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# The Dynamics of Land Deals in the Tana Delta, Kenya

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## **THE DYNAMICS OF LAND DEALS IN THE TANA DELTA, KENYA**

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## **Abstract**

*The Tana delta is within the Tana Delta District that was carved out in 2007 from the larger Tana River District in Coast province. The district headquarters is situated in Garsen and the delta is a common use area for the communities inhabiting the area. The delta is named after the Tana River, the largest river in Kenya that stretches over a total length of 1,000 km. The river originates from Mt. Kenya and Aberdares ranges in central Kenya and has a catchment area of about 95,000 Km<sup>2</sup>, which is approximately 17% of Kenya's landmass. The delta ranges between two kilometers and up to forty-two kilometers in width.*

*Large tracts of land within the Tana Delta have been set aside for large industrial scale farming and for mining by government and private agencies, as well as by foreign governments. In addition, settlement schemes have taken up some of the most important dry season pastures within the Tana delta and communities from outside the pastoral areas were settled there to undertake crop farming. The delta is therefore under unprecedented threat as corporations and foreign agencies scramble to exploit its riches for export crops, bio-fuels and minerals. While the delta provides immense environmental services to the country, developments that do not take the special circumstances of the delta into consideration may lead to the collapse of most of its services.*

*This study examines the various land deals in the delta and the actors involved. The terms of such concessions and their political manifestations are critically reviewed. In order to understand the dynamics of the land deals in the Tana delta, it is important to identify the justifying arguments being put forward by the proponents with a view to interrogating their plausibility, and giving a glimpse of what the future direction might be with regard to such deals, particularly in such a fragile ecosystem as the Tana delta.*

*Among the prominent land deals in the delta are the plans by the Tana Athi River Development Authority, TARDA, (a government agency), and the largest sugar company in Kenya, the Mumias Sugar Company, to convert about 40,000 ha of the delta into a monoculture sugar cane plantation. The Kenya Government has already given tenure rights and ownership of the 40,000 ha of delta land to TARDA, ostensibly to grow rice and maize as a response to Kenya's recent droughts and food shortage. Unfortunately, more than 25,000 people living in 30 villages will be evicted from their ancestral land that has now been given to TARDA.*

*Other land deals of significant concern within the delta and its immediate neighborhood include: Bedford Bio-fuels Inc, a privately held multinational company based in Canada, to acquire 90,000 ha of land through 45-year lease agreement, to grow *jatropha curcas*; Tiomin Kenya Ltd, a company incorporated in Canada, to mine titanium in the delta; another sugar company, Mat International, to acquire 120,000 ha of land in Tana delta and adjacent districts, and Qatar intends to lease from the Kenya government about 40,000 ha of land in delta to grow food crops, in exchange for supporting a major new port in nearby Lamu town. These and other acquisitions of smaller magnitudes in the delta are central to this study.*

## 1.0: Background of Tana River District

Tana River district falls within the arid and semi-arid lands (ASALS) of Kenya. Globally, the ASALS are estimated to make up more than 40% of the earth's surface and accommodate about 35% of the world population (Draft Sessional Paper, 2010). In Kenya, the ASALS account for more than 80% of the country's land mass and are home to about 10 million people and over 70% of the national livestock herd and most of the wildlife outside the protected areas.

Tana River district is one of the seven (7) districts that make up the coast province and is sparsely populated, with an estimated population of 240,075 people, including the Pokomo farmers who are Bantus and the Orma and Wardei pastoralists who are Cushitic, (Kenya Population and Housing Census 2009, (KPHC 2009)). The district's name is derived from the Tana River, the longest river in Kenya that runs along the entire eastern boundary of the district and is the major source of water for human and livestock consumption, and for wildlife and agricultural use. Towards its mouth between Mnazini and Kipini at the Indian Ocean, the river creates an extensive triangular landmass characterized by wetlands, which constitutes the Tana delta, and this is the richest pasture in the whole region. The delta forms a natural habitat for an enormously diverse flora and fauna, providing a fall-back grazing pasture for livestock during the dry season (by the pastoralists), while its waters are used for agriculture (by the Pokomo farmers and agro-pastoral Orma) and to a limited extent, fishing (by both the farmers and the pastoralists).

From north to south, the district stretches from the Equator to Latitude  $3^{\circ}$  South. From west to east it is located between Longitudes  $38^{\circ} 30'$  East and  $40^{\circ} 15'$  East. The location of Tana River District in Kenya, and in relation to the neighbouring districts is shown in Fig.1.1.

*Figure 1.1: A Map Showing the location of Tana River District in Kenya*



The district is expansive and has five (5) administrative divisions with a total land area of about 38,694 km<sup>2</sup> and an estimated population of 240,075 people (Kenya Population and Housing Census for 2009).

Politically, the district is divided into three parliamentary constituencies, including Bura, Galole and Garsen. The current study covers only one of these three constituencies, Garsen constituency, with an area of 12,649 km<sup>2</sup>, and part of Lamu west constituency, notably Witu division, which forms part of the Tana delta.

Climatically, Tana River District is hot and dry, except for the area along the Indian Ocean where it is normally hot and humid with little variations in temperature. The average annual temperature is above 25<sup>0</sup>C and may sometimes rise to above 30<sup>0</sup>C. The rainfall in the district is generally low, bimodal erratic and unreliable, with a mean annual range of between 300mm and 500mm. The coastal belt of the district receives a rainfall of 750 – 1250mm annually. However, a very narrow band around Kipini and Chara receives rainfall of between 1200mm to 1500mm annually.

The Tana River supports diverse livelihoods of the communities living in the district – mainly the farming and the pastoralist communities. While Pokomo Bantus are settled farmers, the Orma and the Wardei are nomadic and transhumant pastoralists; and both the farmers and the pastoralists derive their livelihoods from the Tana River. The farming and pastoralism lifestyles are distinct and often in competition. This has created periodic conflicts between these two communities, particularly during the dry season. These conflicts are said to occur whenever the Orma pastoralists try to access the river to water their livestock because the Pokomo farmers have occupied virtually all the river banks, leaving no space or access corridors for pastoralists to access the river water.

### *1.1: Sources of data*

The data and the information for this study was obtained through a mixed of approaches that included a review of the existing literature, focus group discussions and interviews with key informants including government officials, community leaders, and some individual Orma and Pokomo elders who were able to discuss their perceptions of the 'development projects' taking place in the delta and the alienation of their land in favour of the projects.

Secondary data that were consulted for this study include various works on rural livelihoods and the encroachment of community land by other interests such as irrigation schemes, agricultural projects, bio-fuel production, mineral extraction, national parks and other uses. Studies on settlement schemes in dry lands, mainly in the Horn of Africa, have also been considered.

Focus group discussions (FGD) and key informant interviews were conducted with groups such as women, youth, elders and religious leaders being consulted in the process. Key informants interviewed included some of the government officials concerned with land adjudication and local leaders such chiefs, councilors and a former member of parliament. The consultation with the groups and the interviews with the key informants focused on the situation prevailing in the delta, its genesis and the perceptions of these people regarding the impacts of the land deals on their livelihoods, and possible remedies.

## 2.0: Introduction to Tana delta

The Tana delta is one of the country's largest and most important freshwater wetland ecosystems that support a significant pastoralist community (the Orma and Wardei) and small-scale subsistence farmers (Pokomo) who are dependent on it and have been so for many generations. In addition, the delta is said to hold more than 50% of the national potential for irrigable land. The delta is quite extensive and consists of diverse habitats including semi-arid acacia thorns, dry land savannah, coastal forests, grasslands, beaches, sand dunes, ox-bow lakes, mangrove swamps and seasonal as well as permanent freshwater pools. The seasonal flooding keeps the area fertile throughout the year and the local communities adapt their livelihood activities in tandem with such flooding patterns.

The Tana delta consists of Garsen, Tarasaa and Kipini trading centres with a total area of about 16,012 km<sup>2</sup>, as depicted in table 2.1 below; in addition to Witu division of Lamu West constituency.

*Table 2.1: Land size and composition of the delta*

Area (km <sup>2</sup> )	Km <sup>2</sup>			
	Garsen	Tarasaa	Kipini	Total
Total Area	14,460	838	714	16.012
Arable land	2,892 (289,200 ha)	502 (50,200 ha)	428 (42,800 ha)	3,822 (382,200 ha)
Water Mass	2,880	168	178	3,226
Range land	8,688	168	108	8,964
Tana river length in Km	130	30	60	270

Irrigable Land 764.4 Km<sup>2</sup> (76,440 ha); Nabutola, W.L. (2009)

The delta has a rich and diverse species of biodiversity including some endangered species. The fragility of the delta and the risk posed by the sustained alienation of land for various uses has been of great concern to the local Orma community and conservationists as well. The extent of the delta and the area it covers is depicted in Figure 2.1 below.

*Figure 2.1: A map showing the extent of the Tana Delta*

QuickTime™ and a  
TIFF (Uncompressed) decompressor  
are needed to see this picture.

*Source: Olivier Hamerlynck & Stephanie Duvail*

The delta also provides critical pastures for hundreds of thousands of heads of cattle for the Orma pastoralists, and to a lesser extent, the Wardei. During the dry season, the Orma and many other pastoralists from neighbouring districts rely entirely on the delta for pastures for their cattle, sometimes reaching a peak of over 3 million heads (as was the case during the 2009 drought), some of which often remain within the delta throughout the year. The delta also supports small-scale crop cultivation by Pokomo farmers and some Orma agro-pastoralists,

growing crops such as maize, beans, peas, bananas, mangoes, cassava, melons and several vegetables, on small plots of less than two acres each. In addition to the farmers and the pastoralists, the delta also supports minorities of hunter-gatherer communities, collectively known as the *Wasanya*, and sometimes referred to as the *watta*<sup>1</sup>.

These indigenous communities of the river basin have practiced traditional land use activities like small-scale agriculture, fishing and livestock keeping as well as harvesting of wetland resources and products for hundreds of years without any major negative impacts on the environment. These traditional methods of natural resources utilization have always been maintained at sustainable levels using traditional governance and regulatory mechanisms, thereby contributing to their conservation and sustainable utilization.

### *2.1: The changing political economy of dry lands*

According to FAO estimates, 20 Million ha have been acquired by foreign investors in Africa alone over a period of 3 years, with long leases of 30 to 99 years. World Bank data estimates that 37% of all 'land grabs' is for agrofuels production, and that is expected to grow many fold by 2045.

It has been observed that the dry lands of East Africa have witnessed unprecedented interests from various avenues over the last few years. For instance, Helland maintains that pastoralists are specialists in the art of surviving in marginal environments but they continue to be pushed to 'the margins of larger society in a social and political sense as well' (Helland (2001: p. 56). Similar views have been expressed by other scholars pointing out the fact that various interventions by governments and other actors have favoured crop production in areas which were traditionally the home of pastoralists and/or agro-pastoralists, thereby undermining the very basis of the pastoralists livelihood (Abdel Ghaffar Ahmed, 2001; Pankhurst & Pigué, 2004). Baxter also poses a similar argument that the main threat to pastoralism today continues to be the end of the communal grazing land, privatization and alienation of grazing resources (land and water) and most critically, the restrictions on pastoral mobility (Baxter, 2001: p. 244/5). Pankhurst & Pigué further maintain that many of the negative effects on pastoral livelihoods have been promoted either directly or indirectly by government interventions through development projects and settlement schemes (Pankhurst & Pigué, 2004: p. 9).

Writing on pastoralists in the Sudan, Salih observes that wherever land-based resources formed the main sources of their livelihood, the denial of the pastoralists' access to these resources that were vital to their survival became an issue of resource security that is related to both pastoral sustenance and to the environment (Salih, 1999).

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<sup>1</sup> According to Councillor Abaloni Racha Abaloni of Tana River County Council, *Watta* is a distortion for 'wato', which means 'few'. The mythology on the 'Wato' maintains that they are offspring of a brother and a sister who had an incest relationship and were made outcasts from their community, the *Karayu*.

### **3.0: Land Deals in Developing Countries**

Over the past years, vast tracks of agricultural lands have been taken over by foreign firms. Much of this land is located in African countries with fast increasing populations suffering hunger and undernourishment. Such land acquisition has been happening outside public scrutiny and many details are still concealed. FIAN International points out that the current losses of land facing small-scale farmers and pastoralists is reminiscent of those experienced during the colonial times.

For a long time now, women, peasants, small producers, pastoralists and indigenous people have seen their traditional lands taken away by powerful actors, including their own government, national elites or large local and foreign investors. FIAN International further maintains that land grabbing, even where there are no related forced evictions, drastically reduces land availability for land scarce groups, reduces the political space for peasant oriented agricultural policies and gears national markets towards agribusiness interests and global markets, rather than sustainable peasant agriculture for local and national markets and for future generations. This is particularly detrimental in societies where the peasantry counts for a large percentage of the population – and where there is considerable population growth – hence the state obligation to provide access to productive resources.

According to the Oakland Institute, the three main drivers of the land grab movement include the rush by increasingly food insecure nations to secure their food supply; the surging demand for agro-fuels and other energy and manufacturing demands, and the sharp rise in investment in both the land market and the soft commodities market. The Oakland Institute argues that many governments are looking to stabilize supplies by acquiring foreign lands for food production in the hope of averting domestic social unrest and political instability over food price and supply. Fears of food shortages remain real since food prices have failed to come down in many countries, with food emergencies persisting in several of these countries. For instance, the Gulf States with scarce water and soil resources on which to grow food, but which have vast oil and cash reserves, are said to be conducive for food import dependency, and their food supply has become increasingly uncertain and evermore expensive.

#### ***3.1: Definition of 'land grab'***

The term land grab is often referred to the purchase, lease or other form of alienation (taking possession) of huge tracts of land, mostly in poor developing countries, by national government agencies, private investors and wealthier food

insecure nations, aimed at producing crops, bio-fuel or minerals, for export. Other authors prefer the term (trans) national commercial land transactions as it pertains to both transnational and domestic deals, and underscores the commercial nature of the transactions regardless of scale and output markets.

Although there are many actors on the 'land grab' stage in the Tana delta, some of the most pronounced and of significant impact are discussed in this section. A new type of land grabbing is said to be taking place in many parts of the developing countries, in which foreign investors (both public and private) are taking possession of huge stretches of fertile land for agricultural production in some of the poorest countries in the world.

It has been argued that the current land grab that is characterized by unprecedented pressures on land resources is placing new tensions on land tenure systems. Consequently, large corporate land deals have the effect of reducing any chance of poor nations attaining food self-sufficiency, and some actually consider such land concessions as government outsourcing food at the expense of their most food-insecure citizens.

It is ironical for these food deficit poor countries to concede their most fertile land to foreign countries and corporate investors instead of using it to boost their domestic food production. Land is considered as a vital resource necessary to meet the domestic needs of developing countries and generate meaningful employment and well being of their citizens. Unfortunately, the current trend of land grabbing is putting private interests in direct competition with land for local food production, a situation that cannot be tolerated in the face of growing hunger among the world's poorest populations.

What could be the causes of the current rush for commercial lands in the developing countries? Although there may not be 'the only causes' as such, several factors have been adduced as being responsible for the growing trend of land grabbing. The increasing pressure to produce agrofuels as an alternative to fossil fuels is reported to have created an artificial demand (for agrofuels) that is unprecedented among cash crops. Other contributing factors are said to include the global food crisis and the financial crisis.

### ***3.2: Examples of land grab in developing countries***

In a recent study on Ethiopia, Ghana, Madagascar and Mali, about two million hectares of land across the four countries are said to have been signed over to foreign interests, including a 100,000 ha irrigation project in Mali and a 450,000 ha plantation for agro-fuel in Madagascar. In 2009, the government of Ethiopia marked out 1.6 million hectares of land, extendable to 2.7 million hectares, for investors willing to develop commercial farms.

To guarantee the food security of their own populations, a number of food importing nations have started to purchase or lease land in developing countries, to actually outsource their own food production. Apart from the Gulf States, China, Korea, India, Japan, Libya and Egypt appear among the major investors looking for fertile and water abundant farmland. In the case of southern Brazil, the indigenous Guarani are said to suffer high rates of suicide, malnutrition, unfair imprisonment and alcoholism, and are regularly targeted and killed by gunmen hired by the ranchers who have taken over their land.

The Emirate of Qatar is said to have only about 1% of its land suitable for farming and has leased 40,000 ha in Kenya for crop production, while recently acquiring holdings in Vietnam and Cambodia for rice production, and in Sudan for oils, wheat and corn production. The United Arab Emirates (UAE) on the other hand, imports 85% of its food requirements, and has recently purchased 324,000 ha of farmland in Pakistan. Similarly, Saudi Arabia and China are also said to have shown interest in leasing large tracts of land in Pakistan.

Countries such as China, Japan and South Korea are also said to be seeking to acquire land as part of their long-term strategy for food security. In the case of China that aims to increase its rice production from 100,000 tons to over 500,000 tons within a period of five years, has looked abroad to other Asian and African countries and has so far purchased over 100,000 ha in Zimbabwe in 2008 and has invested about 800 million dollars in Mozambique in modernizing agriculture for export rice production. Similarly, Japan and South Korea have opted to rely on imports rather than self-sufficiency to feed their people, with both countries sourcing about 60% of their food national food needs from abroad. In its latest land deals, South Korea is said to have acquired over one million hectares in Sudan, Mongolia, Indonesia and Argentina.

In what the Oakland Institute refers to as the second largest farmland deal to date and which was finalized in mid 2008 but was not reported in the media until early 2009, a U.S. investor signed a lease of 4,000 km<sup>2</sup> with a Sudanese warlord from Southern Sudan.

Furthermore, substantial land investments for agro-fuel production have been reported in Ghana, Senegal, Mozambique, Guatemala and Brazil, resulting in massive displacement of numerous smallholder farmers in the process. In Ghana for example, over twenty companies from various countries are said to be acquiring land there to cultivate non-food crops and other crops for the production of ethanol and bio-diesel, mostly for export.

### *3.3: Effects of land deals in developing economies*

The consequences of global overuse of resources, in particular climate change and loss of biodiversity are most severe for future generations; the loss of biodiversity leads to extreme vulnerability of food production, global warming leads to loss of fertile lands, water resources, and hence food production.

With the expansion of the land under the irrigated monoculture in Ethiopia, severe environmental degradation was reported, with loss of forests along the Awash River that was hitherto essential for the pastoralists, (Gameledin, 1987). Construction of dams and dykes for the development of irrigated farms changed the seasonal run-off patterns of the Awash River, so that the sensitive wetland ecosystem within the floodplains got severely disturbed (Bodestan, 1974; Flood, 1976; Kloos, 1982). Currently soil degradation due to salinization poses a serious problem that also affects the surrounding pastoral communities, which suffer from extremely salty water. Besides, the health risks on pastoralists have increased significantly due to herbicides and pesticides that are washed into the Awash River and worsen the quality of the river and the ground water that is used for consumption.

According to the Afar pastoralists, they feel excluded from the projects in the name of development and they are afraid of the socio-economic consequences of the large influx of the immigrant labour from the high lands that has come to work on these projects. As a result of the new large schemes in the pastoral areas, a growing number of Afar and Karrayu pastoralists are gradually losing their pastoral production basis, and are forced to search for alternatives by supplementing their livelihoods with subsistence oriented cultivation of maize and sorghum, and/or low-paid wage-labour like the picking of cotton. In addition, in the face of increasing land scarcity and the monetarization of land, violent conflicts among Afar clans have become more frequent and threaten the social fundamentals of the clan society. Thus, pastoral vulnerability is increasing as in the process of agricultural industrialization new risks are produced, that gradually undermine pastoral coping capacities and resilience (Rettberg 2010). The negative costs of modernization and national food security have to be paid by the pastoralists.

Destroying the capabilities of the pastoralists is just the opposite of the declared aim of food self-sufficiency for Ethiopia and preventing malnutrition and famine. The benefits of the irrigated monoculture of cotton and sugarcane and ethanol do not appear to reach the Afar pastoral community, which are obliged to leave their territory or to sedentarize around the new towns created by the 'development' projects without any hope of development, after having lost their livestock.

The socio-cultural impacts of these large projects on the pastoralists are also monumental. For instance, the large numbers of single male workers on the schemes have tended to attract many girls from Addis Ababa and other highland towns in search for survival by selling sex. Thus, the new lifestyle imported from

outside will endanger the Afar way of life, with changes which it could be hard to define as 'progress' or 'development'.

The policies of most of the African governments tend to push nomadic pastoralists towards sedentarization, according to the old theory that considered nomadic pastoralism as an ancient mode of production, inferior to the agriculture in the development of human civilization. In reality however, most studies have shown that it is the most profitable way to exploit a semi-desert environment from an economic point of view.

The Oakland Institute points out that rapid acquisitions of crucial food-producing lands by foreign private entities pose a threat to rural economies and livelihoods, land reform agendas, and other efforts aimed at making access to food more equitable for poor and vulnerable populations in many developing countries.

In the case of Kenya, various government policies have never been supportive of the nomadic pastoralist production. This lack of support is discernible in the government statements espoused in vision 2030, national economic blueprint to the year 2030. The government could phase out nomadic pastoralism by converting the few remaining wetlands into irrigated agricultural land. Through the government policy on irrigated agriculture, wetlands will be taken away, pasture availability would become more unsustainable and many pastoralists would fall into destitution.

#### **4.0: The Kenyan Situation**

In Kenya, the issue of illegally acquired land is an emotive issue that has been in the heart of the land debate in the country over the years.

There are three types of land tenure systems in Kenya: private land, public land and trust land. Given that Kenya is a developing country, it needs a lot of land for public benefits and yet it has little left in terms of land banks for that purpose. The newly adopted National Land Policy (NLP) and the recently promulgated new Constitution point out the following as the main objectives of a good land administration system:

- Access and beneficial occupation and use of land for all Kenyans, especially the poor;
- Economical, socially equitable and environmentally sustainable allocation and use of land;
- Efficient, effective and economical operation of land market.

The New Constitution stipulates that 'the natural resources of Kenya belong to the people of Kenya, and the government merely holds them in trust for the people'. The new Constitution distinguishes between public land, private land and community land. The category of government land that was previously 'owned' by the state and for which the president had been empowered to allocate at will, will be replaced by public land under the National Land Commission which

will be accountable to parliament. The president will therefore no longer have the privilege of giving out land to his political cronies freely. What was hitherto trust land is now community land, and will not be 'held in trust' by the county councils as has been the case in the previous constitution, but instead administered by local communities. In the past, both the county councils and the central government treated trust land as if it were government land and the communities were simply informed when trust land was leased or even sold.

KNCHR and the Kenya Land Alliance point out that 'public land was an attractive patronage asset because it was accessible, with the President illegally converting his constitutional powers as trustee of public lands (on behalf of the public) to *de facto* ownership powers'<sup>2</sup>.

The 'Vision 2030' which provides the development roadmap for Kenya to the year 2030, considers foreign investment as key to agricultural development. The government sought to attract investors with the particular intent to grow cash crops both for export and for domestic consumption. For instance, the Kenya Investment Authority points out that sugar production stands at 402, 000 tons per year while the demand stands at 600,000 tons per year, hence the need to meet the shortfall through increased agricultural investment.

Land grabbing in Kenya has its genesis in pre-independence Kenya when a small group of white settlers were allocated 20% of Kenya's landmass consisting of the best agricultural land. Kenya is said to be the most unequal society in the whole of East Africa. It is not unusual to find the very poor and landless pitching camp outside thousands-acre swathes of land invariably owned by former or serving government bigwigs or politicians.

Poverty is endemic in Kenya with approximately 56% of the population living in absolute poverty. It is estimated that 10 million people suffer from chronic food insecurity and about two million people rely on food assistance at any given time. Around 32% of the entire population is undernourished. While rates of chronic malnutrition are evident all across Kenya's regions, acute malnutrition is extremely high in Northeastern province and the Tana River district of Coast province, under which the Tana delta falls. Every fourth child in northeastern province is said to suffer from acute malnutrition (wasting), contributing to higher child mortality in the province.

Unfortunately, quantifications and detailed information on land grabbing are often inadequate due to the unwillingness of both governments and businesses with vested interests to fully disclose information on negotiations and deals made, as well as the terms of the deals. It was extremely difficult for us to extract the necessary information from those involved in the land deals.

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<sup>2</sup> The president has powers to make grants of freehold or leasehold of un-alienated government land to companies and individuals for the **public good**.

#### *4.1: Land deals (land alienation) in the Tana Delta*

Lack of access to land is a major determinant of poverty, as more than 80% of the population depends on agriculture for their livelihoods and growing inequality in land ownership as well as smallholdings contributes to high levels of poverty. From the 20% of the land that is suitable for cultivation, only 12% is classified as high potential (adequate rainfall) agricultural land and 8% is medium potential land. The rest of the land is either arid or semi-arid, and only suitable for extensive livestock production or partly for irrigation.

Nearly all the land in Tana River and Tana Delta districts is trust land and an overwhelming majority of the settlers do not have titles to their ancestral lands. They are considered as 'squatters' by the authorities although they may have lived on the same place for generations. This legal situation makes them vulnerable to land grabs by powerful persons or institutions that use the district administration and the Ministry of lands officials to acquire title deeds for lands occupied and/or tilled by others. It is common to find an individual or a firm with a title deed for large tracts of land in the delta that they may never have seen at all.

The Tana delta is fragile, dynamic and extremely rich and important wetland system that requires careful planning in its utilization. The delta is currently under unprecedented threat as government, corporations and foreign agencies scramble to exploit its riches for export crops, bio-fuels and minerals. While the delta provides immense environmental services to the country, developments that do not take the special circumstances of the delta into consideration may lead to the collapse of these services and the destruction of livelihood sources for host communities that depended on these resources for generations.

Large tracts of land within the Tana delta and the adjacent districts, have been set aside for large industrial scale farming, bio-fuel production and for mining. In addition, settlement schemes have taken up some of the most important dry season pastures within the Tana delta and communities from outside the pastoral areas were settled there to undertake crop farming. The resource tenure implications of all these dynamics are such that individual/private ownership of land is increasingly replacing the communal ownership of land and land-based resources. Increasing alienation of communal lands in the delta will result in the development of private ownership of the land, which was hitherto communal in ownership and use.

#### *4.2: Different land deals in the delta*

#### *4.2.1: Tiomin Mining*

*Tiomin Kenya Ltd*, a company that was originally incorporated in Canada but whose local subsidiary has now been bought by the Chinese, has proposed the extraction of Titanium from the sand dunes of the Tana delta. The Tiomin Company is based in south coast in the districts of Kwale and Msambweni. The Tana delta has been identified to hold huge Titanium deposits that could augment the company's production in Kwale district. Although the actual size of the delta land that would be involved is not yet known (but expected to be more than 20,000 ha), the company is said to be in discussions with the local government officials at the delta (Tana River County Council) and the deal is yet to be sealed.

From the outset however, it is clear that the negotiations for this land for mining is in breach of the country's laws. For instance, there has been no participation of the local community in the process, yet the Mining Act as well as the Environmental Management and Coordination Act require public participation in decision making on issues such as this.

#### *4.2.2: TARDA-Mumias Partnership*

Another prominent land grab in the delta is that of a public private joint venture between the *Tana Athi River Development Authority (TARDA - a government agency)*, and the *Mumias Sugar Company*, to convert about 40,000 ha of the delta into a monoculture sugar cane plantation for agrofuels. The Kenya Government has already given tenure rights and ownership of the land to TARDA, ostensibly to grow rice and maize as a response to Kenya's recent drought and food shortage. Unfortunately, more than 25,000 people living in 30 villages stand to be evicted from their ancestral land that has now been given to TARDA. A local conservation lobby challenged the government decision in the High Court in their effort to halt the project. Unfortunately, the High Court ruled in favour of the project on a technicality and the local lobby was asked to bear the entire cost of the suit. With tenure rights and ownership of the over 40,000 ha, TARDA has now commenced the fencing of their land using electric fence, which is likely to claim lives of innocent Orma pastoralists and/or their livestock and those of the adjacent Pokomo farmers.

Besides the 40,000 ha now under its ownership, TARDA already owned a large part of the Tana River delta, estimated between 130,000 and 200,000 hectares of high-potential wetland where a rice project had been initiated in the 1990s, which later collapsed. Farmers and pastoralists are now partly using this land, but now planned for the sugar project. TARDA is supposed to provide the land and Mumias Sugar Company Ltd would run the plantation and the sugar factory. The allocated land is basically trust land and any alteration to the land tenure ought to be in consultation with the affected communities. Instead of consulting the affected communities, the county council of Tana River merely informed them when the land was being leased out.

It has been argued that the social and economic costs of the sugar project far outweigh its expected benefits. A local Kenyan daily captured these concerns and raised the concern that: “*Barely a month after it was approved by the National Environmental Management Authority, the Tana Integrated Sugar Project at Kenya’s Coast has come under fresh attack by environmentalists and local leaders, who say its environmental and social costs at \$59 million far outweigh its projected benefits of \$19 million*”<sup>3</sup>.

#### *4.2.3: Mat International*

Another sugar company, *Mat International*, is in the process of acquiring 120,000 ha of land, 30,000 ha of which are within the delta and the rest from the adjacent districts. The company is said to be undertaking the mandatory environmental and social impact assessment, and it is yet to be seen if the project will receive the requisite approval by NEMA (National Environment Management Authority). Interestingly, the local communities appear to be more receptive to the *Mat International* compared to the *TARDA-Mumias* venture because the former is said to have planned to give more than 50% of the land to the locals for use as outgrowers, while the latter will undertake the production themselves, providing for a paltry 4,000 ha that would be set aside for the locals to use as outgrowers.

#### *4.2.4: Bedford Bio-fuels*

*Bedford Bio-fuels Inc*, a privately held multinational company incorporated in Canada, is said to be in the process of acquiring 90,000 ha of delta land through 45-year lease agreement, to grow *jatropha curcas*. The land is currently owned by five local group ranches and is all open land where the pastoralists often graze their cattle without much hindrance. However, it is expected that the land will be fenced off when the company finally takes over its ownership for the production of the *jatropha* bio-fuel.

#### *4.2.5: G4 Industries*

A more recent arrival on the land alienation scene in the delta is the *G4 industries*, a new British company registered in England in 2008 that proposes to acquire about 50,000 ha of the delta to undertake oil seed farming. The company is said to have already prepared the statutory environmental and social impact assessment and has received significant feedback comments from the local communities and conservation organizations working in the area. Whether it will finally receive approval is yet to be known, but is most likely.

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<sup>3</sup> *The East African*, 30 June 2008.

#### 4.2.6: Galole Horticulture Project

*Galole Horticulture Project*, belonging to a Kenyan from Eastern province, has alienated 5000 ha of delta land. The County Council pretends not to be aware of this deal and denies allocating any land to this individual. There is no official record of the land being transferred, but the grabbed land is already under use by the project developer who has cleared about 5% of the land so far and planted maize. When he clears the rest of the land and fences it off, more delta land will be lost and the Orma and Wardei pastoralists will be put under more pressure to search for pasture from outside the delta.

Besides the various private interests by the companies and government institutions mentioned in the foregoing paragraphs, some foreign governments have also been part of the 'land-grabbing spree' taking place in the Tana delta. In 2009, the announcement that Kenya would lease for a period of 80 years, part of the Tana delta to another country to farm in the delta and export the produce to its people, raised national outrage but did not succeed to stop the transaction.

#### 4.2.7: Land for Emirate of Qatar

Following a three day official visit of Kenya's president in November 2008 to the Gulf emirate of Qatar, it came to be known that Kenya would receive a US\$ 3.5 billion loan to build a second deep water port, and provide in exchange 40,000 ha of land to Qatar to grow food. However, since this was brought to the public domain by Kenyan media in December 2008, nothing more has been heard of this deal. Regarding the land deal between Kenya and Qatar, a Kenyan local daily attempted to contextualize the on-going rush for the Tana River delta land and argued that '*The reported land deal between Kenya and Qatar is not unique. Global trends point to resource-hungry nations snapping up huge tracts of agricultural land, mostly in poor Asian and African nations in what activists say is a 'land grab' that will worsen poverty levels*'<sup>4</sup>. In this acquisition, it was explained that the indigenous peoples would be relocated, because they were few and barely utilized the land. This contention tends to ignore the extensive use of the pastures by nomadic pastoralists who utilize the varied ecosystem in different times of the year.

If this deal between Kenya government and the emirate of Qatar succeeds, 40,000 hectares of this fertile land will be leased to the emirates of Qatar for an 80-year period to provide horticultural produce for the Qataris. Although the exact location of the proposed plantation is not yet known, the local communities point out the only possible location could be somewhere in the middle part of the delta. Given that Kenya is a food deficit country with perpetual dependence on relief food distribution for a significant part of its population, it came as a big shocker to many Kenyans that the government could 'sell away' its land when over 10 million Kenyans faced starvation following the 2009 and the 2011 droughts. At

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<sup>4</sup> The Standard, 6 January 2009

any given time, it is estimated that about 30% of Kenyans (about 13 million Kenyans) are faced with acute food shortage for most part of the year.

A Kenyan media pointed out thus, “*The current dispute over the alienation of more than 100,000 acres of prime land in the Tana delta is just one example of the presidential opaqueness that continues to cost Kenya dearly. The issue here is not legal, but economic, political and moral*”<sup>5</sup>.

The net effect of all these alienations of community land would be the displacement of tens of thousands of people, mainly the pokomo farmers who are smallholders growing subsistence crops such as maize, cassava, beans, vegetables and mangos. The Orma and the Wardei pastoralists and the agro-pastoralists among them would also suffer immensely as the delta has been used as the grazing land for their cattle for several generations. The new projects would use irrigation that is likely to cause severe drainage of the delta, leaving local pastoralists and farmers without water for their livestock during dry seasons. The projects could block access to the river.

Gabre made the observation among the Karrayu of southern Ethiopia that state-sponsored land alienation made the Karrayu to retreat to the periphery subjecting them to an ever-shrinking resources that gradually pushed them deeper and deeper into a vicious spiral of less productivity and increasing impoverishment (Gabre, 2004: pp. 251).

#### *4.2.8: Private ranches*

There are several private ranches, the most prominent of which is an 80,000-acre ranch, the Nyangoro ranch that was curved off by some Orma elites so that they could keep their animals there and protect the pastures therein from encroachment. They are yet to be given documents of ownership but everyone knows the land as their ranch. There are also several other private ranches – often ranging between 35,000 acres and 150,000 acres. Most of these are owned by members of the Orma community who live in urban areas of Nairobi, Mombasa and (possibly even) outside the country, and others by Pokomo elites. A striking feature of almost all the private ranches is that they are not fenced and access by the pastoralists for grazing their livestock is usually less controlled than it would have been had they been enclosed.

The restriction on the grazing resources posed by the continued grabbing of their ancestral land has led the Orma pastoralists in the delta, with the support of their elites, to organize themselves into groups and carve out for themselves group ranches so that they may ‘save’ some land for their livestock in the process. In that regard, I was able to identify seven (7) ranches including Idassa Godana, Giritu, Hagadandi, Kibusu, Kitengela, Wachu Oda and Kone Dertu. There are

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<sup>5</sup> *Daily Nation*, 2 January 2009.

also individual Orma elites who have appropriated some private ranches for themselves as part of the protection mechanism being adapted by the Orma community in the face of the increasing pressures on their land.

### **5.0: The impact of 'land grab' on the local communities**

The various land deals discussed earlier in this paper have had significant and far reaching impacts on the livelihood strategies and social support mechanisms of the Orma pastoralists and the Pokomo small scale farmers in Tana delta, with the overarching impact being the restriction of access to key land-based resources. The responses by the local Orma community and their allies, mainly conservation organizations, have been diverse, including demonstrations and seeking the intervention of the judicial courts to stop some of the most serious land 'grabs' in the area. Following the granting of a license to Mumias and TARDA for turning the delta wetland into a monoculture of sugarcane, the Orma community with the support of a conservation lobby group petitioned to the High Court, praying for the halting or even reversal of the decision. However, Kenya's High Court ruled in favour of the project developers (with costs) on a technicality, in 2009. Unable to receive any hearing from their own government, the Orma pastoralists decided to be pro-active by 'grabbing' their own grazing corridors that were left between the settlement schemes, as a safeguard measure against the encroachment and grabbing of the same by foreigners (from outside the community).

Under comparable circumstances in Mozambique, a government supported bio-fuel project, the ProCana project, was initiated without due regard to its consequences for communities' access to land and landed resources and their livelihoods. The ProCana project had requested for 30,000 ha fertile land to be irrigated using the waters of Missingir dam. In response to claims of displacement of local communities, the President of Mozambique was quoted as saying during the launch of project, thus 'bio-fuel production will not dislodge Mozambican farmers from their lands. What would be utilized for agro-fuel production are currently underutilized or empty lands, and the project would avoid using land currently used for food production'<sup>6</sup>. However, facts on the ground point to a different picture – at least 400 households would be displaced by the project, disrupting their livelihoods and destroying their socio-cultural fabric irreversibly. Although the Mozambican laws require public consultation before the project could be implemented, it was revealed that only community elites and the elders were consulted and most of them gave the green light to the project, depicting the social disconnect between the elites and the grassroot community members. Should the ProCana project get to implementation, it is said to effectively alienate up to 100,000 ha of land, more than three times its initial allocation of 30,000 ha.

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<sup>6</sup> FIAN International Secretariat (2010): Land Grabbing in Kenya and Mozambique – A report on two research missions; and a human rights analysis of land grabbing.

Zaal and Dietz point out that when access to adequate grazing land and water is restricted in pastoral areas, investment in private water facilities and commercially available feed will be required, including payment for cultivators' stubble fields after harvests (Zaal & Dietz, 1999). However, it should be noted that such investments in water facilities and high value fodder (including farm residues) may only be accessed by the rich and the medium wealth pastoralists, leaving the poorest pastoralists at the mercy of mother nature, with the possibility of losing all their stocks to droughts. The situation among the Orma pastoralists in the delta has been observed to reflect this tendency where the better-off herders often purchase farm residues and accessing high value fodder through the leasing/renting of private ranches during times of pasture scarcity. This situation is expected to increase in occurrence given that the grazing land in the delta is ever declining with the sustained pressure of land grab that is taking place.

Since foreign land acquisition is profit-oriented and largely export driven, it will foster the introduction/deepening of an industrial agricultural mode of production in the host countries. This mode of production entails massive loss of topsoil, destruction of biodiversity and the release of large amounts of CO<sub>2</sub>. This in turn displaces local producers of food crops, hence negatively affecting local availability of food as it diverts food producing resources and labour to cash crop production, while subjecting the local communities to the vagaries of the volatile food markets that face export crops.

Some of the immediate impacts of the land deals in Tana delta on the local communities include the following:

- Low educational levels of the communities living in the Tana delta is an indication that the uptake of ideas about the proposed project might prove to be a challenge to the indigenous people since it has been established that literacy levels dictate the uptake of any innovation of intervention;
- The community is afraid that more children will drop out of school and get into child labour and other vices due to introduction of money economy that would be instituted through plantation farming that would require human labour;
- The Tana delta offers dry season grazing relief to the pastoralist, and this would be difficult to attain since the sugarcane, bio-fuel and mining projects would be purely plantation based and highly capital-intensive. The traditional ancestral pastures/grazing land would be taken over by these projects. The grazing lands are a source of cultural heritage to the indigenous people and there is real danger of losing the cultural identity by the community;
- Low food production complemented by high poverty levels of the populations in the delta could push people to stop producing subsistence crops in favour of cash crops. The resultant effect could be greater

dependence on food relief from government and humanitarian agencies should the price of bought food increase to prohibitive levels in the future, and,

- The indigenous communities would lose their rights of access to land and food resources as the new land owners discussed earlier would have exclusive rights to the land in the delta including the areas bordering the riverbanks.

Thus, the new projects would adversely affect the livelihood systems of the indigenous communities and thus expose them to losses of property, cultural identity and heritage. It is also evident that the proponents of the projects have engaged in limited fashion with indigenous communities and what they feel or say about the projects.

The rhetoric of the investors and states that attempt to justify land grabbing often mention the issues of job creation, infrastructural development and economic improvement. However, the reality on the ground does not seem to support this contention. The reality facing the people is as follows:

- No jobs, because the industrial farming only requires a small number of workers. The wages are very low and the employment is seasonal and often precarious; no new schools worth mentioning and equally no provision of health facilities as promised;
- Infrastructure is not for local needs but usually for export purposes – including ports, highways and international airports; and
- The projects lead to loss of access to lands, water and fishing grounds.

The damages provoked by large monoculture projects in the developing countries are not limited to the destruction of local livelihoods. The inevitable consequences of these capital-intensive investments are the imposed and often violent change of the traditions and ways of life of the concerned local communities, irrespective of the country in question.

Speaking on the case of Ethiopia, Getachew as quoted by Ethical Sugar, points out that, 'large-scale irrigation schemes run by private agricultural investors and the state ... have failed to live up to the government's expectations such as bringing foreign currency, food security, provision of raw materials, creation of jobs, and transforming pastoralists into self-sufficient sedentary farmers and ranchers' (Getachew, Kassa Negussie (2001, p. 95).

## **6.0: Conclusion**

The future of the Orma pastoralists that is increasingly getting linked to the political economy of the coastal region as well as the national economy is facing multiple pressures from the ongoing projects by the government and the other land deals that are ever on the increase. The new Kenyan constitution that will

create a National Land Commission could provide some reprieve from the land 'rush' currently taking place in the delta, since power and financial resources will be devolved to the Counties and the National government will have no say on what happens to the land and land use systems at the local level. The National Land Commission will have only oversight responsibilities on the land issues countrywide, but no responsibilities for distributing land anywhere in the country except any land that belongs to the National government. Aware of the restrictions that will be imposed on the Ministry of lands, and the eminent abolition of the all-powerful office of the Commissioner of Lands, there is now apparently a land rush before the new legal structures come into operation.

It has been argued that many of the countries in the Horn of Africa consider the sectors of Pastoralism and agriculture as distinct fields as far as policy formulation is concerned. Often the responsibilities of agriculture, forestry development and that of the livestock development are entrusted to different government institutions or ministries without any provisions for coordination and cooperation, resulting in contradictory and sometimes conflicting policy objectives and goals. Given the centrality of all the three sectoral areas of pastoralism, forestry and agriculture, there is need to reconsider policy formulations with a view to creating harmony between these critical sectors in the drylands of Eastern Africa.

The fragile ecosystems of the ASALS require cultural and ecological adaptations to development in the pastoral areas. Thus, policy in the drylands should focus on promoting the pastoral sector, including pastoral land use systems, pastoral lifestyle and the support of pastoral mobility with a view to ensuring the sustainability of pastoral livelihoods. In order to protect pastoral lands from the increased land grab currently taking place in many parts of the pastoral areas in Kenya, and particularly in the Tana delta, it is incumbent upon the government to put in place mechanisms that will mitigate against alienation of these lands, by ensuring that the letter and the spirit of the new Constitution is observed. Meanwhile, the current development proposals tend to put the people, biodiversity and ecological functions of the delta in great jeopardy.

## **7.0: Recommendations**

1. Although it is likely to take time to compile ecological, hydrological and socioeconomic data, and to map out the delta, the Kenya Wildlife Service (KWS) is spearheading efforts to get the delta listed as a Ramsar wetland of international importance. NEMA should collaborate with KWS in ensuring that the delta is saved from further grabbing. At least 130, 000 ha of the most critical parts of the Tana River floodplain and Tana River delta should be designated as national protected areas. This will set the stage for any permitted developments in the remaining area of the delta, which will need to be designed to ensure the integrity of the Protected Areas.

2. All allocations of trust lands to individuals and companies contrary to the provisions of the constitution, Trust Land Act and the Land Adjudication Act be revoked, and such lands in question should revert to their original purpose.
3. Using food crops such as sugar for fuel has raised food prices, leading to riots globally, including in Kenya. Let the Kenya government know that destroying ecosystems for toxic monocultures is unethical, and they should follow their own environmental laws and disallow such mega projects that destroy the delicate ecosystem of the delta.
4. All developing countries should prevent large scale land acquisitions and initiate the urgently needed international regulation, including a legally binding agreement related to the proper regulation of financial and other actors active in agricultural investment, to avoid the rampant land grabbing that we see today.
5. The national environmental agency in Kenya, NEMA should demand and take the lead in facilitating a Conservation and Development Master Plan for the Tana delta. This plan should be drawn up in consultation with other government agencies and stakeholders. The Plan should include an economic assessment of the local, national and global Environmental values of the Tana delta.

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