41, plot No 98, and plot No 204.

## ***6. Plots Given to Government Officials***

It was established that some of the government officials benefited from the scheme due to their influence. It was found that some government officials who benefited from the scheme include the provincial administration, police offices and council officials. A total of 4 plots were affected including plot No 41 plot No137, plot No 473, and plot No 288.

## ***7. Plots Sold without Owners Consent***

It was also established that some plots were sold without the consent of original owners. It was reported that those who were tasked with the responsibility of allocating plots colluded with the rich to reallocate plots at a fee. A case in question was plot No 232.

## ***8. Plots sold by the owners***

The enumerators also established that many have willingly sold their plots. This is against the spirit and the purpose of the settlement scheme.

## 2.1.8 RECOMMENDATIONS

1. The government officials who were allocated plots within Kinarini/Gononi Squatter settlement scheme should give back those plots to the community members whose houses are within the road reserves;
2. Those whose houses are within the road reserves should be given an alternative place to move to. The council should not demolish their homes without finding them alternative settlement. This will avert any future conflicts and violations of human rights.
3. The plots with outstanding issues like double allocations should be resolved at the earliest opportunity and those affected given alternative plots. Most of the plots with double allocations have one owner known to the society while the other is not known.
4. Those who were moved from utility plots (stadium) should be shown alternative plots of which they were given numbers but are not able to make payments on the same. Over the period, they have been sent to the survey officer who has not shown any commitment in helping them to acquire the said plots.
5. The Development Plan for the plots should be made available to the beneficiaries; all the community members interviewed during this exercise stated that they did not have a chance to see the plan and that they don't even know how the plan looks like.
6. The council should not allow people to sell and buy plot at will and at the rate in which it has been done; during the process, we learnt that most of the plots have been sold out within this short period of time. The council should therefore make it difficult to buy or sell land.
7. The arbitration committee which has been set up by the Town clerk under directions of the provincial administration should be abolished since people do not have faith and confidence in it.
8. If no viable and lasting solution could be found, then the process should be nullified and a new process initiated to ensure that the Kwale community enjoys the peace and harmony they have always enjoyed.

## 2.1.9 CHALLENGES

Just like in any other audits social audits also have its challenges, which included **Change in land laws**. By the time of the social audit, there were changes in the land laws. Facilitators were forced to apply the old laws even though they were irrelevant and contradicting at some point since the new legislations had not been finalized.

**Access to information-** despite the constitution guaranteeing citizen access to information, the government officials are yet to change. The ministry of land officials were not ready to provide information easily.

## **2.2. PARTICIPATORY ACTION ORIENTED SOCIAL AUDIT – THE CASE OF RAMISI SETTLEMENT SCHEME, PHASE II A**

### **2.2.1 BACKGROUND OF LASA PROCESS**

Haki Centre is currently implementing the Land Social Audit (LASA) targeting local people as the main agents of change. Through this project, the organization is undertaking land social audits on settlement schemes within Kwale County. The aim of the land social audits is to help address injustices that were done during the allocation of land in settlement schemes in Kwale County as well as ensuring that the objective of squatter settlement schemes is achieved.

Social Audit is a popular phenomenon that continues to be embraced by many the world over. It is a process that empowers community members to monitor the management of public resources with a view to ensuring prudent utilization of resources. The Land social audits involve educating the community on the land allocation procedures with the aim of empowering them to establish whether the process of resettlement was done appropriately and as per the law.

This is a report on the Social Audit of Ramisi Phase II A settlement scheme in Kinondo location Diani Division, Msambweni Constituency, Kwale County. The audit was undertaken by Haki Centre following a public outcry on the irregularities and injustices witnessed in the settlement process.

The social audit process for the scheme was initiated in December 2012. Since then, Haki Centre has conducted a series of meetings with; community members, key informants and elders in the buildup to the social audit exercise. These meetings culminated into the identification of social auditors and eventually the social audit exercise, which involved capacity building the participants, field verification process and finally a public accountability forum.

During the field verification process, the officers and the social auditors visited the ground with the aim of collecting and recording complaints and recommendations. Several complaints were made against the allocation process and the people who were given the mandate to spearhead the process. The received complaints indicated the extent of irregularities in the allocation process. In most cases, people pointed fingers at the settlement committee who they said never involved the community significantly.

The purpose of this report is therefore to shed light on the irregularities and the alleged injustices of the Ramisi Phase IIA settle scheme and recommend the way forward to the relevant authorities, especially the National Land Commission.

### **2.2.2 BACKGROUND OF RAMISI SETTLEMENT SCHEME PHASE IIA**

Settlement schemes have been an integral part of Kenya's land tenure system. The main purpose of establishing these settlement schemes is to maintain some form of public control

of the process of settling people either to stimulate agricultural production or to establish human settlement so as to constantly address the problem of landlessness.

Ramisi phase IIA settlement scheme was established in the year 2010 with the aim of settling the landless in the area so as to uplift their living standards through maximizing the use of land.

The land was initially owned by the Madivan group, a private firm that owned the defunct Kenya Sugar Company. When the group wound up its operations in 1960s, the land reverted back to the community. For this reason, the community started settling on the land gradually. It is interesting to note that some community members had been squatting on this land as early as mid-1960s. The government, keen on solving the problem of landlessness and giving security of tenure to the locals, declared the land in which the people had settled on an adjudication area and undertook land adjudication for the people who had settled on these parcels of land. The adjudication covered three sections namely; Mabandani, Mwakamba and Mbuyuni.

The remaining parcel of land that had not been settled on (open land) was declared a settlement scheme by the Ministry of Lands with the aim of giving the locals plots to farm on. These plots were to be of equal sizes of 3 hectares each.

The scheme is within Msambweni constituency, Kinondo location and is composed of eight villages including; Makongeni, Kibarani, Kinondo, Mgwani, Chale, Matunda Bora, Bandani, Mwakipeku and Mabandani.

### 2.2.3 METHODOLOGY

On receipt of complaints from the Community members, Haki Centre set up to follow on the matter. The team employed a number of methodologies in establishing the facts. The following methods were employed;

#### a) Meetings

Haki Centre organized several meetings within Ramisi Settlement Scheme. The aim of these meetings was to establish the facts, and also to inform all the stakeholders on the social audit process. Two categories of meetings were undertaken; meetings with the committee and meetings with the community members/ beneficiaries.

Haki Centre organized five community meetings to identify stakeholders and key informants to gather credible and viable information on the issues that had been raised by the community since the declaration of the scheme by the minister of lands. These meetings brought together youths, community beneficiaries, elders and other stakeholders. The meetings were to discuss the ways and means of resolving the massive irregularities witnessed in the scheme settlement process.

Through these meetings, several pertinent issues came up. These issues included; non-involvement of community members in the land allocation process, land given to upcountry

people, committee members benefiting unduly from the settlement process, among others. These same issues acted as the driving force for the process, each meeting reinforcing the allegations made in the previous meetings.

These meetings were very important in the land social audit process because of the following reasons. First, it was through these meetings that most of the relevant information for the social audit was obtained. Secondly, the social auditors who participated in the process were identified. Finally, through these meetings, community members internalized the concept of the social audit process; including its impacts and what it entails. This was instrumental in the realization of community ownership and support.

#### **b) Training of the social Auditors**

Through the series of meetings undertaken above, Haki Centre organized a three days training to the identified social auditors. During this training, participants were taken through the settlement scheme process, the laws governing settlement schemes, and the new land laws among others. On the other hand, the social auditors also had a chance to visit the field for the field verification process.

The social audit training was undertaken at Hillpark Hotel from 22<sup>nd</sup> to 25<sup>th</sup> March 2013. As earlier stated, the training involved both practical and theoretical aspects. The theoretical aspect entailed taking the social auditors through the laws governing the settlement process. This was aimed at equipping them with the necessary knowledge to undertake the social audit within the framework of the law. The practical aspect involved actual visit to the field to verify the process. In the final day of the training, a public accountability forum was organized where the social auditors presented their findings to the community. At this meeting, more information was gathered to come up with recommendations which reflect the needs and expectations of the community.

The team of social auditors comprised of women, youth and old men. The diversity in the team added more value since each group brought a unique aspect thus giving a perfect blend for the exercise.

#### **c) Interviews**

Through the social auditors trained above, Haki Centre managed to interview a total of 110 community members in the affected scheme. The aim of the interview was to establish whether the community was really aggrieved and the magnitude of their grievances.

In order to comply with ethical standards, the respondents consent was first sought before they could take part in the process. Because informed consent is of paramount importance in this regard, the respondents were furnished with all the relevant information concerning the land social audit, the extent and nature of their participation and the possible impacts of participation. As such, all those who took part in this exercise did it out of their free will and most importantly from an informed perspective.

Interviews were the primary source of information thus forming the backbone of this process. A total of 96 people filled questionnaires which were designed to seek information on the affected plot number, nature of complaint and possible remedies.



It is through the analysis of the interview transcripts that the social auditors drew a report which was presented to the community through a public accountability forum held at Mabandani grounds on 25<sup>th</sup> March 2013 from 2:00 pm.

## 2.2.4 FINDINGS

### a) Constitution of the settlement committee

Several queries were raised by the community members on how the settlement committee was set up. None of the community members interviewed could describe how the settlement committee was constituted. Most of them said they know the chairman and a few people that he worked with. This raised serious concerns on the credibility of the committee and whether they could deliver a fair exercise.

However, during the public accountability forum, it emerged that indeed there was a committee elected by the community members. As a matter of fact, one of them stood up to shed light over the issue. In his submissions, he pointed out that there was another influential committee which was working beside the elected committee. The elected committee comprised:

1. Abdalla Bakari Mwarima
2. Hassan Hamisi Madzengo
3. Salim Mwalimu Mwarandani
4. Hadija Mohammed Changu
5. Amina Amadi Tsumo
6. Hamisi Mwinyi Tsumo
7. Juma Mohammed Tolozi
8. Bibi Omar Mwachoyo

He intimated that the elected committee had no say and were there to be seen but not to be heard. As such, the entire process was undertaken by the 'powerful' committee which was not elected by the people. This powerful committee comprised of the following people:

1. Ali Chigoti - Chairperson
2. Mohammed Hamisi Mwasengeza - Secretary
3. Kassim Masudi Chiwaka - Vice Secretary
4. Mohammed Mwalimu Mwarandani
5. Juma Salim Mwachei
6. Hamisi Mohammed Issa
7. Bakari Hamadi Mwakirenje
8. Hamisi Seif Mwakirimo
9. Bakari Hussein Chamkono
10. Amadi Salim Chivuto
11. Abdallah Mbaruk Mwarupiya
12. Rashid Choka
13. Mwalimu Shida

14. Mohammed Hamisi Mwabwagizo

15. Rajabu Seif Kubambanya

From the same forum, it also came to our attention that the community had formed a review committee to look into the injustices of the entire process. It was evident that they were working under a lot of opposition and some of them including the chair expressed concerns for their lives since they have been threatened to stop the exercise. The following were the members of the review committee at the time of its constitution.

1. Shaban Salim Nyere - Chairperson
2. Ali Zuberi
3. Bibi Omar Mwachoyo
4. Kasim Mwakazi
5. Hamisi Mwalimu Mwabwagizo
6. Mohammed Abdalla Mwavumbani
7. Mrs. Vincent

This review committee faced a lot of challenges. First, it was an uphill task finding surveyors. Secondly, since there was no clear work plan, coordination between the committee, the community and the ministry was very poor. Third, because of threats, some committee members either stepped down or stopped participating actively in the process. Last but not least, verification of plots was very tricky since in certain instances the map could not agree with what is on the ground.

#### **b) Settlement process**

The social audit of the Ramisi settlement scheme established a number of things which were not done as per the law guiding the settlement process.

First, no vetting of squatters was done. Second, the final list of beneficiaries is not known to the community members. It is alleged that many people who benefited from this scheme were not the local indigenous communities. This allegation can only be substantiated if the list of beneficiaries is made available for the community members to scrutinize.

#### **c) Lack of community involvement**

It was observed that people residing in the affected scheme were not involved in the process. Instead, they were only informed that surveyors would come and survey their parcels of land and shortly afterwards allotment letters /title deeds issued. However, the community was not informed on how the scheme was going to affect them. This has led to discontent as community members feel this was a ploy to give their land to other people.

#### **d) Criteria of plot size determination/unequal measurement**

The failure by the relevant authorities and the concerned land department to avail in a public place the PDP for public consumption explains why there were a lot of complaints arising from the allocation of plots and differentials in plot sizes. Haki Centre through the social auditors established that some plots were significantly bigger than others. This brought to the

fore questions challenging the credibility of the criteria used to determine the sizes of the plots.

**e) Public non-access to Part Development Plan for Inspection**

Almost all the community members interviewed during the field verification process said that they have never seen the Part Development Plan (PDP) anywhere. According to the regulations, the public should be given a period of 60 days to inspect the PDP before any allocations is done.

It was therefore improper to proceed on to allocate land before making the PDP available for public inspection.

**f) Poor identification of squatters**

The social auditors witnessed cases where people whose ancestral land was given to other people. Land was allocated to people who were not squatters or sometimes not of the indigenous origin. In most of these cases the rightful occupants were not allocated an alternative land, leading to land disputes between them and the new owners. Community members reported that the process of squatter identification was done by only one individual who they allege was the chairman.

**g) Shared plots**

Some plots were shared by more than one person. In certain instances, one small plot could be shared by three people.

**h) Unequal distribution of plots**

Some people benefitted from the process more than others. Certain families were allocated more plots than others either because of the role they played in the exercise, the relationship they had with those who did the allocation or their financial strength.

**i) Prying on Public utility land**

Parcels of land allocated to public utilities are not safe. It is emerging that a portion of land that was earmarked for a playground was irregularly sold by the committee to an unsuspecting buyer. On the other hand, some private developers are trying to get themselves plots in land allocated for Makongeni trading Centre.

## **2.2.5 RECOMMENDATIONS**

Based on the foregoing, the community social Auditors through Haki Centre recommend the following to the National Land Commission and any other relevant bodies;

- a) That the list of beneficiaries and the map be produced and made public for everybody to see for the sake of accountability and transparency.

- b) That any plot which was allocated to government officials due to their influence should be repossessed and given to the community members who did not benefit from the process. In cases where the plot in question has exchanged hands, the plot should still be repossessed.
- c) Utility plots that have been grabbed or purchased for private development should be repossessed back.
- d) That the findings and the recommendations of the review committee be adopted and implemented in its entirety because it's a community driven process that commands the full confidence of the people.
- e) That if none of the above is forthcoming, the process be nullified and done a fresh and due process followed.

### **2.2.6 CONCLUSION**

The noble idea that is the Ramisi squatter settlement programme, was conceived with the main objective of ending the problem of landlessness by allocating parcels of land to the residents and subsequently provide them with the legal documents that confer security of tenure. However, the irregularities and injustices witnessed in the settlement schemes are major setbacks to the achievement of the said objectives and must be entirely addressed if these objectives are to be realized.



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