

## Chapter 6

# Human Dignity Is on the Line: Small-Scale Fisheries, Blue Growth, and Human Rights in Lamu, Kenya



Bryan P. Galligan , Fernando C. Saldivar, and George W. Maina 

**Abstract** In Lamu, Kenya, small-scale fisheries are an integral part of culture, livelihoods, and the local economy. Unfortunately, this vibrant region on Kenya's north coast is under threat from a large-scale development project that affects local communities and the natural ecosystems on which they rely. The implementation of the SSF Guidelines, and particularly the guidelines' emphasis on protecting small-scale fishers' human rights, could provide local communities with a measure of protection from these threats. In recent years, the community in Lamu has worked in precisely that direction, fighting and winning a lawsuit against several government agencies that ruled to protect fishers' constitutional rights to life, culture, a clean and healthy environment, and property. To document this struggle and draw lessons from it, we conducted a literature review and legal analysis, also drawing on our personal experience with the community in question. The court's novel interpretation of Kenya's 2010 Constitution makes clear the integral connection between basic human rights and the protection of small-scale fisheries, providing a model for other communities whose rights are threatened by large development projects. At the same time, there is a risk of the 2018 judgment being only a victory on paper as the case continues to wind its way through appeals. There is a wide gap between the court's ruling and the concrete reality on the ground in Lamu where, despite the ruling, part of the port project has become operational while the remainder is under construction, resulting in environmental damage and the displacement of fishers from their traditional fishing grounds. Despite the continuing failure of the Kenyan government to protect fishers in Lamu, these events nonetheless demonstrate that the SSF Guidelines can be progressively implemented when fishers and civil society make rights-based legal demands.

---

B. P. Galligan (✉) · F. C. Saldivar  
Jesuit Justice and Ecology Network Africa, Nairobi, Kenya

Department of Biology, Loyola University Chicago, Chicago, IL, USA  
e-mail: [bgalligan@jesuits.org](mailto:bgalligan@jesuits.org)

G. W. Maina  
Africa Regional Office, The Nature Conservancy, Mombasa, Kenya

© The Author(s), under exclusive license to Springer Nature  
Switzerland AG 2024

J. Nakamura et al. (eds.), *Implementation of the Small-Scale Fisheries Guidelines*, MARE Publication Series 28,  
[https://doi.org/10.1007/978-3-031-56716-2\\_6](https://doi.org/10.1007/978-3-031-56716-2_6)

**Keywords** Artisanal fishery · Coral reef fishery · Western Indian Ocean · Litigation · Environmental justice · International law · Constitutional law

## 6.1 Small-Scale Fisheries in Lamu, Kenya, and Their Challenges

For the communities of the Lamu archipelago located along Kenya's north coast, small-scale fishing has been a way of life and means of survival for centuries (Ylvisaker 1982; Crowther et al. 2016; LaViolette and Fleisher 2018). These communities share a strong connection to their marine resources while having long been marginalized by Kenya's central government and living in various states of insecurity at the hands of armed forces on both sides of the conflict taking place along the Kenya–Somalia border (Waddilove 2020). Crabs and small fish are found in mangrove creeks, octopus are fished on foot by women, and significant artisanal fisheries exploit coral reefs inshore and tuna and similar species offshore, forming the backbone of the local economy and providing a reliable means of food security (Save Lamu 2018). All of this is made possible by Lamu's highly productive and biodiverse ecosystems, which are comprised of fringing coral reefs, sandy lagoons, seagrass beds, and extensive mangrove forests (Osuka et al. 2016), as well as a highly productive, but seasonally and interannually variable, area of open ocean called the North Kenya Banks (Kamau et al. 2021). The area also sustains populations of key species such as turtles, dugong, whales, and dolphins (Osuka et al. 2016). The fisheries supported by these unique habitats directly or indirectly support 70–75% of residents' livelihoods (Osuka et al. 2016). However, in addition to their economic and intrinsic value, Lamu's marine biodiversity and fisheries are also notable for the role they play in local culture.

Lamu is home to diverse communities, including a number of Indigenous groups who see themselves as interdependent among each other and in deep relationship with the ecosystems in which they live (Save Lamu 2018). These communities, which include the Bajun, Swahili, Sanye, Aweer, and Orma, strive to orient individual actions and communal lifeways towards “*the wellbeing of each creature within the ecosystem*” (Save Lamu 2018, p. 3), an ethical norm that is already more sophisticated and inclusive than those found in most contemporary approaches to fisheries governance (Galligan 2021). The interdependence of these groups in the form of shared economic and cultural relationships was even named as part of the justification for inscribing Lamu's Old Town, the longest continuously inhabited Swahili settlement in East Africa, as a World Heritage Site in 2001 (UNESCO 2002). Kenya's High Court at Nairobi has additionally affirmed the specific role that small-scale fisheries play in Lamu's cultural heritage, ruling that these fisheries are protected by fishers' constitutional right to culture (Ali Baadi v. Attorney General 2018). Of course, these external pronouncements only serve to confirm the words of Lamu community members, who point out that “*our environment has provided our*

*communities with resources over the centuries*” and that *“our cultural identity depends on it”* (Save Lamu 2018, p. 10).

Lamu stands out from other parts of Kenya’s coast because of its remote location, high biodiversity, distinctive cultural mix, and historic marginalization (Fig. 6.1). While some aspects of Lamu’s small-scale fisheries are similar to their more southern counterparts, the aforementioned differences make the north coast unique. However, Lamu is not an aberration. Rather, analyzing Kenya’s fisheries governance in dialogue with this marginalized perspective provides the most honest accounting of how the system really works and offers the best hope of cultivating resistance (Medina 2013). Alarming, small-scale fisheries in Lamu face several threats today, most of which come from sources outside the community (Galligan and Kinney 2021). Local leaders and civil society organizations point to their historic exclusion from political processes, forced displacements, and the lack of basic services, as well as the imposition of governance structures (so-called chiefs) that have undermined traditional decision-making practices (Save Lamu 2018). More recently, law enforcement authorities began to strictly enforce a national ban on beach seines with no advance notice and without providing the community with alternative gears (Mohammed 2021). Community members, who had used this gear for generations, also claim the ban was formulated without any meaningful local consultation (Mohammed 2021). An ongoing maritime boundary dispute with Somalia has also reduced fishing access and increased the potential for violence at sea (Kadagi et al. 2020). The area’s most urgent threat, however, and the focus of the



**Fig. 6.1** Looking south along the Lamu seafront at low tide

case presented in this chapter, is the Kenyan government's largest-ever infrastructure project, known as the Lamu Port–South Sudan–Ethiopia Transportation Corridor, or LAPSSET, which is slated to include a megaport, a cross-country oil pipeline, highways, railways, a resort city, and a coal plant (LAPSSET 2016).

LAPSSET and the other challenges confronting small-scale fishers in Lamu echo those named in the Food and Agriculture Organization of the United Nations (FAO)'s Voluntary Guidelines for Securing Sustainable Small-Scale Fisheries in the Context of Food Security and Poverty Eradication (SSF Guidelines), which identify “*non-participatory and often centralized management systems*,” “*unequal power relations*,” and “*infrastructure developments*,” among a host of other issues as pressing challenges for small-scale fisheries (FAO 2015, p. x). While these trends are far from the only challenges faced by coastal communities around the world, the events in Lamu present a familiar pattern, in which inadequate and unethical governance models have conspired with initiatives oriented exclusively or almost exclusively towards macroeconomic growth to violate small-scale fishers' human rights (Cohen et al. 2019; Galligan 2021; Okafor-Yarwood et al. 2022). This is one reason why the SSF Guidelines are so valuable. Where small-scale fishers are squeezed on all sides by a growing ocean economy (Cohen et al. 2019; Bennett et al. 2021), fisheries law and policy must assert ethical norms capable of reigning in the worst excesses of so-called Blue Growth. The SSF Guidelines do precisely that, asserting the most widely recognized normative framework the world has today, namely, the regime of human rights developed in the United Nations system since the end of the second World War (FAO 2015; Nakamura 2022). It is also worth noting that, like other voluntary guidelines produced by FAO, the SSF Guidelines were approved by consensus of all FAO working member states, including Kenya (Courtney et al. 2019).

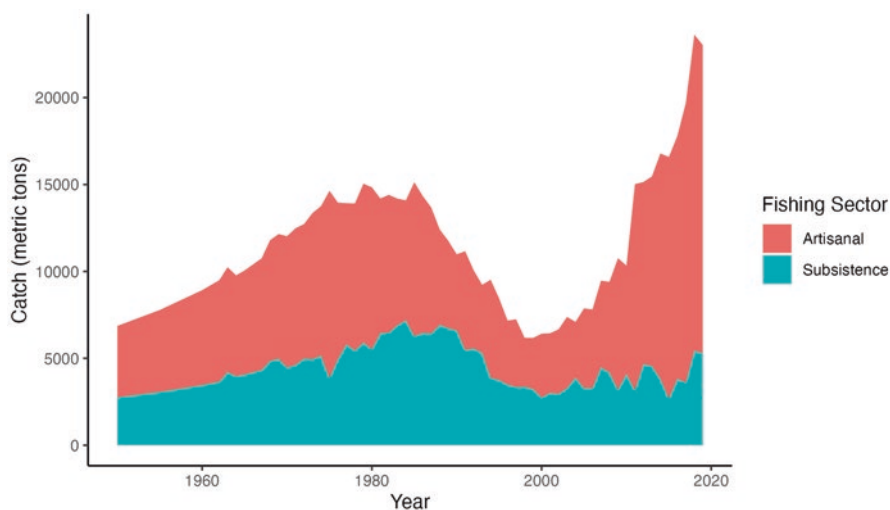
By promoting a human rights-based approach to small-scale fisheries management (cf. Allison et al. 2011), the SSF Guidelines demand a radical shift in fisheries governance overall. The case of Lamu, Kenya, provides an opportunity to explore the potential role that rights-based litigation could play as one tactic among many for bringing about this shift. The efforts of coastal communities in Lamu to oppose the procedural and distributional abuses of LAPSSET (Athman and Ernst 2015), and the substance of a High Court judgment ruling in the communities' favor (Ali Baadi v. Attorney General 2018), provide an early example of how recognizing the role small-scale fisheries play in fulfilling human rights can provide strong protection against ecologically and socially destructive Blue Growth initiatives. By strengthening human rights protections in small-scale fisheries, the LAPSSET judgment helps to implement this key aspect of the SSF Guidelines. However, it does not bring about wholesale transformation.

This argument is based on a combination of legal analysis, a review of academic literature and policy documents, and our personal experience with the community in question. After providing an overview of the small-scale fisheries operating along Kenya's coast and the law and policy frameworks that govern them, this chapter turns to the case of *Mohamed Ali Baadi v. Attorney General*, in which the High Court at Nairobi ruled in favor of small-scale fishers in Lamu and against a lengthy list of Kenyan government agencies, citing the fishers' constitutional rights to life,

culture, a clean and healthy environment, and property (*Ali Baadi v. Attorney General* 2018). The case provides a model for how coastal communities can organize to spur the implementation of the SSF Guidelines, seeking legal redress for violations of their preexisting constitutional rights. Unfortunately, the situation in Lamu also suggests the limitations of this approach. Where legal structures are not designed to protect these rights in the first place, the SSF Guidelines and the human rights they strive to protect are likely to remain ideas rather than concrete realities.

## 6.2 Marine Small-Scale Fisheries in Kenya<sup>1</sup>

As in Lamu, small-scale fisheries all along Kenya's coastline are crucial for the food security, livelihoods, and cultures of local communities. They are also subject to a variety of social, political, and ecological challenges. According to recent estimates, catches by Kenya's marine small-scale fisheries have steeply increased since 2010 and are now estimated to be approximately 25,000 metric tons annually, a value that is higher than at any point in time for which statistics are available (Fig. 6.2) (McAlpine and Zeller 2020). At the same time, catch rates (catch per unit effort) are



**Fig. 6.2** Estimated landings of marine small-scale fisheries in Kenya. Data are obtained from the Sea Around Us database (McAlpine & Zeller 2020), which is assembled using the catch reconstruction procedure documented by Zeller et al. (2016)

<sup>1</sup>While Kenya's freshwater fisheries are responsible for most of the country's landings, we focus on the marine sector in this chapter. Marine and freshwater fisheries do bear some similarities in Kenya (notably, Beach Management Units were pioneered in Lake Victoria before being implemented on the coast), but the social, economic, ecological, and governance contexts of these two sectors are sufficiently different to merit focusing on one to the exclusion of the other. When we refer to Kenyan small-scale fisheries in this chapter, we are specifically referring to the marine sector.

only 23% of what they were in the mid-1980s, indicating that the high catches by Kenya's small-scale fisheries are likely the result of increasing pressure on fish stocks and not increasing fish abundance (Samoilys et al. 2017). As catches become less diverse, an increasing amount of fishing pressure is being borne by just a few species (Samoilys et al. 2017), and overfishing has made Kenya's coral reef ecosystems vulnerable to collapse (Obura et al. 2022). This challenging ecological context is exacerbated by a series of social concerns common to Kenyan coastal communities. For example, when compared with their counterparts in neighboring countries, coastal communities in Kenya tend to be more reliant on marine resources, participate in fewer alternative livelihood activities, and have less adaptive capacity (McClanahan et al. 2015). They are also more likely to experience food insecurity than the coastal regions of neighboring countries or inland regions of Kenya (KNBS 2015; Taylor et al. 2019). In addition, micronutrients available in wild-caught fish are not usually fed to children of non-fishing families, even though this practice could substantially improve health outcomes for these children (Cartmill et al. 2022). In Lamu, these issues are compounded by a recent history of violent extremism associated with issues of land, electoral politics, and the religious ideology of al-Shabaab (Nyagah et al. 2017).

These are disturbing trends, and some observers warn that Kenya's small-scale fisheries may be headed towards collapse, which would likely cause a food security crisis (Taylor et al. 2019; McClanahan 2020). The fact that such a crisis is even possible is a symptom of a long history of poor fisheries governance and consistent marginalization of coastal communities, especially on the part of the colonial and postcolonial governments in Nairobi. Beginning in the 1920s, the British colonial government invested in a series of white-run commercial fisheries with no real plans for sustainability, no concern for the food security of local communities, and no benefits for the colonized population (Glaesel 1997). After Kenya gained independence in 1963, fisheries governance shifted from this purely "extractivist" model to a more conservation-oriented, but still top-down and "resourcist" approach that was based on the establishment of marine parks and reserves (Glaesel 1997; Berkes 2010; Galligan 2021). Meanwhile, the previous trends of overfishing and social marginalization continued.

While the colonial and postcolonial experiments on Kenya's coast did not sufficiently protect ecosystems, fish stocks, or livelihoods, they did successfully erode (but not replace or eliminate) the traditional structures that preceded them (Glaesel 1997; McClanahan et al. 1997, 2005; Save Lamu 2018). By the early 2000s, Kenya was clearly in need of a new approach to fisheries governance. Then, in 2004–11 years before the SSF Guidelines would promote "*participatory management systems, such as co-management*" (FAO 2015, § 5.15)—the first Beach Management Units (BMUs) were established on Lake Victoria (Cinner et al. 2012a). The BMU is a co-management structure that gives local fishers and other stakeholders some responsibility in monitoring landings, enforcing fisheries regulations, and even establishing new protections as long as they do not conflict with national fisheries law and policy (Cinner et al. 2012a). BMUs introduced a degree of democracy into fisheries governance that was unprecedented in Kenya. Since their introduction, they have contributed to positive social and ecological outcomes, although these are highly dependent

on the strength of implementation in any given community (Cinner et al. 2012b). Concurrently with the development of BMUs, a separate movement also developed along the coast to begin implementing community-managed marine protected areas, sometimes known as *tengefu* (McClanahan et al. 2016).

The increased involvement of coastal communities in the management of their marine resources is a real sign of progress, but this progress is far from assured, especially in light of Kenya's enthusiastic embrace of the Blue Growth ideology. On a global level, the expansion of blue economic development (Jouffray et al. 2020), also known as "Blue Growth," has provided an opportunity for powerful interests to marginalize small-scale fishers and roll back progress on the SSF Guidelines. This trend is often characterized by the de-democratization of ocean governance and a reallocation of marine space and natural resources from local communities to corporate or government actors (Barbesgaard 2018). The LAPSET project in Lamu provides a stark example of just such an attempt to short-circuit democratic governance arrangements and violate small-scale fishers' human rights for the sake of profit (Save Lamu 2018; Okafor-Yarwood et al. 2020). The relatively recent move towards co-management is a promising trend, but even this limited degree of success is now facing an acute threat. In the following section, we describe the legal and policy frameworks that have contributed to this decidedly mixed outcome (Nakamura et al. 2021).

### ***6.2.1 The Normative Framework for Small-Scale Fisheries in Kenya***

If the future of Kenyan small-scale fisheries is threatened by the central government's focus on Blue Growth, the SSF Guidelines present an alternative vision that centers the needs of small-scale fishers and coastal communities. To some extent, this second vision is actually more consistent with Kenyan law than the first. For example, some of the legal and policy frameworks governing small-scale fisheries in Kenya include progressive requirements for community consultation and gender representation (Nakamura et al. 2021). However, to understand this issue more deeply, we must discuss Kenya's 2010 Constitution, which introduced a weak form of federalism by creating 47 county governments with functions and powers separate from the national government (Gathii and Otieno 2018). This feature of the 2010 Constitution is important to note because devolution and regionalism have been hotly contested issues since Kenya's independence from the United Kingdom in 1963. Although the Independence Constitution, which the 2010 document replaced, would come to enshrine a centralized vision of the state, the debates over redistribution of resources and recognition of regional and ethnic identity "*have remained at the heart of Kenyan politics ever since*" (Branch 2011, p. 16). This has particularly been the case for the people of Kenya's former Coast Province, where Lamu County is located, and disagreement over these issues resulted in mass violence during the first decade of independence (Branch 2011).

In keeping with the 2010 Constitution's devolved framework, there are overlapping layers of authority between national and county governments that apply to marine and fisheries governance. Unfortunately, the constitution does not always provide clear guidance on what to do when these layers of authority conflict: "*in contrast to a federalist system, sovereignty is not constitutionally divided between the national government and the counties*" (Mubaku 2021, para. 18). This means that legislation passed at the national level can, in some cases, override law and policy formulated at the county level. The potential conflict between national and county authority under the 2010 Constitution is a persistent issue, a point that was litigated in the *Ali Baadi* case.

Despite these issues of devolution, Kenya's 2010 Constitution represents a tremendous advance in enshrining environmental protections and sustainable development principles as pillars of its legal framework. Before the 2010 constitutional reform, "*environmental law in Kenya was fragmented and sector specific, lacking a constitutional basis, and was rarely applied by the courts*" (Soyapi 2019, p. 153). This led to inadequate cooperation among governance sectors, policy incoherence, and steep challenges when it came to implementing fisheries law and policy (Samoiyls et al. 2011). Today, however, the situation has vastly improved, largely due to the 2010 constitutional reform. Unlike the Independence Constitution, the 2010 document includes a Bill of Rights that specifically enumerates the right to a clean and healthy environment (Art. 42), economic and social rights (Art. 43), and rights to culture and language (Art. 44). It also incorporates customary international law into Kenyan law and specifies that ratified treaties and agreements are part of Kenyan law, even in the absence of enabling legislation (Kabau and Njoroge 2011). Article 20(1) provides that the Bill of Rights "*applies to all law and binds all State organs and all persons,*" meaning that not only the government, but also private individuals and juridic persons such as corporations may be held accountable for violations of those rights (Sang 2016). This broad reach of the Bill of Rights into private conduct may hold promise for corporate accountability, ensuring that those engaged in mega-development projects such as LAPSSSET observe the full range of Kenya's environmental protections.

Kenya's primary environmental law is the Environmental Management and Coordination Act of 1999 (EMCA), which established the National Environment Management Authority (NEMA) and set out the requirements for environmental impact assessments (EIAs), incorporating social and economic concerns alongside traditional environmental questions (Juma 2002).<sup>2</sup> NEMA's twofold mandate is to ensure sustainable management of Kenya's environment "*through exercising general supervision and coordination over matters relating to the environment and to be the principal instrument of government in the implementation of all policies relating to the environment*" (National Environment Management Authority n.d.). As NEMA's remit covers all policies related to the environment, it is intimately involved in marine policy, particularly as it is charged with Kenya's EIA and

---

<sup>2</sup>A revision of the EMCA was done in 2015 to streamline it with the new constitution.



strategic environmental assessment (SEA) processes, the completion of which are preconditions for coastal development projects (Walker et al. 2014). EMCA also establishes a National Environmental Tribunal as a separate specialized court to hear matters broadly related to the environment.

In 2016, Kenya adopted the Fisheries Management and Development Act, with an objective “*to protect, manage, use, and develop the aquatic resources in a manner which is consistent with ecologically sustainable development, to uplift the living standards of the fishing communities, and to introduce fishing to traditionally non-fishing communities and to enhance food security*” (Fisheries Management and Development Act 2016, § 5). One of the mechanisms for accomplishing this is the act’s establishment of the Kenya Fisheries Service, as well as a Fisheries Council composed of cabinet ministers and researchers to advise the government on fisheries policy. While the act provides that individual counties may develop their own fisheries management plans, those must be submitted to the Director General of the Fisheries Service for approval. Moreover, although the act defines the terms “artisanal fisheries”<sup>3</sup> and “artisanal fishing vessel,”<sup>4</sup> no specific provision is made for enhanced care or protection of small-scale fishing communities above and beyond those rights enshrined in the constitution, although the requirements for fisheries management plans do stipulate that stakeholders must be consulted, traditional fishing rights considered, and social impact assessments carried out, all of which should function to protect the interests of small-scale fisheries (Fisheries Management and Development Act 2016, § 39). Despite these requirements, some fishers report that consultations have been opaque and that those managing them have withheld key details in order to confound fishers’ participation (Ali Baadi v. Attorney General 2018; Mohammed 2021).

Several other key pieces of legislation are relevant to fisheries policy in Kenya, particularly those affecting the environment and wildlife conservation. Among these are the Maritime Zones Act, the Climate Change Act of 2016, the Wildlife Conservation and Management Act of 2013, and the Kenya National Wildlife Strategy 2030. The wildlife statutes provide the mandate for the Kenya Wildlife Service (KWS), which manages nine Marine Protected Areas (MPA) along Kenya’s coast. The Maritime Zones Act defines Kenya’s territorial waters and its exclusive economic zone, excluding foreign fishing vessels from operating there without authorization. This is particularly important in Lamu because Kenya’s northern maritime border with Somalia is the subject of a long-standing dispute that was

---

<sup>3</sup>“*Artisanal fisheries’ means small-scale traditional fisheries that may be carried out for subsistence or commercial purposes in which the owner is directly involved in the day-to-day running of the enterprise and relatively small amounts of capital are used*” (Fisheries Management and Development Act 2016, §2).

<sup>4</sup>“*Artisanal fishing vessel’ means any local fishing vessel, canoe, or un-decked vessel with a length overall of not more than ten meters, which is motorized or not motorized by an outboard or inboard engine not exceeding forty horsepower, or powered by sails or paddles, but does not include decked or undecked semi-industrial fishing vessels or vessels used for recreational fishing*” (Fisheries Management and Development Act 2016, §2).

adjudicated by the International Court of Justice in October 2021, a decision Kenya has indicated it will ignore, given that it favored Somalia's interpretation of where their border lay (Dahir 2021). Although the ruling largely splits the difference between the two claims, it still results in a significant loss of Kenya's northern fishing grounds, which negatively affects the Lamu community and makes the contested waters a much more dangerous area to fish (Kadagi et al. 2020).

Kenya's 2016 Climate Change Act builds upon the foundation of the 2010 Constitution and the EMCA while also serving as the first climate change law framework on the continent (Wambua 2019; Nakamura et al. 2021). It establishes a Climate Change Council, chaired by the President of Kenya, to develop and implement a plan to achieve the act's objectives "*for the development, management, implementation and regulation of mechanisms to enhance climate change resilience and low carbon development for the sustainable development of Kenya*" (Climate Change Act 2016, § 3). Section 23 of the act provides for the enforcement of rights related to climate change as a component of the right to a clean and healthy environment in Article 70 of the 2010 Constitution. This means that failure to mitigate the effects of climate change, or planning development in a manner which is not low carbon and climate resilient, rises to the level of an actionable violation of constitutional rights in Kenya (Naeku 2020).

While Kenya does not have a specific piece of legislation addressing small-scale fisheries, it does have a strong foundation in its existing constitutional and statutory framework for addressing the claims of fishers and the needs of their communities in line with the SSF Guidelines. However, building capacity to achieve these goals remains a challenge. Kenya, like other African states, does not employ enough adequately trained workers and scientists to track the implementation of, or effective compliance with, regulations (Olashore 2019). Conflicting spheres of authority and a lack of coordination among branches of government also increase the risk of bureaucratic delay. For example, while NEMA falls under the jurisdiction of the Ministry of Environment and Forestry, the Fisheries Service is a part of the Ministry of Agriculture. These various executive agencies have not always worked in ways consistent with their legal mandates and have at times undermined environmental protection and human rights. Moreover, Kenya's bureaucracy has historically been unable to assert its independence from political control in Nairobi, although this problem has slowly begun to diminish since the passage of the 2010 Constitution (Gathii 2016a). On the other hand, Kenya's judiciary is increasingly showing its independence from the executive, particularly on issues of constitutional interpretation (Gathii 2016a; Mungai 2021). This independence portends well for the courts to serve as an arbiter of these conflicts and expand the reach of Kenya's battery of environmental rights in a way that could better support small-scale fishers.

### 6.3 Courting Justice: Implementing the SSF Guidelines Through a Rights-Based Legal Demand

Small-scale fishers often face exclusion, marginalization, and human rights abuses in the context of today's developing Blue Economy (Cohen et al. 2019; Okafor-Yarwood et al. 2020; Bennett et al. 2021). In Kenya, these abuses are not primarily the result of a lack of legal protections for small-scale fishers, but rather are due to the government's neglect of its existing obligations. Where this is the case, a functioning judiciary can provide a measure of protection for coastal communities and serve as a means of implementing the SSF Guidelines. In this section, we return to the case of Lamu, Kenya, where recourse to the judiciary has been the most successful route to strengthening protections for small-scale fishers. Although the community's success remains far from decisive, its legal battles provide insight into the connection between small-scale fisheries and human rights law, both theoretically and as a practical strategy for improving small-scale fisheries governance. Litigation can play a key role in strengthening human rights protections in small-scale fisheries governance, with the *Ali Baadi* judgment providing helpful precedent in this regard. Such strengthened protections are one of the stipulations of the SSF Guidelines, although their establishment cannot be substituted for a comprehensive implementation of the guidelines as such.

#### 6.3.1 *Small-Scale Fisheries and Blue Growth in Lamu, Kenya*

The proposal and construction of the Lamu Port–South Sudan–Ethiopia Transport Corridor (LAPSSET) in Lamu, Kenya, builds on the region's long history as a port city and center of trade. As early as the year 1000, social life in Lamu revolved around the sea, both as a source of fresh food and for the maritime trade networks that then encompassed the Indian Ocean (Crowther et al. 2016; LaViolette and Fleisher 2018). However, over recent centuries economic activity in Lamu has declined, in part due to the British colonial government's diversion of trade to Mombasa Port on Kenya's south coast and its deliberate neglect of the communities in Lamu (Curtin 1983; Heathcott 2013). Against this historical backdrop, a development project that features a large deep-water port might not seem like a bad idea. In fact, the idea of a port construction project in Lamu was first proposed in a parliamentary debate as early as 1970 (Republic of Kenya 1970, pp. 1149–1150), followed by a feasibility study a few years later (Laylin 2010). However, despite this seemingly promising history, the LAPSSET project has been planned and implemented in ways demonstrative of the worst trends of Blue Growth in Africa, marginalizing small-scale fishers, degrading natural resources, and even at its best promising a form of economic development that will not benefit local communities (Childs and Hicks 2019; Okafor-Yarwood et al. 2020).

Moreover, LAPSSSET has been burdened from the outset by the historical marginalization of the largely Muslim communities along Kenya's coast and the powder keg of identity politics along the entire Horn of Africa (Branch 2011). Since independence, Kenya's minority communities have come to "*perceive the national economy as a zero-sum arena controlled by entrenched state elites, and national politics as a game dominated by the country's large ethnic communities*" (Goldsmith 2012, p. 88). Kenya's highly centralized independence constitution ensured that decisions were made in Nairobi and not on the coast, which concretely benefited the ruling communities (Branch 2011). Part of the problem for Lamu's fishing community is that Lamu itself has long been considered marginal by the Kenyan state, which has historically been suspicious of minority Indigenous groups and Islam, both of which are strong identity markers for communities in Lamu (Chome 2020; Waddilove 2020). This has consistently frustrated relations between the local community and the national elite.

LAPSSSET is a key part of Kenya's Vision 2030 plan for long-term development. Although it is billed as a means of integrating historically marginalized areas into the national economy, the project's core economic rationale is based on a vision of capitalist modernity that promotes an extractive development paradigm notorious for creating inequality and environmental destruction (Gediminas 2020; Mkutu and Mdee 2020). Although very much a twenty-first-century project, LAPSSSET follows a colonial model of infrastructure-led development designed to make the extraction, production, and movement of commodities more efficient without regard for host communities (Enns and Bersaglio 2020). Along with the 32-berth port in Lamu, the LAPSSSET project includes:

*crude and product oil pipelines from Lamu through Isiolo to Juba in South Sudan and Addis Ababa in Ethiopia; new highways from Lamu through Isiolo to Addis Ababa and Juba; new standard-gauge railway lines from Lamu through Isiolo to Juba and Addis Ababa, as well as from Nairobi to Isiolo; three new international airports and resort cities in Lamu, Isiolo, and Turkana; and a new dam along the Tana River.* (Wanyeki 2020)

China financed the construction of the first three berths of the Lamu Port, the only stage of the project in operation and the one most immediately relevant for small-scale fishers (Wanyeki 2020; Aalders 2021; Praxides 2022).

As is often the case with mega-development projects, there is "*a fundamental gap between an underlying imagination of how the LAPSSSET planners open up space they consider 'un-used,' and the values and rights that communities attach to particular places within that space*" (Aalders et al. 2021, p. 1289). These contested geographies of meaning have fueled intense debate about the appropriateness and value of LAPSSSET, and they have also inspired the local community to mount an organized resistance to the project's worst abuses. To press for their rights and preserve the values they attach to the land and water, community organizations have come together in a coalition known as Save Lamu to demand inclusion in, and benefits from, LAPSSSET (Athman and Ernst 2015). While the community's demands for justice have received a measure of recognition from the Lamu County government, the central government—which is tasked with planning and implementing the

project—has consistently negotiated in bad faith (Athman and Ernst 2015). In fact, in a pattern of behavior that is remarkably consistent with the colonial model of extractive development mentioned earlier, “the Government of Kenya and other partner governments have displayed a marked reluctance to engage the stakeholders whom the project will affect” (Save Lamu 2018, p. 37). Of course, this trajectory is deeply disturbing, especially considering the SSF Guidelines’ stipulations that coastal communities be involved in decision-making and that fisheries governance processes protect human rights. It is also what forced the Save Lamu coalition to resort to legal action in their fight for justice.

### 6.3.2 *Connecting Human Rights and Small-Scale Fisheries in Court*

On April 30, 2018, the High Court of Kenya handed down its decision in the case of *Mohamed Ali Baadi v. Attorney General*, 60 years after the petition was originally filed in Nairobi on behalf of a group of Lamu County residents negatively impacted by the LAPSSET project (Ali Baadi v. Attorney General 2018). Although most petitioners were fishers, and the court’s decision addresses the impact of the LAPSSET project on small-scale fisheries in and around Lamu, it would be a mistake to read the case as one dealing only with the interests of a small, isolated fishing community on Kenya’s northern border. Rather, the High Court is ambitiously carving out space for Kenya’s judiciary to read the protections in its 2010 Constitution and Bill of Rights through an environmental lens. This lens interprets sustainable development as that which not only protects Indigenous rights and culture, but which demands that local communities have a say in all aspects of proposed mega-development projects such as LAPSSET. This indication by the Kenyan judiciary that the country’s environmental protections have teeth, and that violations of these protections are actionable by aggrieved individuals, is what makes the *Ali Baadi* case groundbreaking. It also portends well for future efforts to protect small-scale fisheries in Kenya and elsewhere. The case is currently on appeal, but the trial court’s decision and analysis can serve as a guide for action in the meantime.

At the heart of the *Ali Baadi* petitioners’ claim is the allegation that the LAPSSET project has had, and will continue to have, far-reaching consequences on the marine ecosystems of the Lamu region, including the destruction of mangrove forests, discharge of industrial effluents into the environment, and effects on fish species and marine life. Given the community’s economic, social, and cultural reliance on the ecosystem, the petitioners alleged that the proponents of LAPSSET had an obligation to take this into consideration in the design and implementation of the project. Their failure to do so, as well as their ongoing failure to inform and consult with the local Lamu community, represents a violation of the Kenyan Constitution and statutory law (Ali Baadi v. Attorney General 2018, 20).

In addition to the violation of their traditional fishing rights, the Lamu petitioners allege that the LAPSSSET project and its proponents infringe their rights to (1) public participation, (2) access to information, (3) a clean and healthy environment, and (4) culture. In an extraordinarily detailed decision—well over 100 pages—the High Court found for the petitioners on each of their claims and crafted relief to remedy those violations. As the court noted on several occasions, the petitioners emphasized that they were not opposed to the LAPSSSET project itself, but rather to the manner in which it was conceptualized and implemented (*Ali Baadi v. Attorney General* 2018, 21, 335). Thus, even though one of the reliefs sought was an injunction restraining the project, what the court issued instead were orders largely aimed at the environmental impact assessment (EIA) and strategic environmental assessment (SEA) processes: the EIA was deemed insufficient, both in terms of its quality and the lack of public participation, and the SEA had never been completed. The court thus remanded the license based on these assessments to Kenya's National Environment Management Authority (NEMA) for further review.

Notwithstanding the relatively modest relief granted by the court, which includes some compensation for more than 4700 Lamu fishers,<sup>5</sup> the *Ali Baadi* decision represents a watershed in Kenyan environmental law in that it provides a roadmap for individuals and local communities, including small-scale fishers, to frame their claims for violations of Kenyan law in the language of international human rights. This is important because without specifically mentioning the SSF Guidelines, the court in *Ali Baadi* incorporated the guidelines' human rights-based approach into the adjudication of the claims of Lamu's fishing community. What makes this decision novel is the great length to which the court goes to emphasize the nexus between petitioners' environmental claims and the fundamental rights and freedoms guaranteed under the Kenyan Constitution and Bill of Rights. Moreover, it is noteworthy that *international law*, both treaty language and foreign decisional law, can be instructive in determining the scope of the same (*Ali Baadi v. Attorney General* 2018, 107, 221, 254, 299). Specifically, the court cited rulings of the Inter-American Court of Human Rights and the South African and Indian supreme courts, which adjudicated similar claims under their own constitutions (*Ali Baadi v. Attorney General* 2018, 223, 279–282, 316, 319–322, 336). This point is critical because it stands in stark opposition to other courts, including the United States supreme court (Ferrari 2019, pp. 103–108), which largely reject foreign authority as instructive. It further shows a broad judicial cosmopolitanism on the part of the Kenyan judiciary on environmental matters, portending well for future claimants.

In addition to being able to draw from foreign decisions and precedent to bolster future claims, small-scale fishers in Kenya will also be able to rely on the decision of the *Ali Baadi* court regarding fishing access rights. Here, the court expressly recognized the traditional fishing rights of the Lamu community, emphasizing that “...the government may only regulate or interfere with these traditional fishing rights for compelling and substantial objectives...subject to full and prompt

---

<sup>5</sup>As of May 2023, the fishers in Lamu still have not received the awarded compensation.

*compensation*” (Ali Baadi v. Attorney General 2018, Summary of Findings and Disposition, G). The legal test for “*compelling and substantial objectives*” is a very high bar, which indicates that Kenyan courts may be willing to serve as gatekeepers protecting the rights of traditional fishing communities against proposed mega-development projects, including the later stages of LAPSSSET. It is possible that this position will also strengthen the approaches taken by courts in other countries.

In the *Ali Baadi* decision, Kenya’s High Court is developing its constitutional jurisprudence in line with a growing “judicial environmentalism” of Africa’s international courts, which have expanded their jurisdictional remit from trade matters alone to include human rights and environmental claims (Gathii 2016b, pp. 391–393). Whereas these international courts are enforcing environmental norms by holding African states accountable for violations of the regional instruments they sign, the *Ali Baadi* court goes a step further and gives constitutional effect to these same treaties and agreements, thus handing Kenyan claimants recourse under domestic law for their breach (Ali Baadi v. Attorney General 2018, 307; Gathii 2016b, p. 436). Ultimately, environmental democracy is the hallmark of the decision, an understanding that “*environmental issues must be addressed by all, or at least a majority of those affected by their outcome*” (Ali Baadi v. Attorney General 2018, 217). Thanks to the Lamu fishers in the *Ali Baadi* case, that principle is now enshrined in Kenyan constitutional jurisprudence and can be used to implement the SSF Guidelines in Kenya and elsewhere.

## 6.4 Are We There Yet? Lessons Learned and the Way Forward

The *Ali Baadi* case and the community members in Lamu who fought it provide a beacon of hope for small-scale fisheries threatened by Blue Growth in Africa and around the world. The case clearly demonstrates that the intimate relationship between small-scale fisheries and human rights is not just an academic talking point or a vague aspiration that only appears in soft law instruments like the SSF Guidelines. Instead, that relationship is concrete, clear, and (thanks to the *Ali Baadi* case) enshrined in constitutional jurisprudence. States, communities, and others seeking to implement the SSF Guidelines’ human rights-based approach to small-scale fisheries governance can learn from the events in Lamu, both as a source of guidance in the formulation of fisheries law and policy and as precedent for similar litigation efforts. The case further demonstrates how the SSF Guidelines counteract some elements of blue economic growth and serve to bolster the important “regulative idea” of Blue Justice (Jentoft 2022).

Unfortunately, more recent events in Lamu also demonstrate the limitations of this approach. After the 2018 judgment, the respondents filed a sweeping appeal that lifted the injunction ordered by the High Court. Construction has since continued, with no evidence that a revised complement of impact assessments is even

under consideration. In the meantime, the destruction of the local ecosystem has continued, port security has displaced small-scale fishers from productive fishing grounds, and at the time of this writing the ordered compensation has still not been delivered to the community. Although the legal victory in the *Ali Baadi* case was remarkable and encouraging, it has not yet resulted in concrete improvements for fishers in Lamu. Meanwhile, the Kenyan government's failure to fulfill the letter and spirit of its own laws on environmental and fisheries governance—a failure that made the *Ali Baadi* case necessary in the first place—further illustrates how factors such as politics, a lack of transparency and accountability, and greed can undermine even the best law and policy frameworks.

The implementation of a human rights-based approach to small-scale fisheries governance requires deep and systemic reform, not just post hoc tinkering with existing laws and policies affecting coastal communities. To be sure, the *Ali Baadi* decision goes well beyond “tinkering,” but its judgment—and other judgments like it—will only ever be one part of an eventual solution. What is actually needed in Lamu and elsewhere is a paradigm shift in the governance of small-scale fisheries, one that designs future initiatives to achieve ethical social objectives (Galligan 2021) while acknowledging the entire human rights context of coastal communities in developing countries (Allison et al. 2011), and implementing the SSF Guidelines intentionally rather than incidentally.

While a comprehensive description of our recommended paradigm shift is beyond the scope of this chapter, we suggest three avenues as crucial steps for improved governance in countries like Kenya: policy, political will, and finance. First, law, policy, and management plans governing small-scale fishing communities should be co-produced with the concerned communities in a democratic and holistic manner. Marine conservation and development NGOs have done this type of work successfully in other parts of Kenya (e.g., McClanahan et al. 2016). An even better example can be found in Haida Gwaii, Canada, where a “land-sea-people management plan” was developed and implemented by a working group consisting of government agencies, Indigenous leaders, and academics (Muhl et al. 2022). Second, political leaders must transition from a self-interested mode of governance based on political and economic priorities to a norms-based model focused on the common good (Francis 2020). Where this transition has yet to be made, legally actionable rights protections, which include those in constitutional and statutory law but usually exclude international agreements, should be aggressively utilized by civil society to hold governments accountable. Finally, even where good policy and political will align, improved coastal governance will not be achieved without increased finance (Ojwang et al. 2017; Bellanger et al. 2020). Ending unjust fiscal burdens on developing countries, such as those caused by tax evasion and avoidance as well as debt servicing obligations, will be an important first step towards financing just and effective management (Dempsey et al. 2022). These proposed directions of change are systemic and thus do not lend themselves to concrete or simple recommendations. Instead, they will only be achieved by movement-building and sustained advocacy over long periods of time (Laybourn-Langton et al. 2021).



There is no one-size-fits-all recipe to achieving the comprehensive paradigm shift in small-scale fisheries governance demanded by the SSF Guidelines. It is likely the case that most governments agreed to the guidelines with no plan of action for implementing them (Jentoft 2014). Nonetheless, litigation efforts such as the *Ali Baadi* case can still provide some amount of reform, and when a state's executive is unable or unwilling to fulfill their legal obligations to protect small-scale fisheries, as is the case in Kenya, recourse to the judiciary can be an effective tool for progress. What both the achievements and limitations of the events in Lamu demonstrate is that moving small-scale fishing communities' rights from paper to reality will require a wide-ranging strategy that includes legal action as part of a suite of tactics that can motivate governments to act on behalf of the communities they serve.

**Acknowledgments** We are immensely grateful to the community leaders of Save Lamu and other organizations who are leading the fight against the human rights abuses perpetrated in the development of LAPSET, who continue to fight for the improved governance of small-scale fisheries, and who assisted us in our research for this chapter. These include Khadija Abdillahi, Walid Ahmed Ali, Mohamed Athman, Adam Lali Kombo, Khadija Shekuwe, Somo Mohamed Somo, and many others. We hope this chapter will provide a small contribution to that work while also helping others to learn from it. We are also grateful to Sasha Kinney for her invaluable support in conceptualizing and researching this chapter. We thank Ifesinachi Okafor-Yarwood and one anonymous reviewer for their helpful comments on this manuscript.

## References

- Aalders JT (2021) Building on the ruins of empire: the Uganda railway and the LAPSET corridor in Kenya. *Third World Q* 42(5):996–1013. <https://doi.org/10.1080/01436597.2020.1741345>
- Aalders JT, Bachmann J, Knutsson P, Kilaka BM (2021) The making and unmaking of a megaproject: contesting temporalities along the LAPSET corridor in Kenya. *Antipode* 53(5):1273–1293. <https://doi.org/10.1111/anti.12720>
- Ali Baadi v. Attorney General (2018) e.K.L.R. (H.C.K.) (Kenya). <http://kenyalaw.org/caselaw/cases/view/156405/>
- Allison EH, Asgard B, Willmann R (2011) Human rights approaches to governing fisheries. *MAST* 10(2):5–13. <https://digitalarchive.worldfishcenter.org/bitstream/handle/20.500.12348/1091/3001.pdf>
- Athman M, Ernst H (2015) Supporting diverse communities to respond to LAPSET with one voice in Kenya. In: Booker S, Knight R, Brinkhurst M (eds) *Protecting community lands and resources in Africa: grassroots advocates' strategies and lessons*. *Natural Justice & Namati*, pp 119–128
- Barbesgaard M (2018) Blue growth: savior or ocean grabbing? *Peasant Stud* 45(1):130–149. <https://doi.org/10.1080/03066150.2017.1377186>
- Bellanger M, Speir C, Blanchard F, Brooks K, Butler JRA, Crosson S, Fonner R, Gourget S, Holland DS, Kuikka S, Le Gallic B, Lent R, Libecap GD, Lipton GW, Nayak PK, Reid D, Scemama P, Stephenson R, Thébaud O, Young JC (2020) Addressing marine and coastal governance conflicts at the interface of multiple sectors and jurisdictions. *Front Mar Sci* 7:544440. <https://doi.org/10.3389/fmars.2020.544440>
- Bennett NJ, Blythe J, White CS, Campero C (2021) Blue growth and blue justice: ten risks and solutions for the ocean economy. *Mar Pol* 125:104387. <https://doi.org/10.1016/j.marpol.2020.104387>

- Berkes F (2010) Shifting perspectives on resource management: resilience and the reconceptualization of “natural resources” and “management.”. *MAST* 9(1):13–40
- Branch D (2011) *Kenya: between hope and despair, 1963–2011*. Yale, New Haven
- Cartmill MK, Blackmore I, Sarange C, Mbeyu R, Cheupe C, Cheupe J, Kamau-Mbuthia E, Iannotti L, Wamukota A, Humphries AT, Lesorogol C (2022) Fish and complementary feeding practices for young children: qualitative research findings from coastal Kenya. *PLoS One* 17(3):e0265310. <https://doi.org/10.1371/journal.pone.0265310>
- Childs JR, Hicks CC (2019) Securing the blue: political ecologies of the blue economy in Africa. *J Political Ecol* 26(1):323–340. <https://journals.uair.arizona.edu/index.php/JPE/article/view/23162>
- Chome N (2020) Land, livelihoods, and belonging: negotiating change and anticipating LAPSET in Kenya’s Lamu county. *J East Afr Stud* 14(2):310–331. <https://doi.org/10.1080/17531055.2020.1743068>
- Cinner JE, Daw TM, McClanahan TR, Muthiga N, Abunge C, Hamed S, Mwaka B, Rabearisoa A, Wamukota A, Fisher E, Jiddawi N (2012a) Transitions toward co-management: the process of marine resource management devolution in three east African countries. *Glob Environ Change* 22(3):651–658. <https://doi.org/10.1016/j.gloenvcha.2012.03.002>
- Cinner JE, McClanahan TR, MacNeil MA, Graham NAJ, Daw TM, Mukminin A, Feary DA, Rabearisoa AL, Wamukota A, Jiddawi N, Campbell SJ, Baird AH, Januchowski-Hartley FA, Hamed S, Lahari R, Morove T, Kuange J (2012b) Co-management of coral reef social-ecological systems. *Proc Natl Acad Sci USA* 109(14):5219–5222. <https://doi.org/10.1073/pnas.1121215109>
- Climate Change Act, No. 11 (2016) Kenya Gazette Supplement No. 68
- Cohen PJ, Allison EH, Andrew NL, Cinner J, Evans LS, Fabinyi M, Garces LR, Hall SJ, Hicks CC, Hughes TP, Jentoft S, Mills DJ, Masu R, Mbaru EK, Ratner BD (2019) Securing a just space for small-scale fisheries in the blue economy. *Front Mar Sci* 6:171. <https://doi.org/10.3389/fmars.2019.00171>
- Constitution (2010) (Kenya)
- Courtney CA, Pomeroy R, Brooks SH (2019) Taking stock of the status of implementation of the voluntary guidelines for securing sustainable small-scale fisheries: a country-level assessment framework. *Mar Pol* 100:361–370. <https://doi.org/10.1016/j.marpol.2018.12.005>
- Crowther A, Faulkner P, Prendergast ME, Quintana Morales EM, Horton M, Wilmsen E, Kotarba-Morley AM, Christie A, Petek N, Tibesasa R, Douka K, Picornell-Gelabert L, Carah X, Boivin N (2016) Coastal subsistence, maritime trade, and the colonization of small offshore islands in Eastern African prehistory. *J Isl Coast Archaeol* 11(2):211–237. <https://doi.org/10.1080/015564894.2016.1188334>
- Curtin PR (1983) Laboratory for the oral history of slavery: the Island of Lamu on the Kenya coast. *Am Hist Rev* 88(4):858–882. <https://doi.org/10.2307/1874023>
- Dahir AL (2021, October 12) Why a sea dispute has Somalia and Kenya on edge. *NYT*. <https://www.nytimes.com/2021/10/12/world/africa/kenya-somalia-maritime-dispute.html>
- Dempsey J, Irvine-Broque A, Bigger P, Christiansen J, Muchhala B, Nelson S, Rojas-Marchini F, Shapiro-Garza E, Schuldt A, DiSilvestro A (2022) Biodiversity targets will not be met without debt and tax justice. *Nat Ecol Evol* 6(3):237–239. <https://doi.org/10.1038/s41559-021-01619-5>
- Enns C, Bersaglio B (2020) On the coloniality of “new” mega-infrastructure projects in East Africa. *Antipode* 52(1):101–123. <https://doi.org/10.1111/anti.12582>
- Environmental Management and Coordination Act, No. 8 (1999) (Kenya)
- FAO (Food and Agriculture Organization of the United Nations) (2015) Voluntary guidelines for securing sustainable small-scale fisheries in the context of food security and poverty eradication. <http://www.fao.org/documents/card/en/c/I4356EN>
- Ferrari GF (2019) Legal comparison within the case law of the supreme court of The United States of America. In: Ferrari GF (ed) *Judicial cosmopolitanism: the use of foreign law in contemporary constitutional systems*. Brill/Nijhoff, Boston, pp 94–139. [https://doi.org/10.1163/9789004297593\\_005](https://doi.org/10.1163/9789004297593_005)

- Fisheries Management and Development Act, No. 35 (2016) (Kenya)
- Francis (2020) *Fratelli tutti*. Encyclical letter on fraternity and social friendship. [https://www.vatican.va/content/francesco/en/encyclicals/documents/papa-francesco\\_20201003\\_enciclica-fratelli-tutti.html](https://www.vatican.va/content/francesco/en/encyclicals/documents/papa-francesco_20201003_enciclica-fratelli-tutti.html)
- Galligan BP (2021) Fisheries extractivism and the right to subsistence: conflicting governance models and the legal structures that enact them. *Mar Pol* 133:104729. <https://doi.org/10.1016/j.marpol.2021.104729>
- Galligan BP, Kinney S (2021) Providing access or taking sides? Blue growth, small-scale fisheries, and the case of Lamu, Kenya. *Promotio Iustitiae* 132:87–94. <https://www.sjesjesuits.global/documents-category/promotio-iustitiae/>
- Gathii JT (2016a) Assessing the constitution of Kenya 2010 five years later. In: Ginsburg T, Huq A (eds) *Assessing constitutional performance*. Cambridge University Press, New York, pp 337–364. <https://ssrn.com/abstract=3314206>
- Gathii JT (2016b) Saving the Serengeti: Africa's new international judicial environmentalism. *Chi J Int'l L* 16(2):386–438. <https://chicagounbound.uchicago.edu/cjil/vol16/iss2/3/>
- Gathii JT, Otieno HM (2018) Assessing Kenya's cooperative model of devolution: a situation-specific analysis. *Fed Law Rev* 46(4):595–613. <https://doi.org/10.1177/0067205x1804600407>
- Gediminas L (2020) How to understand a development corridor? The case of Lamu port–South Sudan–Ethiopia transport corridor in Kenya. *Area* 52(3):600–608. <https://doi.org/10.1111/area.12601>
- Glaesel H (1997) Fishers, parks, and power: the socio-environmental dimensions of marine resource decline and protection on the Kenya coast. University of Wisconsin-Madison
- Goldsmith P (2012) Constitutional reform and minority exclusion: the case of the Bajuni and Lamu County. In: Laher R, Sing'Oei K (eds) *Indigenous people in Africa: contestations, empowerment, and group rights*. Africa Institute of South Africa, Pretoria, pp 85–103. <https://doi.org/10.2307/j.ctvh8r1v2.12>
- Heathcott J (2013) Heritage in the dynamic city: the politics and practice of urban conservation on the Swahili coast. *Int J Urban Reg Res* 37(1):215–237. <https://doi.org/10.1111/j.1468-2427.2012.01154.x>
- Jentoft S (2014) Walking the talk: implementing the international voluntary guidelines for securing sustainable small-scale fisheries. *MAST* 13:16. <https://doi.org/10.1186/s40152-014-0016-3>
- Jentoft S (2022) Small-scale fisheries in the blue economy. In: Jentoft S, Chuenpagdee R, Bugeja Said A, Isaacs M (eds) *Blue justice: small-scale fisheries in a sustainable ocean economy*. Springer, Cham, pp 3–15. [https://doi.org/10.1007/978-3-030-89624-9\\_1](https://doi.org/10.1007/978-3-030-89624-9_1)
- Jouffray JB, Blasiak R, Norström AV, Österblom H, Nyström M (2020) The blue acceleration: the trajectory of human expansion into the ocean. *One Earth* 2(1):43–54. <https://doi.org/10.1016/j.oneear.2019.12.016>
- Juma L (2002) Environmental protection in Kenya: will the environmental management and coordination act (1999) make a difference? *SC Envtl LJ* 9(2):181–218
- Kabau T, Njoroge C (2011) The application of international law in Kenya under the 2010 constitution: critical issues in the harmonization of the legal system. *Comp Int Law J South Afr* 44(3):293–310. <http://www.jstor.org/stable/24027054>
- Kadagi NI, Okafor-Yarwood I, Glaser S, Lien Z (2020) Joint management of shared resources as an alternative approach for addressing maritime boundary disputes: the Kenya-Somalia maritime boundary dispute. *J Indian Ocean Reg* 16(3):348–370. <https://doi.org/10.1080/19480881.2020.1823169>
- Kamau JN, Jacobs ZL, Jebri F, Kelly S, Kimani E, Makori A, Mwaluma J, Mueni E, Ong'anda H, Palmer MR, Popova E, Roberts MJ, Taylor SFW, Wihsgott JU, Painter SC (2021) Managing emerging fisheries of the North Kenya Banks in the context of environmental change. *Ocean Coast Manag* 209:105671. <https://doi.org/10.1016/j.ocecoaman.2021.105671>
- Kenya National Bureau of Statistics (KNBS) (2015) Kenya demographic and health survey 2014. <https://dhsprogram.com/pubs/pdf/fr308/fr308.pdf>

- LAPSSET (2016) Brief on LAPSSET corridor project. LAPSSET Corridor Development Authority. <http://vision2030.go.ke/wp-content/uploads/2018/05/LAPSSET-Project-Report-July-2016.pdf>
- LaViolette A, Fleisher JB (2018) Developments in rural life on the Eastern African coast, a.d. 700–1500. *J Field Archaeol* 43(5):380–398. <https://doi.org/10.1080/00934690.2018.1489661>
- Laybourne-Langton L, Quilter-Pinner H, Treloar N (2021) Making change: What works? IPPR. <https://www.ippr.org/research/publications/making-change-what-works>
- Laylin T (2010, December 14) Chinese-backed Kenyan “super port” could devastate UNESCO island. *The Ecologist*. <https://theecologist.org/2010/dec/14/chinese-backed-kenyan-super-port-could-devastate-unesco-island>
- Maritime Zones Act (2012) Cap. 327 (Kenya)
- McAlpine A, Zeller D (2020) Kenya: Updated catch reconstruction for 1950–2018. In: Derrick B, Khalfallah M, Relano V, Zeller D, Pauly D (eds) *Updating to 2018 the 1950–2010 marine catch reconstructions of the Sea Around Us: Part I—Africa, Antarctica, Europe, and the North Atlantic*, vol 28(5). Fisheries Centre Research Report, Vancouver, p 46–59. <http://www.seararoundus.org/data/#/eez/404?chart=catch-chart&dimension=taxon&measure=tonnage&limit=10>
- McClanahan TR (2020) Wilderness and conservation policies needed to avoid a coral reef fisheries crisis. *Mar Pol* 119:104022. <https://doi.org/10.1016/j.marpol.2020.104022>
- McClanahan TR, Glaesel H, Rubens J, Kiambo R (1997) The effects of traditional fisheries management on fisheries yields and the coral-reef ecosystems of southern Kenya. *Environ Conserv* 24(2):105–120. <https://doi.org/10.1017/S0376892997000179>
- McClanahan TR, Mwangi S, Muthiga NA (2005) Management of the Kenyan coast. *Ocean Coast Manag* 48(11–12):901–931. <https://doi.org/10.1016/j.ocecoaman.2005.03.005>
- McClanahan TR, Allison EH, Cinner JE (2015) Managing fisheries for human and food security. *Fish Fish* 16(1):78–103. <https://doi.org/10.1111/faf.12045>
- McClanahan TR, Muthiga NA, Abunge CA (2016) Establishment of community managed fisheries closures in Kenya: early evolution of the *tengfu* movement. *Coast Manag* 44(1):1–20. <https://doi.org/10.1080/08920753.2016.1116667>
- Medina J (2013) *The epistemology of resistance: gender and racial oppression, epistemic injustice, and the social imagination*. Oxford University Press, Oxford
- Mkutu K, Mdee A (2020) Conservancies, conflict, and dispossession: the winners and losers of oil exploration in Turkana, Kenya. *Afr Stud Rev* 63(4):831–857. <https://doi.org/10.1017/asr.2020.2>
- Mohammed MS (2021) Constitutional Petition E506 of 2021
- Mubaku JM (2021, August 19) Is the BBI ruling a sign of judicial independence in Kenya?. Brookings Institution. <https://www.brookings.edu/blog/africa-in-focus/2021/08/19/is-the-bbi-ruling-a-sign-of-judicial-independence-in-kenya/>
- Muhl EK, Armitage D, Silver J, Swerdfager T, Thorpe H (2022) Indicators are relational: navigating knowledge and power in the development and implementation of coastal-marine indicators. *Environ Manag* 70:448–463. <https://doi.org/10.1007/s00267-022-01670-3>
- Mungai C (2021, August 27) Why Kenya’s judges will shape next year’s presidential elections. *The Africa Report*. <https://www.theafricareport.com/122311/why-kenyas-judges-will-shape-next-years-presidential-elections/>
- Naeku MJ (2020) Climate change governance: an analysis of the climate change legal regime in Kenya. *Environ Law Rev* 22(3):170–183
- Nakamura JN (2022) Legal reflections on the small-scale fisheries guidelines: building a global safety net for small-scale fisheries. *Int J Mar Coast* 37(1):31–72. <https://doi.org/10.1163/15718085-ja10081>
- Nakamura J, Chuenpagdee R, El Halimi M (2021) Unpacking legal and policy frameworks: a step ahead for implementing the small-scale fisheries guidelines. *Mar Pol* 129:104568. <https://doi.org/10.1016/j.marpol.2021.104568>

- National Environment Management Authority. (n.d.). Establishment. Retrieved December 15, 2021, from [http://nema.go.ke/index.php?option=com\\_content&view=article&id=1&Itemid=136](http://nema.go.ke/index.php?option=com_content&view=article&id=1&Itemid=136)
- Nyagah T, Mwangi J, Attree L (2017, February). Inside Kenya's war on terror: The case of Lamu. *Saferworld*. <https://www.saferworld.org.uk/long-reads/inside-kenyaas-war-on-terror-the-case-of-lamu>
- Obura D, Gudka M, Samoily M, Osuka K, Mbugua J, Keith DA, Porter S, Roche R, van Hooidonk R, Ahamada S, Araman A, Karisa J, Komakoma J, Madi M, Ravinia I, Razafindrainibe H, Yahya S, Zivane F (2022) Vulnerability to collapse of coral reef ecosystems in the Western Indian Ocean. *Nat Sustain* 5:104–113. <https://doi.org/10.1038/s41893-021-00817-0>
- Ojwang L, Rosendo S, Celliers L, Obura D, Muii A, Kamula J, Mwangi M (2017) Assessment of coastal governance for climate change adaptation in Kenya. *Earth's Futur* 5(11):1119–1132. <https://doi.org/10.1002/2017EF000595>
- Okafor-Yarwood I, Kadagi NI, Miranda NAF, Uku J, Elegbede IO, Adewumi IJ (2020) The blue economy—cultural livelihood—ecosystem conservation triangle: the African experience. *Front Mar Sci* 7:586. <https://doi.org/10.3389/fmars.2020.00586>
- Okafor-Yarwood I, Kadagi NI, Belhabib D, Allison EH (2022) Survival of the richest, not the fittest: how attempts to improve governance impact African small-scale marine fisheries. *Mar Pol* 135:104847. <https://doi.org/10.1016/j.marpol.2021.104847>
- Olashore OO (2019) Implementation of the international legal framework regarding climate change in developing countries: a review of Nigeria, Kenya, and Botswana's environmental provisions governing climate change. *Environ Law Rev* 21(3):189–209
- Osuka K, Samoily M, Mbuga J, de Leeuw J, Obura D (2016) Marine habitats of the Lamu-Kiunga coast: An assessment of biodiversity value, threats, and opportunities (ICRAF Working Paper No. 248). World Agroforestry Centre. <https://doi.org/10.5716/WP16167.PDF>
- Praxides C (2022, June 21) Phase 1 of Lamu Port complete as second, third berths opened. The Star (Kenya). <https://www.the-star.co.ke/counties/coast/2022-06-21-phase-1-of-lamu-port-complete-as-second-third-berths-opened/>
- Republic of Kenya (1970) Motion: Adoption of the Development Plan 1970–1974. Kenya National Assembly Official Report Feb. 6—Mar. 20, 1970, p 1137–1175
- Samoily MA, Osuka K, Maina GW (2011) Opportunities and challenges of current legislation for effective conservation in the Tana Delta—Pate Island region of the Kenyan coast. In: Obura DO, Samoily MA (eds) CORDIO status report 2011. CORDIO East Africa, Mombasa
- Samoily MA, Osuka K, Maina GW, Obura DO (2017) Artisanal fisheries on Kenya's coral reefs: decadal trends reveal management needs. *Fish Res* 186:177–191. <https://doi.org/10.1016/j.fishres.2016.07.025>
- Sang B (2016) The reach of the bill of rights into personal legal relations in Kenyan constitutional law and jurisprudence. *Oxf Univ Commonw Law J* 16(2):235–261. <https://doi.org/10.1080/014729342.2017.1281631>
- Save Lamu (2018) Biocultural community protocol for Lamu County: The Lamu Indigenous community and their rights to the preservation of their natural resources, cultures, heritage, and management of biodiversity. <http://www.savelamu.org/wp-content/uploads/2019/07/LAMU-COUNTY-BIOCULTURAL-COMMUNITY-PROTOCOL-24-June.-1.pdf>
- Soyapi CB (2019) Environmental protection in Kenya's environment and land court. *J Environ Law* 31(1):151–161. <https://doi.org/10.1093/jel/eqz008>
- Taylor SFW, Roberts MJ, Milligan B, Ncwadi R (2019) Measurement and implications of marine food security in the Western Indian Ocean: an impending crisis? *Food Secur* 11(6):1395–1415. <https://doi.org/10.1007/s12571-019-00971-6>
- UNESCO (2002 December 8), Report of the World Heritage Committee, WHC-01/CONF.208/24. <https://whc.unesco.org/archive/2001/whc-01-conf208-24e.pdf>
- Waddilove H (2020) The coast: an elusive political bloc. In: Cheeseman N, Kanyinga K, Lynch G (eds) *The Oxford handbook of Kenyan politics*, Oxford, pp 715–728. <https://doi.org/10.1093/oxfordhb/9780198815693.013.050>

- Walker H, Sinclair AJ, Spaling H (2014) Public participation in and learning through SEA in Kenya. *Environ Impact Assess Rev* 45:1–9. <https://doi.org/10.1016/j.eiar.2013.10.003>
- Wambua C (2019) The Kenya climate change act 2016: emerging lessons from pioneer law. *Carbon Clim Law Rev* 13(4):257–269
- Wanyeki LM (2020) Foreign policy and regional relations. In: Cheeseman N, Kanyinga K, Lynch G (eds). *The Oxford handbook of Kenyan politics*, Oxford, pp 589–601. <https://doi.org/10.1093/oxfordhb/9780198815693.013.41>
- Ylvisaker M (1982) The ivory trade in the Lamu area, 1600-1870. *Paideuma* 28:221–231. <https://www.jstor.org/stable/41409885>
- Zeller D, Palomares MLD, Tavakolie A, Ang M, Belhabib D, Cheung WWL, Lam VWY, Sy E, Tsui G, Zylich K, Pauly D (2016) Still catching attention: sea around us reconstructed global catch data, their spatial expression and public accessibility. *Mar Pol* 70:145–152. <https://doi.org/10.1016/j.marpol.2016.04.046>

**Bryan P. Galligan** is a Jesuit scholastic of the USA East Province and former research and policy analyst at the Jesuit Justice and Ecology Network Africa in Nairobi, Kenya. His academic work focuses on marine fisheries ecology, food security and nutrition, and ecological justice.

**Fernando C. Saldivar** is a member of USA West Province of the Society of Jesus (Jesuits) and has been a member of the State Bar of California as an attorney since 2005. He was previously the Global Policy and Advocacy Officer for the Jesuit Justice and Ecology Network Africa (JENA) in Nairobi, Kenya. He is a Visiting Scholar in the Department of Philosophy at Loyola University Chicago and currently studies at Centre Sèvres—Facultes Jésuites de Paris in France.

**George W. Maina** is a conservation scientist at The Nature Conservancy (TNC) Africa Region Program. He works on linking science, policy, and practice to advance fisheries reforms and effective ocean governance, mainly in the Western Indian Ocean. George also works on conservation and restoration of blue carbon ecosystems and the role they play in addressing climate change and in providing additional ecosystem services and livelihood benefits.