

**Large-Scale Land Acquisitions in Kenya:  
The Yala Swamp Case Study of Kenya's Land  
Governance System and Actual Practices**

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requirements for the  
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## Statement of Originality

I declare that the content of this mini-thesis is my own work. This mini-thesis has not been submitted for any degree or other purposes. I certify that all other sources, used or quoted, have been indicated and acknowledged by means of complete references.



**Signed:**

**Odenda Richard Lumumba**

**September 2014**



## ABSTRACT

This thesis examines debates concerning large-scale land acquisitions in Kenya by looking at the case of the Dominion Farms Limited takeover of Yala Swamp. The case study illustrates actual practices of Kenya's land governance system in terms of how large-scale land acquisitions take shape and their results on the ground. The study explores changes that have taken place at Yala Swamp from 2003 to 2013 and assesses them against the backdrop of recent and emerging land governance regulatory frameworks at national, regional and global levels. The study's research methodology and data analysis reveal that the new large-scale land acquisition phenomenon has a historical dimension in that it perpetuates a continued legacy of land dispossession of local communities of the unregistered land thereby disrupting their livelihoods. This thesis contributes to a lively intellectual debate and literature on land governance by examining land issues from a governance and political economy perspective. Yala Swamp was chosen as a case study of large-scale land acquisition. The case shows how new land regulatory policies are being shaped and constrained by what is considered beneficial for foreign investment but not necessarily in tandem with local communities' needs and expectations. This thesis is anchored on the assumption that land governance frameworks' transformative potential depends on the extent to which they are able to address the structural factors that entrench continued poverty, food insecurity, gender inequality, environmental degradation and land conflicts. The thesis argues that initiatives that facilitate the corporate takeover of land and other resources from the poor in order to give to large-scale investors foreclose the smallholder agricultural space for future expansion. It further argues that an understanding of land reform processes from a governance and political economy perspective offers insight that could not only improve the design of land governance regulatory frameworks, but also provide pathways to support implementation. It concludes by suggesting that global and regional frameworks and guidelines need to be used

to strengthen local institutions in addressing the land question in Kenya rather than merely providing for privately-regulated responsible investments.

## **KEY WORDS**

Large-scale land acquisitions, land grabbing, land governance, land policy reforms, constitutional reforms, local communities, small-holder producers, commercial agriculture.

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## ACRONYMS AND ABBREVIATIONS

AfDB	African Development Bank
AUC	African Union Commission
EIA	Environmental Impact Assessment
EUC	Economic Commission for Africa
FAO	Food and Agriculture Organization
FIAN	Food First Information and Action Network
F & G	Framework and Guidelines [on Land Policy in Africa]
G8	Global Economic Forum of the Group of Eight
GRAIN	Genetic Resources Action International Network
HIV/AIDS	Human Immunodeficiency Virus/ Acquired Immune Deficiency Syndrome
IFAD	International Fund for Agricultural Development
IFPRI	International Food Policy Research Institute
ILACO	Dutch Consultancy Company
LBDA	Lake Basin Development Authority
NEMA	National Environmental Management Authority
PRAI	Principles for Responsible Agricultural Investment
UN	United Nations
UNCTAD	United Nations Conference on Trade and Development
UNECA	United Nations Economic Commission for Africa
UNFAO	United Nations Food and Agriculture Organization
USA	United States of America
VGs	Voluntary Guidelines [on the Responsible Governance of Tenure of Land, Fisheries and Forestry in the Context of National Food Security]

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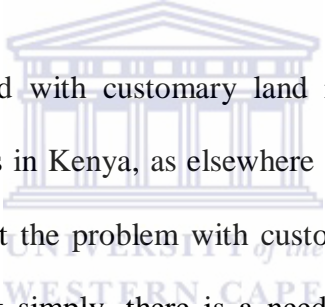
# **1.0 Chapter One: Background and Context**

## **1.1 Introduction**

The phenomenon of large-scale land acquisitions in Kenya as elsewhere in Africa is not new except the scale and scope has been exacerbated by the increased demand for large-scale land acquisitions for production of food, bio-fuels and extractive industry raw materials since 2008 (Alden Wily, 2011; Anseeuw et al, 2012; Deininger, 2011; World Bank, 2010; Amanor, 2012). This study seeks to use Dominion Farms Ltd, a project of an American investor in Yala Swamp in Kenya, to show how it forms the continuation of past practices. It explores whether or not the new land governance frameworks are able to regulate such investments to ensure that they address the implications of large-scale land acquisitions such as loss of access by local communities to agricultural land and commons for grazing and fishing.

The context of this study is that the emerging land governance systems not only seek to address the historical legacy of a dualistic system of economic development created by colonialism (Okoth-Ogendo, 1991), but also the unresolved and internationalized land question as a post-colonial and a global problem hindering economic transformation (Moyo, 2008). Under the dualistic system, land rights acquired by outsiders in host African local communities are secured while customary user rights by local communities are neglected, unrecognized and not protected amidst the increased large-scale land acquisitions since 2008 (Alden Wily, 2011). This study argues that despite the legal recognition and protection of community land tenure by the Constitution of Kenya in 2010, which establishes the new land governance system, the slow implementation in practice still allows the government and its agencies to take undue liberties with community land. According to Okoth-Ogendo (2008), a number of African countries such as Botswana, Mozambique, Uganda, Ethiopia, Kenya, Tanzania, and Ghana have legislative frameworks that recognise customary land rights of

their communities. However, Alden Wily (2011) demonstrates that they do not have the practice of enforcing them. Consequently, according to Amanor (2012:7), German et al (2011), and Cotula (2013), large-scale land acquisitions undermine the land rights of customary users by facilitating the appropriation of their land despite emerging legal recognition of these rights. In this thesis, I show how the Yala Swamp land deal in Kenya facilitates land dispossession by putting the interests of a foreign investor before those of locals. Instead of supporting smallholder-led development by securing their durable access to Yala Swamp, which is the key to their economic, social and environmental future, the government encourages the acquisition of their natural resource for the benefit of a private investor.



This research study is concerned with customary land rights, because of the continued appropriation of community lands in Kenya, as elsewhere in Africa. This has been observed by Peters (2013) who argues that the problem with customary land rights is the denial of property in land to Africans. Put simply, there is a need for legal reforms to ensure that customary land rights are documented and defensible by law to stop initiatives that push governments to give away local communities' land to large-scale foreign investors and medium-scale domestic land acquirers. This builds on Alden Wily's earlier observation that community lands in Africa are treated as if they do not amount to real property rights worthy of protection under the new land governance systems (Alden Wily, 2011).

The study is further concerned with continued practices on the ground that compromise the recognition and protection of customary land rights, despite the provisions of the land governance regulatory frameworks at national, regional and global levels, which seek to ensure that all categories of land rights enjoy comparable protection. Another concern is that



despite the Kenyan state's positive acknowledgement of the role of customary land users as the dominant smallholder producers (See Table 1), official agricultural policy encourages and promotes large-scale landholding by foreign investors. This practice dates from colonial times to the present, as pointed out in Kenya Vision 2030, and the Agricultural Sector Development Strategy 2010-2020 (Republic of Kenya, 2008, 2010; Smalley and Corbera, 2012).

**Table 1. Changes in farm structure in Kenya, 1994-2006.**

Total		Size of landholding (hectares)							
		0.01-0.59	0.6-0.99	1.0-1.99	2.0-2.99	3.0-3.99	4.0-4.9	5.0-7.99	8.0+
1994									
Number of farm households	2,404,076	547,165	530,124	615,054	310,202	95,964	119,197	70,747	115,622
% of hhs		22.8%	22.1%	25.6%	12.9%	4.0%	5.0%	2.9%	4.8%
Cumulative % hhs		22.8%	44.8%	70.4%	83.3%	87.3%	92.2%	95.2%	100.0%
mean landholding size (ha)		0.3	0.8	1.5	2.5	3.5	4.5	6.5	13.2
total land in size category (ha)		164,149	424,100	922,581	775,506	335,873	536,388	459,858	1,525,728
% of total landholdings		3.1%	8.3%	17.8%	15.5%	6.7%	10.1%	9.0%	29.5%
Cumulative % of landholdings		3.1%	11.4%	29.2%	44.7%	51.4%	61.5%	70.5%	100%
2006									
Number of farm households	3,008,975	1,342,987	677,704	619,329	233,783	59,050	39,178	12,578	24,366
% of hhs		44.6%	22.5%	20.6%	7.8%	2.0%	1.3%	0.4%	0.8%
Cumulative % of hhs		44.6%	67.2%	87.7%	95.5%	97.5%	98.8%	99.2%	100.0%
mean landholding size (ha)		0.29	0.74	1.33	2.32	3.39	4.39	6.25	31.12
total land in size category		388,392	499,942	826,433	542,821	200,315	172,050	78,674	758,280
% of total landholdings		10.9%	14.2%	24.3%	16.0%	5.7%	4.8%	2.1%	22.0%
Cumulative % of landholdings		10.9%	25.1%	49.4%	65.4%	71.1%	75.9%	78.0%	100.0%

**Source: 1994 Welfare Monitoring Survey; 2006 Kenya Income and Household Budget Survey (Kenya: Central Bureau of Statistics, 1996 and Kenya National Bureau of Statistics, 2006).**

The other reason why there is concern about customary land rights is that since the imposition of the colonial British property system in Kenya, the ultimate power over customary land rights was vested in the colonial and independence governments as trustees who continued to authorize transactions over community lands. This phenomenon amounted to the declaration of customary land users as mere tenants of the crown, as pointed out by

Okoth-Ogendo (1991). Conflicts arising from this, form the foundation for struggles Kenyans have waged over many decades to secure their properties in land, which in part resulted in the establishment of the new land governance system as provided by the National Land Policy of 2009 and the Constitution of Kenya of 2010 (Republic of Kenya, 2009 and 2010).

Since the establishment of the colonial dual legal property system that began with the enactment of the East African Regulations of 1897 (Wanjala, 2000), which provided a land acquisition mechanism for settlers whose rights were documented and defensible by law. Kenya at independence continued with the resultant dual system of unequal land tenure. As a consequence, customary land tenure has been treated as inferior to the acquired freehold and leasehold tenure systems. This is the practice that the new Constitution, promulgated in 2010, seeks to redress. The greatest threat to the desired land reforms in Kenya remains the elite capture of the political process and its focus on how best to exploit under-utilized community land.

As Alden Wily (2011) points out, there is an historical assumption that uncultivated customarily-held lands used collectively in common are still treated as if they do not have owners until statutory entitlement is given by the state, despite the new emerging legal regimes relating to land tenure, use and management in general. According to Wanjala (2000) and Bates (1989), Kenya undertook privatization by systematic individualization, titling and registration. The pre-independence Swynnerton Plan of 1954 (Swynnerton, 1955) instigated a transformation in security of tenure away from a customary land tenure regime, which was considered as a static, pre-capitalist system that was inimical to capitalist transformation. Yet according to Okoth-Ogendo (2008), customary land tenure is a social system with enormous

resilience, flexibility and continuity that sustained it under customary law without national legal support.

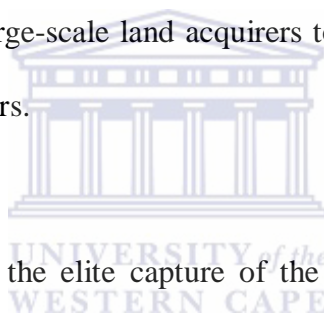
The next Section expounds on the research problem and the rationale of this study.

## **1.2 Statement of the Problem**

Kenya, being an agrarian society, is a country where land is a central asset for the majority of its citizens as a basic economic resource from which they eke out a livelihood (Republic of Kenya, 2009:7). Thus, the land governance system that regulates access, ownership, use and control of land has great implications for local communities' ability to attain food security and to establish their economic, social and political standing in society. The land question that this thesis seeks to investigate is traceable to the colonial dual legal practice of large-scale land acquisitions that began with the enactment of the East African Land Regulations of 1897 (Wanjala, 2000), and all other legal frameworks that continued to govern land acquisitions through independence, up to when Kenya promulgated a new Constitution in 2010 (Republic of Kenya, 2010). This Constitution established a new land governance system to reverse the old order by enhancing good governance as a prerequisite for economic growth and inclusive sustainable development (see Chapter 2). Thus, the new land governance regulatory framework (a) seeks to promote equitable access to land as a key to development, (b) promotes the recognition and protection of all categories of tenure regimes, (c) provides a safeguard against infringement, and (d) aims to facilitate the realization of the development goals of all land users.

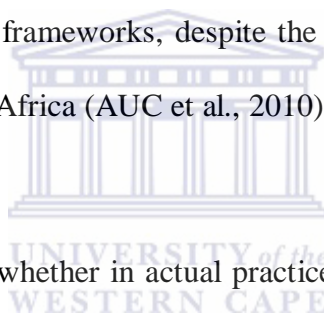
According to Kenyan scholars who have probed the Kenyan land question before (Okoth-Ogendo, 1991; Wanjala, 2000; Kanyinga, 2000; Kameri-Mbote, 2009), what is required is a new land governance system to 'fix' it. A number of reports such as the Constitution of

Kenya Review Commission (Republic of Kenya, 2005), the Njonjo Commission (Republic of Kenya, 2002), the Ndung'u Commission (Republic of Kenya, 2004) and the Sessional Paper No. 3 on National Land Policy (Republic of Kenya, 2009) posit that the policies of the colonial government facilitated the entrenchment of a dominant settler economy while subjugating the African economy through administrative and legal mechanisms. The successive post-independence regimes continued this practice by further marginalizing customary rights to land until the new constitutional dispensation in 2010 that seeks to reverse this old practice. Therefore, this study seeks to probe to what extent the new land governance system provided by the Kenya National Land Policy of 2009 and the Constitution of Kenya of 2010 is being implemented on the ground to reverse the historical trend in land governance that favours a few large-scale land acquirers to the disadvantage of the majority of small-scale customary land users.



The problem researched is how the elite capture of the political process affects the new national land governance system provided in the Constitution to immediately and systematically deal with the land question in all its historical and contemporary manifestations. The study also probes the prospects for inclusive smallholder-led agriculture available for Yala Swamp communities in their diversity to contribute to the economic growth of the area rather than being marginalized by large-scale investors seeking the use of the same land. This is what Alden Wily refers to as a number of countries making promises of new legal support for customary land rights that they are yet to make good (Alden Wily, 2011).

The key problem in Kenya, as elsewhere in Africa is how best to exploit a community's under-utilized land by different stakeholders. This diverts attention from the major challenge of implementing land governance tenets geared towards addressing rural poverty and hunger problems. This requires the recognition, protection and registration of local community land rights. The large-scale land acquisitions taking place in Africa are feared to be marginalizing local communities by depriving them of land and natural resources critical for their livelihoods. This phenomenon has been labelled a 'land rush', 'land grabbing' and a 'new scramble' for Africa (Alden Wily, 2011; Anseeuw et al, 2012; Amanor, 2012). These are the kind of concerns that this study seeks to probe. Indeed, the large-scale land acquisitions of local communities' land by investors, both local and foreign, continue without strict adherence to the new regulatory frameworks, despite the centrality of land to the economy and politics of many countries in Africa (AUC et al., 2010).



The research seeks to determine whether in actual practice the new land governance system promotes respect, recognition and protection of customary land users' legitimate and existing rights to land and natural resources as required to achieve the agricultural development objectives as articulated in the government's agricultural land investment policies.

The next section discusses the research objectives and questions of the study designed for conducting investigation into the identified problem.

### **1.3 Research Objectives and Questions of the study**

The purpose of this research is to investigate the actual practices of large-scale land acquisition by looking at the case of the Dominion Farms Ltd investment project in Yala Swamp. This is the most prominent ongoing and controversial case of large-scale commercial farming that shows how different actors on the ground do or do not comply with the new land

policy, legal and institutional framework for regulation of land ownership and use in Kenya. This study also seeks to understand how the devolved land governance system that is consultative and participatory is shaping or constraining continued negotiations and transactions of land between the investor, the state at national and local level, and the community. Furthermore, the study investigates emerging implications of large-scale land acquisitions for local communities' livelihoods in the face of the new land governance system, on the basis of findings from this case study.

This study into large-scale land acquisitions in Kenya, focusing on Yala Swamp, was undertaken to investigate the following three questions:

1. In what ways and to what extent are different actors on the ground complying with the new land policy, legal and institutional regime for the regulation of land ownership and use in Kenya? Whereas Article 63 (5) of the Constitution of Kenya (Republic of Kenya, 2010), provides for the recognition, protection, management and administration of community land.
2. How are the provisions shaping practice and with what implications?
3. What lessons does the case of Yala Swamp offer for emerging regulatory frameworks governing large-scale land acquisitions?

This study aims to explore the major challenges facing the public agency officials in charge of the new land governance system on recognition and protection of customary rights in first instance. Secondly, who monitor and regulate claims to a common pool resource like Yala Swamp, to ensure that formal granted property rights do not deprive local communities of their access, hence undermining their livelihoods.

## **1.4 Rationale of the study**

The study seeks to contribute to the emerging literature on global, regional and national land governance systems aimed at regulating large-scale land acquisitions, given local communities' continued complaints about their loss of access to land and other natural resources needed for their livelihoods (AUC et al., 2010; World Bank, 2010; FAO, 2012; Borras et al, 2013; Margulis and Porter, 2013; Margulis et al, 2013).

The study is significant in assessing why the national land governance system provided by the policy and constitutional provisions in Kenya has not fixed the longstanding land administration and management issues despite regional and global regulatory framework initiatives that seek to complement the improvement of large-scale land acquisition governance.

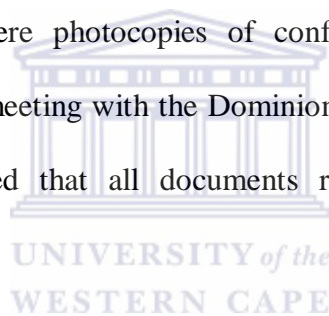
The other significance of this research is that it contributes to the emerging empirical evidence being documented by practitioners and academic researchers on what is shaping and constraining the recognition, respect and protection of customary land users' tenure rights in Kenya, as elsewhere in Africa, in the context of rising investor interest (Amanor, 2012; German et al., 2011; Okoth-Ogendo, 2008; Kameri-Mbote et al., 2013). This is in appreciation of the limited exchange of information and sharing of on-the-ground experiences across African states experiencing ill-regulated large-scale land acquisitions amidst new land governance systems. There is a need to take stock of experiences and draw lessons from flaws in either conceptualization or implementation of the new land governance systems in order to address the challenges that African countries face in this area.

## **1.5 Scope and Limitation of the study**

This being a mini-thesis study, the scope and focus of the study was limited to one field case study at Yala Swamp as an example of a large-scale land acquisition. This is a prominent case of the ongoing and controversial large-scale commercial farming in an area, which has

not benefited previously from the official policy of encouraging foreign investment in such farms. Thus, despite the clearly stated objectives of the study, the local community and the state officials were cautious about the motives for the research since local politicians had embraced the large-scale land acquisition as an economic opportunity.

The other significant limitation of this study was gathering relevant documents about the land lease to Dominion Farms Ltd, which were not easily provided. For instance, while the Farm Manager permitted access to the farm's office and facilitated the guided tour of the entire field farm by staff, he did not provide any contractual and business plan documents. All documents obtained from civil society organizations and former consultants pertaining to Dominion Farms operations were photocopies of confidential documents not publicly available. During a follow-up meeting with the Dominion Farm Manager he acknowledged the document but clearly stated that all documents related to Dominion deals were confidential.



A further limitation of this study is that the government officials in charge of regulatory frameworks who agreed to be interviewed were also reluctant to share documentary reports. This was due to the sensitivity of land matters in Kenya and specifically on this case that was deemed to be the first foreign land investment project in an area which had been marginalized due to the radical politics in the area. Yet, the current local politicians have embraced this investment as a great economic opportunity, despite emerging negative implications. These limitations were surmounted by cross-checking and verifications through engagement in constructive conversations with different stakeholders. By taking direction from Scoones et al (2013), about the methodological problems of doing 'land grab' research due to problems of



secrecy and non-disclosure, I relied on qualitative analyses rather than quantitative methodological tools to arrive at a nuanced perspective.

The other limitation was that community members and leaders and civil society key informants do not have all the documents and information on the Yala Swamp deal. Rather, they have witnessed on the ground the appropriation of the very land that the communities around Yala Swamp depend on for their livelihoods. This limitation was compounded by the fact that land governance in Kenya is a very sensitive matter, given its political, economic and administrative nature. Citizens and groups have to use these channels to articulate their interests, exercise their legal rights and obligations, and mediate their differences. Hence land information is not freely available. The Yala Swamp land deal was the first major agricultural investment in an area which is deemed a 'political opposition zone'. The political leaders of the area have ensured the power they wield is reflected in the land acquisitions process, thus making it difficult to get relevant information about the Memorandum of Understanding they negotiated and signed with the investor. But due to the implications for the local communities, the members of local communities around the project were prepared to share, in confidence, both orally and in writing, whatever information they had.

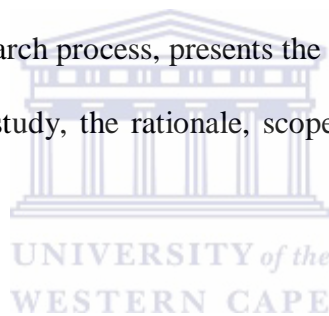
The other limitation of this study was that it was undertaken at the time when both the devolution and the new land governance systems were being rolled out, which limited the reach to all stakeholders and respondents who would have made their inputs into the study. To overcome this limitation, the researcher reviewed and examined an extensive range of secondary literature alongside the fieldwork data in order to triangulate experiences and to reach conclusions. The research drew on case studies by Pearce (2012), FIAN (2010), Makutsa (2010) and Kameri-Mbote et al., (2013), for the Yala Swamp case, on German et al (2011) for cases studies from Sub-Saharan Africa, and on Cotula (2013) for work on land grabs elsewhere in Africa.

Given the limited study time-frame of May to July 2013, within which field and secondary data were collected, analyzed and documented, more studies need to be done in this area. Of primary importance is how investors and other stakeholders, especially states, can be made to comply with the provisions of the new land regulatory frameworks. Equally important is the recognition, respect and protection of communal land users' tenure rights, as the enactment of the envisaged Community Land Law is awaited.

## **1.6 Thesis Outline**

This thesis is divided into seven chapters, outlined as follows:

Chapter One is the introductory chapter that provides a brief review of the large-scale land acquisition phenomenon and its history in the Kenyan context of the land governance framework. It introduces the research process, presents the statement of the problem, research objectives and questions of the study, the rationale, scope and limitations of the study and ends with the thesis outline.



Chapter Two provides the background and context of the Kenyan land question from the historical footprints of large-scale land acquisitions, detailing the historical and contemporary manifestations of the land question in Kenya as a land governance problem. The chapter reviews the promulgation of land acquisition laws that established the old regulatory framework as a means of legitimizing dispossession of the customary land users, but which the post-colonial and successive independence governments retained and continued with until the promulgation of the Constitution of Kenya in 2010 that seeks to reverse the situation.

Chapter Three presents an overview of the land policies developed by global, regional and national institutions as regulatory initiatives aimed at regulating land deals to mitigate problems arising from historical and contemporary large-scale land acquisitions. The chapter

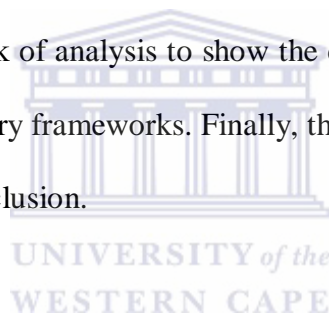
shows how global land policies continue to be influential in shaping and constraining land reforms at regional and national levels.

Chapter Four reviews the various scholarly and contemporary debates about large-scale land acquisitions and the regulatory frameworks created as a solution to what has been labelled a 'global land grab'. The literature discusses the World Bank and its partners who see a development opportunity for the rural poor through large-scale land acquisitions, subject to fixing weak land governance in host countries. The literature sheds light on the critics of the World Bank Group. The critics are spear-headed by civil society groups who adhere to a human rights perspective and who assert that large-scale land acquisitions, besides being a complex link to the past colonial and imperial land grabs, are a threat to local communities' livelihoods. This cannot be justified by a regulatory framework calling for responsible agricultural investments along the lines of World Bank-proposed principles. The literature is then reviewed along the themes of large-scale land acquisitions, the effects on customary land users' livelihoods and compliance with, respect for and recognition of pre-existing rights. The chapter then develops a conceptual framework and provides a working definition of land governance to show how it is understood for the purpose of this thesis. The chapter builds on the thesis argument that the new global regulatory frameworks alone cannot stop land grabbing or translate large-scale land acquisitions into an all-inclusive development package.

Chapter Five introduces the case study site and provides an analysis of the study site by population, economy, agro-ecology, the settlement and politics. The chapter provides an explanation and elaboration of the study methodology and methods applied by explaining the appropriateness of the selected qualitative methods for this study. This chapter ends with the ethical considerations for the study.

Chapter Six presents the narrative of what has happened at the study area and how different stakeholders have responded. The chapter reviews how the land deal was sealed, the local communities' loss of access to Yala Swamp, the local communities' feeling of betrayal by their representatives, and the local communities' concerns about future prospects. This chapter gives a holistic view of the large-scale land deal acquisition process and the resultant implications for local communities' livelihoods and of the investor's hopes and targets.

Chapter Seven is the concluding chapter, which summarizes the study findings in relation to the research questions by drawing on fieldwork data through a deeper analysis of the research findings, in order to draw conclusions. The chapter triangulates the collected field data in light of the conceptual framework of analysis to show the continuities and contrasts between the old and the new land regulatory frameworks. Finally, the chapter summarizes the findings of the study and presents the conclusion.



## **1.7 Conclusion**

This chapter provided the context of large-scale land acquisitions and how these generate the yet-to-be-answered Kenyan land question, which the new land regulatory framework seeks to address, once implemented. It introduced the statement of the research problem, set out the research objectives and question of the study, the rationale, scope and limitations of the study. The chapter then provided the thesis outline, organized by chapter.

The next chapter traces the historical context of the land question in Kenya. It points out the political, economic, social and legal factors that have shaped and constrained Kenya's efforts to come up with the new land governance system in regard to access to land, use and production, at the centre of the land question (Sorrenson, 1968; Ochieng, 1990: 230-241); Okoth-Ogendo, 1991; Wanjala, 2000; Kanyinga, 2000).

## **2.0 Chapter Two: The History of the Land Question in Kenya**

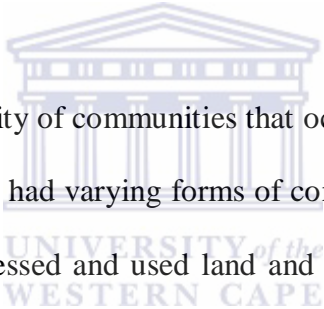
### **2.1 Introduction**

This section discusses the origin of the land question in Kenya as a critical land tenure debate surrounding the initial phenomenon of large-scale land acquisitions governance (Sorrenson, 1968; Ochieng, 1990: 230-241); Okoth-Ogendo, 1991). The section examines the pre-colonial land tenure regime and how it was disrupted by the colonial period large-scale land acquisitions through the imposition of British property law and its propagation of individualized tenure. Thirdly, it explores the transitional period to independence and, in the immediate post-independence period, the retention and continuity of the colonial policy and legal frameworks without major changes, deepening the land question (Harbeson, 1973; Leys, 1975; 1984; Leo, 1989; Wanjala, 2000; Kanyinga, 2000). The continuity of the dominant colonial policy was favoured by the post-independence leaders because it provided the elite capture of the political process that provided control over land, territory and the people. Finally, it discusses current efforts of land tenure and land governance reforms during the on-going large-scale land acquisition phenomenon and its emerging implications for resolving the historical land question in Kenya.

### **2.2 Pre-Colonial Period**

There is very little literature on how land was acquired, held and transmitted in the period before colonialism, and the existing literature points to anthropological and ethnographic accounts that have been critiqued as misrepresenting communal land tenure in Kenya (Ochieng, 1990: 230-241; Okoth-Ogendo, 1991; Wanjala, 2000). According to Okoth-Ogendo (1976, the clan, lineage and family authorities that were responsible for the allocation of land to members of a group or community and for general control and administration of community land, cannot conceptually be equated to authority with

ownership or trusteeship in the sense of English law, as they merely exercised political authority over land. Other authors support this argument by emphasizing that pre-colonial land tenure was regulated by the political authority of the kinship system under which land was held (Migot-Adholla et al., 1994 and Migot-Adholla, 1984:199-232). They all point out that communal tenure was an inclusive land tenure regime that guaranteed access to and use of land to individuals and members of a group through a continuous re-adjustment, re-arrangement and re-allocation of access and use rights to land (Ochieng, 1990: 230-241). Thus, during the pre-colonial period, the prevailing land tenure was community-based, which allowed individuals who belonged to a particular group to share in and benefit from land and all attendant resources on it (Okoth-Ogendo, 1976; Berry, 1993:105).



Notwithstanding the ethnic diversity of communities that occupy present-day Kenya, the land tenure that prevailed in the period had varying forms of communal tenure that regulated how individuals and communities accessed and used land and natural resources for agricultural, grazing, fishing, water and forestry rights, individually and collectively. This led to a flexible structure of access to and control of land in the pre-colonial period, which was disrupted by the colonial land tenure regime (Sorrenson, 1968; Ochieng, 1990: 230-241; Okoth-Ogendo, 1991; Wanjala, 2000).

Given that Kenya has over 42 ethnic groups, the pre-colonial period must have been very diverse according to the diversity of economic activities, settlement patterns and socio-political organizations, which must have led to the corresponding diversity in the customary laws regulating land. With specific reference to the Luo community on the land surrounding Yala Swamp in the current Siaya County, the land tenure system that prevailed was family land tenure. While, the entitlement to family land was vested in the whole family jointly or corporately, the use and benefit from or access to land was in the first instance to different

sections of the family and secondly to grown-up male individuals in the family. The individual entitlement to access was through the mother given the polygamous nature of many families. Besides family tenure there also existed communal land or common pool resource areas like Yala Swamp, where grazing, water, fishing, and swamp material collecting rights were shared equally.

Thus, in the pre-colonial period land tenure in Kenya is better described as a community-based regime, where allocation was governed by a tribal, clan, lineage or family land authority (Ochieng, 1990: 230-241). Therefore land in pre-colonial Kenya was held under trusteeship on behalf of members of an ethnic group.

### **2.2.1 The Colonial Period to Independence (1887-1963)**

This section examines the history of the land question in Kenya from the Berlin Conference of 1885, which confirmed the large-scale land acquisition in Africa that resulted in the British declaration of a protectorate over Kenya in 1895, and a settler colony in 1920 (Sorrenson, 1968; Okoth-Ogendo, 1991; Wanjala, 2000). The section explores three major events: the expropriation of land, the imposition of English property law as an instrument of land dispossession, and the systematic efforts to transform customary land tenure, which form the foundation of Kenya's land question and the attendant land governance system (Wanjala, 2000).

### **2.2.2 Land Expropriation and Establishment of the Colonial Land Governance Regulatory Framework (1897-1915)**

The historical footprints of land acquisitions in Kenya are traceable to the Arab colonization of coastal regions before the British colonial rule that was sparked by the Berlin Conference of 1885. This Conference triggered the partition of Africa and consequently justified the

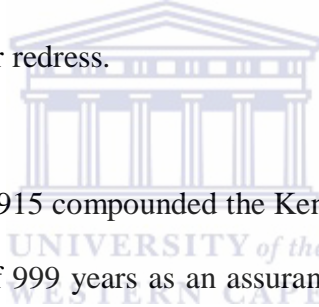
British acquisition of Kenya as a British protectorate in 1895. This was a double pronged process of acquiring large tracts of land that dispossessed the natives of their land (Sorrensen, 1968; Okoth-Ogendo, 1991; Wanjala, 2000; Republic of Kenya, 2002; Kanyinga, 2000). The first phase involved the acquisition of a ten-mile coastal strip via a concession agreement with the leader of Zanzibar under the Sultan of Oman. This acquisition facilitated the transfer of the land rights of the Coastal communities to the Imperial British East African Company and eventually to the British colonial authorities, when Kenya was declared a protectorate in 1895 after the company became bankrupt in 1894 (Ghai and McAuslan, 1970; Kanyinga, 2000). The rest of the hinterland, what is now Kenya, was acquired under the British Foreign Jurisdiction Act of 1890 as 'waste and unoccupied land in the protectorate' (Republic of Kenya, 2002:23). But the colonial administration was yet to settle the question of jurisdiction since the protectorate status, which unlike the colony, did not give the colonial authorities the radical title to land that could allow alienation. Thus, according to Sorrenson (1968:49), before the colonial administration promulgated the East African (Acquisition of Lands) Order-in-Council of 1898, they issued the Land Regulation of 1897, through which the acquisition of short leases of 21 years, renewable for a similar period, were given to settlers. The settlers were unhappy with the short-term leases and pushed for longer leases of 99 years, which were issued upon promulgation of the 1902 Crown Lands Ordinance (Sorrenson, 1968:55; Okoth-Ogendo, 1991).

The extension of foreign laws to the protectorate was compounded by the enactment of ordinances in 1901, 1902, 1908, and the most important of all in 1915, when the Crown Lands Ordinance rendered Kenyans as 'mere tenants at the will of the crown' (Okoth-Ogendo, 1991). This led to the massive dispossession of local communities as a result of the expanding colonial settler economy that shaped the land question in Kenya, which Okoth-Ogendo (2000:123-134), aptly referred to as 'the last colonial land question in the 21<sup>st</sup>



Century'. The three key elements of the land question in Kenya that became central in various land reform debates were:

- the denial of communities' access to and control of land, leading to destabilization in production relations;
- the confining of communities to unviable ethnic enclaves which could not support technological transfer but led to serious degradation; and
- the lack of a clear regulatory framework for the promotion of African land acquisition practice, that resulted in the relegation of customary law to statutory law. This practice continued throughout the colonial period and the subsequent post-independence era, until the National Land Policy of 2009 and the Constitution of Kenya (2010) provided for redress.



The Crown Lands Ordinance of 1915 compounded the Kenyan land question when it allowed settlers to obtain unique leases of 999 years as an assurance of absolute ownership and as a foundation for white settlement and investment in agriculture (Okoth-Ogendo, 1991:41). That was a response to the complaints of settlers who had argued that the 1902 Crowns Lands Ordinance treated the colonial state as the landlord and settlers as subjects under strict state control. The settlers had argued that leases of 99 years amounted to the perpetuation of a feudal relationship that constrained their agricultural business in the colony (Sorrenson, 1965). The 1915 Ordinance started a historical process of what Mamdani (1996) refers to as 'European settlements' for settlers as 'citizens' and reserves for 'natives' as 'subjects', leading to the practice of a dual system of land tenure administration and separate development as a necessary condition for the perpetuation of colonial rule. The dualistic system meant that natives' land relations were governed by customary tenure, while settlers' relations to land were governed under individualized tenure with high levels of civil rights as

‘citizens’ relative to those enjoyed by natives as ‘subjects’ (Mamdani, 1996:145-165; Berry, 1993).

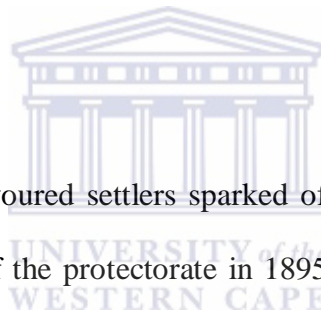
The 1915 Ordinance had serious consequences for natives’ access to land because it triggered large-scale acquisition of land in the arable areas of the highlands in parts of the Eastern, Central and Rift-Valley provinces (Sorrenson, 1967 and 1968; Mbithi and Barnes, 1975 and Alila et al., 1985). This resulted in a series of colonial laws that introduced hut taxes, forced the recruitment of Africans into the armed forces during the First World War, and into wage labour on settler farms (Van Zwanenberg, 1975; Berman, 1990).

In summary, the colonial period between 1897 and 1915 saw the establishment of the policy and legislative framework that laid the foundation of Kenya’s large-scale agricultural farming as the hallmark of the colonial process from 1897 (Okoth-Ogendo, 1976 and 1981. Whereas the 1915 Ordinance settled the colonial juridical question of land alienation by vesting all land in the colonial sovereign authority, it created Kenya’s land question, that Harvey (2003), aptly describes as ‘accumulation by dispossession’. The land acquisition started in this period for settler agricultural production of coffee, tea and sugar was estimated at 3 million hectares, representing about 75 percent of the arable land at independence (Okoth-Ogendo, 1981).

### **2.2.3 Imposition of the Colonial Policy Land Regulatory Framework and Transformation of Customary Land Tenure Relations (1915-1954)**

The land acquisitions from the coastal strip up to the Nile River for agricultural purposes along the Uganda Railway zone, to support the building and maintenance of the railway, paved a way for changes with regard to landownership and use in Kenya (Sorrenson, 1968; Haberson, 1973 Okoth-Ogendo, 1981. The colonial policy direction originating from this

period was that the settlers were agents of economic development as the main actors in agricultural production, who deserved security of tenure, as registered proprietors, to individual and exclusionary tenure (Brett, 1973). According to Alden Wily (2011) the colonial policy was founded on the denial that the indigenous/community-based possession amounted to ownership in a manner which European law could accept in the 19<sup>th</sup> century. Yet, the ‘wasteland’ thesis – that the land was not genuinely occupied and used in a consistent manner that could constitute a property right – which guided the colonial state to take possession of land it deemed unsettled and uncultivated land, based on the 17<sup>th</sup> century treatise of John Locke (1689) that real property only comes into being through labour, continued into the 21<sup>st</sup> century to guide the large-scale land acquisition phenomenon dubbed ‘land grabbing’.



The colonial land policy that favoured settlers sparked off African resistance over colonial bias from the very declaration of the protectorate in 1895, culminating in the Harry Thuku riots of 1920 at the declaration of the settler colony state. On their part, the Asians in Kenya pushed for equal treatment as they protested against white settler discrimination and domination (Sorrenson, 1965 and 1967). The colonial response was through the Devonshire White Paper of 1923, which declared that Kenya was an African country and that the native rights were “paramount”. However, this policy position was not tenable as, in practice, court cases showed that the indigenous people were mere tenants of the Crown, as promulgated in the 1915 Crown Lands Ordinance, when the issue of radical title was resolved and therefore subsequent promulgation of colonial status in 1920-1921 simply affirmed this position that had been reached in 1915 (Ghai and McAuslain, 1970).

The 1930 policy direction to guarantee natives security of tenure in the reserves was prompted by the economic depression of the 1930s, which created the need to increase production in the colonies to enhance production in Britain (Cowen, 1982). However, the discovery of gold in the Kakamega Reserve in 1932 tested the colonial authorities' commitment to securing the land rights of customary land users in practice, as it demonstrated that security in reserves was subject to imperial interests, when the colonial authority declared that the land could be temporarily excluded from the reserve for the purpose of granting a lease for the development of mineral resources. This ambivalence in the land policy direction prompted the appointment of the Kenya Land Commission headed by Morris Carter in 1932, to address the problem of the African peasantry created by the preceding colonial land policies (Wanjala, 2000). According to Kitching (1985), the Morris Carter Commission was an attempt to resolve the increased squatter population of over 100,000 which had settled on white settlers' farms in the period between 1918 and 1928. The high number of squatters on settler farms led to a review of labour regulations, which occasioned the first wave of displacements and evictions from settler farms that resulted in social unrest (Kitching, 1985; Bates, 1989).

During the 1930s and 1940s, Kenya witnessed the piecemeal implementation of the recommendations of the Kenya Land Commission that perpetuated the dualistic policy of land access and control, as reflected in the establishment of native settlement schemes. While these schemes were meant to improve the agricultural infrastructure in the reserves (Smith, 1976:124), they generated more disputes over land ownership that resulted in the skewed distribution of land.

The period from 1930 to 1940 instead of it being remembered for the intensification of African agriculture, it is best remembered for the establishment of a class of white settler landowners. These were made up of the small, upper middle-class, and plantation-type elites whose large-scale land acquisitions ranged from 400 hectares to more than 800 hectares. The most notable members of this class were British aristocrats such as Lords Delamere, Hindlip and Cransworth. The second class was made up of South African colonials like Eliot and Grogan who wanted to model Kenya in South Africa's image of separate development of whites and blacks (Sorrenson, 1968:67-68).

After the Second World War, when Britain required its colonies to increase their exports to support its post-war reconstruction, colonial Deputy Director of Agriculture, R.J.M. Swynnerton argued that the best way to correct the problem of land use among Africans so as to contribute to the much needed increased production was to reform the customary tenure system (Swynnerton, 1955). The Swynnerton Plan of 1954, named after this colonial agronomist who designed it, was a plan for intensifying the development of African agriculture in Kenya through the reform of customary land tenure into an individualized tenure regime through systematic individualization, titling and registration. The plan was to promote titling as a means of organizing native reserve landholdings to expand cash crop farming to boost the settler agricultural economy to meet the colonial British post-war reconstruction process. However, different scholars have argued that the process was merely meant to create an African elite, rooted in land, to provide liberal leadership to anchor the continuation of colonial land policies (Okoth-Ogendo, 1991; Migot-Adholla, et al, 1994). According to Ghai and McAuslan (1970), beyond creating stability, the Swynnerton Plan was to check radical nationalism that denounced European large-scale land acquisitions and

demanded the return of that land instead of reforming the customary land tenure – in other words, a political demand for redistribution, as distinct from tenure reform.

In conclusion, the period between 1915 and 1954 saw colonial policy responses to unrest and protests against the colonial regulatory policies allowing Africans to engage in only limited cash-crop growing, limited resettlement of the crowded native reserves population and transformation of customary tenure. Two major reasons were behind the land policy responses: one political and the other economic. The political purpose was to create the African landed elite as a bulwark against radical nationalists, a measure that was considered to have helped in containing the Mau-Mau peasant revolt in 1950s (Haberson, 1973; Sorrenson, 1967; Lamb, 1974). The economic objective was to integrate African customary land users into a capitalist production model so as to complement settler agricultural production after the 1930s depression and the Second World War reconstruction process (Okoth-Ogendo, 1976).

The next section discusses efforts by the colonial authorities to redistribute land following the customary land tenure reform of 1954.

#### **2.2.4 Colonial Land Redistribution Efforts before Independence (1955-1962)**

The colonial administration following the Swynnerton Plan of 1954, together with recommendations of the East African Royal Commission of 1953-1955, embraced individual tenure to implement the moderate, white farmer-supported land redistribution, to pre-empt radicalisation and future designs to take over white settler farms under an African government (Odinga, 1967). By undertaking limited land redistribution, the colonial authorities presented themselves as saving the economy from further decline, because many settlers were not attending to their farms due to an uncertain future. This policy of moderate

redistribution continued to guide Kenya's land redistribution and economic development over several decades up to the present (Anderson and Throup, 1985).

According to Wasserman (1973), four reasons led to the limited land redistribution policy before independence. Firstly, it was the white settler's desire to control the government land redistribution initiative to ensure that their interests were protected. Secondly, the government needed to contain the Mau Mau insurgency that posed a threat to the white farmers. Thirdly, the white settler need to create the African landed elite as a buffer against the peasant agitation for land redistribution. Fourthly, the World Bank supported the land redistribution effort (IBRD, 1961:4). However, Wasserman (1973) had pointed out that the land redistribution effort was an independence 'bargain' scheme to African nationalists, which gave constitutional and economic concessions to European settlers in exchange for the speedy transfer of political power. But according to Harbeson (1973), the Land and Freedom Army (Mau Mau) and radical nationalists considered the pre-independence settlement schemes as a fraud to enrich retiring settler farmers. Thus, the colonial administration pushed for a limited settlement solution without involving the Kenya African National Union (KANU), which pressured for the land to be returned at independence so that it could be redistributed freely to the people, with the support of the Kenya African Democratic Union (KADU) (Odinga, 1967). According to Leo (1989) and Njonjo (1978), the land redistribution programme had two objectives: to de-racialize landownership and to restore settler farmers' confidence that their land would not be forcibly taken away.

Okoth-Ogendo (1981:332) concluded that the design and implementation of the colonial land redistribution programme focused on the retention of the capitalist agrarian economy prevalent among white settlers rather than redressing the landlessness in native reserves. For

the majority of those who were settled, they were not the landless that had advocated and given political impetus to the scheme.

Having traced the historical footprints of the land question from the colonial period when the overriding objective was to entrench a dominant settler economy while subjugating the African customary land user economy through administrative and legal mechanisms, I now turn to the post-independence context. Here I assess how post-colonial and successive independence governments came to embrace the colonial policies, and once more further subjugated customary rights to land (Harbeson, 1973; Leys, 1975; Okoth-Ogendo, 1991; Leo, 1989 Wanjala, 2000; Kanyinga, 2000).

### **2.3 The Kenyatta Era at Independence and Immediately After (1963-1978)**

At independence in 1963, the historical processes of land acquisitions had solidified into a quantum of colonial property as the foundation of the political economy of the new independent state shaped by the colonial economic, social, political and legal arrangements. The Kenyatta era did not resolve the long-outstanding land question, but simply embraced the same land tenure reform objectives by resettlement of a few landless in the Million Acre Settlement Scheme, who were deemed to be land hungry and a threat to the regime (Leys, 1975; Leo, 1985; Njonjo, 1978). According to Bates (1989), Harbeson (1973), and Okoth-Ogendo (1981), landed property in Kenya at independence and immediately thereafter was manifested in the dual system of large-scale commercial farming on the one hand and the smallholder customary land use on the other hand.

The Kenyatta regime, fearing to disrupt the dominant settler economy, embraced the colonial policy and legal framework on land tenure and protection of property rights in land. This divided the ruling party between the liberal wing led by Jomo Kenyatta and Tom Mboya on



the one hand, and on the other, radical nationalists led by Oginga Odinga and Bildad Kaggia, who advocated for radical land redistribution policies (Harberson, 1973:90-101). By 1965, the government started reviewing the economics of small-scale settlements, with the emphasis on 'willing-buyer, willing-seller' transactions through land-buying companies and co-operatives, as a mode of gaining access to land. Most literature points to this fact as the reason for the perpetuation of disparities in land ownership and use (Sorrenson, 1967; Van Zwanenberg, 1975 Wasserman, 1973 Migot-Adholla, 1984; Okoth-Ogendo, 1976 and 1991).

However, despite the Kenyatta government not meeting the high expectations of most citizens by perpetuating a dual system of economic relationships, the limited land redistribution programme stimulated an agriculture-led growth of the country's economy for more than 10 years until the mid-1970s. The Kenyan economy suffered setbacks due to the oil crisis of 1973 and the drought of 1974 and never recovered up to the 1980s when structural adjustment programmes worsened the situation when agricultural growth declined.

In summary, the Kenyatta era perpetuated the colonial regulatory framework, complete with its development model, without making any attempt to change the distribution pattern of land. Thus, Kenyatta merely suspended the land question without redressing the customary land issues that were high on the independence struggle agenda, a matter which he left for his successor, Daniel Arap Moi, who ascended to power after his death in 1978. I would argue that the Kenyatta era represented a perfect elite capture of the political process. This culminated in a process of customary lands being set apart for the growing class of African elites whose focus was to exploit the under-utilized land rather than implementing the agricultural strategies that could effectively address the country's rural poverty and hunger problems, which required dealing with growing land constraints faced by colonial displaced persons.

## **2.4 The Moi Era (1978-2002)**

Moi ascended to power after the death of Kenyatta in 1978 and picked up the suspended land question by appointing a Parliamentary Select Committee to probe the land problem of the Coastal strip of Kenya, which was the major land issue then (Okoth-Ogendo, 1981). According to Kanyinga (2000), Moi was convinced that Kenyatta's political power base was built around allocating grants of land, thus, in the mid-1980s Moi embarked on a process of using public land for political patronage. Kanyinga (2000) further argues that Moi's interest in the suspended land question was not to resolve it, but that it came in handy to pay for building political influence around election times as the economy was suffering from economic pressure necessitated by structural adjustment and political opposition of the 1980s and 1990s. This viewpoint is affirmed by the Sessional Paper No. 1 of 1986, the second major economic policy document in independent Kenya, which upheld the continuity of the colonial land tenure policy and legal framework without any major review since independence (Republic of Kenya, 1986:90). I argue that the continuity of the colonial land tenure policy and the legal regime by the second post-independence regime was an opportunity to entrench the elite capture of the political process as a means controlling land, territory and people. Hence Moi adopted the slogan of following in Kenyatta's foot-steps (popularly known as 'Nyayo' in Kiswahili).

In summary, the Moi era inherited, unaltered, the colonial legal framework for the protection of private property rights to land from the Kenyatta era, which had inherited this framework from the colonial government. Consequently, the prospects for inclusive smallholder-led agricultural development in eradicating hunger and poverty remained in abeyance as political elites went around seeking any remaining piece of land. No wonder that when Kibaki took over in 2003, the first step by the National Rainbow Coalition (NARC) was to come up with the 2003-2007 Economic Recovery Strategy for Wealth and Employment Creation.

## **2.5 The Kibaki Era and the Future of Land Reform (2003-2013)**

Kibaki won the elections in December 2002 on a promise of land reform among other constitutional reforms (Kanyinga, 2008). In the third major economic policy blueprint, the Economic Recovery Strategy for Wealth and Employment Creation, 2003-2007, the government identified poor land tenure systems, including the neglect of customary law regimes that govern community land tenure, as major underlying causes of poverty, and concluded that there was a need for a new land policy direction (Syagga and Mwenda, 2010; Republic of Kenya, 2003).

Drawing from the recommendations of several review commission reports such the Njonjo Commission of Inquiry into existing land law and tenure systems of 2002, the Ndung'u Commission of Inquiry into Illegal and/or Irregular Allocation of Public Land of 2004, and the Constitution of Kenya Review Commission of 2005, which provided for the establishment of the National Land Commission as an appropriate land governance framework, the Kibaki regime started the process of changing the old land regulatory framework. However, the process was met with resistance up until the highly-contested election of December 2007 and the subsequent National Accord brokered by Kofi Annan, Chairperson of Africa Progress Panel, Former Secretary General of the United Nations and Nobel Laureate, which recommended the reform of land governance among other constitutional reforms (Kameri-Mbote, 2009:219). Thus, on 3rd December 2009 Sessional Paper No. 3 of 2009 on National Land Policy was passed, providing for the recognition and protection of community land as one of the categories of land in Kenya, on an equal basis with private and public land (See Table 2). In 2010, the new Constitution of Kenya, anchoring the provisions of the National Land Policy, established a National Land Commission as the new land governance institutional framework whose operationalization was provided for in the Land Act, No. 6 of 2012 and the National Land Commission Act, No.

5 of 2012. According to Manji (forthcoming) and Kaag, M and Zoomers, A. (2014:54-68), land reforms geared towards transparency and accountability of land sector transactions are facing serious levels of resistance in the implementation phase of these laws.

**Table 2: Land Categorization in Kenya**

Ownership Categories	Area in sq.km	%
Public land	76,953	12.99
Community Land (Formerly Trust land)	396, 323	66.84
Private land	108, 403	18.28
Total	581,697	98.11

**Source: Republic of Kenya, 2004** (*Statistical Abstract, Nairobi: Bureau of Statistics*)

This was the context that gave rise to the establishment of the National Land Commission which is mandated to systematically address the land question in all its historical and contemporary manifestations. The National Land Policy of 2009 and the Constitution of Kenya of 2010 reversed the issue of the location of radical title, which colonialism and the successive post-independence governments had relocated from indigenous communities to the imperial sovereign authority. This formed the basis for the Constitutional provision that “All land in Kenya belongs to the people of Kenya collectively as a nation, as communities and as individuals” (Constitution of Kenya, 2010: Article 61(1), Republic of Kenya, 2010).

## 2.6 Conclusion

In summary, the Kenyan land question requires a departure from past practices of policy and legal continuity to enforcement and implementation of the new regulatory framework, which was designed to end the history of land injustices so as to put the country on an equitable and sustainable trajectory. The discourse on the land question cannot be reduced to the reform of land tenure and its relation to land acquisition for agricultural production only, it must be

linked to the socio-political history of the country. It is a multi-layered issue that is embedded in the changing dimensions of social, political and economic dynamics of the country. Thus, I would argue that a policy is necessary but not sufficient; legal frameworks are good but not enough to make the state accountable. I now move from the history and context of the Kenyan land question to the analysis of the policy and legal frameworks on large-scale land acquisitions in the next chapter.



## **3.0 Chapter Three: Policy and Legal Frameworks on Large-Scale Land Acquisitions**

### **3.1 Introduction**

In the past 10 years a number of policy and legal regulatory frameworks have been developed by global, regional and national institutions to regulate land acquisitions generally and specifically to guide land investments. Most of those in Africa have largely been influenced by international instruments and policy frameworks by powers that started in 2003 with the World Bank Land Policy Framework for Growth and Poverty Reduction (Deininger, 2003). In 2004 the European Union released Land Policy Guidelines, which were designed to guide land policy reforms in developing countries (European Union, 2004). In the period 2006 - 2009 the African Union Commission (AUC), in collaboration with the African Development Bank (AfDB) and the United Nations Economic Commission for Africa (UNECA) came up with a Framework and Guidelines on Land Policy in Africa to strengthen land rights, enhance productivity and secure livelihoods (AUC et al., 2010). Currently, in response to the challenges of improving land governance to give recognition and protection to the land rights of local communities in land laws and facilitating the strengthening of security of tenure of communities, with particular focus on how best to promote women's rights within the community context, the Land Policy Initiative (LPI) is leading the process to develop Guiding Principles on Large-Scale Land-Based Investments in Africa. Coincidentally and influenced by these initiatives between 2004 and 2009, Kenya developed a National Land Policy to regulate the land tenure rights whose principles are anchored in the Constitution of Kenya (2010) that established the National Land Commission as a land governance institutional framework (Republic of Kenya, 2009 and 2010).

This chapter discusses three major policy and legal frameworks developed expressly to regulate large-scale land acquisitions which this thesis will cite as global, regional and national land governance regulatory frameworks. At global, regional and national levels the regulatory frameworks stand to generate a lot of debate about their attempts to control and legitimize large-scale land acquisitions that are labelled as land grabs, land rush and/or a new land scramble.

These regulatory frameworks are:

- (a) Principles for Responsible Agricultural Investment (PRAI), devised by a World Bank-led Consortium (FAO et al., 2010);
- (b) Voluntary Guidelines (VGs) on the Governance of Tenure of Land, Fisheries and Forestry in the Context of National Food Security, developed by the FAO Committee on World Food Security (CFS) (FAO, 2012);
- (c) the African Union Framework and Guidelines (F&G) on Land Policy in Africa (AUC et al., 2010);
- (d) the Land Policy Initiative of Guiding Principles on Large-Scale Land-Based Investment in Africa;
- (e) the Kenya National Land Policy (2009) and the Constitution of the Republic of Kenya (2010) that established the National Land Commission as the 'National Land Governance Framework' (Republic of Kenya, 2009 and 2010).

## 3.2 The Global Regulatory Framework

### 3.2.1 Principles for Responsible Agricultural Investment (PRAI)

The call to develop principles to regulate foreign investments in land was initiated in 2009 by the Global Economic Forum of the Group of Eight (G8) at L'Aquila Summit (Stephens 2013). It called on international organizations led by the World Bank, the Food and Agriculture Organization (FAO), the International Fund for Agricultural Development (IFAD) and the United Nations Conference on Trade and Development (UNCTAD) to develop principles for responsible agricultural investment. As pointed out by Margulis et al. (2013:1-23), the principles were developed as a response to the negative implications of increased investment in agricultural land, water, grassland and other natural resources accessed and used by local communities in developing countries since 2008 (FAO et al., 2010:1). These principles were also in response to civil society protestation at the increase in large-scale land acquisitions or land grabbing (GRAIN, 2012). In a statement in April 2010, organisations including La Via Campesina, the Food First Information and Action Network (FIAN), and the Genetic Resources Action International Network (GRAIN) rejected the PRAI as a move to try to “legitimize what is absolutely unacceptable: the long-term corporate (foreign and domestic) takeover of rural people’s farmlands” (GCAR, 2010), Civil Society Mechanism, 2011; and Global Witness, 2010; also (See <http://www.focusweb.org/content/stop-land-grabbing-now>).

The seven Principles for Responsible Agricultural Investment (PRAI) that were publicized in 2010 are: respecting land and resource rights; ensuring food security; ensuring transparency, good governance, and a proper enabling environment; consultation and participation; responsible agro-enterprise investing; social sustainability; and environmental sustainability



(World Bank, 2010: x, 68-91). In short, the seven principles stand for responsible agricultural investment that respects rights, livelihoods and resources. However, scholars like Borras et al. (2013) call them a mere trajectory for facilitating private investment in agriculture rather than being a regulatory framework to contribute to economic growth and the reduction of poverty as alluded to by the World Bank in its defence of the seven principles (Deininger et al., 2011). Another major critic of these principles is Dr. Olivier De Schutter, United Nations Special Rapporteur on the Right to Food. He points out that the PRAI were not developed in an inclusive manner including grassroots organizations representing small farmers. He regards them as unacceptable principles for merely constituting a check-list unable, by itself, to slow down a trend they see as destroying peasantry in the global south (De Schutter, 2011:254). Consequently, the Special Rapporteur argues against regulating large-scale land acquisitions and leases, instead of proposing alternative agricultural investment models (De Schutter, 2011: 250). He concludes that:

What we need is a vision that goes beyond disciplining land deals and providing policy-makers with check-lists of how to destroy the global peasantry responsibly. ...agricultural investments must be investments that benefit the poor in the South, rather than leading to a transfer of resources to the rich in the North (De Schutter, 2011:275)

The International Food Policy Research Institute (IFPRI) is the strongest supporter of PRAI because PRAI is based on the IFPRI Code of Conduct for foreign land acquisition (Braun & Meinzen-Dick, 2009). However, despite the support from IFPRI and the G8 countries, the PRAI principles, devised by the World Bank-led group, were never formally endorsed (CFS, 2011; Stephens, 2013). Thus, the PRAI initiative is dismissed as mere self-regulatory policy advice to mitigate the negative impacts of large-scale land acquisitions.

In summary, the PRAI principles are not conceived as public policy on agricultural investments because they do not include any reference to binding legal instruments such as

national laws and regulations or international human rights law, instead they build on voluntary frameworks for corporate social responsibility (Borras Jr et al., 2013). PRAI principles are in the category of Equator Principles, the Extractive Industry Transparency Initiative (ETI), Santiago Principles, Organization of Economic Co-operation and Development (OECD) Guidelines for Multinational Enterprises among others, whose goal is to reduce risks to investors and to prevent risk to capital (Stephens, 2013). Simply put, the PRAI principles are highly criticized by civil society organizations and social movements of smallholder farmers and pastoralists, indigenous people and fisher-folks for lack of transparency in an agency-led initiative without participation and clear vision for the future.

I argue that because of the opposition and contestation about PRAI, the World Bank and its partners have convinced the Committee on World Food Security (CFS) to stage another round of discussion on an initiative known as CFS Principles for Responsible Investments in Agriculture and Food Systems. Already the first draft is available for discussion. But on its part the World Bank, at the demand of the G8 countries in 2012, with funding from the Gates Foundation, the United Kingdom, the United States of America, the Dutch and Danish Governments, embarked on developing a new instrument for Benchmarking the Business of Agriculture (BBA). This started towards the end of 2013 and at the Spring meeting of the World Bank on 11th April, 2014, the ranking of over 40 countries was expected to take place, as the Bank released its 2014 '*Doing Business Ranking Report*', the model on which agricultural benchmarking is tailored. Thus, whatever the World Bank does the stigma against its initiatives which are deemed to facilitate land grabs that are dispossessing and impoverishing local communities across the globe refuses to go away. My further argument is that since the 1980s and 1990s when the Structural Adjustment Programmes devastated the

livelihoods of millions, the World Bank initiatives are seen as designs for empowering the corporate minority by exploiting both human and natural resources of developing countries.

### **3.2.2 The Food and Agriculture Organization Voluntary Guidelines on Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security**

According to McKeon, (2013:105-122), the process that resulted in the Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security (VGs) was based at the Committee on World Food Security (CFS) as a more inclusive global forum. Compared to the PRAI process, which was based at the World Bank, its set of principles were opposed by global civil society and social movements for lacking legitimacy, despite involving international organizations such as FAO, IFAD, UNCTAD and the World Bank Group. The Voluntary Guidelines trace their origins to the FAO International Conference on Agrarian Reform and Rural Development (ICARRD), held in Brazil in 2006. Beyond the fact that the Voluntary Guidelines were adopted and endorsed by the international community, they embrace concerns of land tenure and land reforms of developing countries as expressed at ICARRD (McKeon, 2013; Seufert, 2013:181-186). This was the first time that such a detailed and internationally accepted voluntary and non-binding guide to regulate land governance practice had been drawn up and endorsed by the international community.

These Voluntary Guidelines are about four things: improving tenure governance and information on internationally accepted practices on rights to use, control and manage land and other natural resources; contributing to policy, legal and institutional frameworks regulating tenure rights; enhancing of transparency in the functioning of tenure systems; and strengthening capacities of implementing agencies (Seufert, 2013). But just like the PRAI

principles they ended at promoting respect and recognition of existing rights without according them the property rights recognition that is legally binding. Thus, while they are independent of each other, the Voluntary Guidelines also include provisions on responsible investment as they refer to large-scale land acquisitions (FAO, 2012:23-25). But more importantly, they both focus on the ‘what’ component of land governance and not the context of the issues that must be addressed.

The first difference between the two global voluntary and non-binding land governance frameworks is that PRAI is backed by the G8 nations, the corporate sector and the World Bank, while the VGs are supported by civil society, G20 heads of state, social movements and certain African countries which are most targeted by large-scale land acquisitions. Those in support of the VGs are those who prefer a land governance framework based on the existing human rights frameworks rather than a purely market-based framework sponsored by the World Bank and supported by the G8-led New Alliance for Food Security and Nutrition, backed by private Agribusiness.

The second difference between the two is that whereas PRAI went through a limited process, the VGs enjoy legitimacy because of an inclusive and participatory process endorsed by the G20 heads of state who committed to domestication of the guidelines into their internal laws and practices.

The third difference is that PRAI focuses on investment with support of large-scale commercial agriculture in rural areas, which are dominated by smallholder customary land users. VGs on the other hand focus on enhancing the tenure security of vulnerable and marginalized landholders and users to maintain the viability of smallholder production.

Consequently, VGs enjoy the support of civil society and peasant movements as opposed to PRAI which was denounced as a threat to the land rights of the poor in favour of corporate sector takeover of rural communities' farmlands (GCAR, 2010, Civil Society Mechanism, 2011; and Global Witness, 2010).

The differences notwithstanding, the two global regulatory frameworks (PRAI and VGs) both fall into the global governance architecture of the food and agriculture sector, spear-headed by FAO that participated in both processes (Cohen and Clapp, 2009:6). Thus, the Committee for Food Security has been mandated to involve all stakeholders in re-looking into the two investment frameworks with a view to setting up a new set of principles for responsible agricultural investments by 2014 to be endorsed by all state and non-state actors (Stephens, 2013; Blank, 2013). This effort and call to have a one-shop global regulatory framework to regulate land deals is supported by all the stakeholders (Cotula, 2013), because of the weakness in the compliance mechanism that is not supported by the majority of the international community and its networks. Global civil society and social movements that are opposed to the World Bank PRAI as the framework to regulate large-scale land acquisitions instead of the FAO VGs (Margulis and Porter, 2013; McKeon, 2013).

According to Borras et al (2013), the trajectory of the global land governance portrays three political tendencies in practice, namely 'regulate to facilitate', 'regulate to mitigate negative impacts and maximize opportunities' and 'regulate to block and rollback' land grabbing. The first and third tendencies are deemed as strategic from the standpoint of the World Bank and La Via Campesina who hold pro-capitalist and anti-capitalist positions respectively, on development pathways. The second is deemed as tactical and meant to address the inevitable negative implications or draw-backs faced by host communities at local sites of large-scale

land acquisition/land grabbing. It is noteworthy to point out that the first and second tendencies emphasize procedural issues.

### **3.3 The Regional Regulatory Framework**

The Framework and Guidelines on Land Policy in Africa was led by the Land Policy Initiative (LPI), which was formed in 2006 as a joint effort of the African Union Commission (AUC), United Nations Economic Commission for Africa (UNECA) and the African Development Bank (AfDB). The consortium's aim was to initiate a process for the development of a framework and guidelines for land policy and reforms in Africa, with a view to strengthening land rights, enhancing productivity and securing livelihoods.

The Framework and Guidelines (F&G) were developed through continent-wide and regional multi-stakeholder consultations, refined by national experts and finalized by the Joint Conference of Ministers of Agriculture, Lands and Livestock in April 2009. Finally, the F&G were endorsed by the Assembly of African Heads of State and Governments at the African Union Summit in July 2009 (AUC et al., 2010: xii). Through a declaration, the Framework and Guidelines on Land Policy in Africa was established as a regional reference to guide the land policy process in African countries at national level. Thus, this framework gave impetus to the finalization of the Kenya National Land Policy document that was endorsed by Parliament on 3rd December 2009.

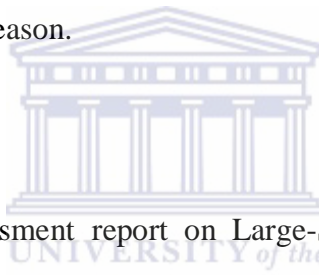
The reform of land governance in Africa was necessitated by the felt need 'to foster good governance of land, natural resources and processes of land use change' (AUC et al., 2010:20). This was to redress the predominantly colonial and post-independence dualistic system and an unequal enjoyment of land rights that limited equal opportunities for all land

users in Africa because of patronage, nepotism and corruption that were prevalent in many African countries (AUC et al., 2010:20). For the first time, governments from across Africa endorsed key goals and best practices for reforming land governance in the region.

The Framework and Guidelines on Land Policy in Africa seek to provide a framework for understanding land issues in Africa by putting the land policy development process in context. Secondly, the F&G discuss the ecological, political, economic, social, cultural and demographic parameters in which the land question must be addressed, as well as discussing the upsurge in large-scale land acquisitions as the “new scramble for African land resources” (AUC et al., 2010:10). Thirdly, it discusses the implications of land policy for different sustainable development issues, including agriculture and other economic uses such as mining, energy, tourism and the need to protect ecosystems. Fourthly, it focuses on guidelines in terms of the process of policy development, the process of implementation, and the tracking of progress. Thus, the F&G are broadly about why and how member states must address land policy, and resolve challenges that have been encountered within Africa.

The Framework and Guidelines on Land Policy in Africa came into place at the time of an upsurge in large-scale land acquisitions by foreign and domestic investments in Africa, yet the continent’s economic growth depended largely on the way land and land-based resources were regulated, used and managed to ensure that all categories of land users enjoy comparable protection (AUC et al., 2010). As a peer civil society expert who participated in the process of developing the African Union Land Policy Framework and Guidelines, I contributed to the restructuring of three components of the land system in terms of its property structure, use and production structure and the provision of the support services

infrastructure. That was with the aim of redressing the weak and bad land governance across the continent that gave the impression that Africa had abundant, unused and under-utilized land available to foreign land investors. This is consistent with Alden Wily's (2010) argument that the land that was being acquired in Africa belongs *de facto* to rural communities under customary tenure system. Contrary to the 'wasteland' theory that guided the colonial acquisitions of much of the community land all over Africa as uncultivated and unsettled lands according to John Locke's 17<sup>th</sup> century treatise that argued that real property only comes into being through labour (Alden Wily, 2011). John Locke's treatise is flawed in its assumption around there being 'wasteland' available to outsiders' labour across the globe because what may appear available is land used for varied range of livelihood activities for local communities who use it in season.



As of 2013 following the assessment report on Large-Scale Land-Based Investments in Africa (LSLBI), the Land Policy Initiative (LPI) has started a process to develop Guiding Principles on LSLBI in Africa. The draft Guiding Principles are an effort to have an African-owned process, but in reality they are building on the global effort on the platforms for implementation of the improved land governance frameworks. While improving land governance is important, I would argue that the focus is on how to exploit Africa's under-utilized land rather than implementing agricultural strategies that effectively address the continent's rural poverty and hunger problems. In my view, this requires exploring inclusive smallholder-led agriculture and with it, the formula in sharing benefits rather than marginalizing local communities by legitimizing the land deals of private corporations seeking land all over Africa.



In summary, the Framework and Guidelines on Land Policy in Africa provides a guide to African countries to design national land governance regulatory frameworks based on new national land policies that facilitate the security of land rights for investors and customary land users alike. However, according to Alden Wily (2011) customary land rights are not explicitly mentioned in the declaration, by which the Heads of State of the African Union endorsed the Framework and Guidelines on Land Policy in Africa in July 2009 - this despite the fact that the majority of rural Africans occupy and use land under customary law.

Thus, since institutional land governance concerns are better addressed at the national level where infrastructure and mechanisms are needed to regulate land acquisitions and safeguard the land rights of customary land users, in the next section, I examine the establishment of a national land governance regulatory framework in Kenya.

### **3.4 National Land Governance Framework**

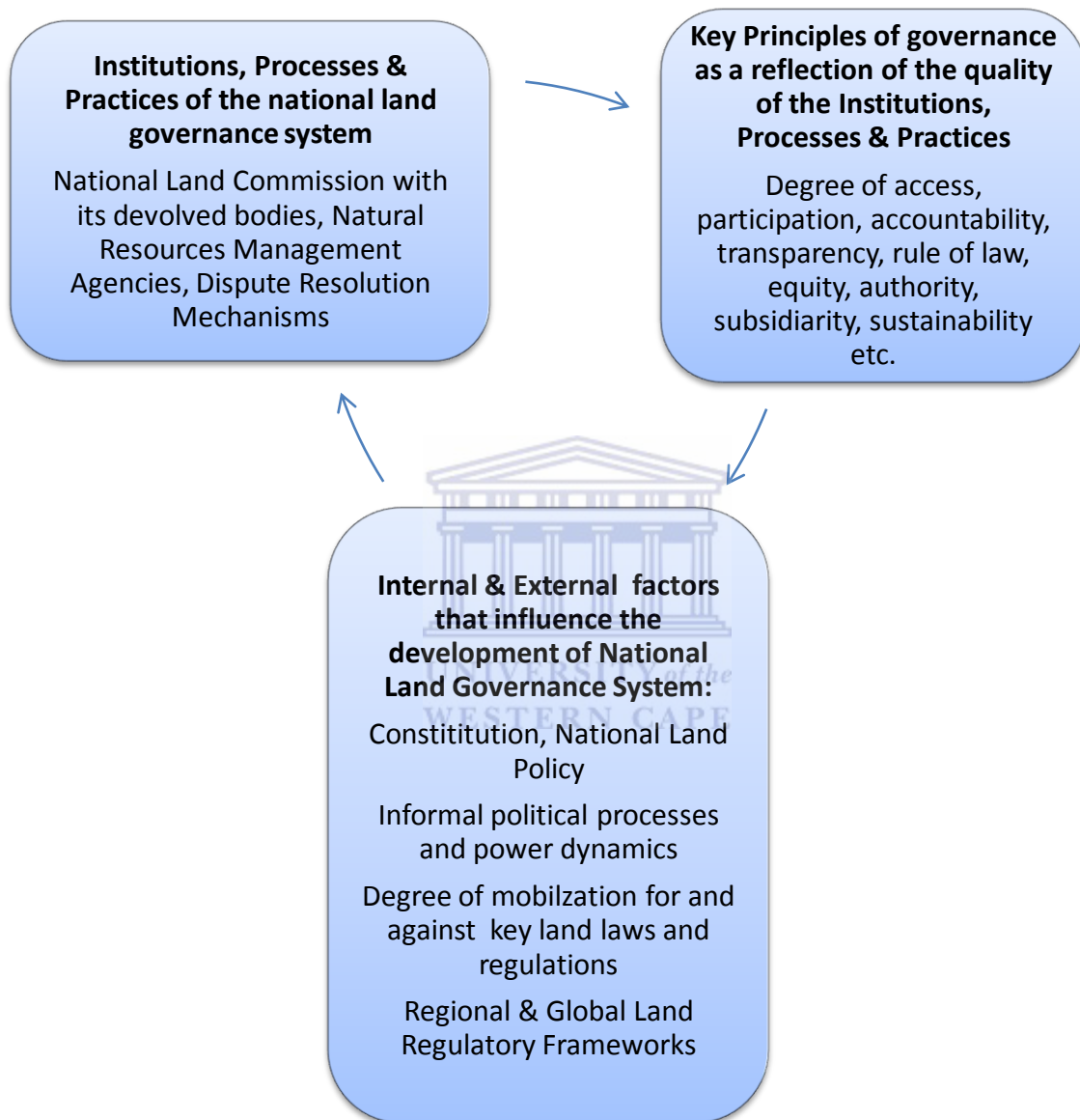
#### **3.4.1 Introduction**

This section examines the background and the process of establishing a new land governance system in Kenya, even though contemporary literature on this process is yet to emerge and be published. Before colonialism Kenyan native communities exercised a customary land tenure system whose regulatory framework is little known (Wanjala, 2000). The known land governance framework was imposed by the British in 1897 to regulate the acquisition and control over land under the British foreign property law regime that facilitated European settlement in Kenya (Sorrenson, 1968; Wanjala, 2000). The historical overview of the national land governance system in Kenya is a continuity of the colonial dual legal approach. The dualistic system secured acquired land rights for settlers, while ignoring African customary property laws under which native communities acquired, used and controlled land

(Okoth-Ogendo, 1991 and 2008). In order to understand the Kenyan new land governance institutional framework, this thesis used the land governance conceptual framework as shown in Figure 1, to facilitate the analysis.

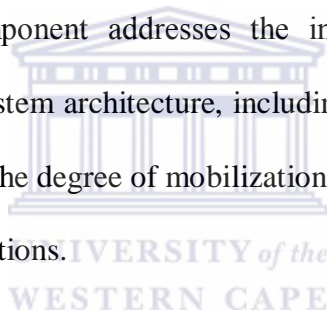


**Figure 1: The What, the How and the Why of the National Land Governance System in Kenya**



The conceptual framework adopted for this study (as seen in Figure 1) outlines the key elements that will assist in structuring the analysis of the Kenyan land governance system in terms of the progress made towards its formulation and use in Kenya to guide the regulation

of large-scale land acquisitions as in the case of the Yala Swamp. This framework is premised on the notion that there are three questions upon which a land governance system can be assessed. The ‘what’ addresses the element of what makes up the land governance system in terms of institutions, processes and practices to address the identified need or to fix the perceived concern or problem. For instance, in Kenya the land governance system was set up “to guide the country towards efficient, sustainable and equitable use of land for prosperity and posterity” (Republic of Kenya, 2009: ix), and as a means of reversing and redressing historical land injustices. The ‘how’ pertains to the key principles of governance, namely participation, transparency, accountability, legitimacy, rule of law, equity, strategic vision, devolution/subsidiarity and sustainability. It is about the quality of the institutions and processes. The ‘why’ component addresses the internal and external factors that influence the land governance system architecture, including the informal political processes and power dynamics that inform the degree of mobilization for and against the desired goal in terms of key land laws and regulations.



In practice, this conceptual framework is about principles of good land governance that can translate into the tangible regulation of land acquisition, access, use and control under representative institutions that provide oversight and adjudicate disputes. According to Alden Wily (2011) and Amanor (2012), such a land governance system decentralizes authority to the lowest levels that give communities a greater role in governance, which prioritizes the needs of the vulnerable people in society. However, whereas Kenya has made impressive strides in putting the land governance and management institutional framework in place., According to my observation on the ground, the elite who have captured the political process and those who have benefited from past land allocations have slowed down the implementation by denying the National Land Commission enough budgetary allocation to

carry out its mandate. Consequently, according to Klopp and the author in Kaag and Zoomers (2014: 67), there is every effort by domestic and foreign elites and their companies to undermine and stall the new land governance framework implementation.

### **3.4.2 Establishment of a New Institutional Framework for Land Governance in Kenya**

The new Kenyan Land Governance Framework was established on the provisions of the National Land Policy (NLP) whose mission and objectives are:

#### **Mission of the Policy**

To promote positive land reforms for the improvement of the livelihoods of Kenyans through the establishment of accountable and transparent laws, institutions and systems dealing with land (Republic of Kenya, 2009:1).

#### **Objectives of the Policy**

The overall objective of the National Land Policy is to secure rights over land and provide sustainable growth, investments and the reduction of poverty in line with the Government's overall development objectives (Republic of Kenya, 2009:1).

Specifically, the policy was designed to offer a framework of policies and laws to ensure the maintenance of a system of land administration and management that provides: all citizens with the opportunity to access and beneficially occupy and use land; economically viable, socially equitable and environmentally sustainable allocation and use of land; and efficient and effective utilization of land and land-based resources. These specific objectives of the policy capture the philosophy of the principles of Sessional Paper No.3 of 2009 on National Land Policy (NLP) that are anchored in the Constitution of Kenya (2010).

The philosophy behind the principles of the NLP is that land in Kenya is not just a commodity in the market place, it should be held, used and managed in a manner that is equitable, efficient, productive and sustainable in accordance with the following principles:

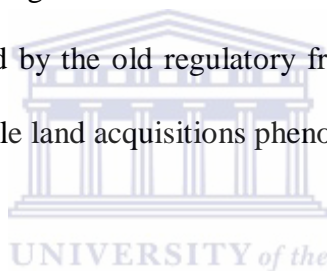
Equitable access to land; security of land rights; sustainable and productive management of land resources; transparent and cost effective administration of land; sound conservation and protection of ecologically sensitive areas; elimination of gender discrimination in law, custom and practices related to land and property in land; and encouragement of communities to settle land disputes through recognized local community initiatives consistent with the Constitution. (Republic of Kenya, 2010:43-44).

The criticism of the old land governance regime was that it promoted policies, laws and practices that valued land only as an economic resource that should be managed productively without recognizing the other values enshrined in the NLP principles, which the National Land Commission is now mandated to take into account. The NLP provisions were opposed by representatives of white settler communities under their network of the Kenya Land Owners' Association (KELA), which was opposed to provisions requiring land acquisitions to be reviewed. Other groups that opposed the policy were donors led by United States Agency for International Development (USAID) who questioned the NLP's overly agrarian thrust and its lesser focus on urban land issues. Ultimately the NLP was passed by Parliament in 2009 and its principles were geared to the establishment of new Kenyan land governance, as required by the Constitution.

Since the old land governance regime was entrenched in the old Constitution as a means of legal acquisition of land under the property clause, the Constitution of Kenya (2010) established the National Land Commission to reverse the old order, which represented the continuity of historical land injustices. Article 67 of the 2010 Constitution of Kenya

establishes a National Land Commission as the new land governance institutional framework. The NLC has the following functions: to manage public land on behalf of national and county governments; to recommend national land policy to the national government; to advise the national government on a comprehensive programme for the registration of titles in land throughout Kenya; to conduct research related to land and the use of natural resources, and make recommendations to appropriate authorities; to initiate investigations, on its own initiative or on a complaint, into present or historical land injustices; to monitor and have oversight responsibilities over land use planning throughout the country (Republic of Kenya, 2010: 47-48, Article 67 (2) (a)-(h)).

The core mandate of this new land governance institutional framework is to seek answers to the historical land question posed by the old regulatory framework, which remains a major challenge given the new large-scale land acquisitions phenomenon.



The National Land Commission is required to operate both at national and county levels, as an integral part of the devolved government structure. The National Land Commission Act that operationalizes the Commission's mandate underscores the requirement for it to manage and administer all unregistered trust land among other unregistered community land on behalf of the county government. Therefore, in line with the African Union Framework and Guidelines on Land Policy in Africa that espouses principles of democratization, transparency, good governance, popular participation, equity, poverty reduction, subsidiarity, gender equity and sustainability, the National Land Commission is supposed to inform the conduct of land acquisitions in the country. Consequently, the National Land Commission was set up to regulate operations in the entire land sector and to implement reforms that have been sought since colonialism, over 118 years ago. As the National Land Commission prepares to provide quality land governance, which is much needed in Kenya, the

contestation and focus on the LSLBI as far as land governance and agricultural development is concerned has led to the LPI's development of the Guiding Principles on LSLBI and country level platforms to anchor the new land governance systems.

### **3.5 Conclusion**

In summary, this chapter analyzed the land policy and legal frameworks on large-scale land acquisitions aimed at regulating the undesired effects of this phenomenon. It finds that at the global and regional levels the principles and guidelines have no solid link to some form of compliance mechanisms except when anchored to the national level. The chapter dealt with the question of their effectiveness given the intricate nature of land deals which seem to go hand in hand with displacement, dispossession and corrupt tendencies, to the detriment of customary land users. The chapter points to the need to strengthen the national policy and legal frameworks implementation mechanisms for the protection of local communities' land rights, with a particular focus on how best to promote women's rights within the community context. This is the sure way of creating resilient societies with secure livelihoods across generations. However, further analysis is urged to discourse the regional and national frameworks that are yet to be subjected to scrutiny in dealing with difficult historical challenges that go beyond the emerging implications of the current land-based investments.



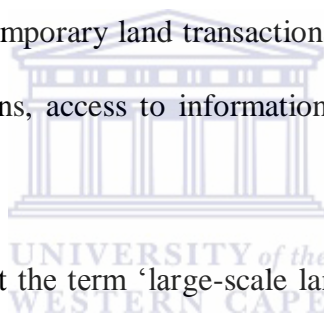
## **4.0 Chapter Four: Literature Review on Large-Scale Land Acquisitions Governance: A Conceptual Framework**

### **4.1. Introduction**

This chapter reviews the various conceptualizations and debates about large-scale land governance, acknowledged as a complex transnational process being dealt with at local, national, regional and global levels (Margulis and Porter, 2013). The literature that has emerged on large-scale land governance is mainly by scholars of globalization who have examined it from the perspective of transnational/global governance (Margulis et al., 2013; Borras et al., 2013; McKeon, 2013; Stephens, 2013; Seufert, 2013) and from a human rights perspective (De Schutter, 2011; Kunnemann and Monsalve, 2013:123-139). The literature argues that the complexity of global land governance is made more complex due to several initiatives undertaking rule-making processes involving numerous actors targeting the regulation of a process that is inherently multi-dimensional. They broadly conclude that the land governance process, despite being fluid, is interactive between local, global, and multi-layered institutions shaping this new field of governance (Margulis et al., 2013).

The major initiatives discussed in the reviewed literature are those undertaken by the Food and Agriculture Organization (FAO), spear-headed by the Committee on World Food Security (CFS), and the G8 New Alliance for Food Security and Nutrition initiative, spear-headed by the World Bank. The two initiatives are about the formulation of Voluntary Guidelines (VGs) on the Responsible Governance of Tenure of Land, Fisheries and Forestry and Principles for Responsible Agricultural Investment (PRAI). At regional level, the African Union initiative which is least discussed is the one that produced the African Framework and Guidelines on Land Policy. The Land Policy Initiative is currently developing Guiding Principles on Large-Scale Land-Based Investments in Africa and the first draft has gone through electronic consultations, as at 21st April 2014.

To examine the land governance system for the regulation of large-scale land acquisitions this thesis reviewed the use of different terms to describe this phenomenon. Scholars of globalization use the term ‘global land governance’ to refer to the emerging practice of handling trans-border land governance problems (Margulis et al., 2013:4). They acknowledge that the concept of global governance emerged in the 1990s in response to global problems such as HIV/AIDS and climate change, which were beyond the capacity of any single nation-state to manage (Roseneau, 1995:13-43). Therefore, this term makes sense when referring to global rule-making initiatives about ‘land grabbing’. The term ‘land grabbing’ is used most frequently by scholars of globalization and describes and analyzes the explosion of large-scale (trans) national commercial land transactions (Borras et al, 2013). This term is also used to politicize and historicize contemporary land transactions which occur under conditions of highly asymmetric power relations, access to information, and distribution of benefits and costs (Margulis et al., 2013).



The literature reviewed notes that the term ‘large-scale land acquisition’ is not preferred by scholars of globalization because it is descriptive and its use de-politicizes the contemporary phenomenon of land grabbing. Just like global civil society, social movements of peasants argue that the term ‘acquisition’ is part of a legitimizing discourse preferred by the World Bank Group, Inter-governmental agencies and key policy and governmental actors, aid donors and some NGOs like Oxfam. Other terms used in the literature on this phenomenon include ‘land rush’ and ‘land deals’.

## **4.2 The Literature Debates on Large-Scale Land Acquisitions Governance**

According to Cotula et al. (2009), FAO, IFAD, UNCTAD and the World Bank 2010 (FAO et al., 2010), large-scale land acquisitions governance is necessary for regulating different forms

of land investments as a development opportunity. Thus, the World Bank sees large-scale acquisitions as investments in land meant to improve productivity and economic growth as a new Bank agricultural development strategy since 2008. Hence, the instrument the World Bank has proposed to regulate any negative impacts is one based on the seven principles for Responsible Agricultural Investment that respect existing land rights, livelihoods and resources (PRAI). This is despite envisaged risks of local communities being marginalized (Vermeulen and Cotula, 2010:13). The proponents of large-scale land acquisitions argue that large-scale land deals have drawn Foreign Direct Investments to Africa (Aabo and Kring, 2012:10). Braun and Meinzen-Dick (2009:2), who argue like Cotula et al. (2009) why land investments in the agricultural sector should not be seen as an economic opportunity, which should be regulated to produce ‘win-win’ improvements in productivity through technology transfer and the introduction of best agricultural practices. However, the United Nations Special Rapporteur on the Right to Food criticizes the World Bank Principles for Responsible Agricultural Investment as promoting the violation of the human right to food by embracing large-scale land acquisitions by investors. Local communities are deprived of the access to productive resources for their livelihoods by having their land leased to investors (De Schutter, 2009:2).

According to Kunnemann and Monsalve (2013:123-139), civil society organizations and transnational agrarian movements such as the Genetic Resources Action International Network (GRAIN), the FoodFirst Information and Action Network (FIAN) and La Via Campesina are opposed to Codes of Conduct on foreign land acquisitions and the Principles for Responsible Agricultural Investments because they aim at legitimizing what amounts to land grabbing in practice. Other scholars like Alden Wily (2012) and Amanor (2012) have pointed out the paradox of land governance frameworks which seem to unite the interests of national governments and international development organizations in their support of large-

scale land acquisitions and the ambiguous recognition and respect of customary land rights that do not amount to their protection as property rights for their own citizens.

Borras et al. (2013) point to the challenge of global land governance in the debate as a contestation between those who see the land governance frameworks as a trajectory of 'regulate to facilitate', 'regulate to mitigate negative impacts and maximize opportunities' and 'regulate to block and roll-back' land grabbing. Therefore, they conclude that the global agrarian change that shapes and is being shaped by on-going land grabbing has resulted in making global land governance more complicated going by the trajectory of the discourse, instruments and the practice of global governance of land grabbing. Yet, while Margulis and Porter (2013:80) appreciate the complexity of the global land governance process, they argue that no single land governance initiative can be effective in sorting out the local, national and global problem of land grabbing, but that it requires a combination of efforts in responding to what is acknowledged as a complex issue of transforming relationships between people and land-based resources through organizing the economies and politics.

An overview of the major regulatory initiatives in large-scale land acquisitions in the last 10 years is summarized in Table 3., This depicts the thematic issues of focus in the practice of the land governance debate by agricultural development economists, the World Bank and other international organizations on the one hand and on the other, the Civil Society Organizations and Social Movements.

**Table 3: Overview of major debates on global regulatory initiatives on large-scale land acquisitions**

Initiative	Year	Institution	Focus Area
Land Policy Framework for Growth & Poverty Reduction	2003	World Bank	Land Markets, Poverty Reduction Development
EU Land Policy Guidelines	2004	EU	Land Policy Reforms
Voluntary Guidelines on the Right to Food	2004	FAO	Food Security
ICARRD Principles  International Conference on Agrarian Reform and Rural Development	2006	FAO	Agrarian Reform:  1. The need to improve the access of the poor to land and other natural resources.  2. Improve rural capacities for development and access to services and complimentary livelihood assets.
Key elements of a code of conduct for foreign land acquisition	2009	IFPRI	Dual approach:  1. Code of Conduct  2. Appropriate policies/international laws
Minimum Human Rights Principles	2009	UN – Olivier De Schutter	Human Rights
RAI Principles World Bank	2009	WBG & consortium	Responsible Agricultural Investments, respecting rights, livelihoods and resources
African Union Framework & Guidelines on Land Policy in Africa	2009	AUC, AfDB, UNECA	Land policy and land reform in Africa in order to strengthen land rights, enhance productivity and secure livelihoods

International Land Coalition partnership with regional farmers' organizations and NGOs	2010	ILC with ROPPA(West Africa), AFA(Asia) & COPROFAM(Latin America), and Action Aid & Oxfam	Dialogue on large-scale land acquisitions and alternatives
Nairobi Action Plan on Large-Scale Land Based Investments in Africa	2011	LPI <sup>1</sup>	<ol style="list-style-type: none"> <li>1. Assessments of land-based large-scale investments</li> <li>2. Capacity support</li> <li>3. Monitoring and reporting mechanism</li> <li>4. Principles for sustainable land investments</li> <li>5. Land policies promoting equitable access and secure land rights</li> </ol>
'Dakar Appeal against the land grab', during the World Social Forum in Dakar, Senegal , February 2011	2011	Collective appeal by civil society and social movements	Rejecting WBG PRAI Principles by CFS Advocating a strong focus on human rights
Civil Society Declaration on Food Sovereignty	2012	Civil Society Organizations worldwide	Debate with FAO to advocate for a food sovereignty concept instead of food security
Voluntary Guidelines FAO-CFS	2012	FAO	'Human rights' and 'tenure security'

**Source : Verhoog (2013) Compilation from these sources: (Deininger, 2003; EU, 2004; AUC *et al.*, 2010; FAO, 2006; Von Braun & Meinzen-Dick, 2009; FAO *et al.*, 2010; Monsalve, 2010; CFS, 2011; De Schutter, 2009, 2011; GRAIN, 2012; Wouterse *et al.*, 2011; FAO, 2012)**

Among the literature reviewed three thematic issues are debated, which provide a better understanding on large-scale land acquisitions governance, and these are: the drivers and scope of large-scale land acquisitions, recognition and protection of pre-existing land rights, and emerging effects on livelihoods. Thus, it is important to discuss what different scholars and critics say in relation to the land governance frameworks, which this thesis seeks to add

<sup>1</sup> LPI, in furtherance of Nairobi Action Plan on LSLBI has since commenced a process to develop Guiding Principles on LSLBI in Africa.

to in terms of the analysis of the drivers of large-scale land acquisitions, and the effects on both the customary land rights use and livelihoods.

### **4.3 Drivers and Scope of Large-Scale Land Acquisitions**

The literature analyzing the drivers and scope of large-scale land acquisitions has sparked a big debate on whether large-scale land acquisitions are beneficial to host local communities' livelihoods, in the context of their pre-existing land uses (World Bank, 2010; Daniel and Mittal, 2009; GRAIN, 2008; FAO et al., 2010). Cotula et al. (2009) ask whether the land deals are 'a land grab or a development opportunity?' because they supposedly create an opportunity to improve livelihoods in host countries. Nonetheless, by 2010 both Cotula and Vermeulen acknowledged that land deals were resulting in the risks of local communities' displacement and marginalization (Vermeulen and Cotula, 2010:13). According to Von Braun (2010:299) the emerging implications of large-scale land acquisitions need a coordinated global regulatory framework to address the risks.

There is a wide range of drivers that lead to large-scale land acquisitions but the most mentioned in the studies by proponents and opponents have to do with food, fuel and financial crises (Hall, 2011; Borras and Franco, 2010:507-23; Deininger et al., 2011; Cotula et al., 2009; FAO et al., 2010). For host countries the drivers are given as the old unsuccessful effort to attract foreign direct investment associated with potential benefits of economic development, employment creation and improved agricultural and other physical infrastructure, yet, the actual driver has been foreign direct investment driven by international capital seeking where to invest for profit (Oakland Institute, 2011; Zoomers, 2011:12-20). However, the UN Special Rapporteur on the Right to Food has criticized large-scale land acquisition as amounting to an opportunity cost to small-scale farmers, who are being

subjected to extreme commercial pressure that leads to worse vulnerability and poverty levels.

The literature reviewed on the scope of large-scale land acquisitions from the media and research publications reveal an enormous acquisition of land in African countries stretching from Southern Sudan, Ethiopia, Kenya, Mali, Tanzania, Democratic Republic of Congo (DRC) and Mozambique where the acquisition is characterized as land grabbing (White et al., 2012:624; Anseeuw et al., 2012; Amanor, 2012; Woodhouse, 2012:777). Both Hall (2011) and Cotula (2012 while appreciating the scope of large-scale land acquisition say that the use of the term 'land grab' is only meant to draw attention to the effects that acquisitions have on local communities in terms of the potential for dislocation and dispossession

According to the Land Matrix, the scope of land deals has increased since 2008 and the prime target of the land rush is Africa (Anseeuw et al., 2012), which the World Bank and other international organizations say has extremely cheap agricultural land (Deininger et al., 2011, Von Braun and Meinzen-Dick, 2009:2). I argue that this is a mere denial that community lands in Africa are recognizable as property with market value.

#### **4.4 Recognition and protection of pre-existing land rights**

Another subject of debate in the reviewed literature originates from the World Bank's promotion of the Principles for Responsible Agricultural Investment that calls for recognition and respect of pre-existing land and natural resource rights. The World Bank also supports the FAO Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security (FAO, 2012), which addresses broader land issues such as access to land and the governance of land tenure (McKeon, 2013:105-



122). While appreciating the increased demand for the legal recognition of customary land rights, authors like Cousins (2007:282), question the imposition of the “Western-legal” form of private property on socially legitimate occupation and use rights. Okoth-Ogendo (2008) urges for the recognition and protection of the resilient and flexible customary land tenure on an equal basis with other imposed land tenure regimes. Peters (2013:556) questions the soft law recognition of customary land rights and calls for a stop to the denial of customary land rights as property rights, which is the basis for misappropriation by both the domestic and foreign elite.

Alden Wily further argues for a stop to treating customary land rights as mere commons that are vulnerable to appropriation due to legal manipulations that facilitate the denial of customary held land as not amounting to the property rights status, thereby legalizing their expropriation (Alden Wily, 2012:751). On the other hand, GRAIN and other international non-governmental organizations challenge the World Bank Group, the FAO and the European Union for promoting voluntary guidelines and principles in an attempt to legitimize and regulate global land transactions (GRAIN, 2012).

The major concern is that customary land rights in Africa do not amount to property rights, hence majority agricultural producers (60-70%) are still being pushed off the land they use by large-scale agricultural investments (Oxfam International, 2007; Matondi, 2008).

#### **4.5 Effects on Livelihoods**

According to Daniel and Mittal (2010:30), despite the World Bank Group’s official policy to support large-scale land investments as a means of improving agricultural productivity since 2008, the World Bank Group and its partners undertook to promote a set of principles in 2010

for respecting existing land rights, livelihoods and resources. But according to Stephens (2013) the World Bank efforts amounted to transnational negotiations of land governance as communities dependent on land for their livelihoods lost access to their land, without the materialization of benefits of employment and improved infrastructure as suitable alternatives. German et al (2011) have also pointed out that although large-scale land acquisitions have opened up Africa for agricultural investment opportunities, it is the prevailing land governance system which leads local communities losing access to land and other natural resources for their livelihoods. Another debate about the effects on livelihoods is the changing shift from food production to bio-fuels crops (Borras et al, 2013), which is likely to cause food insecurity among citizens of host countries (Daniel and Mittal, 2009:16).

In summary, this part of the chapter explored the emerging literature on large-scale land acquisitions and governance responses, by scholars and institutions such as Amanor, (2012); Margulis and Porter, (2013); Margulis, McKeon, and Borras (2013), Stephens, (2013); Deininger et al. (2011); GRAIN (2012); FAO, IFAD, UNCTAD and World Bank (2010). I consequently argue that for Kenya and the rest of Africa land governance ought to be about giving due recognition and protection to the land rights of communities in the formulation of land laws. Land governance should also strengthen community land security of tenure, with a particular focus on how best to promote women's and other marginalized groups' rights within the community context. Otherwise, any initiative designed to extract developing countries' natural and human resources for the foreign corporate interests and the national elite, is unacceptable and not defensible. Quality land governance initiatives need to explore the capacity of smallholder's capacity to develop their land; that should be addressed and not the corporations' accessibility to community land. Development models that ignore that smallholders have a stake in agriculture will not guarantee food security nor ensure the sustainable use of natural resources to bring about the much desired development.

## 4.6 Conceptual Framework

This section discusses land governance and develops a conceptual framework, refined from Cheema and Maguire (2002:15) as a tool of analysis to interrogate fieldwork data and relate it back to debates about the large-scale land acquisitions regulatory frameworks. Before introducing the conceptual framework, it is important to define the key concept of ‘land governance’ so that its usage throughout this thesis is understood. This thesis adopts a working definition, which conceptualizes land governance as being:

“the political and administrative structures and processes through which decisions concerning access to and use of land resources are made and implemented including the manner in which conflicts over land are resolved” (AUC et al., 2010).

This is the same understanding Palmer et al (2009) held when they stated that land governance is about:

“the rules, processes and structures through which decisions are made about access to land and its use, the manner in which the decisions are implemented and enforced and the way that competing interests in land are managed” (Palmer et al., 2009).

The two working definitions are wider than the World Bank’s notion of land governance being “about the policies, processes and institutions by which land, property and natural resources are managed” (World Bank 2010:2). Thus, according to Burns and Dalrymple (2008:1), land governance addresses issues of land administration and land management institutions, processes and practices that are essential for sustainable development in terms of equitable stakeholder participation and benefits according to the law and policy provisions in force. This is ensured when land governance is anchored on the principles of participation, transparency, accountability, legitimacy, rule of law, equity, subsidiarity, sustainability, devolution of power, and integrity as espoused in Article 10 of the Constitution of Kenya,

2010 and the Framework and Guidelines on Land Policy in Africa (Republic of Kenya, 2010; AUC et al., 2010).

The conceptual framework adopted here is premised on the notion that a good land governance system is one founded on institutions and processes that are democratic and anchored in key principles of participation, the rule of law, transparency, accountability, legitimacy, equity, strategic vision, devolution of power, subsidiarity and sustainability (Cheema and Maguire, 2002:2; Burns and Dalrymple, 2008:1; AUC et al., 2010; Republic of Kenya, 2010).

This conceptual framework, as shown in Figure 1 has been modified from the conceptual framework on democratic governance and human development (Cheema and Maguire, 2002:15). It is used here to reflect on - the 'what', the 'how' and the 'why' of the national land governance system in Kenya. Firstly, the 'what' component of this conceptual framework deals with what makes up the national land governance system in terms of institutions, processes and practices. Secondly, the 'how' is about the quality of the land governance system which is characterized by the principles of participation, transparency, accountability, the rule of law, equity, strategic vision, devolution of power, integrity and sustainability. This in turn translates into the guarantee of land rights despite the proliferation of global and regional regulatory frameworks which may present a challenge of interacting with local interests. Thirdly, the 'why' deals with internal and external factors that influence the development and operation of the land governance system.

This conceptual framework provides the analytical basis for assessing the quality of the land governance system not as a finished product, but in terms of rules and institutions that are

chosen, the mode of decision-making leading to the selection of rules and institutions (that is the negotiations versus unilateral actions) and the type of alliances and coalitions forged in the process (Palma, 1990; Margulis and Porter, 2013). According to Margulis and Porter (2013) land governance comprises complex mechanisms, processes, relationships and institutions through which various actors articulate their interests, exercise their rights and obligations to mediate their differences. Figure 1 illustrates this complex situation as viewed from the perspective of the new Kenyan land governance system.

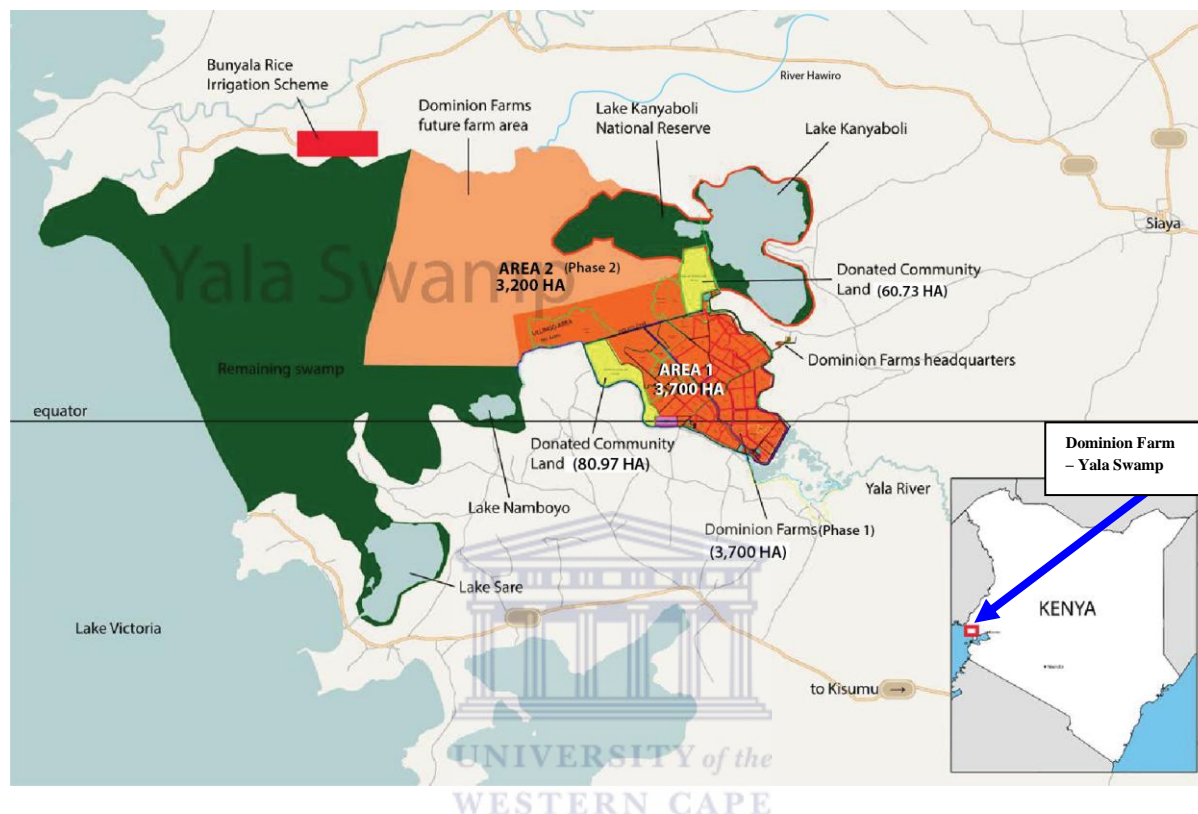
#### **4.7 Conclusion**

This chapter discussed different scholars and authors debating the land regulatory frameworks in light of large-scale land acquisitions whose emerging effects in host countries especially in Africa re-kindle the memories of the historical manifestations of colonialism in the form of land grabs and the scramble for community lands. The chapter brings out the debates as to whether large-scale land acquisitions are beneficial to local communities' livelihoods or merely facilitate the losing of community land and further marginalization. I argue that the quality of land governance is measured against the degree that it is able to address the structural factors that entrench continued poverty, food insecurity, gender inequality, exclusion, conflicts and environmental degradation. Proponents argue for large-scale land acquisition as an opportunity, while those who criticize the phenomenon points not only to consequences for the local livelihoods and the disruption of customary land users' livelihoods and the land tenure system, but also the deprivation of land and natural resources taken over by private and corporate interests. The chapter ends by discussing the conceptual framework which focuses on the what, how and why elements of the Kenyan national land governance system. The literature review lays the foundation for the next chapter about the chosen methodology and methods used to probe the implications of large-scale land acquisitions in the Yala Swamp.

## 5.0 Chapter Five: Study Methodology

### 5.1 Case Study Site

**Figure 2: Location of the Study Area Site**



**Source: Abila et al., (2006), refined by Author, 2013.**

The site of the study area is the Yala Swamp located on the north-eastern shoreline of Lake Victoria in the western region of Kenya in the devolved governments of the Siaya and Busia counties. It is the third largest swamp after the Lorian and Tana River Delta in Kenya and an important riparian and floodplain wetland, which provides habitat to rare species of fish and *sitatunga* (*Triglophus spekei*) antelopes. Its ecological and hydrological functions provide a source of livelihoods to thousands of people, both women and men who use Yala Swamp resources to support their well-being in neighbouring communities. The importance of the Yala Swamp was identified in the 1960s when it was the subject of reclamation for agricultural purposes. However, it has been observed that the reclamation proceeded on the

notion that the wetland was only useful when converted to other uses. This view was held by an economist and politician the late Hon. Peter Okondo, who once said that the Yala Swamp was useless (Okondo, 1989: I [11-14]). This same notion was held by the eventual investor, Dominion Farms Ltd, a proprietor who justified the acquisition of the Yala Swamp by claiming that “the swamp is useless, empty boggy land” (Pearce, 2012:54). These views about the Yala Swamp were advanced notwithstanding the fact that for a long time, local communities accessed and used it as a valuable resource for various activities to improve their livelihoods.

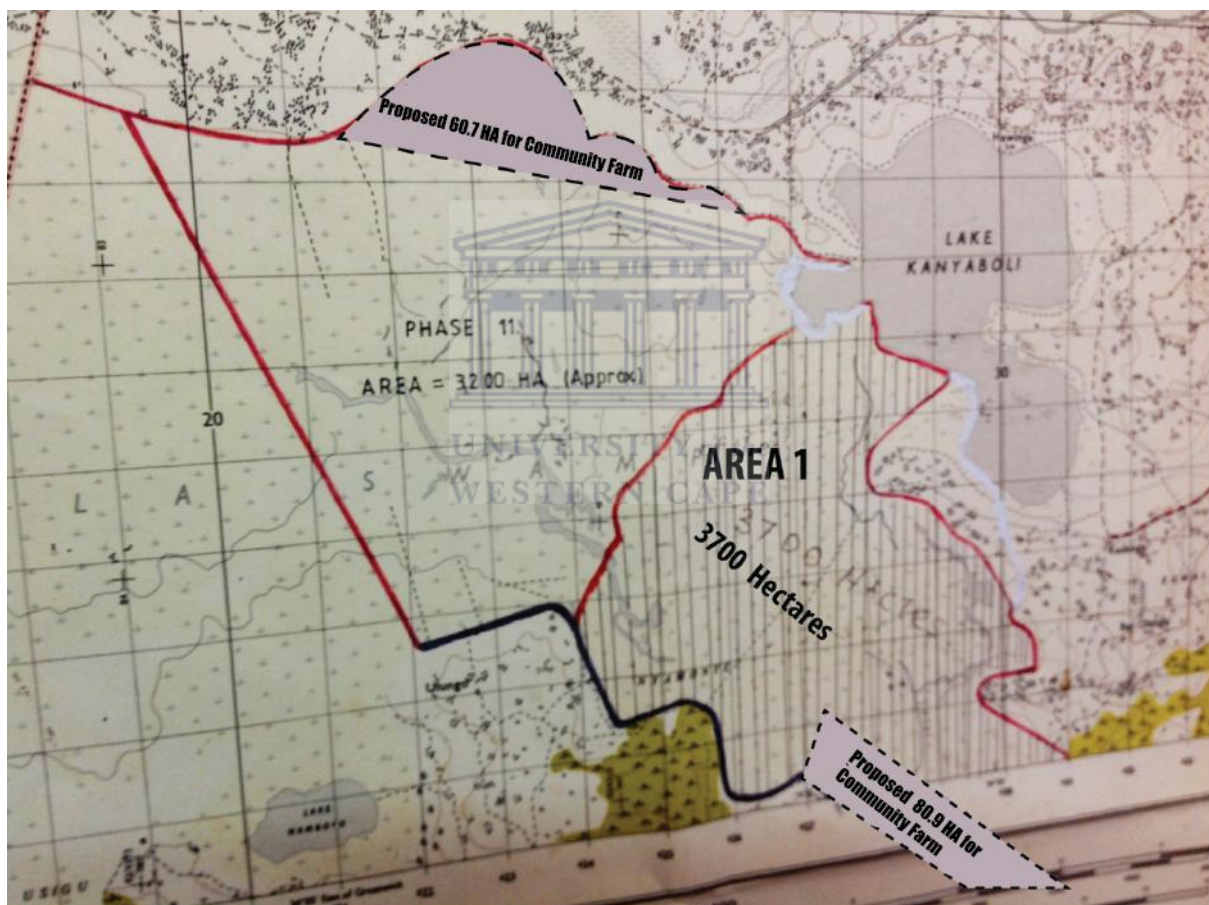
Between 1965 and 1970 part of the Yala Swamp covering 2,300 hectares was reclaimed and put under the Lake Basin Development Authority for a rural integrated agricultural project involving immediate local communities for production of cereals, pulses and horticultural crops. The free access stopped with an agro-industrial investment deal begun in 2003 with Dominion Farms Ltd, a subsidiary of the Dominion Group of Companies based in United States of America. This resulted in the loss of livelihoods for local communities, whose secure customary land rights were interfered with. The Yala Swamp case is therefore the subject of this study, 10 years after the entry of Dominion Farms Ltd.

The swamp area is approximately 17,500 hectares to 21,765 hectares in size, inclusive of the three ox-bow lakes of Lake Kanyboli, Namboyo and Sare. It is divided into three areas, namely: Area I (2,300 Ha), a reclaimed area originally used by the Lake Basin Authority before passing it to Dominion Farms Ltd in 2003; Area II (9,200 Ha), earmarked for future reclamation, from which Dominion was to get the additional aggregated area to the permitted 6,900 hectares by 2008 making up the large-scale irrigated farm, which remained contested until 2012 when the High Court ruled against community contestation; and Area III (6,000



Ha), earmarked as buffer zone between Lake Victoria and the areas earmarked for further reclamation. Figure 3 shows the acquired sections of the Yala Swamp by Dominion Farms Ltd and what was designated for local communities' agricultural purposes on either side of the farm.

**Figure 3: The Dominion Farm negotiated two phases (Phase I - 3,700Ha and Phase II - 3,200Ha) and the two proposed areas of 60.73Ha and 80.97Ha set aside for each of the Councils for use by the two surrounding local communities (i.e. Yimbo and Alego).**



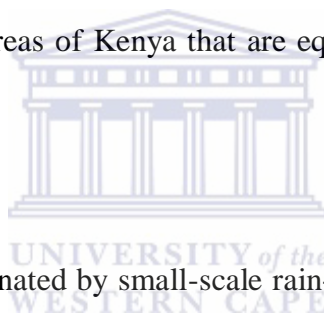
Source: Dominion Farms Ltd, Manager's Office. Photo taken during a field visit and modified to show the marginal areas set aside for community use as depicted on the Dominion Farms Ltd Yala Swamp Development Proposed Land Use Plan, from the 2008 Agreement of Lease (Kaplan & Stratton Advocates, 2008).



This is the site of approximately 6,900 hectares of the large-scale land acquisition by Dominion Farms Limited, made up of Area I (2,300 Ha) and a portion of Area II (9,200Ha from which the reclamation of approximately 4,600 Ha is projected).

### **5.1.1 Population and Economy**

According to Pearce (2012:55), there are 700,000 people living within 10 miles of the swamp, which according to the publicly available 1999 National Population Census Report includes the population of Siaya District of 480,184 plus 238,780 of Bondo District with high population densities of 316 and 242 persons per square kilometre, respectively (Republic of Kenya, 2008:4). This population density is high compared to the population densities of the first and second largest wetland ecosystems of Lorian and the Tana River Delta, located in low density arid and semi-arid areas of Kenya that are equally targeted for large-scale land acquisitions.



The economy of the area is dominated by small-scale rain-fed crop production of grains and tubers, livestock keeping and artisanal fishing. Due to constrained market access, the area has limited production of cash crops such as cotton and sugar cane. The area has limited non-farm business with high unemployment rates for both women and men, hidden in large participation in subsistence agriculture, fishing and livestock keeping.

Overall the area is ranked among the 10 poorest districts in Kenya, based on the total expenditure on food and non-food requirements (NEMA, 2005:7). Poverty levels stand at 58.02% against the current national figures of 46% of the population according to the Agricultural Sector Development Strategy, 2010-2020 (Republic of Kenya, 2010: xii). This situation is aggravated by the fact that the only major source of income is subsistence farming despite the irrigation potential in the area. Thus, despite agriculture being a mainstay of the

economy, the sector's performance is in decline due to traditional methods of agriculture, the high rate of deaths due to HIV/AIDS (which has been more serious in this area than in most parts of the country), unpredictable rainfall patterns, the collapse of main cash crops and the lack of agricultural processing industries (NEMA, 2005:7).

### **5.1.2 Agro-ecology**

The agro-ecological setting of the Yala Swamp is an extremely flat area with minor irregularities between an altitude of 1135 metres and 1150 metres on the east and west of the swamp. The soils are fertile alluvial clay derived from both lacustrine and riverine deposits, which are suitable for agriculture and livestock keeping with average rainfall, which needs supplementary irrigation, because the area is a depression, which receives less rainfall. According to the Environmental Impact Assessment Report (NEMA, 2005:5), the swamp area is largely a wetland with a varying canopy of papyrus and other wetland grasses, shrubs and bushes on shallow waters with a bit of drier and raised grounds.

There are multiple tenure arrangements in the Yala area wetland, ranging from community land (formerly categorized as trust land) to private/individual land and public land (formerly categorized as government land). Despite the imposition of formal land tenure, in the form of a state sanctioned lease, the residents around the Yala Swamp consider themselves to be the customary land owners of the site area.

### **5.1.3 Settlement and Politics**

The site area is settled by the Luo community, the community of the late Jaramongi Odinga Odinga, a radical nationalist who opposed the retention and continuity of colonial land policy and legal framework that subjugated the customary land users (Odinga, 1967; Okoth-Ogendo, 1981). According to Shipton (1988), the Luo remained in a relatively weak economic

position due to their radical stance against the colonial customary land tenure transformation that drew African native communities into commodity production under the Swynnerton Plan of 1954 (Swynnerton, 1955). The post-independence successive regimes that embraced the Swynnerton Plan development pathway ensured that radical nationalists like Oginga Odinga and his Luo community did not benefit from foreign land investments (Sorrenson, 1968; Lamb, 1974).

In 2003 when the Luo community, led by Raila Odinga, son of Oginga Odinga joined the ruling coalition that formed the government after Moi, Dominion Farms Ltd was received as the first agricultural investment in Yala Swamp, the home and political constituency of the Odingas.

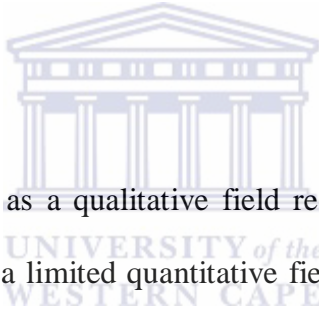
The Yala Swamp area is settled by the Luo community who engage in small-scale farming, artisan fishing, and livestock keeping. The settlement pattern of the area follows the agro-ecological setting with high potential areas having the highest population density. However, the two surrounding local communities of Yimbo and Alego, because of having settled on high rocky and sandy soils, depend on the Yala Swamp which provides major ecological and hydrological functions as a major source of their livelihoods. By the mid 1960s and 1970s the government, through the self-reliance and an integrated development strategy, embarked on the limited reclamation of the Yala Swamp as a targeted re-settlement of the local communities that were settled on surrounding less productive lands (FAO, 1970).

Politically, the Yala Swamp area is under a political regime, which is a hybrid of informal patron-client relationships that underlie and overshadow legal-rational norms. Consequently, as in most African communities, formal institutional rules are largely irrelevant; hence political leaders prefer personal rule which limits the need to use formal institutional

channels. This political practice seems to limit the community's efforts of holding formal institutions and their leaders to account (Shmuel, 1973; Hyden, 2006; Diamond, 2008).

Against this backdrop, the two County Councils negotiated the lease agreement with the large-scale land investor in 2003 over the Yala Swamp, with whom they agreed to identify and set aside at least 60.73 hectares for each of the Councils for the use by the local communities for agricultural purposes (Kaplan and Stratton Advocates, 2008). Thus, politically, the power to regulate use, and allocate land was radically vested with the County Councils as the trustees of the community who had ultimate control and authority over their land.

## **5.2 Research Design**



The study was broadly designed as a qualitative field research study, complemented by a desk-based literature review plus a limited quantitative field survey among 100 members of two local communities made up of 43 women and 57 men surrounding the large-scale acquired farm. The study randomly selected 50 community members on each of the investor's large-scale farms (Yimbo in Bondo and Alego side of Siaya District). The study was demographically representative and respondents included both women and men of varying ages, education levels and occupations.

The fieldwork research used a triangulation technique, which in social science is the mixing of data and methods that enables diverse viewpoints and standpoints to be brought together to address a particular research problem being investigated (Olsen, 2004:3). This enabled an empirical analysis that drew on in-depth interviews with different actors that included the investor, public institution officials, leaders of local communities and civil society officials,

as key informants involved in and knowledgeable about the processes of the Yala Swamp land acquisition. The interviews followed a semi-structured guideline designed around these themes: new land governance frameworks and public participation in land use allocations; level of awareness on regulatory frameworks governing large-scale land acquisitions; demographic information of local communities surrounding the Yala Swamp; and the roles of different stakeholders in large-scale land acquisitions regulatory frameworks. This allowed a level of openness to interviewees to touch upon aspects that the guideline did not capture. The research was also structured to capture evidence through participatory observation of what was happening on the ground, shaped by practices and approaches of the different actors. This methodology is supported by Bryman (2008) who argues that a combination of methods leads to a strategy for carrying out the research and a follow up for rounding out and widening the inquiry.

Given that large-scale land acquisitions *per se* are not a new phenomenon, the research was designed to focus on finding out how the new Kenyan land governance system was being applied at the local site of the study, how this was shaping or being constrained by practices and approaches on the ground, which might be contrary to the provisions of the national, regional and global land regulatory frameworks initiatives. This is in accordance with North's (1990: 92-104) notion of path dependence, which argues that institutions are often shaped over time by the historical whims of political and economic actors. The timing of this study in 2013 was chosen as a contribution to the contemporary debate on the proliferation of new land governance framework initiatives at global, regional and national levels. This was done to determine the compliance with the new land governance regulatory framework on the ground (See Figures 11-13), given that the Yala Swamp land deal is both a show-case of large-scale land investment and local communities' resistance to its implications in Kenya.

This study involved a critical desk literature review on how codes of conduct, standards and principles of responsible agricultural investments by agencies such as the World Bank, the Food and Agriculture Organization of United Nations, and the International Food Policy Research Institute were shaping or constraining the on-going negotiations for the extension of the land deal that commenced in 2008. The methodology was one of assessing the legal and non-legal underpinnings of the regulatory frameworks in terms of actual practices on the ground. Key informant interviews were conducted with public institution officials charged with regulation, the investor seeking the new deal and the members of civil society engaged in efforts to ensure participatory and transparent processes involving local communities.

Due to the limitation of using one case study with limited fieldwork, the research was designed to benefit from earlier case studies in the same study site by FIAN (2010), Kameri-Mbote et al., (2013) and Pearce (2012). The study aimed to build on their human rights and legal analysis to augment the author's own land governance perspective. FIAN (2010) used a human rights framework and found that the large-scale land acquisition compromised the surrounding communities' livelihoods. Kameri-Mbote et al (2013) found that the recognition and protection of customary land rights were adversely affected. Pearce (2012) found that local communities' agricultural, livestock and artisan fishing activities were cut off from the Yala Swamp as a common pool resource by the investor's enclosure. This study builds on these earlier studies by determining to what extent and in what ways, the new emerging land governance frameworks for regulation of large-scale land acquisitions are redressing and ameliorating the key issues. The use of qualitative research methods, complemented with a limited quantitative survey in investigating the research study problem, is in line with the objectives of this research.

### 5.3 Sample Size and Sample Selection Procedure

The field study targeted about fifteen different stakeholders involved in the Yala Swamp, which included:

- (a) leaders of local communities that accessed and used the wetland before the arrival of the foreign investor;
- (b) the investor who acquired the wetland in the study area;
- (c) public regulatory agency officials from different line ministries and authorities (Lands, Public Works, Water Resource Management, Fisheries, Environmental Management, Wildlife, Agriculture), and
- (d) civil society organization officials.

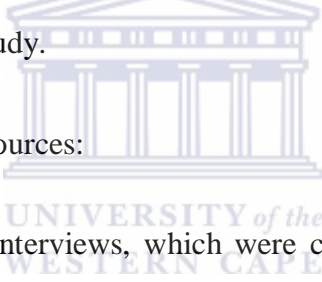
A hundred members of local host communities from both Yimbo on Bondo side and Alego on Siaya side were surveyed as respondents to a questionnaire (see Appendix 2). The questionnaire was designed to obtain data on the effectiveness of and compliance with the land governance regulatory frameworks on the acquisition of land resources in the Yala Swamp. The two local communities were selected because prior to the transfer of the Yala Swamp to the investor, they used the land and had a direct association with it for multiple alternative livelihoods. The in-depth interviews with different actors posed the same questions to all and were done during the month of May 2013 to triangulate the gathered information.

The random and purposive sampling procedure ensured the collection of data from all key informants and representation of two local communities for whom a marginal 60.73 hectares of land on both sides of the acquired large-scale farm was set aside for their agricultural purposes (See Case study area site detail).

## 5.4 Data Sources and Data Collection

The study used both fieldwork and desk data sources. According to Johnson and Christensen (2008), qualitative research is used to understand and interpret social interaction whereas quantitative research enables the testing of hypotheses by looking at cause and effect so as to make predictions. In this study, I used qualitative methods because these have the advantage of recognizing the inherently subjective nature of social relations (Olsen 2004:7) The fieldwork data was collected through fieldwork in-depth interviews with different actors and community member respondents, plus direct observation and field notes undertaken in May 2013. Secondary desk data was gathered and analyzed from relevant literature reviews in order to understand the parameters and paradigms of large-scale land acquisitions governance as reflected in the selected case study.

The following are the main data sources:

- 
- a) In-depth semi-structured interviews, which were carried out among different actors such as: the investor's Managing Director and agricultural Farm Manager; local and international civil society organization officials operating in the study area (Action Aid International, Friends of Yala); public institution officials (Ministry of Lands, Agricultural Sector Development Programme, Fisheries, Wildlife, Water Resources Management Authority, National Environmental Management Authority); and leaders from the two local communities of Yimbo and Alego, together with Siaya County Assembly Representatives.
  - b) A survey among 100 respondents of members of the local communities representing customary land users around the Yala Swamp provided data through responding to semi-structured questions.



- c) Earlier case studies on the Yala Swamp conducted by FIAN (2010), Kameri-Mbote et.al, (2013) and Pearce (2012), plus other unpublished reports by local civil society organizations. The earlier fieldwork data confirmed and filled in gaps on the implications of large scale land acquisition viewed from a human rights framework as compared to this research study based on a land governance conceptual framework.
- d) The Investor Project Investment Plan of 2005 and the 2003 and 2008 Memoranda of Understanding containing the terms and conditions of the Lease Agreement, provided data on the investor's objectives and promised social benefits to the local host communities.

Data collection from all these sources included participatory observation evidence gathered in the field. A range of published and unpublished literature was reviewed during the study period. These included: the Constitution of Kenya (2010), Sessional Paper No. 3 on the National Land Policy, Kenya Vision 2030, New Land Laws of Kenya, the investor's Project Investment Plan, 2003 and 2008 Lease Agreement Memoranda, Framework and Guidelines on Land Policy in Africa, Global Land Regulatory Frameworks documents and analytical literature on global land governance. Online sites of international organizations and social movements, media outlets and other scholarly web sources were accessed for more secondary data.

## **5.5 Data Processing and Analysis**

The data that was collected was reviewed, validated, triangulated, synthesized and analyzed in accordance with the study research objectives and in an effort to answer key questions that had been designed to investigate the study statement of the problem. The data processing and analysis benefited from information and insights gathered over several years, particularly during the author's public land rights advocacy work at the Kenya Land Alliance since 2000.

In relation to this research, since 2003 at the inception of the private investor's large-scale land acquisition in the Yala Swamp, the author served as a key informant to other researchers at the same study site. Once data was collected in the field and through the interviews of different actors and parties known to the author over time, plus personal participatory observation field notes, it was analyzed in the context of the contemporary debate on land tenure and land reform, and especially the land governance conceptual framework so as to nuance different perceptions and perspectives (See Frequency Tables and Bar-charts).

Qualitative research tools and approaches were used to interpret the data through a sociological analytical framework, which enabled the deduction and triangulation of data with the reviewed literature (Neuman, 2003:47). I processed and analyzed data using descriptive statistical and illustrative tools such as tabulation, graphs, charts and tables for ease of comprehension. The findings and conclusions reached reflect the appropriate key elements of the research study objectives, which contribute to on-going empirical studies into large-scale land acquisitions, their governance and discourses surrounding them, to inform future studies and policy-makers.

## **5.6 Ethical Consideration**

In research of this nature, it is essential to take care to meet basic ethical principles in social science research. Accordingly, in this study, the community's culture and way of life was treated respectfully. All interviewees and respondents were informed about the purpose of the research study and how the data was to be used according to the University of Western Cape's EMS Faculty Board Research and Ethics Committee Guidelines. The study used two forms, one requesting interviewees' participation in the research, and detailing the research objectives and research questions; the second was the participant consent form that was duly

assented to and signed by both the interviewee and the interviewer. The interviewees were not recorded but they consented to the taking of notes. This study triangulated the fieldwork data using the captured information together with other sources and statements by other interviewees.

Whereas the ethical consideration requires that interviewees and respondents sign the consent forms, this presented a great challenge. The author's work with the Kenya Land Alliance and familiarity with the case study area communities came in handy.

### **5.6.1 Confidentiality**

While conducting the interviews the author used the overt approach, whereby the objectives of the study were explained to the respondents who were then asked for permission to conduct the interviews. All interviewees and respondents were informed of the maintenance of confidentiality at all times. Any information they preferred to give in confidence was to be handled in a way that this study did not attribute the responses to an individual or organization without their permission. During the limited survey among 100 members of the two communities surrounding the site area, some respondents gave voluntary verbal consent to filling in of the questionnaire and use of the information for this study. As much as the principles of voluntary participation and withdrawal guided the researcher's ethical practice, being known in the study area because of the researcher's public land rights advocacy work, facilitated the process. However, it also required the assistance of a colleague who was working on a conflict management project with the local communities and Dominion Farms Ltd to introduce the researcher to the Dominion Farms Manager and some community opinion leaders. It helped the respondents to focus on the study objectives of the project, which were about monitoring and upholding enjoyment of land rights of the swamp at the study site, rather than on the researcher's institutional connection to the Kenya Land

Alliance. It is important to note that the researcher had reasonable knowledge and information of the study area and the investment project that stood him in good stead in further probing, as well as in the later triangulation of new data collected.

### **5.6.2 Voluntary Participation and Informed Consent**

Prior to the interviews, the researcher explained the purpose and context of the study and why the participants' involvement was requested. It was imperative and ethical to do so because most participants knew the researcher's public advocacy work and thus they had to make their decision to participate or not. On participants' informed consent, the majority signed the consent forms and a few who were unable to sign the consent form to maintain their anonymity still voluntarily filled in the questionnaire under the principle of confidentiality. They also had the right to withdraw from the interviews at any time for any reason.

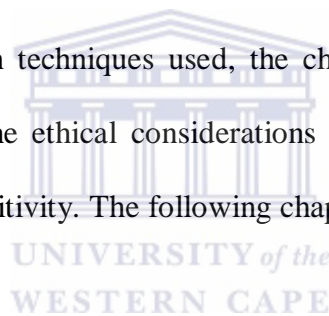
## **5.7 Conclusion**

The field study was undertaken in the area around the Dominion Farms Ltd, on the Siaya side of the swamp and on the Bondo side of the swamp both bordering Dominion Farms Ltd (see Figure 5). The data presented in the next chapter is based on a random sample survey in which 100 individuals from the communities on the Siaya side of the swamp and the Bondo side of the swamp participated, with 43 women and 57 men. They ranged in age from 18 to over 72 years, with an average age of 45.

The fieldwork was also undertaken in the form of semi-structured interviews with 14 key informants including local community representatives (opinion leaders), County Elected Representatives, Government Regulatory Officials (Ministries of Land, Agriculture, Departments of Wildlife, Fisheries, Water and Environment), Investor Representatives (Managing Director and Agricultural Director) and civil society officials. A list of interviewees is provided in Annex 5. Details of the interview guide and the study survey

questionnaire are included as Annex 1 and 2 respectively. The fieldwork data gathered is presented as a common narrative in the next chapter under three thematic areas as follows: local communities' loss of access to Yala Swamp, betrayal of local communities by their representatives, and community concerns about the future generation's prospects.

This chapter discussed the study site and how the research was designed to bring out the in-depth understanding of how the study area is being shaped and constrained with the large-scale land acquisition process that started in 2003. It is yet to be finalized, due to the community protests and contestations with the investor. It explained the choice of the qualitative research methodology using a single case study to investigate what actual practices show about the transition from the old to the new land governance regulatory framework. Besides the research techniques used, the chapter discussed the data analysis adopted and finally presented the ethical considerations to this kind of study in order to address the cultural and land sensitivity. The following chapter presents the fieldwork data.



## 6.0 Chapter Six: Fieldwork Data Findings and Analysis

### 6.1 Introduction

This chapter presents the field data of the study site of Yala Swamp. This is presented as a narrative of the detail of how an agro-industrial investment deal begun in 2003, by Dominion Farms Ltd, a subsidiary of the Dominion Group of Companies based in the United States of America, is an on-going and controversial project. This is because land governance is about access and rights to land and all natural resources associated with it in terms of who uses what resources and how that is decided in the promotion of security of rights. The local communities, especially the youth and women surrounding Yala Swamp feel betrayed by their representatives who negotiated away their important source of livelihood to a foreign agricultural investment. According to Adhiambo (interviewed, May 2013), aged 40, of Aduwa village, East Yimbo, when asked about their land which was submerged when the reservoir was created after the construction of the weir, she lamented:

I am not happy and feel betrayed about what happened but as a woman there is nothing I could do. Our land is owned by my husband who surrendered it to the company. I do not own the land

This means that women and youth who are struggling to find any land to sustain their new families are the majority of those affected by the project and to whom the loss of access to Yala Swamp for multiple alternative livelihoods, have their lives turned upside down. See Figure 4, showing a representation of women and youth as those who are disproportionately affected by the land loss. According to Obalo (interviewed, May 2013), a retired civil servant aged 64 and a Yimbo community elder in Kasau village on the Bondo side of Yala Swamp puts it:

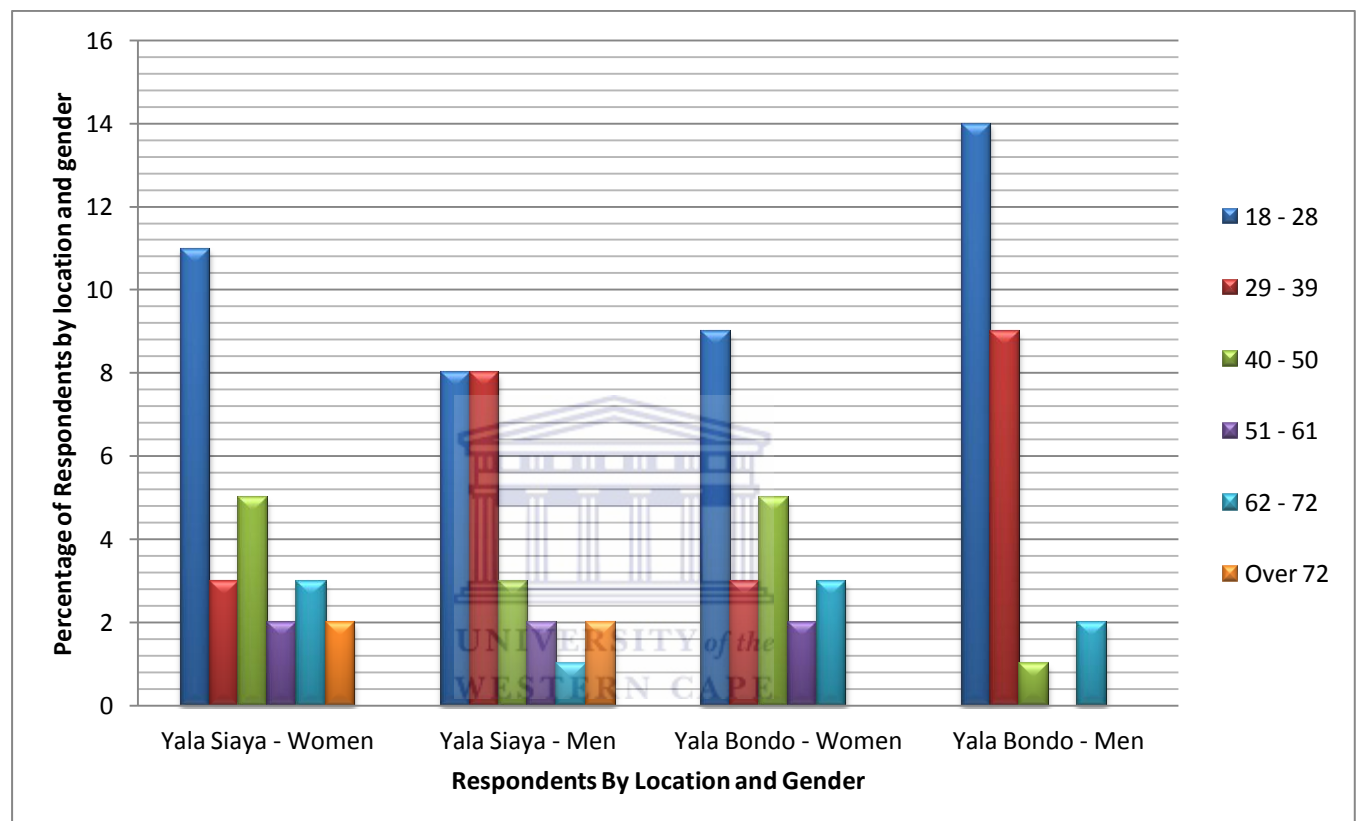
They came with promises and we supported the project, hoping it would change our lives, but now they have instead turned against us, destroying our very sources of livelihoods

The fresh water wetland serves as an important ecosystem that provides several local communities from near and far areas with the natural resources to secure their livelihoods, besides its high potential for agricultural production. Figure 2 shows how Dominion Farms Ltd have taken advantage of an important ecosystem by taking up two huge areas and only setting aside two small parcels of land for the rest of the communities. In Figure 5 the satellite image shows how the entry of Dominion Farms Ltd displaced local communities from their strategic settlement around the Yala River and the Swamp as a major natural resource. This land acquisition clearly imposed a significant loss on host communities in terms of loss of land and disruption of multiple livelihoods (See Figure 5).



**Figure 4: Respondents by age and gender of those who lost access to Yala Swamp**

Figure shows women and youth within the age bracket of 18 to 39 accounting for 65 percent of the total number of respondents who are disproportionately affected by the loss of access to Yala Swamp.



Source: Author, 2013

Figure 4 further shows that the age range of 60 years and above, who the Department of Agriculture show as the average age of those engaged in farming in Kenya, accounted for less than 7 percent of those sampled. The cumulative implication is that Kenya being a land-constrained country, women and youth who enjoy weaker land rights are bound to suffer more from the loss of access to Yala Swamp as a means of their livelihoods. This is because the women and youth are disadvantaged in land ownership, yet Yala Swamp, which they considered for their agricultural and other livelihood expansion strategy, has been foreclosed by the land acquisition by Dominion Farms Ltd.



**Figure 5: Satellite image showing portion of Yala Swamp excised from Bar Olengo and Nyamonye adjudication section in Siaya County**

The Figure 5 satellite image shows the portion of excised land from the Bar Olengo adjudication section on the Siaya side of Yala Swamp, as well as from the Nyamonye adjudication section on the Bondo side of Yala Swamp. These exercised portions form an additional land to Yala swamp defined by the green line in 2003. The communities on both sides of Yala Swamp complained of the excision of their already adjudicated and certified parcels of land, contrary to the provisions of the Registration of Land Act, Chapter 300 of Laws of Kenya and the Compulsory Land Acquisition Act, Chapter 295 of Laws of Kenya. According to Obalo (interviewed, May 2013), from Nyamonye, East Yimbo the excision was intended to create a buffer zone between Dominion Farms Ltd and the communities, as seen in the satellite image.



**Source: Winan Surveys, 2012**

The Figure 5 satellite image also shows that the local communities from both sides of the Yala River (marked blue) were cut off from accessing the Yala River for water uses and fishing. According to Obalo (interviewed, May 2013):

I am unhappy about what happened to us, but there was nothing we could do since we were told by government officials that Dominion had permission to construct a weir to create a reservoir for irrigation of the Dominion Farms. The official emphasized that the government had leased the land to Dominion Farms Ltd

As further explained in the next section, the entry of Dominion Farms Ltd in Yala Swamp meant that local communities had to lose access to the Yala Swamp and river so as to make space for the investor operations.

## **6.2 Local Communities' Loss of Access to Yala Swamp**

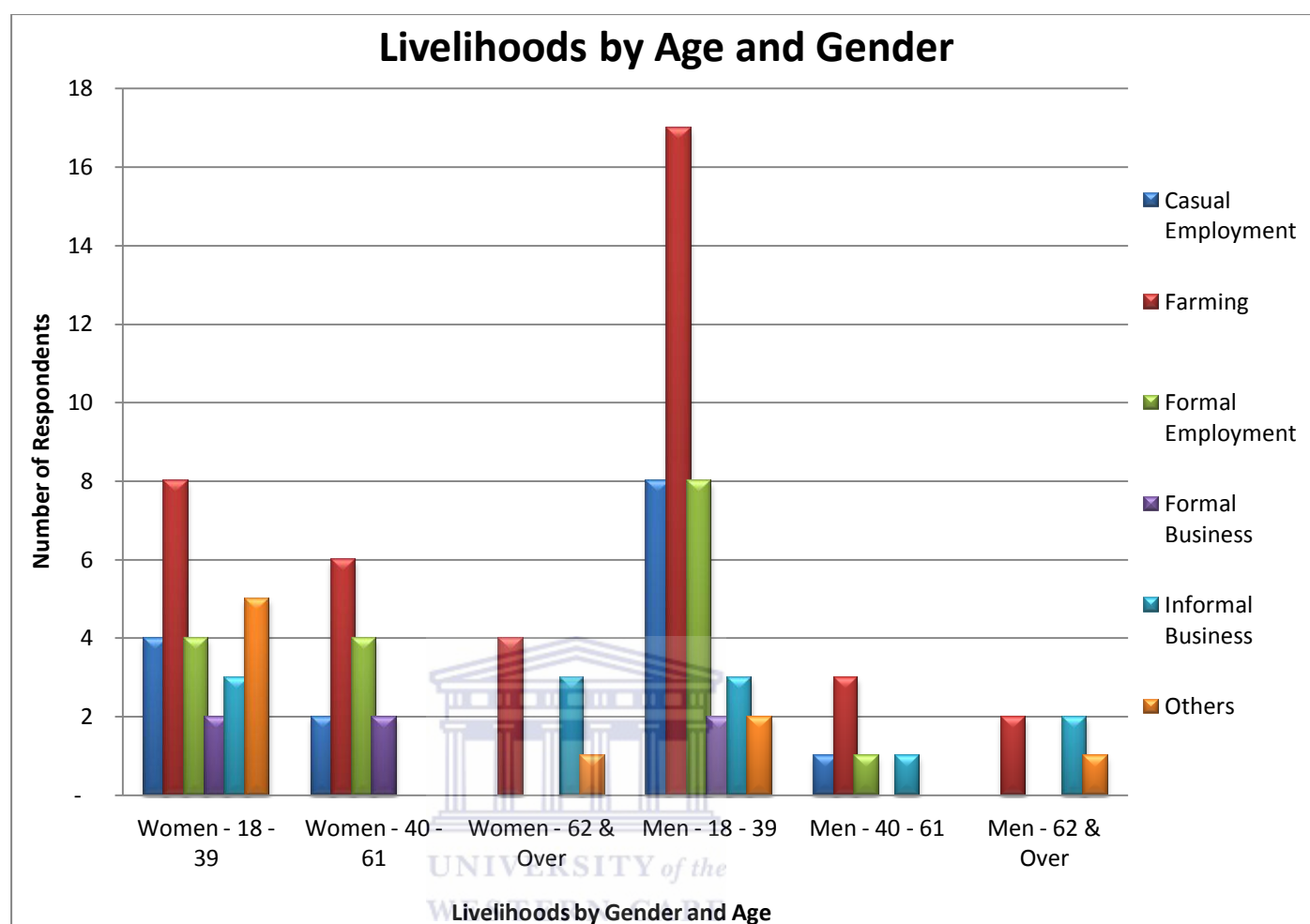
Figure 6 shows what the large-scale land acquisition of Yala Swamp by Dominion Farms Ltd meant for local communities surrounding the land deal site. The taking of Yala Swamp from local communities meant that their multiple livelihoods activities such as growing crops, grazing of livestock, fishing and gathering various swamp materials had to stop to make space for the industrial agricultural investor project. The community lost land on which they depended to produce their food and make a living, for promised benefits that are yet to materialize. The promised benefits were the creation of employment opportunities, improvement of food security, electrification of the villages, improvement of infrastructure in the form of roads, and the building of schools and clinics. There is no reliable figure of how many people suffered this loss of access to the Yala Swamp area. The Dominion Farms Ltd Manager, Abir (interviewed, May 2013) puts the number at no more than 700 people from around and further along the swamp. Action Aid Programme Officer, Atieno (interviewed, May 2013), says the figure estimated by the Dominion Farms Ltd Manager is

equivalent to 75 households in the reclaimed section of the swamp. Land was to be set aside for these families, according to the Memorandum of Understanding between the two County Councils of Siaya and Bondo and Dominion Farms Ltd. Atieno emphasised that thousands of communities and schools from around and further along the Yala Swamp lost access to the Yala Swamp. According to Muga (interviewed, May 2013), a 55 year-old resident of Bar Olengo sSub-location on the Siaya side of Yala Swamp:

Many people who lost access to Yala Swamp were not strictly those who were settled or held parcels of part of the reclaimed section of Yala Swamp. For many villagers, this was losing land without being formally dispossessed. This is because families accessed Yala Swamp in season and for different uses on a temporary and need basis

From the sample survey of 100 respondents from both sides of Dominion Farms Ltd around the Yala Swamp, 40 percent said their main source of livelihood is agricultural farming and livestock grazing. The rest, accounting for 60 percent were engaged in various sources of livelihoods ranging from casual employment to formal business (see Figure 6). Figures on the loss of access to the Yala Swamp remain contested because while local communities may not have been physically displaced from the very space occupied and used by Dominion Farms Ltd, Yala Swamp is a common property resource from which local communities as users were dispossessed thereby suffering a loss of access. The company's attempts to play down the extent of loss fails to recognize local communities' claims of dispossession from a communal or common property regime they accessed freely and used for growing crops, grazing, fishing and gathering swamp materials for multiple alternative livelihoods before the entry of the investor.

**Figure 6: Local communities' livelihoods by age and gender**



**Source: Author, 2013**

The local communities described how they derived their livelihoods from small-scale family farming of common rain-fed crops such as maize, beans, sorghum, potatoes, cassava, cowpeas, vegetables and rain-fed rice from unrestricted access to the Yala Swamp as a community resource. Figure 6 above shows the main livelihood occupation by age and gender. It reveals how women and youth in the age bracket of 18 to 39 years are disproportionately affected, accounting for 60 percent of those sampled. The other thing that Figure 6 shows is that as much as the area around Yala Swamp is categorized as an agricultural area with local communities engaged in small-scale agriculture and fishing, 60 percent of the random sample size are shown to be engaged in other livelihoods. Besides farming and grazing which are done in uncultivated areas and off-season crop fields, during

the dry season, other important sources of livelihoods were fishing and the production of handicraft products from swamp materials, particularly by women. This was confirmed by George Oraro Obalo, a Yimbo community elder whose parcel of land borders the Yala swamp on the Bondo side (Obalo, interviewed, May 2013). Obalo further explains:

Prior to the coming of the investor, we were able to produce our food, to access fresh drinking water from Yala River and were able to use natural resources from the swamp. Now we are forced to drink contaminated water because of the degraded environment as a result of Dominion activities.

A number of local community members in the field explained how the investor promised to improve their livelihoods by reclaiming part of the swamp and turning it into profitable rice paddies, which would provide food security and generate employment. From Kadenge village in Alego on the Siaya side of the swamp, a community leader, Ochieng (interviewed, May 2013), explains:

When the investor came, the company promised to ensure food security and also promised to improve infrastructure by building more health centres and schools, besides providing employment opportunities for our youth. But all we are seeing is increased poverty and marginalization.

Another local community representative, Odindo (interviewed, May 2013), a farmer aged 45 says that he was a youth leader who spear-headed the resistance against the Dominion Farms Ltd entry into Yala Swamp from the Bondo side of the Dominion farms. He acknowledges that the community was aware of Dominion Farms Ltd being allocated 3,700 hectares of land in the first phase of the company operations. However, they did not expect that Dominion Farms' operations would infringe on their individual private parcels of land without proper consultations with local residents. He says that the company encroached on the private parcels of land next to the Yala River (see Figure 7), without proper compensation. Those affected (see Table 4) were only offered a once-off payment of about US Dollars 1,292.4 per one hectare, which he claimed was not enough for the lost land and relocation costs. Odindo,

who grows beans, maize and potatoes on 3.2 hectares on the Bondo side of the swamp, said he rejected Dominion's offer to acquire his land, because the compensation money was too little compared to US\$930 from his annual sales from farming. He explained further that local farmers around Yala Swamp feared that Dominion would eventually force them off their farms through flooding, aerial pesticide sprays that were bound to affect their drinking water from the Yala River, their crops and animals. According to Winan Surveys, a technical mapping services consultancy group based in Kisumu, which Action Aid International hired to undertake a map interpretation service and ground land survey around the Yala Swamp area in 2012, a number of local communities' alleged complaints of encroachment on their land were vouchsafed after the adjudication map sheets' interpretation and satellite image reading. According to the Winan Surveys' findings a number of individual private land parcels in the Bar Olengo Adjudication Section on the Siaya side of the swamp and others on the Nyamonye Adjudication Section of the Bondo Side of Yala swamp were indeed found to have been encroached on as per satellite images as shown in Figure 9. Table 4 shows a list of some of the private lands encroached upon as per the complaints of the registered proprietors.

**Table 4: Private lands encroached upon as per complaints of registered proprietors**

VILLAGE	NAME	PARCEL	Original Size;	Excised	REMARKS
	FRANCIS OBIERO OJOW	1296			Not affected
	OBONYO OJOW	1301			Not affected
	MATHLIDA MAYA	1852	3.4	2.0	
	OURU MAYA	1309	3.6	1.1	
	ONYANGO MUGA	1305	3.7	1.8	
	FRANCIS PEPE MAYA	1308	12.9	6.5	
	OUMA MAYA	1307	10.1	6.1	
	ORUYA OLWARE	1306	5.9	4.4	
	MURANDO OMWENDE	1304	4.9	2.8	
	SEWE OCHIENG	1302	2.4	1.1	
	CARILUS AIRO	1048			Not affected
	AYILA	1046	12.9	8.8	
	MARIA AYILA	1045	5.7	4.0	
	OMONDI AYILA	1463	3.1	2.0	
	OSIRA MUMBO	1464	2.7	2.0	
	LAWRENDE ODONGO	1008	7.3	2.8	



BAR OLENGO SUB-LOCATION	FANUEL OTIENO	1007	7.1	5.1	
	VITALIS WADENYA	1536			Not verified
	LUCAS ABUORA	1006			Not verified
	ATERO OWITI	1537			Not affected
	DALMAS AGOLO OWITI	1535			Not affected
	OPONDO AGARE	1000			Not affected
	AGARE SEWE	1001			Not affected
	OMOLLO OWENDA	998			Not affected
	ZAKARIA OMONDI	1685			Not affected
	JOANES OJOW	1292			Not affected
	OTIENO AYILA	1465	5.2		
	CATTLE DIP	1303	2.0		
	JACOB ONYANGO	1611	2.3		

**Source: Winan Surveys, 2012**

Winan Surveys pointed out that Dominion Farms Ltd acquired individual adjudicated parcels of land without following procedures as set out in the Registration of Land Act, Chapter 300 and the Land Acquisition Act, Chapter 295 of Laws of Kenya. Thus, the affected proprietors of affected land parcels were free to raise a dispute as to the correct boundaries of their land.

Figure 7 shows private lands encroached on around the Yala River by the investor by way of pushing away local community members from their adjudicated private land parcels through flooding caused by water from the water reservoir. An entire village of farmers whose families have lived around Yala River for generations have had their land encroached upon by the investor. The terms of land acquisition have proved a source of dispute as many farmers did not receive compensation after protracted negotiations or the compensation amounts paid were deemed inadequate. The negotiation details included compensation for not only standing crops, but also for invisible losses of grazing land, fishing grounds, relocation costs, company buying them land of the same fertility, relocation arrangements within the same area surrounding the Yala Swamp rather than communities finding themselves alternative land elsewhere, and once-off adequate and fair payment to enable them to start new businesses or better livelihoods elsewhere.

The affected people whose land was encroached on complained that compensation paid was for crops and visible development, not for the land. According to Onyango (interviewed, May 2013), from the Bar Olengo Sub-location on the Siaya side of Yala Swamp:

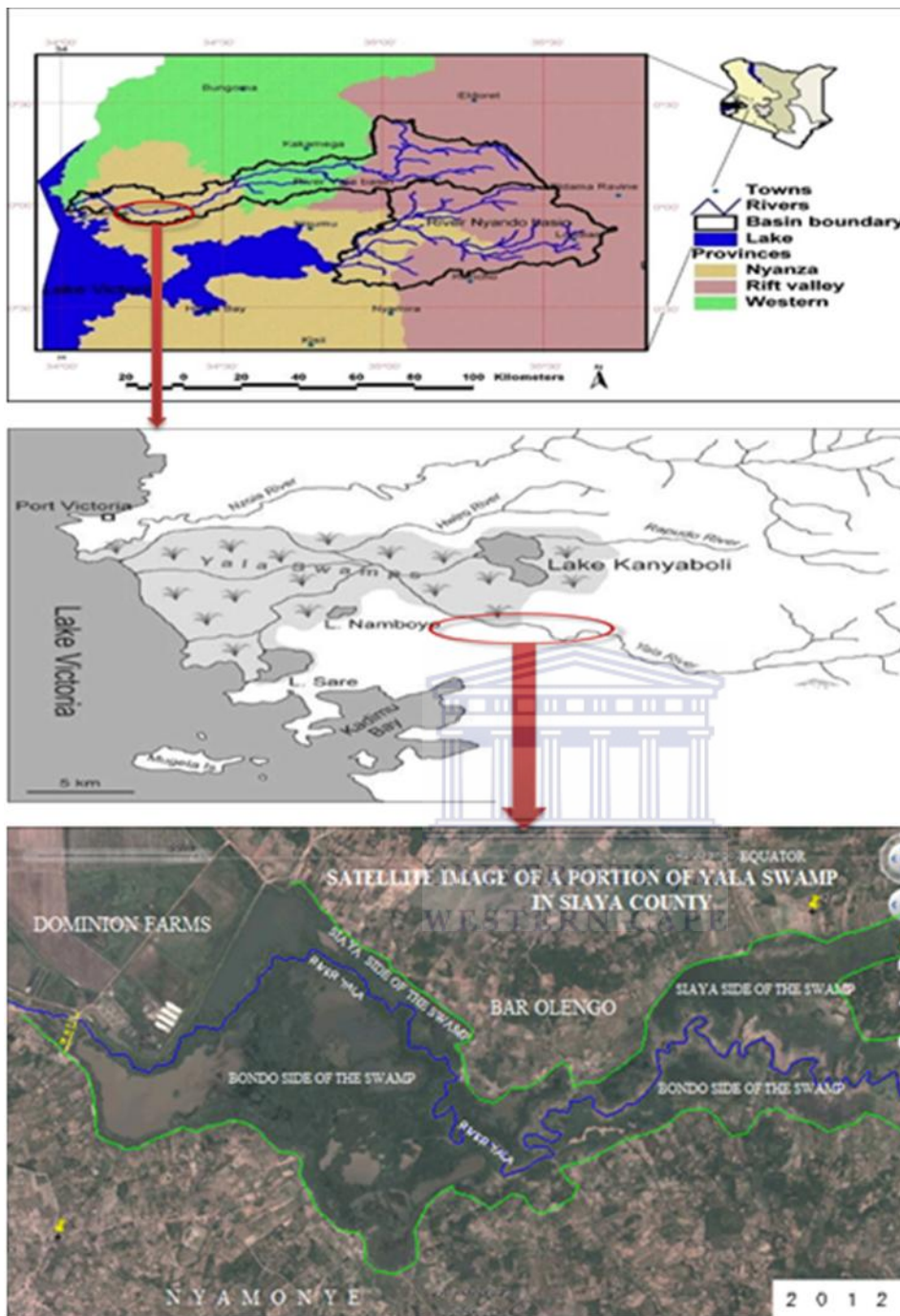
I received one-off payment of US Dollars 1,292.4 per one hectare of my two hectares and told to get off my farm without compensation for relocation costs and losses of fishing grounds regardless of the impacts on my local livelihoods tied to my continued access to Yala Swamp, an important natural resource to my entire family.

Losses such as grazing land, fishing grounds or swamp material gathering space and farmland without standing crops at the time of taking the land were not counted for compensation. Corporate social responsibility initiatives were promised, such as: setting up rice selling kiosks for community members, training of youth in new agricultural technology and construction of fish ponds plus the supply of fingerlings for community members as an economic stimulus package. But no amount of these promises could change the individual private land owners' attitude towards the new agriculture venture because compensation given could not restore their livelihoods to the pre-Dominion Farms Ltd project levels.

Figure 7 shows areas from which local communities were pushed, from next to the River Yala and its swamp which were crucial to the communities' commercial fishing. This encroachment had adverse implications for families that had settled strategically within reach of the fishing grounds of the River Yala and the attendant Ox-bow lakes within the Yala Swamp. The resultant implications for peoples' livelihoods were not anticipated and mitigated at the project design level. Therefore, affected people were expropriated from their land, without compensation, within the marked areas shown in Figure 7.



**Figure 7: Individual private lands encroached on around Yala River by the investor**



**Source: Winan Surveys, 2012**

Table 4 shows the list of advance payments to some of the affected people, rather than a once-off payment that could facilitate the search for new livelihoods.

Table 4 shows a compensation computation but does not reveal that by the company not being able to make a once-off cash payment to individuals whose land was compulsorily acquired, their ability to make alternative livelihoods was not tenable. Apart from the advance payment offered in cash of a uniform payment of US\$ 5.81 regardless of the land size, the rest of the payment was channelled through the Provincial Administration by 2006, which some of the dispossessed owners claimed they had not received by 2013. However, it was not clear how much money was deposited with the Provincial Administration. From a number of community members talked to, similar disputes over compensation entitlements are evident, in addition to the common complaint that compensation was paid for trees but not any other resource lost in terms of grazing land or loss of farmland without standing crops at the time of expropriation.

**Table 5: Compensation of community members whose private land parcels were compulsorily encroached on by the investor**

<b>A DUWA VILLAGE</b>									
NO.	NAME	P/NO	HECTARES	AMOUNT@ USD 523.26/HACTRE	10%TREES /CROPS	AMOUNT FOR VALUED STRUCTURES	TOTAL AMOUNT (USD)	ADVANCE PAID (USD)	BALANCE (USD)
1		3275	0.14	73.26	7.33	0.00	80.58	5.81	74.77
2	Richard Ogambi Oturi	3280	0.3215	168.21	16.82	0.00	185.03	5.81	179.22
3	Martin Okello Oturi	3278	0.3239	169.48	16.95	0.00	186.42	5.81	180.61
4	Pius Ogembo Ojow	3741	1.741	910.94	91.09	0.00	1,002.03	5.81	996.22
5	Manace Owalo Odindo	3222	0.27	141.28	14.13	0.00	155.41	5.81	149.60
6	Rasto Ochara Odindo	3221	0.24	125.58	12.56	0.00	138.14	5.81	132.33
7	Misak Omondi Odindo	3220	0.37	193.61	19.36	0.00	212.97	5.81	207.16
8	Joshua Okeyo Odindo	3219	0.2400	125.58	12.56	0.00	138.14	5.81	132.33
9	Peter Dimba Odindo	3218	0.18	94.19	9.42	0.00	103.61	5.81	97.80
10	Achok Ogaya	1039	3.53	1,847.11	184.71	0.00	2,031.82	5.81	2,026.01
11	Yona Omollo Minyaho	1046	3.4609	1,810.95	181.09	0.00	1,992.04	5.81	1,986.23

12	Stephen Omondi Ogaya	2934	0.81	423.84	42.38	0.00	466.22	5.81	460.41
13	John Onyango Minyaho	2935	0.37	193.61	19.36	0.00	212.97	5.81	207.16
14	Alfred Owili Minyaho	3031	0.12	62.79	6.28	0.00	69.07	5.81	63.26
15	Patrick Juma Minyaho	2033	0.9500	497.10	49.71	0.00	546.81	5.81	541.00
16	Ancertas Odour Juma	1485	1.01	528.49	52.85	1,264.77	1,846.11	5.81	1,840.30
17	Ayieko Nyamira	1029	0.88	460.47	46.05	0.00	506.52	5.81	500.71
18	Samsom Omonge Okal	4407	1.1200	586.05	58.61	0.00	644.66	5.81	638.85
19	Naman Oketch	4409	0.6700	350.58	35.06	0.00	385.64	5.81	379.83
20	Ancertas Odour Juma	1035	1.61	842.45	84.24	0.00	926.69	5.81	920.88
21	Stephen Otieno	1028	1.84	962.80	96.28	0.00	1,059.08	5.81	1,053.27
22	SCC Aduwa Market	1027	2.38	1,245.36	124.54	0.00	1,369.89	5.81	1,364.08
23	Camius Oloo Ngono (Deceased)	4288	0.33	172.68	17.27	0.00	189.94	5.81	184.13

**Source: Winan Survey, 2012.** Technical mapping services consultancy firm hired by Action Aid International to establish land ownership status, position and extent of individual land holding vis-a-vis the Yala Swamp.



Coming back to the controversy surrounding the Dominion Farms Ltd compulsory acquisition of private parcels of land, the controversy continues 10 years since the entry of Dominion Farms Ltd in Yala Swamp because the compensation payment was passed on to the provincial officials who are accused of having not passed on the same to all claimants. According to Atieno (interviewed, May 2013), a Programme Officer with Actionaid International, details about the compensation payments are scanty despite individual complaints received by the Actionaid Office at Usingu Village, Bondo. This is why the need to improve land governance is critical and at the centre of the debate on the envisaged community land law meant to operationalize the recognition, protection and redress of land injustices.

The other claim and complaint that the local communities had against the investor operations was the construction of a weir on River Yala in 2004 that serves Dominion Farms Ltd for irrigation. The weir caused a reservoir that flooded an area up to private individual farms, their market centre at Aduwa and also submerged a public road (classified E1176) connecting the two communities on the Siaya side of the swamp and the Bondo side of the swamp (see Figure 8). Figure 8 is a photograph showing a survey post placed by the District Land Adjudication and Settlement Officer (DLASO) deep in community land as the furthest point the wetland demarcation ought to reach. Consequently the area was flooded by the reservoir after the construction of the weir. Figure 9 shows how deep into community and private parcels of land the Yala wetland extended after the reservoir burst the weir height in 2007 during heavy rains. The yellow line marks the line joining beacons erected by the District Land Adjudication Settlement Officer (DLASO). The purple line defines the extent of the wetland before 2004, the year of the commencement of the Dominion Farms Ltd operations and the construction of a weir. The blue demarcation strips indicate the affected land parcels under water in the new swamp boundaries. The red markings are the beacons erected by the

DLASO (See Figure 9). The survey and satellite image was an initiative of Action Aid International in its efforts to support the Yala communities' advocacy.

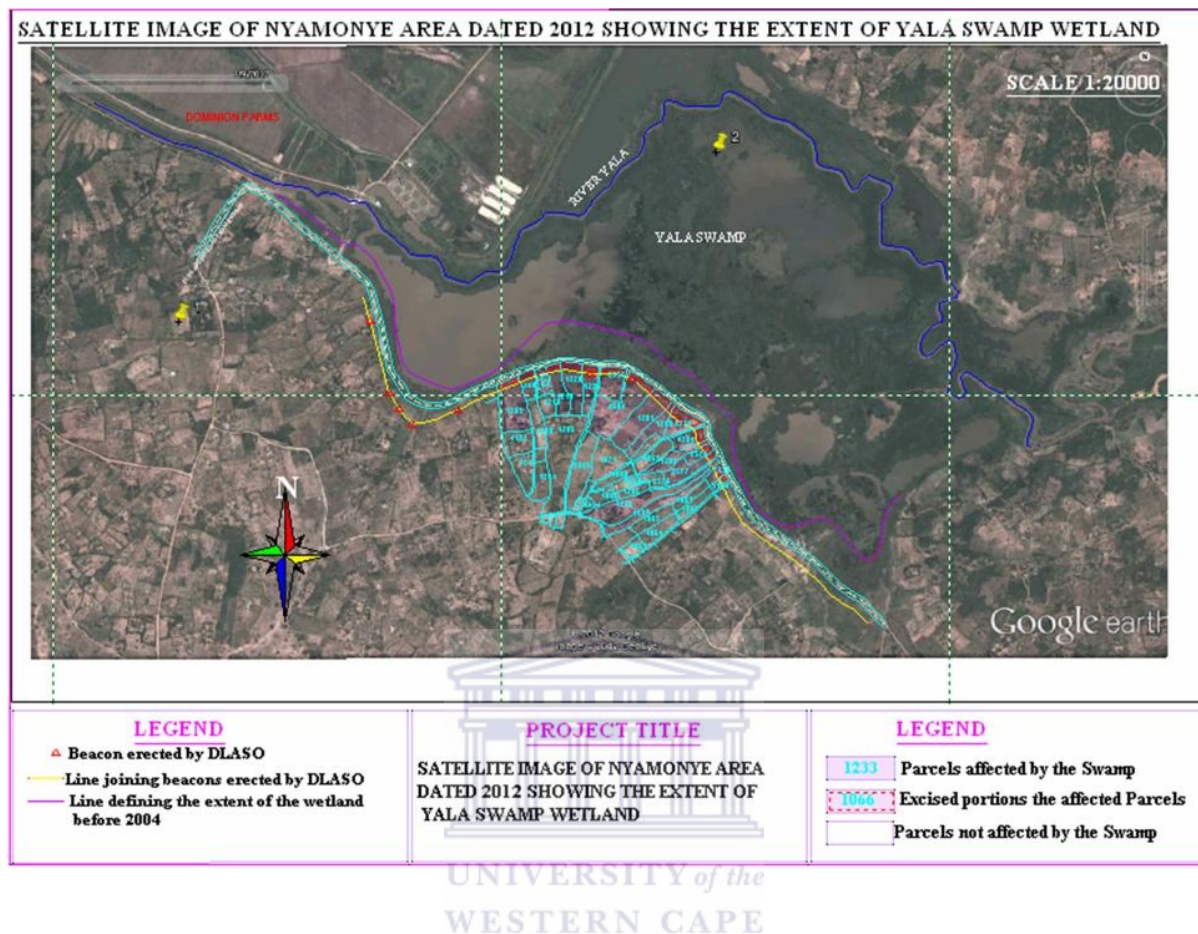
**Figure 8: The survey post indicating how deep the wetland boundary was placed in adjudicated lands of the community.**



**Source: Winan Survey, 2012**



**Figure 9: The extent of Yala wetland after the reservoir extension into private land parcels.**



**Source: Winan Surveys, 2012**

According to Aduwa villagers<sup>2</sup> interviewed, the loss of local habitat, which was flooded in 2007 in the name of development, remains a painful experience because the community lost access to their farms and to Yala River. According to Owiti (interviewed, May 2013), an old man and resident of Aduwa village puts it:

“We have been subjected to living and using dirty water which has exposed us to diseases such as typhoid, bilharzia, malaria and skin ailments.”

<sup>2</sup> A village market, parcel number 1027 in East Yimbo in Nyamonye Adjudication Section is remembered as the investor mischief because the investor threatened to wipe it out through flooding and went ahead to construct a weir to abstract water for irrigated mechanized agriculture that affected 85 families by compromising their livelihood needs.

All the complaints and narratives of community members point to the community anguish over their loss of access to the Yala Swamp in general and particularly to 2,300 hectares of reclaimed swamp land. That land had been open to local communities' agricultural use in the dry season, but due to the fence around most of Dominion farms, the surrounding communities are restricted from access to Yala Swamp resources. Community members from the Siaya side of the swamp narrated how access to water canals and dykes is no longer possible due to Dominion's enclosure of the leased land (see Figure 10). Figure 10 illustrates where the old fence was before the takeover by Dominion and shows the new fence erected on the inner dyke of the swamp land by Dominion. The community members interviewed said that Dominion moved the fence to block the community and their livestock from the canals and dykes. According to Rebecca (interviewed, May 2013), and who also later testified at the Pan African Parliamentary Land Hearing, the Dominion Farms Ltd entry into Yala swamp impacted negatively on women more than other members of the local community around the Yala Swamp. She says:

Dominion disrupted women's means of livelihood and capacity as community managers. We lost our plots of vegetables in the swamp besides disruption of our private farms which were flooded thereby destroying our whole livelihood strategies, yet much of the land allocated to Dominion Farms Ltd remains idle and cannot be put to alternative use.

This sentiment is shared by the Vice-Chairman, Martin Magina Okoyo of the Yimbo Yala Swamp Farmers' Association in the supporting affidavit sworn in their case in the High Court of Kenya at Kisumu Environmental and Land Division Civil Case No. 168 of 2011, who says:

Despite living around Yala Swamp since time immemorial, engaged in subsistence farming, fishing and livestock rearing, Dominion Farms Ltd not only closed our access to Yala Swamp, but through its

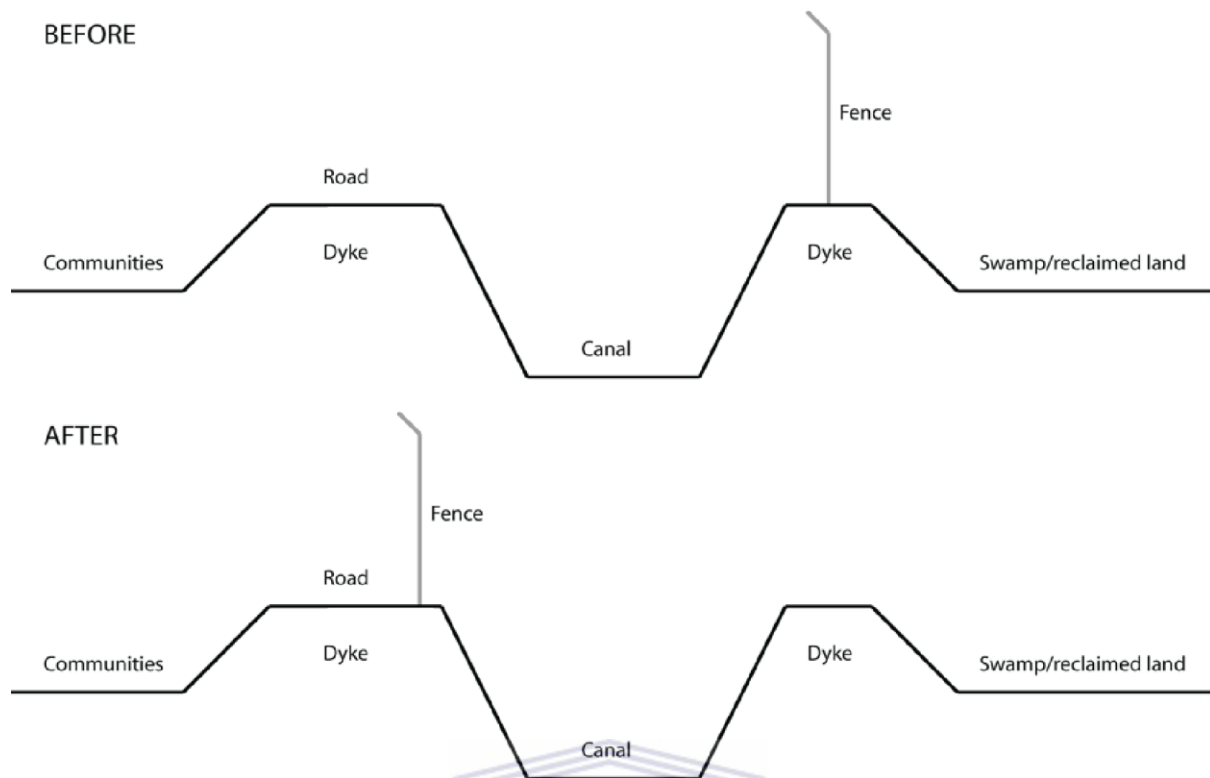
servants and agents descended on our farms with bulldozers and other big earth moving machines destroying our crops... (High Court Case No. 168 of 2011)

**Figure 10: Fence moved by Dominion Farms Ltd. to block communities from accessing the canals and reclaimed land in the Yala Swamp**

Figure 10 illustrates how the Dominion Farms enclosure fence cut-off communities from both sides of the Yala swamp, that is from Yimbo to Kadenge, which has caused great inconvenience to the local communities. Figure 8 shows a public road (classified E1176) connecting people from East Yimbo to Siaya through the Yala Swamp and eventually joining the Bondo to Siaya main road across the River Yala, without going through Bondo town. This road is completely blocked as a result of the construction of a weir, which has caused flooding that has submerged the road. According to Ogaya (interviewed, May 2013), from Aduwa village, he had this to say about the closed road:

I have no words to express how unhappy this village is about this road closure, but there was nothing we could do to stop Dominion mischief. Our own leaders and government insisted that our land was leased to the company, which could do as it wished to undertake its agricultural activities.





However, when the company manager was asked about the community complaints, he dismissed them and emphasized that the community has benefited massively from the Dominion investment by observing:

The company has brought electricity to villages, constructed classrooms in some schools, improved road networks in areas of our operations as well as paid school fees for orphaned children among other corporate social responsibilities (Abir, interviewed, May 2013).

He further argued that the local communities' claim that Dominion privatized a public road which passes through Dominion farms from Siaya to Bondo does not hold because an alternative perimeter road that goes around the edge of the farm was improved to connect the two towns. In addition, another dyke was built and a road was constructed which connects the communities on both sides of Lake Kanyaboli. What the Dominion Farms Ltd manager did not disclose is the fact that the detour around Dominion Farms had transport cost implications, in that it added a 20 kilometres distance to the local communities of Kadenge on the Alego side and to Nyamonye on the Yimbo side, especially for women who travel to

access market places, clinics and schools for their children. The implications of the closure of the road leading to the towns of Siaya and Bondo mean that neighbouring communities have to take a considerable detour of 20 kilometres, costing US\$ 2.3 by local taxi transport or motor cycles, which is too high for local community members who live below the poverty line on less than US\$ 1.5 a day.

An analysis of the social relations and agrarian practice evolving around the Yala Swamp farming system points to local communities experiencing a development pathway beyond their comprehension. Dominion Farms Ltd introduced a development change where those who lost access to Yala Swamp are expected to work for the investor to obtain subsistence. However, members of local communities claim that the investor's entry into Yala Swamp has denied them access to the land they used for the production of food, thus causing food shortages, despite the investor's rice paddies producing 10-18 million kilograms of rice annually. One community member, Mary from Ratuoro village who exemplifies the problems experienced by women as the main providers of food to the community, exclaimed:

How can the local community members pay for rice, and pond fish produced by Dominion Farms if their land is taken away and not enough employment opportunities are available?

According to Siaya County representative, Ochieng (interviewed, May 2013), Yala Swamp was a community common pool resource under multiple tenure regimes before Dominion took it over. Part of it was used by local communities, some of it was used by the Lake Basin Development Authority, while other areas were used by the researchers under the auspices of the County Councils of Bondo and Siaya. According to, Owalla (interviewed, May 2013), the Executive Director of the Community Initiative Action Group Kenya who works with local communities, they normally express the feeling that they were betrayed by their County Council's leaders who undertook to negotiate with the investor about the land lease deal.

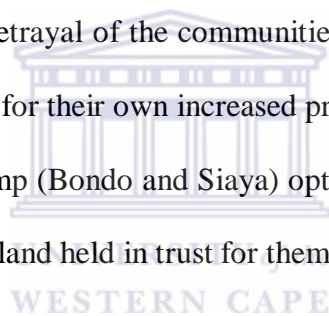
The next section deals with the betrayal of local communities by their representatives.

### **6.3 Betrayal of Local Communities by their Representatives**

Besides having welcomed Dominion Farms entry into Yala Swamp in 2004 after they signed a Memorandum of Understanding with the Lake Basin Development Authority and the Siaya and Bondo County Councils, the local communities, especially women and youth who form the majority of the population and respondents interviewed, feel betrayed when Dominion blocks their access to Yala Swamp (Figures 4 and 10). According to Okello (interviewed, May 2013), Dominion has been allowed to grow rice on Phase I (3,700 hectares) out of a total 6,900 hectares negotiated to be leased to the company, including additional land in Phase II (3,200 hectares). While the terms were yet to be negotiated, Dominion was determined to delink the community from the land, which is intrinsically a source of their livelihoods. Joyce from the Bondo side of the swamp, like many residents of her village, found it hard to believe that their own County Council could forsake their use of the Yala Swamp and allow Dominion to take over on the mere promise of boosting food security, creation of job opportunities and development of infrastructure at the expense of loss of access to the land that inspired their very existence and identity.

According to the Dominion Farm Manager, Abir (interviewed, May 2013), despite having been allowed to reclaim and use 6,900 hectares, the company had only reclaimed 3,000 hectares including 2,300 hectares formerly used by the LBDA, but were only using 1,417 hectares for production of 14-18 million kilograms of rice per annum. The slow pace notwithstanding, according to Were (interviewed, May 2013), the Dominion Agricultural Manager, they aim to plant the whole 6,900 hectares as follows: rice 1,619.4 hectares, soya-beans 2,429.1 hectares, sugarcane 2,429.1 hectares and aquaculture 404.9 hectares. The two further argue that despite Dominion having negotiated to allow local communities to use

121.45 hectares of the reclaimed land, instead they say the company has given 182 hectares to Bondo and 190 hectares to Siaya communities respectively. According to Abir (interviewed, May 2013) says that if there is any betrayal, it's the County Councils who represented the communities as their elected leaders, who betrayed the people. This argument confirms Peters' argument that 'land grabs' in Africa are facilitated by national and sub-national government agencies who allocate land to foreign agents (Peters, 2013). According to the Community Initiative Action Group-Kenya Executive Director, Owalla (interviewed, May 2013), the Yala Swamp reclamation was meant as an integrated development plan for cultivation by local small-scale farmers. Therefore, the alternative cultivation of the reclaimed land as a large-scale farming enterprise by Dominion Farms as negotiated by the two local County Councils is a betrayal of the communities whose agricultural practices and skills were meant to be improved for their own increased productivity. The local communities from both sides of the Yala Swamp (Bondo and Siaya) opted to sue their representatives and trustees in matters of community land held in trust for them.



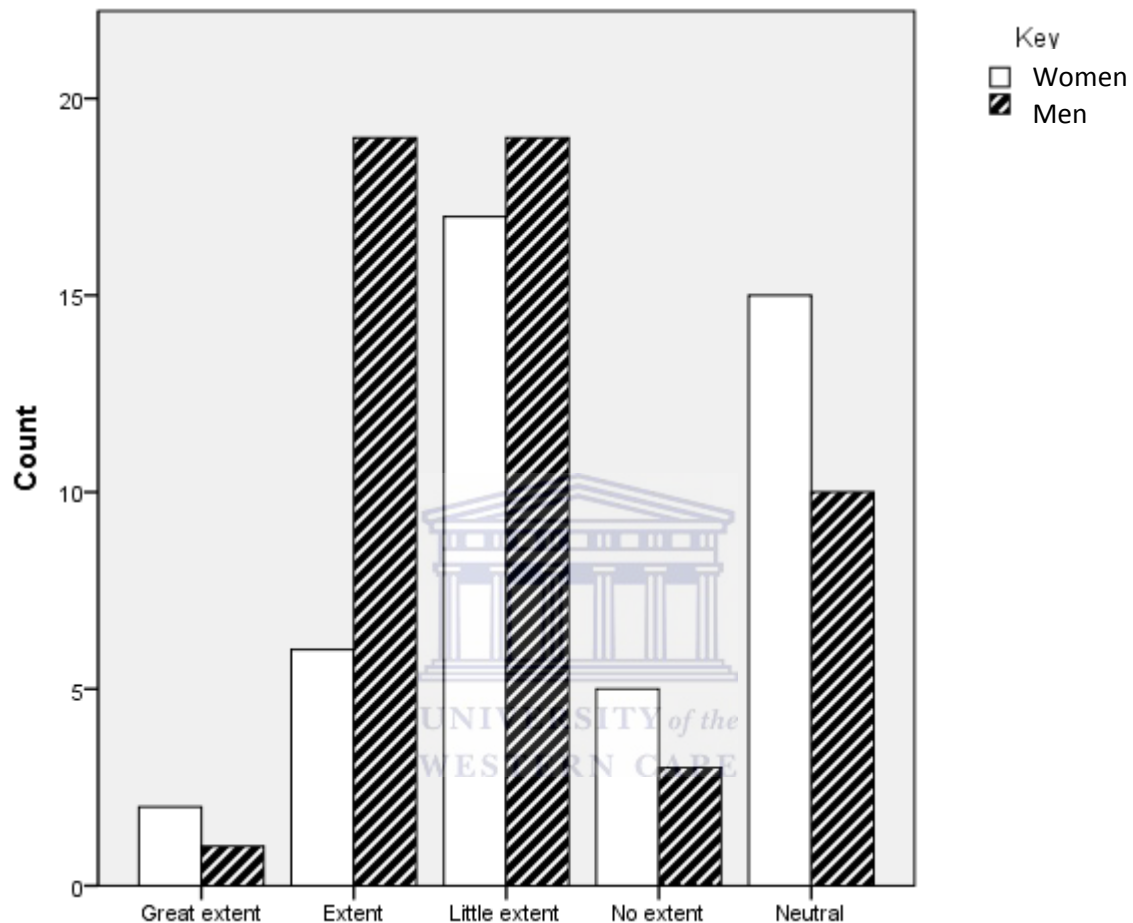
The local community took advantage of the 2010 Constitution of Kenya, under Article 63 that provides for the recognition and protection of community land rights. They filed Case No. 168 of 2011 at the High Court of Kenya at the Kisumu Environmental and Land Division, suing the Bondo and Siaya County Councils as well as Dominion Farms Ltd. The charge was for betraying them by dispossessing them of community land covering 3,200 hectares of the Yala Swamp that is held in trust by the two councils. The case, filed by Martin Magina Okoyo and Thomas Ochieng Ongong, (suing on their own behalf and on behalf of the Yimbo Yala Swamp Farmers' Society) was dismissed and struck out with costs. The case was dismissed on four technical grounds: firstly, that the interim orders of injunction to stop the defendants from interfering with community land measuring 3,700 hectares under jurisdiction of the County Councils of Bondo and Siaya were based on mere fears and

apprehension. Secondly, the photographs showing the alleged destruction of crops were taken on 20<sup>th</sup> September, 2011 yet the alleged incident took place on 30<sup>th</sup> August, 2011. The two dates were materially different and could not aid the plaintiff's case. Thirdly, the list of farmers as signatories and members of the Yimbo-Yala Farmers Society, who authorized Martin Magina Okoyo and Thomas Ochieng Ongongo (Vice-Chairman and Chairman of the Yimbo Yala Swamp Farmers' Association) did not have the authority to act on their own behalf and that of the members. Fourthly, the applicants did not disclose that prior to filing the suit they had filed and withdrawn a similar suit in the Kisumu High Court, namely Case No. 141 of 2011.

The Community has since filed an appeal against the decision, which was allowed as per Civil Appeal No. KSM 94 of 2012, in a ruling delivered at the Kisumu Court of Appeal of Kenya on 25<sup>th</sup> September, 2013. The Court gave applicants five days to serve the record of appeal upon each respondent (Bondo and Siaya County Councils as 1<sup>st</sup> and 2<sup>nd</sup> respondents and Dominion Farms Ltd as 3<sup>rd</sup> respondent).

**Figure 11: The extent to which adjudication is seen as an effective solution to land-based conflicts**

Figure 11 answers the question, to what extent the respondents say that adjudication is an effective way of resolving land based conflicts.

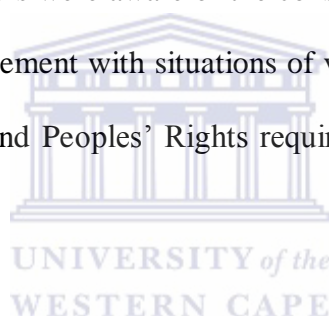


**Source: Author, 2013**

Figures 11 to 13 demonstrate that affected people's knowledge of regulatory frameworks governing large-scale land acquisitions limits the exercising of legal rights, owing to different levels of legal awareness and ability to navigate judicial procedures to make the most of the new land governance system. Women and youth who form the majority demographic sample size in the Yala Swamp surveyed, are most knowledgeable about how adjudication is an effective solution to land-based conflicts as shown by Figure 11. However, since the entire area around the Yala Swamp has been adjudicated according to the District Surveyor, Bondo/Siaya, the Yala Swamp as a common pool resource, according to Ostrom (1986) is the

only resource held under more than one regime that should be able to benefit all without conflict. Figures 11-14 are derived from Survey Questionnaire Section B, on questions about the level of awareness of regulatory frameworks on large-scale land acquisitions. The first part of the section asks about regulatory frameworks and part two is about dispute and conflict resolution mechanisms.

Figure 12 shows the frequency of awareness on Constitutional provisions, which keeps the enjoyment of local rights weak and insecure, despite the on-going land reform agenda. The awareness of the constitutional provisions is important because the 2010 Constitution of Kenya protects the right to property and requires compensation for expropriation. If a good number of the community members were aware of the constitutional provisions it would be a pre-condition for informed engagement with situations of violation of their rights since even the African Charter on Human and Peoples' Rights require compliance with the applicable laws.



**Figure 12: Frequency table on Survey Question 10 on Constitutional Awareness**

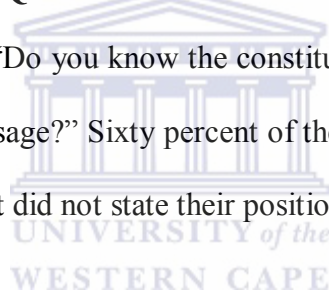
	Frequency	Percent	Valid Percent	Cumulative Percent
Valid	No	11	11.0	11.0
		64	64.0	75.0
	Yes	25	25.0	100.0
	Total	100	100.0	

**Source: Author, 2013**

Figure 12 shows the response to the question: “Do you know the constitutional provisions that regulate the large-scale land acquisition or usage?” This question aimed at assessing whether the communities surrounding Yala Swamp were aware that the 2010 Constitution of Kenya had ended government interference with unregistered community land as per Article 63 (4) that states that “community land shall not be disposed of or otherwise used except in terms of legislation specifying the nature and extent of the rights of members of each community individually and collectively.” The survey result in Figure 13 shows that 64 percent of the respondents were not aware of the constitutional provisions.

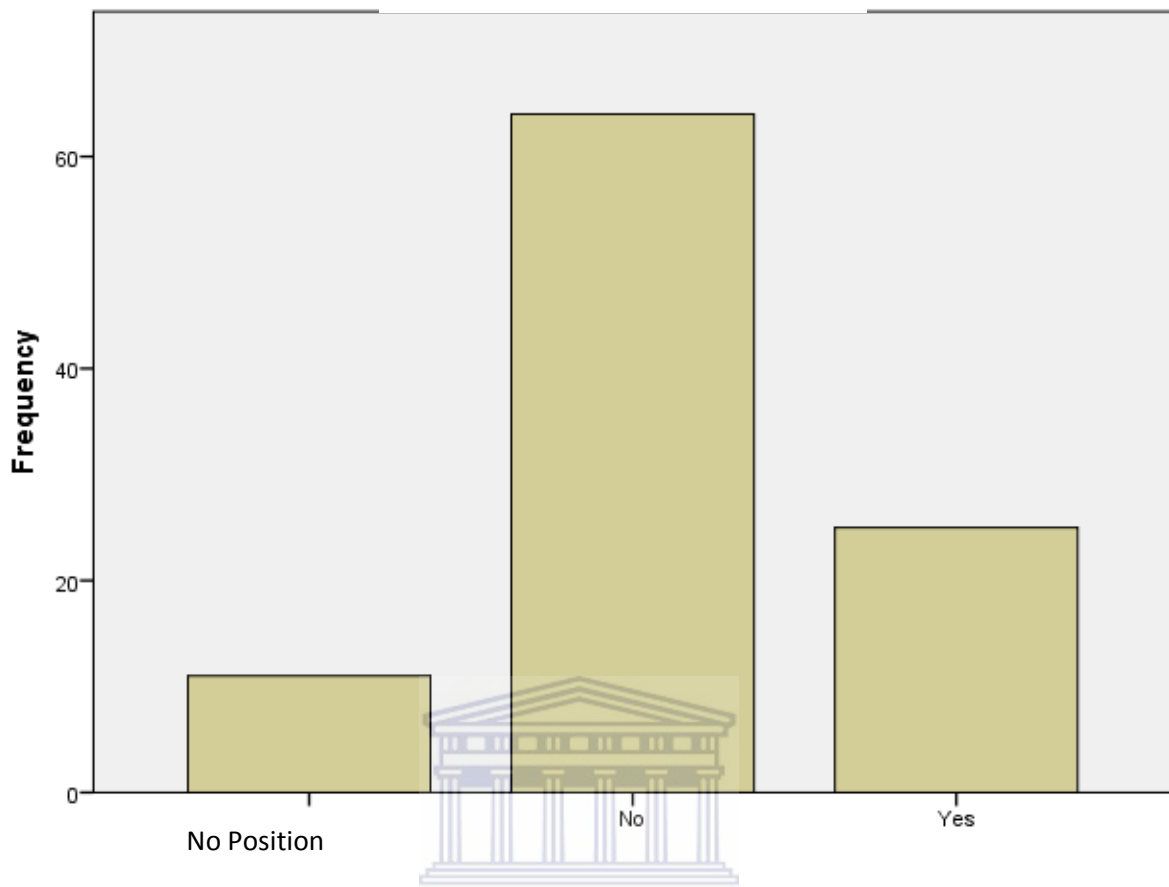
**Figure 13: Bar chart on Survey Question 10 on Constitutional Awareness**

Figure 13 answers the question: “Do you know the constitutional provisions that regulate the large-scale land acquisitions or usage?” Sixty percent of the respondents said “No”, while 25 percent said “Yes” and 10 percent did not state their position.





### 10 Constitutional Awareness



The second case was filed against the Kenya Wildlife Service for gazetting Lake Kanyaboli and its immediate surrounding as a National Reserve in 2010 without consultation and due regard to the traditional land use of the Yala Swamp as a community resource. This case exemplifies the community's resistance to 'green grabbing' or conservation as a form of land grabbing. According to Mwangi (interviewed, May 2013), a Kenya Wildlife Service Officer in Siaya, the Kenya Wildlife Service lost the case and it is planning to engage the community in a more participatory, transparent and accountable dialogue to convince it about the greater gain they stand to get from Lake Kanyaboli as a National Reserve as compared to the present fishing and grazing rights they enjoy.

In sum, the Yala Swamp local communities' feeling of betrayal by their representatives is borne out of negative impacts of displacement, lost livelihoods and promised benefits which have not materialized yet. But the betrayal argument is not unique to Yala Swamp because nation-wide development plans support foreign investment as a means of revitalizing the agricultural sector. Thus, the reclamation and development of the Yala Swamp by Dominion Farms Ltd is not different because its ambitious objectives are: the development of a profitable business model for the region; reduction of poverty in the region through employment opportunities; provision of sustainable livelihoods for rural households; and improvement of the socio-economic infrastructure. The figures of expected outputs in terms of workforce were proposed as 2,500 people, who were expected to do weeding and maintenance, has never been reached. This is because Dominion turned to mechanized farming systems, dashing the early optimism of generating more jobs when the company had initially hired over 1,500 manual labourers to clear the land, only to dissipate the numbers to the current workforce of about 600 (see Table 5). In many ways the local communities' hope that the reclamation of the Yala Swamp into a productive agricultural enterprise to build better lives for them seem to be going wrong.

**Table 6: Estimated employees at the time of fieldwork**

Table 6 shows the employment figures of different categories of employees at Dominion Farms Ltd. In total as per the time of the fieldwork visit, Dominion Farms Ltd had 609 employees representing 24.34 percent of the 2,500 employers projected in its Business Plan.

Department	Permanent	Contract	Casual	Total
Aquaculture	8	11	26	45
Finance & Administration	8	0	3	11
Marketing	5	15	1	21
Farming	18	13	337	368
Rice Mill	15	3	6	24
Feed Mill	0	0	8	8
Workshop/Stores	15	7	12	34
Construction	13	16	24	53
Youth Training Centre	1	5	5	11
Crop Sprayer	1	2	2	5
Soya Bean Project	0	1	28	29
<b>Total</b>	<b>84</b>	<b>73</b>	<b>452</b>	<b>609</b>

**Source: Author, From Dominion Farms Administrative Staff Tabulation, 2013**

Generally, while there are no laws, regulations and directives that oblige the investor to ensure benefits sharing with local communities (Ochieng, interviewed May 2013), the company's lack of a Corporate Social Responsibility strategy is a pointer to a misdirected corporate goodwill. Therefore, it is hard to manage expectations about promises made to local communities going back to the early days of a negotiation of the land deal between the

community representatives and the investor. The main concern of the local communities is the future prospects for their children and the future generation around the Yala Swamp.

#### **6.4 Local Communities' Concerns and Future Generation Prospects**

During the fieldwork data collection a number of local community concerns were raised by key informants and local community respondents interviewed. The main ones were the failure to recognize and incorporate communities living around the Yala Swamp into the Dominion Integrated Development Project Plan, Dominion land acquisition, cultural concerns, promised benefits, and environmental pollution and degradation.

##### **6.4.1 Recognition and Incorporation of Local Land Users' Rights in Yala Swamp**

Whereas the Constitution and the National Land Policy provide for the recognition and protection of community land rights pending registration of the same as fully-fledged community property, including the rights of women and other marginalized groups, communities living around the Yala Swamp raised concerns about not being considered as part of the development efforts in the wetland. A local resident of Alego village on the Siaya side of the swamp proclaimed in protest that, “despite farming this reclaimed swamp land since 1970, nobody recognizes us as viable users of the reclaimed land; instead they are restricting our access to the swamp” (see Figure 15). Figure 15 shows small-scale farming of kale vegetables and bananas on a section of the reclaimed land in the Yala Swamp. This is a reflection of the fact that the community's use of the Yala Swamp, as prior users, cannot be discounted as being irrelevant to the integrated development of the Yala Swamp as a common pool natural resource. There is a lack of balance between large-scale agricultural production and the communities' small-scale production, despite the agricultural potential of the Yala Swamp to increase food security as well as to spur the surrounding area's development.

**Figure 14: Local communities' farm on reclaimed land in the Yala Swamp**



**Source Author, 2013: Small-scale community farming on the reclaimed section of the Yala Swamp.**

According to Pauline Atieno (interviewed, May 2013), a Programme Officer of Actionaid International, during a guided tour of the reclaimed section by the Dominion Agricultural Manager, remarked that:

In practice, customary land rights are not given adequate recognition and protection as provided in law. Hence parts of Yala swamp, local communities used in season was set apart and acquired for public and private purposes without safeguard to customary land rights and sensitive ecosystems

In her view it appeared that the current land use in the Yala Swamp undermined the tenure security of the undifferentiated community land rights. She further argued that Dominion's wish to develop and manage a large-scale irrigated farm of approximately 6,900 hectares of Yala Swamp including the additional area of 3,200 hectares, which has not yet been set apart

in accordance with the provisions of Part IV of Trust Land Act, Chapter 288 of Laws of Kenya, is a breach of the law. This was reflected by 39 percent of local community members' response to the acquisition, arguing that the land in question was community trust land for people ordinarily resident around Yala Swamp and should not have been available for a foreign investor. This is what made the local communities sue the Bondo and Siaya County Councils for attempting to lease out a portion of ungazetted trust land that the two councils held in trust for the local community.

When Dominion Farms Manager, Abir (interviewed, May 2013), was asked to respond to the community's raised concern, he acknowledged that whereas customarily, members of the local community depended on the Yala Swamp for water, grazing, fishing, subsistence crops and handicraft materials, they have not been excluded as they claim. He further explained that Dominion had given them more than 364.37 hectares instead of 121.45 hectares, which their County Council representatives had negotiated for at the start of the project. He further said:

I know as of personal knowledge that the land is by law vested in Bondo and Siaya Councils who having lawfully alienated the same to Dominion Farms Ltd at a valuable consideration, the communities' complaint must be directed to their representatives, because Dominion did not grab their land nor displace them from their sources of livelihood.

That is the same position he held in the replying affidavit in the Case No 168 of 2011 where Dominion was mentioned as third respondent.

#### **6.4.2 Dominion Farms' Land Acquisition in Yala Swamp**

According to the lease agreement displayed at the company office, Dominion Farms Ltd. acquired land measuring approximately 6,900 hectares in June 2003<sup>3</sup> for agricultural investment for a period of 25 years (Abir, interviewed May, 2013). The Siaya and Bondo County Councils as trustees of local communities' unregistered land under the Trust Lands Act (Chapter 288 of the Laws of Kenya) entered into a lease agreement with Dominion Farms Ltd following a Memorandum of Understanding. The land comprising approximately 3,700 hectares ("the gazetted land") was duly set apart in accordance with the provisions of Part IV of the Trust Land Act. The other land comprising approximately 3,200 hectares ("the Additional Area"), was yet to be set apart, see Figure 3. The 'Additional Area' was allegedly set apart through Gazette Notices of 3<sup>rd</sup> November, 2006 and 1<sup>st</sup> December, 2006 which is a subject of dispute and law suit. Thus, the 'Additional Area' could not be used yet for agricultural purposes since it was under water and its exact boundaries were yet to be delimited (Abir, interviewed May, 2013). All the said parcels of land formed the principal lease that was approved by the Commissioner of Lands for a lease period of 25 years from June 1, 2003 with a provision for an option of extension for a further 20 years on terms and conditions to be negotiated later. This possibility of new terms of extension is what is causing great concern to the local communities. According to Martin Magina Okoyo in his supporting affidavit in a Civil Case No. 168 of 2011 against Bondo and Siaya County Councils as 1<sup>st</sup> and 2<sup>nd</sup> respondents and Dominion Farms Ltd as 3<sup>rd</sup> respondent, the area consisting of 3,200 hectares was never and has never been gazetted and is left to be farmed by the local farmers.

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<sup>3</sup> This acquisition which is yet to be finalized is now subject to the land reform legal regulatory frameworks as provided by the Constitution of Kenya, 2010 and the National Land Policy of 2009.



According to a Siaya County representative, the land acquisition process lacked Free, Prior, Informed Consent (FPIC), as provided for in UN regulations on indigenous people and as adopted in the FAO Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forestry in the Context of National Food Security (Ochieng, interviewed, May 2013). This is because the FPIC normally involves three major aspects, according to Hoops (2014:3): the ability to participate effectively and the empowerment of disadvantaged people; the provision of information and obligation to furnish reasons; and the access to procedure and the form of participation that leads to consent. Therefore, regardless of procedural process followed by Dominion Farms, the local communities' feeling remains that the company colluded with the two County Councils to cheat them out of their land without proper consultations. This is because the agreements for lease were negotiated with intermediaries: Bondo and Siaya County Councils and Ministry of Lands and Settlement following a Memorandum of Understanding with the Lake Basin Development Authority for the 1970s reclaimed portion of 2,300 hectares that was included in Phase 1 (3,700 hectares parcel).

The land acquisition process that took place at Yala Swamp was done under a land regulatory framework that secured the removal of local communities from the allocated land to the investor. This is because the investor, the local authority and the government officials had power balanced in their favour to seal the land deal with negligible consultation and participation of local communities, due to information and power asymmetries that put the local communities in a disadvantaged negotiation position. According to Okoyo (interviewed, May 2013), the Vice-Chairman of the Yimbo Yala Swamp Farmers' Society, the land acquisition was insensitive to their prior use of the Yala Swamp for their subsistence farming, fishing and livestock rearing. He says:



The members of our society have since time immemorial been living along the Yala swamp, but since Dominion taking possession of the gazetted area, it has caused us great inconvenience.

According to the Siaya County Yala Swamp Farmers' Forum Chairman, Were (interviewed, May 2013), he asserts that the Yala Swamp is a community resource, which must be recognized and protected as community land and any acquisition must be treated as a historical land injustice that must be redressed according to the provision of the Constitution and the Land Policy .

#### **6.4.3 The Value of the Acquired Land**

The other concern by community members interviewed during the field study on the value of the land acquired by the Dominion Farms was that Yala Swamp was acquired at a paltry rental of US\$ 3.9 per hectare per year. According to Cotula (2013:74-75), many African governments are allocating land so cheaply at low fees and in some cases they are not charging it at all. Cotula's argument is supported by Deininger et al., (2011:63) whose study found that companies were acquiring larger tracts of land than they could farm due to low costs for lease, rental or outright purchase in Africa.

According to Atieno (interviewed, May 2013), Action aid International programme officer, based at Usingu on the Bondo side of Yala Swamp, the land acquired by Dominion played a key role in the local communities' dry season farming, livestock grazing and other multiple livelihoods from swamp raw materials beyond any economic gain they derive from it at the moment. Therefore, regardless of Dominion's capacity of putting the acquired land to gainful use the affected communities hold that the surface rental is nominal and seems quite low and does not reflect the market price for land in the area, according to Oluoch (interviewed, May 2013). Generally there is no vibrant land market since land is held in trust for the family

members. According to Okuku (interviewed, May 2013), a Siaya County representative, the land lease fees charged by Dominion are paid annually but have not resulted in improvement of service delivery to the local communities. One community member, Ochieng (interviewed, May 2013), summed up the value of the Yala Swamp as being “the cost borne by local communities, who have lost a means of their livelihoods for as long as Dominion Farms will remain in the wetland”.

Another common complaint raised is the problem of compensation computation for the payment of local communities, which is based on visible improvements on land such as crops and trees, and not for the land which is legally deemed owned by the government or local authorities as trustee of local communities. This perspective is well put by Abir (interviewed, May 2013), the Dominion Farms Manager in his reply affidavit in the community case against the Bondo and Siaya County Council plus Dominion Farms Ltd as a 3<sup>rd</sup> Defendant in which he says:

I know as of personal knowledge that Yala Swamp land is by law vested in Bondo and Siaya County Council (the 1<sup>st</sup> and 2<sup>nd</sup> Defendants) who having lawfully alienated the same to Dominion at a valuable consideration, the plaintiff remedy if any is with the two county councils and not Dominion as the 3<sup>rd</sup> Defendant.

#### **6.4.4 Compensation for Expropriated Community Private Parcels**

During this research the community members claimed that apart from some private land holders having not received their compensation for expropriated land parcels, it would appear that the issue of the expropriation of communal land holdings and their compensation does not arise. A number of respondents claimed that they were not compensated by Dominion Farms as required by the law. However, Dominion Farms Manager, Abir (interviewed, May 2013), explained that the company paid a fair and adequate compensation for all affected to

the Government, apart from three families who declined the move, “so I am not aware of how the onward payment was processed”. According to Atieno (interviewed, May 2013), a Programme Officer of Actionaid International there are more than three cases of community members not satisfied with that decision to expropriate their land without due consultation regardless of the compensation which they deemed not adequate.

#### **6.4.5 Information Asymmetry on the Investment Deal**

According to the survey, about a third of 100 respondents said they did not feel adequately informed. Another third said they did not attend meetings and rallies at which Dominion proposed to acquire approximately 6,900 hectares of Yala Swamp. They simply heard about the deal through neighbours, the provincial administrators and through village elders. According to Obondo (interviewed, May 2013), a 33 year-old trained lawyer and co-ordinator of the Friends of Yala Swamp Network based in Siaya town, Dominion’s takeover of the Yala Swamp for exclusive use was without informed involvement of surrounding communities. According to Owalla (interviewed, May 2013), the head of the Community Initiative Action Group Kenya, said: “I am not happy about Dominion’s takeover of the Yala Swamp. I will support the local communities’ campaign against land grabs facilitated by the government.” However, according to Abir (interviewed, May 2013), the community can only complain to their County Councils if they were not well represented during consultations.

The other community concern was that information provided by the investor was not properly checked by concerned authorities hence its reliability and truthfulness was dubious. Interviews with Oriend (interviewed, May 2013), revealed that given the low water intake for irrigation from the Yala River, Dominion Farms may not have the capacity they provided when submitting the investment proposal to the concerned government agencies to utilize all the allocated land. This was further pointed out by community members interviewed who were concerned that information submitted by Dominion was rarely made available to the

public. However, the investor representative, Abir (interviewed, May 2013), while admitting that information submitted by the investor was often treated with a veil of secrecy, the aim was not to deny information; rather, it was in the interest of protecting the confidentiality of the content of the investment proposal. The County Councils of Bondo and Siaya, through the replying affidavit by the clerks to the Councils in the Case No. 168 by the local community members against the two Councils, state that all information about the Dominion land deal was known to the County Council Councillors who represent the community.

In summary, regardless of the counter-accusations and mentioned concerns there was clearly an information and power asymmetry between the local communities and the investor on the terms and condition of the lease, technology transfer, and promised benefits. Hence members of the local community talked about not fully understanding the process of the negotiated deal, which was compounded by the fact that they were not left with a copy of the negotiated and agreed agreement between the investor and their County Council representatives. To address such information asymmetries, the Constitution and the National Land Policy provide regulatory principles on devolution of power and authority, stakeholder participation, land acquisition compensation and land dispute resolution mechanisms, but 44 percent of community respondents interviewed had little to no knowledge about the new land policy framework. Only 28 percent said that they had reasonable knowledge of the regulatory framework provisions.

#### **6.4.6 Promised Benefits**

Dominion promised benefits such as jobs for women and youths, increase in food security, electricity power supply, construction of classrooms and health clinics and centres, and the improvement of roads. Several respondents said that a few unskilled jobs on a short term

basis were available to a small number of community members relative to the size of the investment project and the surrounding area population of over half a million people. According to a Ministry of Land official, Ogola (interviewed, May 2013), even if the land deal does not fully address the livelihood aspirations of interviewed local community members, it is not accurate to say that they were not benefiting entirely. He further explained that the local communities' concerns about Dominion land investment has been due to the nature of its business model adopted so far which excludes the local communities from participating in the production, hence denying them a stake in the area's future development.

But nonetheless, local communities look towards benefits to accrue to them. Interviews with Ministries of Lands, Agriculture and Labour officials (interviewed, May 2013), confirmed that benefit-sharing mechanisms are not envisaged in the investment proposal but could only be incorporated through a voluntary arrangement by the investor. According to Okuku (interviewed, May 2013), since proposed benefit-sharing mechanisms are not included in the investment proposal, coupled with the lack of a monitoring system to check whether or not the promised benefits are indeed materializing, it was difficult to assume that meaningful benefit-sharing was taking place.

When the Company Manager, Abir (interviewed, May 2013), was asked whether the promised benefits could be achieved without a proper plan for their delivery, he said their Corporate Social Responsibility plan is working:

We have built classrooms, health centres, clinics, roads, drilled water points and bore-holes. We are providing food security for local area, we provide jobs to many especially women. So far no profits

nor dividends to Dominion Group of Companies based in Edmond, Oklahoma, United States of America.

#### **6.4.7 Environmental Degradation Concerns**

The local communities have voiced their main concern about Dominion Farms project as being incompatible with the Yala Swamp conservation, pointing out the negative effects. According to Otieno (interviewed, May 2013), who was married into a family living in Magombe village on the Bondo side of the Yala Swamp, pointed out that:

the Dominion Farms operations have not only degraded the environment, but chemicals used to spray rice paddies are contaminating water and the surrounding ecosystem to the extent of poisoning pasture and water points for domestic animals and poultry.

#### **6.4.8 Managing of Community Concerns**

The local community concerns, according to Maganda (interviewed, May 2013), a representative of a women's development organization called '*Maendeleo ya Wanawake*' in Bondo, are valid, but she felt that the loss of land would be off-set through the agricultural investment project benefits. However, according to the Bondo County Assembly Representative, Okuku (interviewed, May 2013), "the promises that made the community support the project have turned into the destruction of the Yala Swamp, the source of their livelihoods." Overall, the local communities' concerns include the denial of access through a public road linking the Siaya side of the swamp to the Bondo side of the swamp, denial of access to Yala Swamp as a source of water, loss of fishing and farming opportunities, and loss of grazing grounds, all due to the investor's enclosure fence. According to Obalo (interviewed, May 2013), Yimbo community elder from Kasau Village, on the Bondo side of the Yala Swamp, "life around Yala Swamp is a nightmare; we worked well with Lake Basin Authority, but things are not the same since the entry of Dominion Farms in Yala swamp". He further explains that the Integrated Development Project which was conceived as a means of increasing the local community production and productivity, creating jobs and improving livelihoods is struggling to ensure that the promised benefits materialize.

According to Dominion Farms Manager, Abir (interviewed, May 2013), the company has delivered on its promise of benefits, including support to the Ratuoro Health Centre where they have constructed a laboratory, given bursaries to local students in secondary schools amounting to KES. 1 million per annum (equivalent to US\$ 11,627.9), have repaired roads and improved food security. “Dominion cannot be blamed for the two County Councils’ failure to represent the local communities as trustees over Yala Swamp” (Abir, interviewed, May 2013). Put simply, it is the government and the community representatives as trustees that facilitated Dominion’s large-scale land acquisition in Yala Swamp not as a land grab. Government officials say that the law allows the government to allocate land as a means of promoting agriculture, including food production through large-scale production. Good intentions aside, the failure to involve the local community in a development project of Dominion Farms’ magnitude raises the question of the fate of small-scale producers who are being displaced from a valuable resource for their livelihoods.

Despite the project’s contribution to the transformation of the socio-economic situation of the area of study being long-term, the implications so far point to a project struggling to deliver on its long list of promised benefits. Hence, the community is demanding a guarantee in the sharing of benefits from investments in Yala Swamp. Any efforts without involving a bottom-up approach, with an inclusive agricultural model of investment that includes the investor’s agricultural technology transfer to the local community whose traditional hoe-based farming will continue to co-exist with modern mechanized agriculture as (seen in Figure 16), is detrimental to the local community’s support of the investor’s agricultural

venture. Figure 16 shows the contrast between small-scale efforts as compared to the mechanised superior system of the Dominion Farms Ltd.





**Figure 15: The contrast between the investor's agricultural technology and the local community's hoe-based farming**



Source: Author, 2013

The field visit to the Dominion Farms Ltd office provided an opportunity to the Manager to explain the company's Corporate Social Responsibility initiatives, ranging from the supply of power, construction of classrooms and supply of other educational facilities, construction and equipment of health centres to the improvement of infrastructure. Dominion Farms lack a good public relations and communication strategy to manage the expectations of the local communities. Community representatives, church leaders and politicians pledged and promised a lot of benefits, the investment company is unable to deliver. During the fieldwork, a number of women were sighted and captured on camera (see Figure 11), working in the rice fields as an opportunity to earn a wage as their own income. But even this was criticized by Atieno, an Action Aid Programme Officer who remarked that other local residents at Usingu village on the Bondo side expressly say the unskilled casual jobs are unacceptable and degrading, especially those offered to women, who were tasked with scaring away birds from rice fields. However, the women who earn US\$ 2 per day, are fortunately happy to earn their own income.

**Figure 16: Women working in the Dominion Farms rice fields**



**Source: Author, 2013**

#### **6.4.9 Role of Different Actors**

With large-scale land acquisitions regulation being a complex matter and a topic of growing concern, it involves a wide range of actors at different levels. The study found differentiated actors ranging from government officials, investor agents, local communities, local representatives, local politicians and civil society groups at the field site.

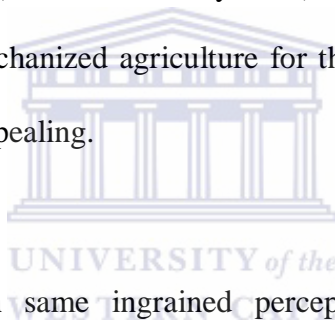
The government officials' compliance with the new regulatory frameworks was limited by uncoordinated administrative and management mandates of different departments all excited by large-scale mechanized agriculture as a means of modernizing agriculture to mind the nitty-gritty provisions of the new land policy, legal and institutional frameworks regulating land ownership and use. To a number of these officials in charge of water, land, environment, fisheries, wildlife and agriculture, the Dominion Farms Ltd kind of project was the most promising example of an agricultural cum-aquaculture venture to be emulated at all costs, according to Ogaola (interviewed, May 2013), a Land Settlement and Adjudication Officer. The new regulatory framework at Article 63 (4) of the Constitution of Kenya provides that:

Community land shall not be disposed of or otherwise used except in terms of legislation specifying the nature and extent of the rights of members of each community individually and collectively (Republic of Kenya, 2010:46).

Thus, mandating Parliament to enact legislation to give effect to this Article, government officials had very little regard for customary small-scale users of Yala Swamp engaged in subsistence farming, grazing of livestock, fishing and gathering of swamp materials whose production and ways of life were deemed backward and unproductive (Ogola, interviewed, May 2013). In my view, the government officials are yet to come to terms with the new regulatory

frameworks that limit their old practices of using the regulation of land ownership and use as a mechanism of consolidating government control over areas like Yala Swamp where government authority was limited.

The second major actors in Yala Swamp were local communities' representatives and local area politicians who were not in a hurry to see the compliance with the new regulatory frameworks in favour of communal land users. They saw large-scale farming as a solution to food insecurity, despite the fact that rice produced by the investor as the main crop was not the staple of the local communities. According to Ogola (interviewed, May 2013), a Land Settlement and Adjudication Officer, sacrificing large-scale mechanized agriculture for the sake of complying with the new regulatory frameworks, was not appealing.

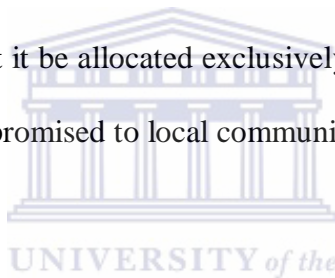


The third significant actor with same ingrained perception that large-scale mechanized agriculture is the best way to use the 'empty and under-utilized' Yala Swamp, was the investor. To the investor, compliance with the new land policy, legal and institutional regulatory framework was secondary to the investor's on-going operations especially that it had provisions limiting foreign national landholding to a lease not exceeding 99 years.

The fourth major category of actors were the community members to whom compliance with the new regulatory frameworks was welcome, because they seek to recognize, protect their fallow and grazing lands and fishing grounds which are important to local land use systems and livelihood strategies. According to Okoyo, the Vice-Chairman of the Yimbo Yala Swamp

Farmers' Society (Supporting Affidavit, Case 168 Of 2011), compliance with the new land governance system was a sure safeguard of their smallholder agricultural expansion frontier from the large-scale land acquisitions.

Civil society groups were the other major actors in Yala Swamp who advocated for compliance with the new land policy, legal and institutional frameworks for the regulation of land ownership and use in Kenya, because local communities' use of and claim to land stood to be recognized and protected. Owalla (interviewed, May 2013), the Executive Director, Community Initiative Action Group Kenya, argued that even where land is not being used to its full potential by local communities, that does not warrant it be allocated exclusively for mechanized agriculture whose benefits were not materializing as promised to local communities.



The civil society groups were using the new regulatory framework to campaign against the use of global and national governance systems to promote and facilitate large-scale land acquisitions instead of regulating aspects that undermined local land rights. Thus, using the new legal regime, Actionaid International, through its programme on community empowerment, was encouraging the local communities to go to court to seek enforcement of their land rights as provided for in land reform blueprints. Also in compliance with the new regulatory framework, the civil society groups managed to push for negotiation among different actors on how to address the emerging problems facing the Dominion Farms Ltd. Though not working as expected, a few meetings had been held by the time of this study, with the participation of all actors including local communities' direct representation. The meetings that were chaired by the District



Commissioner of Siaya were appreciated as an effort to reduce tension and encourage the resolution of attendant disputes.

The final lesson that the Yala Swamp case offers is that gender-blind regulatory frameworks still perpetuate customary systems that foster the inequitable enjoyment of land rights along status, age and gender lines.

## **6.5 Conclusion**

The fieldwork data collected and analyzed pointed to a number of measures that needed to be undertaken to redress local communities' concerns as a matter of good governance. Firstly, according to Ostrom (1986), there is a need to distinguish between the intrinsic nature of the Yala Swamp and the property regime under which it is held, because the Yala Swamp qualifies to be referred to as a "common pool resource." Hence, there is a need to map the communal land rights within and around the Yala Swamp so that they are recognized and protected. Otherwise, even where legal recognition was starting to accord protection to customary land rights, the institutional mechanism in place was insufficient to provide effective protection to customary land rights in light of the agricultural policy of promoting commercial agriculture through large-scale production.

Secondly, civil society groups as major actors in the Yala Swamp case felt the need for the establishment of a plan to ensure that laws and procedures are appropriately adhered to, in order to reduce disputes and conflicts between the investor and local communities. This would ensure that there is clarity of the mandate and coordination among institutions involved in the large-scale land acquisition to avoid unethical and corrupt practices due to the absence of a monitoring system.

In this chapter the researcher has shown that different actors in large-scale land acquisitions do not operate in isolation but are guided by ingrained perceptions that inform why they collaborate in making projects like the Yala Swamp one possible, despite controversy. Equally important was an analysis that emerging regulatory frameworks can only go so far even if all actors were to comply with them, because there are structural issues that require redress for proper implementation of the new land governance system to take place.



## **7.0 Chapter Seven: CONCLUSION**

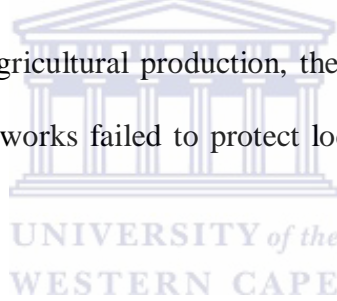
### **7.1 Introduction**

This thesis examined the large-scale land acquisitions in Kenya by looking at the Dominion Farms Ltd takeover of Yala Swamp. The case study illustrates actual practices of Kenya's land governance system in terms of how large-scale land acquisitions take shape and the results on the ground. The study explored changes that have taken place at Yala Swamp from 2003 to 2013 and assessed them in relation to these themes: regulatory frameworks on large-scale land acquisitions, recognition of customary rights to land and associated resource rights, and the role of the state and other non-state actors in large-scale land acquisition. The study found that the new large-scale phenomenon has a historical dimension in that those engaged in it are unfairly taking over large tracts of land held under customary tenure by creating private property interests just like the English colonizers did in the past. Alden Wily (2012) argues that there is nothing new about the current land deals rather than 'a significant surge in the continuing capture of ordinary people's rights and assets by a capital-led and class-creating social transformation'. Despite times being different today, she points out one common aspect between the current and past large-scale land acquisitions that is the legal logic that 'renders untitled (but traditionally occupied and used) lands as unowned, and the state, by default, their legal owners' (Alden Wily, 2012). The paradox is that despite a number of initiatives at national, regional and global levels aimed at regulating large-scale land acquisitions, governments and international development organizations like the World Bank are promoting agricultural development that is resulting in investments and the dispossession of poor people from agriculture without absorbing them in the new agro-industrial enterprises.



## **7.2 Regulatory Frameworks on Large-Scale Land Acquisitions**

This study examined how historical and contemporary forms of regulatory frameworks on large-scale land acquisitions have been used purportedly in promotion of impact development that ensure a balanced and beneficial approach to both the investor and local communities. It found that while the frameworks were expected to achieve the combined goals of solving local communities' problems of poverty, food security and unemployment as well as the investor's interest of making reasonable financial returns, they had a negative implication of dispossessing local communities. The Yala case study showed that legal and policy frameworks for land acquisition and management remain susceptible to abuse. This reality was shown by the fact that while there is an increased interest in the utilization of Yala Swamp natural resources, which offered a chance for large-scale agricultural production, the absence of proper enforcement of legal procedures and policy frameworks failed to protect local communities engaged in small-scale production.



The Yala case study brings to the fore the underlying debate about the facilitation of large-scale agricultural production at the detriment of small-scale production, or what Okoth-Ogendo (1991:3) refers to as “enabling the European sector large-scale agriculture by subjugation of the African sector small-scale production”. This is the trajectory that the World Bank envisaged in its report on Agriculture for Development (World Bank, 2008). Oya (2009) and Akram-Lodhi (2008), argue that the World Bank can hardly oppose large-scale corporate investments when it is a promoter and facilitator of these investments. This position was confirmed by Deininger (2011), when he made an assumption that small farms can and should be linked to large-scale farms through a variety of contract farming schemes as long as this follows a broad set of

principles on responsible investments. However, Borras et. al, (2013), argue that corporate land grabbing facilitated by the World Bank is anchored by the state authority and control, which points to the role of national states in the regulation of the phenomenon of large-scale land acquisitions.

In Kenya, like many other African countries, regulation of agricultural investment is through a regulatory framework involving a number of laws and regulations found in various pieces of legislation, but key provisions being those in the 2010 Constitution of Kenya and the 2009 Land Policy. This exposes the country to a situation whereby the abuse of proprietary rights just like the Dominion Farms' investment in Yala Swamp illustrates the extent to which weaknesses in domestic regulatory framework have been exploited in favour of the investor. The study found that to a large extent, the investor was accorded greater protection than local land right holders, which made a case for the need of voluntary guidelines of best practices developed through regional and global efforts.

The other debate is about how to address the challenges of large-scale land acquisitions in the face of domestic frameworks that are not being implemented. The World Bank (2010), through its research report thinks that large-scale land acquisitions can be turned into a development opportunity, despite the problems of corruption and land deals that are dispossessing and displacing local communities. Hence, Deininger (2011), steps into the debate by arguing that emerging negative impacts of large-scale land acquisitions can be addressed through regulations. However, while appreciating the World Bank and its partners' seven principles for Responsible

Agricultural Investment (PRAI), I argue that if domestic frameworks cannot be implemented to regulate investments in agriculture, how can one expect voluntary principles to effectively regulate them? This is the position of Borras et. al, (2013), who assert that since voluntary guidelines do not question the root cause of land grabbing and accepts that large-scale acquisitions are inevitable, there is no basis to warrant corporate voluntary self-regulation.

Therefore, the promotion of non-binding recognition and respect for existing land and resource rights is tantamount to upholding the colonial and independent legislations in most African countries that vest customary land in the state. This is the practice that is found on the ground in Yala Swamp that points to bad governance, rooted in a historical trajectory and legislative frameworks that promote large-scale land acquisitions.

### **7.3 Recognition and Protection of Community Land Rights in Theory**

My analysis of historical land acquisitions and the recent corporate control of community land at Yala Swamp demonstrates the continuation of a colonial dualistic approach that makes the recognition and protection of community land rights an unattainable goal. In Yala Swamp the study found that state officials facilitated the Dominion agro-industrial business, while ignoring customary systems through which communities continue to acquire, use and control land (Okoth-Ogendo, 2008).

The underlying narrative why community land rights are recognized and protected in theory only, is shown by the assumption that there are ‘empty, abundant and available lands’ in Africa available for allocation to large-scale foreign and domestic corporate concerns. I argue that this is flawed, as shown by the Yala Swamp case where lands deemed empty, form the fishing and

grazing grounds for local communities. This is what Alden Wily (2012) refers to taking over ordinary people's land rights.

#### **7.4 The Role of the State and Non-State Actors in Large-Scale Land Acquisition**

The Yala Swamp study has shown that national and local authority government agencies are playing a major role in facilitating the allocation of land used by local communities, to investors. The role of state agencies in facilitating large-scale land acquisitions is supported by international agencies like the World Bank, who argue that the PRAI Principles can control and regulate land deals (Deininger, 2011).

Studies carried out by Cotula (2011), show that local communities are usually not present at the tables where land deal contracts are drawn up by state agencies and their representatives. Derek Hall et al. (2011) argue that this relates to the way local political processes influence the access to and control over land.

In sum, there is a need for the reform of the investment framework to shift the balance between investors, state agencies and local land users as a means of democratizing the control and regulation of large-scale land acquisitions, which will ensure that the expansion space of small-holder producers is not foreclosed.

#### **7.5 Taking into Account the History of the Land Question in Kenya**

The large-scale land acquisition in Kenya, regardless of it being considered a new phenomenon, is in many ways a continuation of past policies and experiences that perpetuated the Kenyan land question. For instance, the Dominion Farms operations are based on the subjugation local community land rights. The new land governance framework, as provided by the 2010 Constitution of Kenya and the National Land Policy of 2009, was designed to end the history of

land injustices so as to put the country on an equitable and sustainable trajectory, but this outcome requires effective implementation. This thesis found that the large-scale land acquisition phenomenon is a multi-layered issue that is embedded in changing dimensions of the social, political and economic dynamics of the country. Thus, large-scale land acquisitions' regulation can succeed at local level, when understood from a historical perspective.

## 7.6 Conclusion

In conclusion, this mini-thesis looked at the actual practice of the new land governance framework regulating the large-scale land acquisition, using the Yala Swamp Case Study. It found that underlying the debate is the continuity of past regulatory frameworks that challenge the smooth rolling out of the new land governance framework. The historical shift of authority over land from local communities to the colonial and post-independence sovereign authorities remains a challenge that the new national land governance system is yet to reverse in practice, as provided for in the new Constitution of Kenya (2010). The core debate that this thesis engaged with is the failure to probe the root causes of large-scale land acquisitions, accepting that it is inevitable and is meant to benefit small-scale local communities despite dispossessing them of their means of livelihoods. The World Bank Report (2010), argues that corporations are capable of self-regulating in recognizing the pre-existing land and natural rights of local communities. However, the UN Rapporteur on the Right to Food argued for other alternatives to large-scale land acquisitions and leases to be considered (De Schutter, 2011).

*La Via Campesina*, representing small-scale farmers, pastoralists and peasant social movements, plus other allied civil society groups and research think-tanks criticized the large-scale

agricultural industrial model of development. The assumption that large-scale land investments were inevitable win-win solutions if subjected to self-regulation was merely legitimizing land grabbing (La Via Campesina, 2011).

My response is that domestic legislation and policies are the primary source of a regulatory framework that regulates agricultural investment in any state, thus they have to be enforced. The Yala Swamp case began during the old regulatory order, but there are currently legal and institutional frameworks available to ensure balanced and beneficial guidelines to shape new policies to address emerging challenges.



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## Appendices

### Appendix 1: Interview Guide

**1. In your own words, how do you describe the level of participation and consultation provided by the National Land Policy and the Constitution of Kenya in dealing with land rights of local users of Yala Swamp?**

Probes: what measures have been put in place to regulate land allocations? Do you feel land delivery services have improved?

Is land policy in line with principles of fairness and equity if looked at in light of happenings around Yala Swamp operations?

In line with the national land policy is zoning and development control undertaken in an efficient and transparent manner?

**2. Apart from the National Land Policy and the Constitution of Kenya, 2010 what other regulatory mechanisms at regional and global level do you know that regulates large-scale land acquisitions?**

Probes: Have you ever heard of the Africa Land Policy Framework and Guidelines; World Bank Principles on Responsible Agricultural Investment and the UN FAO

Voluntary Guidelines? Do you find any of them useful? What is the response to their provisions you are aware of?

In line with any known regulatory framework how are varied customary land uses of local communities socially legitimate recognized?

**3. Do you think the national land governance system together with global land policies governance system can regulate large-scale land acquisitions?**

Probe: In what ways does Yala Swamp Case reflect compliance with regulatory frameworks governing large-scale land acquisitions?

Do the land administration institutions and other natural management agencies have clear mandates; operate transparently, cost-effectively and sustainably?

Is information provided by the land administration system reliable and sufficient to guide large-scale land acquisitions in Yala Swamp?

In your assessment is the new land governance system capable of management, acquisition and disposal of land in Yala Swamp transparently following clear laid down procedures?

**4. What challenges do you think face large-scale land acquisitions?**

Probe: In your opinion how can they be overcome? Do you think the national land governance system can respond to these challenges?

Are judicial and non-judicial institutions able to resolve disputes arising from land uses in Yala swamp fairly and expeditiously?

**Specific Questions different Actors in Large-Scale Land Acquisitions in the Yala Swamp Case Study:**

**Local Communities**

- What renders you vulnerable to demand proper ways or procedures of doing things?
- How true is it that senior politicians and public servants in Yala Swamp manipulate or ignore the law and policies relating to land allocation and development so as to line their own pockets and those of their families, friends and political allies?
- What is the level of local communities' compliance or response to regulatory frameworks governing land use in Yala Swamp?
- How are the key land governance principles of participation, consultation, fairness, accountability, transparency, equity, decency, efficiency, consensus, inclusiveness democratically exercised?
- How well do you as community leaders work with institutions and agencies in-charge of land and natural resources in Yala Swamp?
- Are the new land laws consistent with Yala swamp area local community customs?
- Do you access reliable information from land administration agencies that enable you make informed decisions and participate into Yala Swamp land issues or question decisions which may affect you?

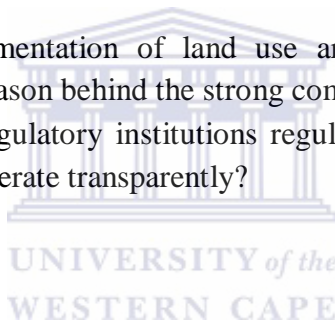
**Investor**

- Do you feel that Yala land is administered in separate systems?
- What difference do recognize in administration of land and natural resources since adoption of the National Land Policy and the New Constitution?
- Is the lack of clarity in land rights, which is leading to social unrest and land disputes in the Yala area related to weak land governance?
- Is the poor land delivery service within Yala Swamp area a reflection of poor land governance within land administration institutions?

- Is land administration information in the Yala Swamp area reliable and accessible?
- Generally public land or common pool resources are badly managed as consequence of weak governance leading public land being treated as ‘free good’ despite its usefulness to investors – do you feel the same applies to Yala Swamp land?

### **State (National & County) Land Management/ Regulatory Agencies**

- Are land management instruments applied by Land Management agencies justified, efficient & transparent?
- How are land management instruments for land use planning and zoning used in Yala Swamp area efficiently & transparently?
- How effective is land use planning in Yala Swamp area in line with community needs & undertaken in a participatory way?
- In what ways are land use arrangements in Yala Swamp directly affecting local communities’ livelihoods?
- Do you think that implementation of land use arrangements agreed upon in non-participatory approach is reason behind the strong community resistance?
- Are land administration regulatory institutions regulating matters in Yala Swamp area have clear mandates and operate transparently?



**Source: Developed by the researcher for the purpose of this study.**

## Appendix 2: Study Questionnaire

### QUESTIONNAIRE

This questionnaire is designed to obtain data on the effectiveness and compliance with land governance regulatory frameworks on the acquisitions of large scale land resources in Yala Swamp. The data and information obtained from this study would help the researcher in determining issues pertaining to large scale land acquisitions as regulated by emerging land laws and policies on large-scale land based investments. Respondents are asked to be as objective as possible in their responses.

#### A: Demographic Information

1. Specific place of residence

- ☐ Yala- Bondo
- ☐ Yala- Siaya

2. Gender of respondent

- ☐ Male
- ☐ Female

3. Age of respondent

- ☐ 18-28 Yrs
- ☐ 29-39 Yrs
- ☐ 40-50 Yrs
- ☐ 51-61 Yrs
- ☐ 62-72 Yrs
- ☐ Over 72 Yrs



4. Highest level of formal education

- ☐ No formal education
- ☐ Primary
- ☐ Secondary
- ☐ College
- ☐ University

5. Main source of livelihood

- ☐ Farming
- ☐ Formal employment
- ☐ Casual employment
- ☐ Formal business
- ☐ Informal business
- ☐ Livestock keeping
- ☐ Others. State.....



**B: Level of Awareness of Regulatory Frameworks on large-scale Land acquisitions**

6. State any national legal/policy document(s) that you know of that is used to guide large-scale land acquisitions

.....  
.....  
.....  
.....

7. State any body/institution(s) that you know of that regulates use of land resources in Yala Swamp area

.....  
.....  
.....  
.....

8. State any international land policies frameworks that you know

.....  
.....  
.....

9. State any process provided in the policy/law that is used in the regulation of management of land resources

.....  
.....  
.....

10. Do you know the constitutional provisions that regulate the large-scale land acquisitions or usage?

- ☐ Yes  
☐ No

11. If so, state the provision(s)?

.....  
.....  
.....

12. Have you ever read the national land policy and the Constitution of Kenya, 2010 provisions on land?

- ☐ Yes  
☐ No

13. If no, what has contributed to this?

- ☐ Non availability of the documents  
☐ Illiteracy  
☐ Apathy  
☐ No apparent Reason

14. If you have read the two documents, how did you obtain the documents?

- ☐ Provided by government  
☐ Provided by the civil society organizations  
☐ Provided by the political leaders  
☐ Bought from government Printer  
☐ Others.

State.....



15. To what extent would you agree that having read the two documents you now fully understand the constitutional provisions on land

- ☐ Strongly Agree
- ☐ Agree
- ☐ Neutral
- ☐ Disagree
- ☐ Strongly Disagree

**C: Regulatory Framework and Public Participation in Land Use System**

16. Do you agree that the emergence of new land policy frameworks has enhanced your participation on the decision regarding large scale land acquisitions?

- ☐ Strongly Agree
- ☐ Agree
- ☐ Neutral
- ☐ Disagree
- ☐ Strongly Disagree

17. To what extent would you say that your knowledge of policy/legal regulatory frameworks on land enabled you to influence major decision affecting large scale land use in your area?

- ☐ Great extent
- ☐ Extent
- ☐ Neutral
- ☐ Little extent
- ☐ No extent

18. How often does the local land administration system educate/inform the public on land and related matters?

- ☐ Very Frequently
- ☐ Frequently
- ☐ Neutral
- ☐ Occasionally
- ☐ Rarely



19. How accurate would you describe any information provided by the local land administration system?

- ☐ Very Accurate
- ☐ Accurate
- ☐ Neutral
- ☐ Least accurate
- ☐ Inaccurate

20. How effective would you say local land administration system is in the management of land and related matters especially those relating to large scale investments?

- ☐ Very effective
- ☐ Effective
- ☐ Neutral
- ☐ Least effective
- ☐ Not effective

21. To what extent do you agree that local land administration system is transparent and accountable in the management of land and related resources?

- ☐ Strongly Agree
- ☐ Agree
- ☐ Neutral
- ☐ Disagree
- ☐ Strongly Disagree

22. Which of the following would you cite as the greatest challenge faced by local land administration system?

- ☐ Insufficient and ill equipped manpower
- ☐ Bureaucracy
- ☐ Lack of transparency and accountability
- ☐ Lack of courage to fully enforce land regulations
- ☐ Inadequate knowledge of land policy and regulatory framework
- ☐ Others.

State.....

23. How frequently are land-based conflicts reported in your area?

- ☐ Very Frequently
- ☐ Frequently
- ☐ Neutral
- ☐ Occasionally
- ☐ Rarely

24. State the parties to these conflicts

.....  
.....  
.....

25. Which of these institutions are often utilized in resolving land-based conflicts?

- ☐ Law Courts
- ☐ Elders
- ☐ Relevant Line ministries/agencies
- ☐ Provincial administration
- ☐ Local political leadership
- ☐ Others. State.....

26. To what extent would you agree that customary/traditional mechanisms are effective in resolving land-based conflicts?

- ☐ Strongly Agree
- ☐ Agree
- ☐ Neutral
- ☐ Disagree
- ☐ Strongly Disagree

27. To what extent would you say that adjudication is an effective way of resolving land-based conflicts?

- ☐ Great extent
- ☐ Extent
- ☐ Neutral
- ☐ Little extent
- ☐ No extent

28. To what extent would you agree that effective implementation of land policies/regulations would greatly reduce land-based conflicts?

- ☐ Strongly Agree
- ☐ Agree
- ☐ Neutral
- ☐ Disagree
- ☐ Strongly Disagree

### Appendix 3: Consent Form

**RESEARCH TITLE: Large-Scale Land Acquisitions in Kenya: Yala Swamp Case Study of Kenya's Land Governance System and Actual Practices.**

I have read the information presented in the information letter about a study being conducted by **Odenda Lumumba Richard** towards the MPhil Programme at the Institute for Poverty, Land and Agrarian Studies (PLAAS) at the University of the Western Cape.

This study has been described to me in a language that I understand and I freely and voluntarily agree to participate. My questions about the study have been answered.

I understand that my identity will not be disclosed and was informed that I may withdraw my consent at any time by advising the student researcher.

With full knowledge of all foregoing, I agree to participate in this study.

Participant Name: \_\_\_\_\_

Participant ID Number: \_\_\_\_\_

Participant Signature: \_\_\_\_\_

Date: \_\_\_\_\_

Place: \_\_\_\_\_

Student Researcher: **Odenda Lumumba Richard**

Student Researcher Signature: \_\_\_\_\_

Student Number: **3212270**

Mobile Number: **+254-733-762408**

Email: **olumumba@kenyalandalliance.or.ke**

I am accountable to my supervisor: **Prof. Ruth Hall**

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Email: **rhall@uwc.ac.za**

## Appendix 4: Request Participation in Research Note

School of Government □ EMS Faculty

**The Institute for Poverty, Land and Agrarian Studies (PLAAS)** School of Government, Faculty of Economic and Management Sciences, University of the Western Cape Private Bag X17 Bellville 7535 Cape Town, South Africa Tel: +27-21-9593733 Fax: +27-21-9593732 [www.plaas.org.za](http://www.plaas.org.za)

10 April 2013

To Whom It May Concern

### Request Participation in Research

This is to certify that **Mr Richard Lumumba Odenda, student number: 3212270** is a registered student for the MPhil in Land and Agrarian Studies at the Institute for Poverty, Land and Agrarian Studies (PLAAS), at the University of the Western Cape.

He is currently in the process of writing his mini-thesis. His research topic is “Large-scale Land Acquisitions in Kenya: Yala Swamp Case Study of Kenya’s Land Governance System and Actual Practices”. The research objectives he is investigating are as follows:

1. How does the devolution participatory and consultative land governance system provided by the National Land Policy and the Constitution of Kenya, 2010 address land rights of customary occupiers and users of areas under customary and common property regimes? Is it shaping practice and with what lessons emerging? And what does it portend for the future of land reforms?
2. In what ways and to what extent are different actors on the ground conforming to the new land policy, legal and institutional regime for regulation of land ownership and use in Kenya?
3. What lessons does Yala Swamp case offer on emerging regulatory frameworks governing large-scale land acquisitions?

We would be grateful if you could assist him with his research. Should you require any additional information or verification, kindly contact me directly.

Yours sincerely,

Associate Professor Ruth Hall  
Supervisor

Institute for Poverty, Land and Agrarian Studies (PLAAS)

Tel: +27 21 959 3733

Email: [rhall@uwc.ac.za](mailto:rhall@uwc.ac.za)

## Appendix 5: Key Informant Interview List

S/No.	Date	Name	Title	Actors' Organization	Location	Contact
1.	9/5/2013	John Omondi Oried	County Govt. Water Officer	Water Resources Management Authority	Siaya Town	+254-714-642981
2.	10/5/2013	Chris Abir	Director of Dominion Farms Ltd.	Dominion Farms Ltd.	Dominion Farms Ltd. Office at Yala Swamp	+254-713-551086 Chris.abir@domfarms.com
3.	8/5/2013	George Oraro Obalo	Yimbo Community Elder	Yimbo Community Resident	Kasau Village, North Yimbo, Bondo	+254-712-947067
4.	8/5/2013	Jacinta Maganda	Women's Representative	Maeneleo Ya Wanawake	Bondo	+254-722-738794
5.	9/5/2013	Elisha Omondi Okuku	Bondo Area County Assembly Representative	Siaya County Assembly	Bondo Town	+254-714-069960 and +254-735-727856
6.	9/5/2013	Willis Okoth Ochieng	Bondo Area County Assembly Representative	Siaya County Assembly	Bondo Town	+254-728-209764
7.	29/5/2013	Vincent O. Obondo	Friends of Yala Swamp Co-ordination Officer	Friends of Yala Swamp	Shititunga Plaza, Siaya Town	Friends of Yala Swamp Office, 3 <sup>rd</sup> Floor, Western Wing, Shititunga Plaza, Siaya Town
8.	29/5/2013	Rogers Ochieng	Human Rights Para-Legal Officer	Support Community in Democracy Alliance	USENGE Market Centre	+254-729-874076
9.	29/5/2013	Pauline Atieno	Programme Officer	Actionaid International	Usingu-Bondo Office	+254-724-398525

10.	28/5/2013	Chris Owalla	Executive Director	Community Initiative Action Group Kenya	Mwalimu Hotel, Siaya Town	+254-716-384135
11.	28/5/2013	Kenneth Otieno	County Environmental Officer	National Environment Management Authority (NEMA)	Siaya Town NEMA Office	+254-710-977104
12.	28/5/2013	Peter Kimwele	County Fisheries Officer	Fisheries and Marine Development	Siaya Town Office	+254-716-016267
13.	28/5/2013	Zacharia Mwangi	Kenya Wildlife Service Officer	Kenya Wildlife Service	Siaya Town Office	+254-335031
14.	28/5/2013	Ogola A. O.	Land Settlement & Adjudication Officer	Ministry of Lands	Siaya Town Office	Ministry of Lands Office, Siaya Town.

