
Land Grab in Kenya

Implications for Small-holder Farmers

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Background

The recent phenomenon of ‘land grabbing’ – acquisition of large tracts of land by wealthy, food-insecure and private investors from mostly poor, developing countries has resulted in loss of land and natural resources for farmers in poor developing countries. The East African Federation of Farmers (EAFF), concerned about the implications of land grab on food security and the livelihoods of small holder farmers in Kenya, commissioned a study to provide information on the extent of the land grab in Kenya. This study looks at the key players and their motivation, responses to the land grabbing and implications on small scale agriculture in Kenya. The study also highlights possible business models that can be utilized for effective engagement between farmer organisations and land grabbers, as well as suggest policy recommendations on the issue.

The study took place over a period of three weeks from July 29th – 19th August 2010 and involved field research and interviews in a selected area, which in this case was the Tana river Delta, and detailed desk research on the issue. The consultant selected the Tana river delta for field research due to the high number of large scale agricultural investments that are targeted in the area.

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Acronyms

CDF – Constituency Development Fund

CBO – Community Based Organisation

EAFF – Eastern Africa Farmers’ Federation

EIA – Environmental Impact Assessment

FDI – Foreign Direct Investment

GDP – Gross Domestic Product

IUCN- International Union for Conservation of Nature

KENFAP – Kenya Federation of Agricultural Producers

KES – Kenya shillings

NEMA – National Environment Management Authority

NGO - Non Governmental Organisation

ODA – Official Development Assistance

TARDA – Tana and Athi River Development Authority

Executive Summary

The recent phenomenon of large scale acquisition through long term leases or outright purchase of farmland in Africa, Asia, Latin America and Eastern Europe by governments and private companies from developed and wealthy countries has come to be known as global land grab. The scale, speed, secrecy and widespread circumvention of land laws of these investments have been the primary source of sustained media and human rights groups’ contention against these investments.

There are a number of factors at the global and at the host (recipient) country level that are driving this trend of land transactions across the globe. At the global level, the financial crisis of 2007/2008 and the global food crisis it spawned triggered a growing interest in agriculture and subsequently land, as an investment avenue, and, as a means to secure global food supplies. Emerging global ecological trends, particularly climate change, has also placed tremendous pressure on governments to find suitable alternatives to fossil fuels. There is a growing demand for large tracts of land to grow crops for biofuel to secure energy needs in the industrialised world.

At the host country level, governments are receptive to this paradigm shift in investment that is targeting land as they see various opportunities presented. The opportunity to increase foreign direct investment and attendant infrastructural developments, opportunity to secure their own food security through increased food production, and opportunity to boost investment in agriculture as a sector are some of the motivating factors.

Africa is particularly attractive to land grabbers due to the perception that there are vast amounts of land available for large scale agricultural investments. Not only does Africa have a lot of available land but the land is cheap, has rich natural resources such as water and soil nutrients and there is cheap labour available for agricultural production. Most of the land in Africa is controlled by the State which makes the process of acquiring it relatively easy. The African Union has come up with a framework and guidelines on land policy with the intention of encouraging members to review their individual land policies and laws in line with considerations outlined therein. The framework and guidelines particularly cautions member states to ensure that their land policies provide adequate measures to ensure that market-driven policies for land development do not expose vulnerable groups to further marginalisation through speculation and land rights transfers.

Kenya is an economy that is largely driven by its agricultural and natural resource sectors. In a bid to transform Kenya into a newly industrialized middle income country, its development blueprint, Vision 2030, highlights the path that must be followed. This development blueprint identifies agriculture as one of the key sectors that will advance Kenya to a projected growth rate of 10% annually. Foreign direct investment is one of the strategies that will enable Kenya to achieve its goals. To this end, the Investment Promotion Act was enacted in 2004 giving legal mandate to Kenya’s investment agenda. Foreign direct investment is seen to be critical in boosting the agriculture sector. Foreign investors in agriculture only have to prove that their investment will contribute towards creation of employment, acquisition of new skills or technology for Kenyans, contribute to tax revenues, increase foreign exchange or utilize domestic raw materials. Investment legislation and policy does not require that the

investor looks into the economic, social, cultural and environmental impacts and implications of their investment particularly on local communities.

Cases of land grabbing have been reported in Kenya although there is not much information available through government or formal sources. Most of the information is available through media reports and lobby groups who are keen to safeguard the rights of marginalised communities. This study focused on the Tana river delta for examples of ongoing land grabs in Kenya. The Tana delta covers an area of about 130,000 ha. Large scale agricultural investments targeting the delta and surrounding areas add up to over 500,000ha, some of which are overlapping. These investments range from sugarcane plantations, biofuel crops such as jatropha, crambe, sunflower and vegetable production.

Impacts on the local community of the proposed developments include loss of access to land for small scale agricultural production including subsistence food production and pastoralism, and loss of access to natural resources such as fisheries, forest products such as honey, water resources among others. Existing conflicts over water and pasture between farming and pastoralists communities will be greatly increased as foreign investors condone off large sections of the delta if not the entire delta. The delta is very rich in its ecological diversity from savannah grasslands, to mangrove forests and coastal tropical forests, to sand dunes and beaches. It hosts a large variety of wildlife including lions, hippos, wild dogs, elephants and a myriad of bird species. With the advent of the proposed agricultural investments this extremely rich biological diversity will be lost to Kenya.

There have been concerted efforts by conservation NGOs, farmers’ organisation and communities against land grabbing in the delta including seeking court intervention, conducting scientific research, gathering information on ongoing deals and disseminating it to the public both locally and internationally. Much more collaborative effort needs to be put in place and measures taken by government to ensure that the wellbeing of local communities and Kenya’s resources – land and other natural resources, are protected especially when foreign investment for agriculture is sought.

One way of ensuring this is by promoting alternative models of agricultural investments which do not involve the transfer of land rights from communities to investors. These include contract farming and joint ventures between communities, both individuals and groups, and investors. Other recommendations include a call to extensive collaboration by non state actors including NGOs, CBOs, farmers’ organisations, media and communities to monitor land grab deals and share information. Non state actors need to play an active role in keeping the government in check with regard to ‘giving’ land away and leaving local communities vulnerable to food insecurity. Secondly, the government needs to secure the land rights of all communities especially where land is held communally either as groups or by government institutions such as county and municipal councils. Thirdly, each economic region should be subjected to regular strategic environmental planning which would highlight the highest potential economic activities for that region without endangering the ecological ecosystem. The investment policy should require that all investments, particularly agricultural investments should be in harmony with the strategic environmental plans. The fourth recommendation proposes that there should be a policy against speculative land holdings. Any investor should be obligated to put into use land leased for

agricultural production. In addition, investment in crops that are new to a region should be limited to a small acreage for a specific period of time until the investor is able to prove the crop's viability. Finally, agricultural investment contracts should be water tight. Investors should include in the contracts what they intend to do for the community such as specific number of jobs or social amenities. The law should obligate the investor to comply with the contractual terms failure to which the lease can be withdrawn. Communities should have copies of these lease agreements which should be well understood and accepted before they are signed.

In conclusion, land grabbing or large scale agricultural investment is taking root in Kenya. Whereas we cannot outrightly reject agricultural investments, care must be taken that they do not result in marginalising and impoverishing local communities and increasing food insecurity in the country. A balance must be found and enforced through legal provisions.

Introduction

What is Land grab?

In recent years, the financial crisis which, in turn, spawned the global food crises, triggered renewed interests in agricultural investments. This new momentum has translated into large scale acquisition, through long term leases or outright purchase, of farmland in Africa, Asia, Latin America and Eastern Europe. The investors are primarily state actors and private companies from developed countries and threshold countries¹ while governments of recipient countries are the hosts and sellers of the tracts of land. Whereas large scale agricultural investment, by itself, is not a new phenomenon, the scale, speed, secrecy and the widespread circumvention of land laws of these investments have attracted and sustained global media attention resulting in these transactions being known as ‘global land grabs’ or ‘land grab’.

In late 2008, GRAIN² sent out an alert through its report *‘Seized: The 2008 Land Grab for Food and Financial Security’* highlighting the growing trend of countries seeking to secure their populations’ food security by acquiring large tracts of land across the globe. The report was accompanied by a list of 100 such cases. For example, well before the global food crisis broke out in 2007, it is reported that China had sealed some 30 agricultural cooperation deals giving Chinese firms access to farmland in exchange for Chinese technologies, training and infrastructure development funds.³ SEED Magazine reported that Libya secured 250,000 ha of Ukrainian farmland, United Arab Emirates opened talks on an 800,000 ha deal with Pakistan among others.⁴ Following growing outcry of massive land grabbing, the World Bank undertook a study, *‘Is there a Global Land Rush?’* whose preliminary results were presented at its Annual Conference on Land Policy and Administration in April 2010. The report inventorised 389 land deals in 80 countries, 37 % for food production and 35 % for biofuel production.⁵ Of these land deals 22% were already being implemented. Alarmed by the speed, size and number of exchanges taking place, the UN Food and Agriculture Organization Director General, Jacques Diouf, warned that the situation risked creating a ‘neo-colonial system’.

A most disturbing factor of the global land grab is the secrecy of the deals. To illustrate this, in undertaking the study just mentioned, The World Bank intended to do a comprehensive study of 30 countries which are considered the ‘hot spots’ for the land grabs. Unfortunately, it had to cut back severely on its expectations because, as it admits, governments would not provide them with information and neither were corporations willing to talk.⁶ There seems to be a lack of transparency in

¹ Threshold countries include Gulf States, China and South- Korea

² GRAIN is an international non-profit that works to support small farmers and social movements in their struggles for community controlled biodiversity based food systems see www.grain.org

³ GRAIN Briefing, *‘Seized: The 2008 Land Grab for Food and Financial Security’*, October 2008, <http://www.grain.org/go/landgrab>

⁴ *Hungry for Land*, published on April 27, 2009 by SEED Magazine, http://seedmagazine.com/content/article/hungry_for_land/

⁵ GRAIN, *‘Against the grain: The World Bank in the hot seat’*, <http://www.grain.org/articles/?id=64>

⁶ Ibid.

the negotiations and exclusion of civil society and communities, particularly those who are users of the land, of host countries.

Host country motivation for land grabbing

Looking at the volume of land (and with it associated rights of local communities to access land, water, and other resources) that is being ‘given’ to foreigners to use, seemingly without regard to existing livelihoods and socio-cultural uses by local communities, why would any government accept such deals and even openly seek these foreign investors? There are a number of factors, both global and local, at play that are the driving these land deals across the globe. Some of the local drivers of land grabbing include;

Opportunity for FDI in Agriculture

Developing countries’ main economic agenda is to move through the ranks from low income countries with low GDP to high income countries which are industrialized. Many developing countries derive their foreign exchange through exploitation of natural resources including mining of minerals, oils, growing and export of cash crops (cocoa beans, coffee, tea, horticulture etc). Cash crops are exported in raw form and value addition is done primarily in importing countries. Other sectors that are fast becoming primary income earners in the recent past include tourism and industrial processes. Developing countries depend on foreign direct investment (FDI) to boost growth in these sectors, increase revenues and provide development opportunities for their citizens including employment opportunities. Attracting FDI into a country is a key agenda of successive governments of developing countries.

For many developing countries, the land grab phenomenon is no more than an FDI opportunity in agriculture and food production. These governments are cognizant of additional benefits that FDI in agriculture brings. This includes government revenues, additional employment and income opportunities, access to technological innovations, agricultural services, inputs and markets especially where local farmers are engaged in contract farming with the investors. Other benefits include, infrastructural development including construction of roads, factories and other social amenities like schools and hospitals as most of these investments are often located in remote rural areas with little government sponsored infrastructural development. These benefits have the potential to improve the living conditions of the rural population and increasing the GDP of the country.

To illustrate this, in 2008 the South Korean firm Daewoo Logistics entered a 99-year lease on a million ha of land in Madagascar to grow corn. This was a lease of about 50% of Madagascar’s arable agricultural land. Reports indicate that in terms of rental value benefits to the Madagascar government was nil⁷. The intended infrastructural development, technological innovation transfer and employment opportunity that the deal would bring to Madagascar must have seemed significant enough for the government to

⁷ Lorenzo Cortula, et al, Land Grab or Development Opportunity? Agricultural Investment and International Land Deals in Africa, FAO, IIED and IFAD, 2009.

sign off on such a deal. The government did not look into the implications of this deal on local livelihoods including small scale agriculture, natural resource access rights as well as socio-political implications of the deal. In Kenya, the government in 2009 was negotiating on a deal with the government of Qatar where it was to lease 40,000 ha of land for production of vegetables and fruit for export to Qatar. This deal was a trade-off, the Qatar government was to finance and facilitate the construction of a second port in the coastal town of Lamu, and Kenya would lease to them the land for their own food production.⁸ Again the Kenya government was looking at the economics of the deal without due consideration to the implications of the deal on local agriculture in the area, environmental considerations and other socio-political factors.

At a local level, local governments and authorities welcome FDI in agriculture to their region due to the economic benefits that they confer on them. For example, in Kenya land has in the past been classified as government land, community land and private land⁹. Much of the land that is available for lease by foreign investors has been government land or community (trust) land. Community land is administered by County and Municipal councils on behalf of communities. Foreign investors acquire rights to these lands through negotiations and deals with the County/Municipal councils without local communities necessarily being involved. Lease agreements usually have annual fees paid to the Councils. For example, Dominion Farms Ltd has leased part of the Yala Swamp to grow rice and pays KES 1,028,921 per annum to Siaya County Council and KES 22,860 per annum to Bondo County council (for the first 3 years and at an increasing rate every three years) as the leased land falls within the two jurisdictions¹⁰. In Malindi, the municipal council has approved a lease request by Jatropha International to lease 40,000 ha of land at a one off payment of KES 3 million to the Constituency Development Fund (CDF) and an annual fee of KES 1 million to the Malindi Municipal council¹¹. Local authorities are expected to raise part of the revenues that they need to run and income from leased land is an opportunity received with open arms.

Opportunity to improve food security

In order to keep pace with the growth of the world’s population, global food production will have to be increased by 70 per cent by 2050¹², in addition, the number of people suffering from hunger is currently on the increase: in 2009, according to data from the Food and Agriculture Organization, the figure passed the billion mark for the first time.¹³ Many developing countries are themselves struggling to provide adequate food for their own citizens. Governments see FDI in agriculture as a way of boosting their own food security through the increased food production that the investments portend. To

⁸ The details of this land lease deal are explored later in this paper.

⁹ The new land policy, Sessional Paper No of 2009, and the new constitution declares that all land in Kenya belongs to the people of Kenya. It classifies ownership of land as public land, private land and community land.

¹⁰ Memorandum of Understanding (MOU) signed between the County Council of Siaya, the County Council of Bondo and Dominion Farms limited signed on 23rd May 2003

¹¹ From interview conducted with a Malindi farmer but not verified with the Council

¹² OECD-FAO Agricultural Outlook 2009–2018, (http://www.fao.org/es/esc/common/ecg/599/en/OECD_Highlights.pdf)

¹³ Press release on June 19, 2009 from FAO media centre on their report ‘*The State of Food Insecurity in the World*’ (accessed at <http://www.fao.org/news/story/0/item/20568/icode/en/>)

illustrate this thinking, Kenya’s president, when asked why he was leasing to Qatar 40,000ha of land to grow vegetables and fruits for export instead of utilizing the same land for growing food for local consumption, responded that it was envisioned that a similar amount of land would be further availed to the Qatari’s to grow vegetables for local consumption in order to boost food security in Kenya.¹⁴

In developing countries, most food farming for local consumption is done on small holder farms. The food produced by these subsistence farmers is for their own consumption from one harvest period to the next. There is often very little surplus for sale. In addition, subsistence farmers utilize labour intensive methods of production, and have poor storage methods often resulting in the loss of significant amounts of their harvests to pests and diseases. FDI in agriculture is seen by governments as an opportunity for large scale production with its attendant benefits. These benefits include economies of scale; investments in agricultural inputs which increase availability of some technological innovations to local farmers such as mechanization of some processes; improved storage facilities and technologies; local level infrastructure development such as feeder roads; and value addition of produce at the farm level. With proper implementation large scale farming investments can bring development to an entire region, through the ‘trickle down’ development.

Opportunity to increase investment in the agriculture sector

Increasing global demand for food also calls for increased investment in agriculture, particularly in developing countries. Official Development Assistance (ODA) to developing countries for the agricultural sector has lost its share of overall aid over time – from around 15% in the 1970s to around 5% in 2007.¹⁵ Public investments can only address this requirement partially and must be amended by private investments. Private investments, therefore, can play a very relevant role in increasing agricultural capacity¹⁶. Developing countries often face a lack of domestic (private and governmental) investment capacities. Foreign direct investments (FDI) in agriculture are, therefore, crucial for strengthening the agricultural sector. These FDI in agriculture are often closely linked to FDI in arable land in order to secure and to control the access to commodities produced on the land.¹⁷

Global drivers for land grabbing

In global history, there has always been acquisition of land by foreign companies or governments. Colonization of African, Asian, and other countries was driven not only by the quest for political and military conquest and domination, but also by the need to provide additional raw materials to feed growing home industries and develop economies. The new rush to acquire land in developing countries

¹⁴ Reported in The National on June 05, 2009 accessed at <http://farmlandgrab.org/4694>

¹⁵ GTZ, Foreign Direct Investment (FDI) in Developing Countries, Eschborn, Germany, 2009

¹⁶ Ibid.

¹⁷ Supra note 14.

in recent years is taking on a frightening dimension, land (and the natural resources it supports including water, soil nutrients and biodiversity) is being taken from the poor to secure the food, (bio) energy needs of populations in rich countries and as secure investment vehicles for rich multinational investment funds. There are various factors that are fuelling this mad rush to grab land by rich nations and companies.

Food security

As mentioned before, in order to feed the anticipated 9.1 billion people in 2050, agricultural production worldwide needs to increase by 70%.¹⁸ In addition, the number of people suffering from hunger is currently on the increase passing the billion mark in 2009.¹⁹ In the past, response to global hunger has focused on food aid and agricultural investment in chemical fertilizer, pesticides, and increasingly, genetically engineered seeds.²⁰ The agricultural model for increasing food production prioritized being large-scale, highly mechanized capitalized forms of agriculture. When the global food prices soared in 2008, grain exporting countries imposed export restrictions on their grain in a bid to secure their own food security. Prospects of basic food staples not being available on the global markets sent shock waves to countries dependent on food imports. Seeking to secure their food security, governments developed policies and allocated funds to enable companies to purchase or lease fertile land in foreign countries to grow food. In a well orchestrated agenda, these governments are promoting acquisition of farmland in foreign countries as an alternative to purchasing food from the global market so as to control the costs of the entire process.

Reports of the countries acquiring land for this purpose include Saudi Arabia, Egypt, Libya India, South Korea, Japan, China, Qatar, South Africa among others. India launched its ‘Focus: Africa’ programme under its EXIM (foreign trade) Policy 2002-2007²¹, ostensibly to boost the country’s trade with Africa. India’s foreign trade policy identifies agriculture as one of the sectors to be promoted and a new scheme *Vishesh Krishi Upaj Yojana* (Special Agricultural Produce Scheme) established. Consequently, the southern Indian State of Andhra Pradesh signed preliminary deals with Kenya for 23,234 ha (50,000 acres) and with Uganda’s Investment Authority for 8,000 ha (20,000 acres). The Indian state would send 500 farmers to the two countries to cultivate the land not as labourers but as entrepreneurs and landowners.²² In 2008, Saudi Arabia announced that it would reduce its domestic cereal production by 12% a year to conserve its water. Further, it earmarked US \$ 5 billion to provide loans at preferential rates to Saudi companies which wanted to invest in countries with strong agricultural potential.²³

¹⁸ Estimates by FAO, supra note 12

¹⁹ Supra note 12

²⁰ Nierenberg, D. & Pollack, B., Innovations in access to land: land grab or agricultural investment, article in Huffington Post on August 5, 2010, accessed at <http://farmlandgrab.org/14711>.

²¹ India Africa Trade: Gaining Momentum, http://www.africa-business.com/features/india_africa.html

²² Ibid.

²³ Vidal, John, How food and water are driving the 21st Century African land grab, The Observer, at <http://www.guardian.co.uk/environment/2010mar/07/food-water-africa-land-grab>

Reports indicate that Saudi Arabia has acquired 500,000 ha of land in Tanzania²⁴ and over 10,000 ha in Sudan to grow wheat, vegetables and animal feeds. United Arab Emirates purchased 400,000 ha of land in Sudan.²⁵ Numerous reports have been compiled detailing some of these land deals.

Securing energy supplies & Climate obligations

Growing global demand for climate–friendly transport fuels is driving demand for vast land to grow biofuel crops such as jatropha, sugarcane and palm oil in large-scale commercial ventures. The trend towards biofuel production in plantations, is driven by the expected efficiency, through economies of scale, predictable operating environments, assurance of quality and regularity of supplies to meet standards set in European and US markets. This is driving investing companies to prefer owning the land so as to directly manage operations.

Governments all over the world – including those in China, India, Brazil, the US and the EU – have enacted mandatory targets for use of biofuels in transportation fuels, creating guaranteed markets for biofuels for decades to come.

In a bid to secure energy supply the European Union begun to push for renewable sources of energy to member states. The 1997, the white paper ‘*Energy for the future: renewable sources of energy*’ proposed a possible 18 Mtoe²⁶ liquid biofuels by 2010. And the 2000 green paper ‘*Towards a European strategy for the security of energy supply*’ proposed that alternative fuels should reach a target of 20% by 2020. Of this the biofuel targets were to be 2% by 2005 and 5.75 % by 2010.²⁷ The *EU Directive on the Promotion of the Use of biofuels and other Renewable Fuels for Transports* (2003/30/EC) came into force in May 2003.²⁸ It stipulated that national measures must be taken by countries across the EU aiming at replacing 5.75 % of all transport fossil fuels with biofuels by 2010. In 2006, the European Commission further sent out an EU strategy for biofuels which aimed at:- further promoting biofuels in the EU and in developing countries; preparation for large-scale use of biofuels by improving their cost-competitiveness; support for research into second-hand generation biofuels; and, exploration of the opportunities in developing countries for the production of biofuel feed stocks and biofuels.²⁹ The directive indicated that EU member states were required to guarantee that a minimum share of biofuels was sold on their national markets for transportation fuels and thus set national indicative targets.

²⁴ This deal was not yet signed at the time of publication of the report “Land grabbing” by Foreign Investors in developing Countries: Risks and Opportunities by International Food Policy Research Institute (IFPRI), IFPR policy brief 13, April 2009

²⁵ Experts Call for GCC ‘land grab’ policy to stop, Arabian Business, Monday, 7 September 2009, accessed at <http://farmlandgrab.org/7328>

²⁶ Tonnes of oil equivalent

²⁷ Van Thuiji and Deurwaarder, European Biofuel Policies in Retrospect, ECN, 2006, accessed at <http://www.ecn.nl>

²⁸ http://en.wikipedia.org/wiki/Directive_on_the_Promotion_of_the_use_of_biofuels_and_other_renewable_fuels_for_transport

²⁹ Supra note 27.

Developing countries, eager to get in on the biofuel boom, see this as an opportunity to develop their rural areas through new and ‘profitable’ land use of previously ‘under-utilised’ land and improve their trade balance through export sales of biofuel.

Securing Financial Investments

The global financial crisis of 2007/2008 brought with it an increased attention from investors on land. Researchers have cited forces such as strong demand from emerging economies such as China, India, central Europe and South America, new demands for bio-energy and other bio-products from agricultural crops and increasing global demand for food.³⁰ Investors increasingly looked to gain direct exposure into soft commodities markets through investment in land, farming and associated activities hoping to capitalize on commodities fundamentals.³¹

Current global financial opinion is that “the single best recession hedge of the next 10 or 15 years is an investment in farmland.”³² Speaking to Contrarian Profits, a financial news and opinion website, Rogers Jr. who is involved in two farmland investment funds – Agrifirm and Agcaptia Farmland Investment Partnership, claimed that he is ‘...convinced that farmland is going to be one of the best investments of our time.’³³ There is a growing expectation that returns on investment in land will continue to grow as its value increases as a result of its growing shortage.

Reports indicate that more than 90 funds³⁴ including banks, investment funds, hedge funds from across the globe are all lining up for a piece of the pie. Large sums of money are being set aside for agricultural investments and acquisition of land in developing countries. Examples include, New York based Blackrock Inc which set aside (in 2008) a USD 200 million agricultural hedge fund of which USD 30 million was to acquire farmland around the world; Germany’s Palmer Capital and UK’s Bidwell who launched a joint fund of USD 425 million to acquire farmland across Europe; Al-Qudra, an Abu Dhabi investment company bought large tracts of farmland in Morocco and Algeria; and, New York based Jarch Capital leased 400,000 ha in Southern Sudan.³⁵

The march towards acquisition of farmland as a secure a investment alternative is showing no signs of slowing down. In June 2009, institutional investors gathered in New York for the inaugural Global

³⁰ Shepard Daniel, The Great Land Grab: Rush For World’s Farmland Threatens Food Security for the Poor, Oakland Institute, 2009 accessed at www.oaklandinstitute.org

³¹ Ibid.

³² Reza Vishkai of Insight Investment quoted by Bad Idea Magazine accessed at <http://farmlandgrab.org/9889>

³³ Betsy Plette, G20 Countries practice ‘agricolonialism’ in developing countries, published August 3, 2009, accessed at http://www.workers.org/2009/world/g20_0806/

³⁴ Ibid.

³⁵ Maywa Montenegro, Hungry for Land, published in Seed magazine.com on April 27, 2009 and Shepard Daniel, The Great Land Grab: Rush For World’s Farmland Threatens Food Security for the Poor, Oakland Institute, 2009 accessed at www.oaklandinstitute.org

AgInvesting Conference. Participants included representatives of endowment funds, pension plans, land investors and analysts from all over the world.³⁶ They listened to presentations on the opportunities available in future land development, with a particular presentation on several African countries that will be an emerging investment theme in coming years.³⁷ Global AgInvesting 2010, which took place in May 2010 to provided participants with insights into complex investment opportunity covering such topics as agricultural land as an emerging asset class including the current state of the sector and outlook for the next few years; different global strategies being pursued by leading managers; how these strategies fit with investor objectives and opportunities for private agricultural investment; and, how large-scale farming operations are addressing social and environmental stewardship challenges particularly in the developing world.³⁸ Success of the Global AgInvesting Conferences resulted in participants requesting for similar conferences in Europe. The Global AgInvesting Europe is slotted to take place in November 2010 in Geneva.³⁹

Globalisation of economic relationships, market–economy reforms and political shift, post 1989, in developing countries, has resulted in land and water increasingly transforming into trade able goods.⁴⁰

Destination Africa

Sub-Saharan Africa is being specifically targeted for land grabs due several factors. First, there is a perception that there is plenty of land available. According to FAO’s 2008 figures, Africa is estimated to have in excess of 800 million ha of cultivatable land of which only 197 million is currently being farmed. Secondly, the land is relatively cheap – Susan Payne the CEO of the largest land fund in southern Africa, Emergent Asset Management pays between USD 350-500 per ha in Zambia about a tenth of the price of land in Unites States⁴¹. Thirdly, Africa is endowed with rich natural resources including fertile soils, abundant water to support irrigation farming and favourable climate. Lastly, there is abundant and cheap labour.

In many African countries land is nationalized or otherwise mainly controlled by the state. The World Bank estimates that across Africa only between 2% and 10% of the land is held under formal land tenure.⁴² In their research, ‘*Agricultural Investment and International Land Deals in Africa*’ Lorenzo

³⁶ <http://seekingalpha.com/article/145269>

³⁷ Ibid.

³⁸ <http://www.soyatech.com/sponsor.php?id=326>

³⁹ http://www.soyatech.com/news_story.php?id=18838

⁴⁰ Development Policy Stand on the Topic of land grabbing – the Purchase and leasing of Large Areas of Land in Developing Countries, BMZ Discourses series, Discourse 015, Federal Ministry for Economic Cooperation and Development accessed at <http://www.donorplatform.org>

⁴¹ Horand Knaup and Juliane Von Mittelstaedt, The new Colonialism: Foreign Investors Snap Up African Farmland, published in Der Spiegel on July 30, 2009, accessed on <http://farmlandgrab.org/6590>

⁴² Lorenzo Cortula, et al, Land Grab or Development Opportunity? Agricultural Investment and International Land Deals in Africa, FAO, IIED and IFAD, 2009.

Cortula et al, found that most large scale acquisition of land in Africa tended to be government allocated leases rather than outright purchase of the land. These leases range from 50 years (e.g. Lonrho’s acquisition of 25,000 ha in Angola) up to 99 years (such as the Daewoo deal in Madagascar). These leases, however, are renewable and in addition to land use rights are inclusive of water rights. In their report ‘*Investing Across Borders 2010*’⁴³, which was a review of foreign direct investment regulations in 87 countries across the world, the World Bank Group found out that in the indicator on accessing industrial land, all the countries surveyed allowed foreign companies to lease land, and 80% of these countries, including those in sub-Saharan Africa, allowed companies that leased land to subdivide, and sublease the leased land. For local communities, whether the land is leased or outright sold to foreign investors the impacts on them is the same. In addition, foreign land investors can then sublease unused portions of acquired land for the duration of their lease earning income on land they are not directly using.

Governments in Sub-Saharan Africa are encouraging large scale acquisition of land by foreign investors whether they are multinationals or funds because of expected benefits earlier indicated in this report. African governments are also changing land and investment policies in order to attract more investors. In Kenya, for example, the government allocated KES 1.5 billion (about USD 18.75million) to create a land bank so as to ease the challenge faced by foreign investors who want to acquire land for investment.⁴⁴ Individuals with land parcels larger than 100 acres were invited to sell their land to the government. The government would also avail land by repossessing land illegally allocated to influential individuals in past political regimes. A government officer quoted in the newspaper article indicated that the land bank was aimed at making Kenya competitive in attracting foreign investments. In fact, a Professor of real estate and construction management at the University of Nairobi lauded the new developments and advised that the government should aim at selling land to investors at reduced prices so as to attract investments into the country.

African Union’s Framework and Guidelines on Land Policy

In 2006, the African Union initiated a process to develop a framework and guidelines for land policy and land reforms in Africa. Although the framework and guidelines was neither intended to be binding upon members nor to be a land policy for adoption by member states, it was intended to inform the development, content and implementation of land policies in member states.⁴⁵ Over the last two decades a number of African states have either completed or are undertaking review of the

⁴³ *Investing Across Borders 2010*, Investment Climate Advisory Services, World bank Group accessed at <http://iab.worldbank.org/>

⁴⁴ Jim Onyango, *Land Bank Scheme Now Comes Under Scrutiny*, published in the Business Daily on October 19, 2009 and *Kenya: Slow Sale process Delays Plan for Land Bank*, published in the Business Daily on February 4, 2010

⁴⁵ AU, ADB and ECF, *Framework Guidelines on Land Policy in Africa*, March 2009 (revised version)

performance of their land sectors and formulating new policies for land reform.⁴⁶ Consequently there has been an emerging consensus across the continent that African governments need to develop comprehensive land policies that have been informed by a number of considerations. These considerations have been enumerated in the *Framework and Guidelines on Land Policy in Africa*.

The Framework and Guidelines contextualises the land question in Africa in various contexts. In the geographical and ecological context, it highlights that regardless of the seemingly vast amounts of land that are arable but underutilized, they form a small portion of the total land mass. Much of the continent is desert, semi-arid or facing ecological damage. It traces the political history of the land question from the scramble for Africa in the 19th Century, to post independence land reform efforts that sought to redress colonially based unequal ownership. These reforms, inadvertently, led to the overbearing role of the state as owner, regulator and user of land resources. The struggle for equitable access and ownership of land and natural resources continues to be one of the underlying causes of conflict across the continent. The Framework and Guidelines also highlights the impacts of emerging global issues on land in Africa. Climate change, the recent surge in world food prices and food supplies, and the ‘new scramble’ for Africa’s land and resources are the emerging issues that it highlights.

The Framework and Guidelines calls for the recognition of the centrality of land in the development process and encourages governments to integrate land issues into decision making processes. Governments need to acknowledge the legitimacy of indigenous land rights systems and strengthen the land rights of women. It calls for governments to ensure that there is a balance between pro-poor priorities and market driven options in the land policies. Adequate measures need to be put in place to ensure that market-driven policies of land development do not expose vulnerable groups to further marginalization through speculation and land rights transfer.

The Framework and Guidelines highlights the importance of agriculture as a sector that contributes over 25% of GDP in most sub-Saharan countries and even up to 40% in some countries. It recommends that land policies should improve agricultural production by clarifying property rights. Securing access to land through clear property rights is crucial for rural farmers and foreign or local commercial investors. It also recommends that land policies and legal frameworks should create enabling environment for the transfer and exchange of land rights either formally through documented transactions or informally through intra-family or community arrangements. In this regard, the Framework and Guidelines seems to encourage land governance regimes that will ease the process of land acquisition for agricultural investments. It declares that promoting the development of robust land rights transfer systems and markets offering various types of rights will ‘expand opportunities’ for acquisition of land resources for many agricultural users engaged in large or small scale, formal or informal operations.

⁴⁶ Ibid., which lists as examples Algeria, Libya, Egypt, Tunisia, Benin, Mali, Niger, Ghana, Burkina Faso, Rwanda and Tanzania as having completed the land reform process, and, Mauritania, Sierra Leone, Liberia, Angola, Lesotho, Madagascar, Swaziland, Kenya, Southern Sudan and Uganda as those undergoing comprehensive land review.

The AU *Framework and Guidelines on land policy* was adopted by the Assembly of Heads of State and Government in July 2009. The Assembly undertook to prioritise and lead land policy development and implementation in their countries and urged all members states to review their land sectors with a view to developing comprehensive policies.⁴⁷

Is there a win – win a possibility in land grabs?

In a bid to address the issue of global food security world leaders at the 2009 G8⁴⁸ Summit held in L’Aquila, Italy addressed the issue and pledged to provide USD 20 billion to boost food supplies in developing countries. The global leaders established the L’Aquila Food Security Initiative which proposed a concerted and coordinated international effort to improve agricultural production and productivity in developing countries.⁴⁹ The World Bank, Food and Agriculture Organization (FAO), United Nations Conference on Trade and Development (UNCTAD), are encouraging private investment in the agricultural sector to complement available public resources, in essence also encouraging large scale foreign acquisition of land. While acknowledging that ‘*some bad practices*’ (dubbed ‘land grabbing’) in agro-investments are occurring, as illustrated in a number of cases in their report ‘*Is there a Global Land Rush?*’, the World Bank in partnership with IFAD and FAO drew up and is promoting voluntary principles of agricultural investments. These are seven principles which recommend 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.⁵⁰

Proponents of large scale agricultural investments are convinced that these land deals could be a win-win for all parties. Developing countries could greatly benefit from increased investments in agriculture and the FDI that the deals provide including food security. However, the role and significance of community–investor partnerships which don’t require the transfer land rights is critical. The role of civil society organizations and a balance of profit and social and environmental responsibility is also significantly important.

⁴⁷ Declaration on Land Issues and Challenges in Africa, Assembly/AU/Decl.1(xiii) accessed at http://www.donorplatform.org/component/option,com_docman/task,docview/gid,1075

⁴⁸ Group of 8 nations - USA, Japan, France, Russia, Italy, United Kingdom, Canada and Germany

⁴⁹ G8 leaders’ statement on food security accessed at <http://www.nowpublic.com/world/full-text-g8-summit-statement-global-food-security>

⁵⁰ Principles for Responsible Agricultural Investment the Respect Rights, Livelihoods and Resources, World Bank, IFAD, UNCTAD, accessed at <http://donorplatform.org>

Opponents to the possibility of a win-win scenario, however, point out that foreign agricultural investment almost always result in local users of the land being displaced from the land and losing access rights to natural resources such as water and grazing land. In an interesting turn of events, media leaks of the long awaited World Bank report on land grabbing reported that *‘investors in farmlands are targeting countries with weak laws, buying arable land on the cheap and failing to deliver on promises of jobs and investments’*. Whereas the World Bank was fronting the possibility of win-win in the land deals, the *‘overall picture of the report was one of exploitation warning that investors either lacked the necessary expertise to cultivate land or were more interested in speculative gains than in using land productively’*.⁵¹

Land Grab in Kenya

Agriculture is the backbone of Kenya’s economy. It is the principal source of livelihood for a large percentage of the population. IFAD indicates that seven out of every ten Kenyans cultivate crops, raise livestock or engage in fishing and forestry.⁵² Agriculture and agro-related activities account for more than 50% of Kenya’s GDP and 80% of export earnings.⁵³ Agriculture also indirectly contributes 27% of the country’s GDP through manufacturing, distribution and service-related sectors.⁵⁴

Of Kenya’s 576,000 square kilometres of land mass (57.6m ha), only about 16% is of high or medium agricultural potential with adequate and reliable rainfall. This medium and high potential land is dominated by commercial agriculture with food crop occupying 31%. About 84% of Kenya is arid and semi arid and not suitable for rain fed agriculture.⁵⁵

Legal and policy provisions for land and investment in land in Kenya

Land ownership has been categorized as government land, private land and communal land. However, in December 2009, parliament passed a new land policy, Sessional Paper no 3 of 2009 which gave the radical title of land to the people of Kenya and re-classified land ownership as public land, community land and private land. The new constitution of Kenya, passed by popular vote (referendum) on 4 August 2010 (and promulgated on 27 August 2010) entrenched the provisions of the land policy in the constitution. This is a significant development with regard to securing land rights for Kenyans. Under the earlier provision, the government land, which in reality, was land held in trust by the government on behalf of the Kenyan people, provided a loophole as the government (and president) could allocate land at will to individuals for political patronage particularly during election years or to investors. Under the

⁵¹ The media leaks were in published in The Financial Times of New York on July 27, 2010 , accessed at <http://farmlandgrab.org/14561>

⁵² <http://www.ruralpovertyportal.org/web/guest/country/geography/tags/kenya>

⁵³ Ibid.

⁵⁴ Ministry of Agriculture Strategic Plan 2008 – 2012, Ministry of Agriculture 2009, accessed at www.kilimo.go.ke

⁵⁵ Ibid.

new constitution the government (or president) cannot sell public land or change its use without an Act of Parliament specifying such disposal or change of use⁵⁶.

In the old legal regime, local authorities held unregistered community land in trust on behalf of local communities. Local authorities have exploited this trust by leasing community land without consulting with the communities. Under the new constitution this loop hole is effectively sealed. The new Constitution declares that ‘community land cannot be disposed off or otherwise used except in terms of a legislation specifying the nature and extent of rights of members of each community individually and collectively’⁵⁷. In addition the new constitution provides the principles by which land in Kenya shall be held, used and managed. These principles include the equitable access to land principle and the sustainable and productive management of land resources⁵⁸. The constitution further promotes public participation in the management, protection and conservation of the environment⁵⁹ and that, the State shall utilise the environment and natural resources for the benefit of the people of Kenya⁶⁰. The new phenomenon of large scale agricultural investment goes against the new law being that the benefit of the Kenyan people from utilisation of land and its resources is not the primary motivation of most investments and neither is there satisfactory public participation in decision making running up to implementation of these investments.

Ownership of and dealings in agricultural land are governed by the Land Control Act. The Act defines agricultural land as land that is not within a municipality or township, land in the Nairobi area, township or urban centre that is declared by the Minister to be agricultural land.⁶¹ The Act prohibits any dealing in agricultural land, including sale, lease, mortgage or sub-division, without obtaining consent of the relevant land control board. The Act obligates the land control board to refuse to give consent in any case in which the land is to be disposed by way of sale, transfer, lease, exchange or partition to a person who is not either a citizen of Kenya, a cooperative society or private company all of whose members are citizens of Kenya.⁶²

Kenya’s Vision 2030 is the country’s development blueprint covering the period from 2008 to 2030. It aims to transform Kenya into a newly industrialized middle income economy by the year 2030.⁶³ Vision 2030 development strategy identifies agriculture as one of the six key economic sectors that will drive the economy to a projected 10 % growth annually through promotion of an innovative commercially-

⁵⁶ Sec 62 (4), Proposed Constitution of Kenya

⁵⁷ Sec 63 (4), Proposed Constitution of Kenya

⁵⁸ Sec 60(1 (a),(c)) Proposed Constitution of Kenya

⁵⁹ Sec 69 (1(d))

⁶⁰ Sec 69 (1(h))

⁶¹ Land Control Act CAP 302, revised edition 2010 (1989) accessed at <http://www.kenyalaw.org/Downloads/Acts/Land%20Control%20Act.pdf>

⁶² Land Control Act Sec 9, (c) (i) and (ii), accessed at <http://www.kenyalaw.org/Downloads/Acts/Land%20Control%20Act.pdf>

⁶³ GOK, Vision 2030, popular version

oriented and modern agriculture.⁶⁴ The strategy considers foreign investment in agriculture critical in boosting the sector. The Kenya Investment Authority, a government body, was established through an Act of parliament (Investment Promotion Act 2004) with a mandate to attract new investments and facilitate new investments in the country.⁶⁵ The Authority promotes agricultural investments in Kenya by highlighting the considerable scope for diversification and expansion of the agricultural sector through accelerated food crop production and increase of non-traditional exports, opportunities for improvement in technological infrastructure such as packaging, storage, and transportation and intensified irrigation and additional value added processing as marketable areas for investments.

Whereas the Land Control Act clearly prohibits lease of land to foreigners, it seems to be in conflict with the investment Act and overlooked in practice by the drive to attract FDI in the agricultural sector. Kenya’s investment policy, given legal mandate through the Investment Promotion Act⁶⁶, provides that the Authority shall consider the following factors before giving an investment certificate to a foreign investor, whether the investment or activity shall contribute to creation of employment of Kenyans; acquisition of new skills or technology for Kenyans; contribution to tax revenues or other government revenues; increase in foreign exchange either through exports or imports substitution; utilization of domestic raw materials, supplies and services; among other factors.⁶⁷ Any investor who can demonstrate that their investment will provide the above benefits to the country is entitled to an investment certificate. The second schedule to the Act provides that an investment certificate holder is entitled to registration under the general Agriculture Act, and various sectoral legislations in the agriculture sector including sisal, pyrethrum, milling of maize/wheat, tea, sugar, coffee, dairy industry etc.⁶⁸ It also entitles the certificate holder to an EIA license under the Environmental Management and Coordination Act (EMCA).

Investment legislation does not require the investor to undertake any social impact assessment of their investment on local communities. An environmental impact assessment is however required by the Environmental Act (EMCA) before the investor can be given an EIA license. Nevertheless, it is the project proponent undertakes the EIA and the law does not provide for independent EIA to be undertaken to supplement what the project proponent provides. Some local groups that have been opposed to some of the foreign agricultural investments have raised concern claiming that NEMA awards EIA licenses even in cases where implementation of the proposed project/investment is likely to cause irreversible environmental and socio-economic harm to the local environment and local communities.

Selected cases of land grab in Kenya

⁶⁴ Supra note 48

⁶⁵ <http://www.investmentkenya.com>

⁶⁶ Act No 6 of 2004

⁶⁷ Investment promotion Act Sec 4.2

⁶⁸ Ibid, second schedule

Kenya has many large scale agricultural farms with foreign ownership some of which have been in business since pre-independence. Examples of these include large tea plantations such as James Finley, pineapple plantations such as Delmonte and flower farms such as Sher Karuturi. There are also other large farms owned by local companies and individuals. In the recent past, some agricultural investments which qualify as land grabs have come to national attention through media reports such as the Dominion farms in Yala swamp and deals that are taking place in the Tana delta. There are also rumours of other land acquisitions by foreigners that the consultant could not find any evidence to substantiate them. These include those circulating on internet networks of Chinese companies having acquired huge tracts in the rift valley to grow wheat. For this research, the researcher chose to focus land grab taking place in the Tana delta. However, to start off this section is a brief highlight of media reports on land grabs across the country.

(i) *Reported land grabs*

Citadel Capital

Mr Karim Sadek, Citadel Capital’s managing director in an interview with Kenyan media, declared the intention to acquire land in Kenya through long term leases to grow agro-based raw materials including wheat and rice to feed its consumer food business Gazour.⁶⁹ The firm was also looking to buy existing Kenyan firms targeting milk processing firms, flour millers and had already set up a fund of USD 150 million for such acquisitions in Africa, with a bias for East Africa.

Indian Companies

As previously mentioned in this report, media reports indicate that the southern Indian State of Andhra Pradesh has signed a preliminary deal with Kenya for 20,234 ha of land for farming in a 99 year lease. 500 Indian farmers would be sent to cultivate land in Kenya as entrepreneurs and land owners and not as labourers.⁷⁰ It is however not clear yet exactly where this land is as information from the government is not available. The Indian authorities claim that East Africa lacks experienced manpower to till land. However, the Indian government is promoting acquisition of farmland in foreign countries particularly in Africa as an alternative to purchasing food from international markets. The Indian Ambassador to Ethiopia confirmed this while addressing the Ethiopian parliamentary panel saying that India was encouraging more Indian companies to come into mainstream agriculture so that they can contribute to local demand and food security.

⁶⁹ Geoffrey Irungu, *Citadel Turns to Agriculture in Search of Investment*, published in the Business Daily on April 12, 2010 accessed at <http://farmland.org/12116>

⁷⁰ India Boosting Trade with Africa, published by Africa-Business.com accessed at http://www.africa-business.com/features/features/india_africa.html

A Bangalore based company, Karuturi Global Limited has acquired land in Kenya for flowers and horticulture. The company currently owns as full subsidiaries Sher Investments, Rift Flowers limited, Kalasha Holding limited and Sher Karuturi limited. Karuturi’s land holdings are in Kenya’s Rift valley.

Yala Swamp-Dominion Farm

In 2003, Dominion Group of companies of Oklahoma USA leased 2,300 ha of land for 25 years⁷¹ in the Yala Swamp in an area that had been reclaimed by the Kenyan government in the 1960’s. Dominion entered into a lease agreement with the Siaya and Bondo county councils which hold the land in trust on behalf of the community. The Farm undertook an EIA for their proposed activity of rice cultivation which was approved and a license given by the National Environment Management Authority (NEMA). However, Dominion Farm went further to reclaim another 3,700 ha of the swamp and intends to reclaim the entire swamp of 17,500ha. A number of families have been evicted from the additional area of farmland claimed by Dominion even though these families have been living on that land for generations. Some farmers even possess registration documents claiming ownership of the land. Dominion offered to compensate these farmers with as little as KES 45,000 per ha which some of the farmers declined. To deal with these stubborn farmers Dominion flooded their farms, by opening the sluices of the weir that they had constructed with the aim of directing the flow of the tributary that feeds the swamp, and destroying their crops⁷²

At its inception, the investment by Dominion Farms received support from senior politicians from the area. NGO’s that opposed the project were subjected to ridicule as people who did not want the region to develop. The project also received enormous support from community members who initially saw it as an opportunity for jobs, development of infrastructure including roads, schools and hospitals as promised by the investor. However, after the initial period when the farm needed a lot of labour to clear the ground, the number of employees reduced tremendously from around 200 to about 60⁷³. The Farm has continued to mechanise reducing the need to employ local labourers. Local community members also complain of the negative environmental and health impacts of the farming methods used by Dominion on their farms, their livestock and their health. Dominion undertakes aerial spraying of pesticides on their rice fields which has had the negative impact of killing non-pest insects in the surrounding community farms and villagers also claim that this has killed their chicken and other domestic fowl. The fertilizers and pesticides used in the Dominion farm drains into the swamp and the community claim that this has been causing their cattle and other livestock to fall sick.

In addition to the negative impacts on the environment by the farming practises, Dominion farm has gone further to fence off the swamp leaving communities who previously depended on it for water, fish reeds and other resources without access to these resources. The Farm also closed access from Siaya to Bondo districts by putting a gate across the main road since the road passes through the Farm.

⁷¹ Memorandum of Understanding between Siaya County Council, Bondo County Council and Dominion Farms limited signed on 23rd May 2003

⁷² Reports from meetings with communities held by Friends of Yala Swamp

⁷³ *Land Grabbing in Kenya and Mozambique*, FIAN 2010, (accessed at <http://www.fian.org/resources/documents/others/land-grabbing-in-kenya-and-mozambique/pdf>)

Community members are forced plead with hired guards at the gate in order to use this public road to move from one district to the other.⁷⁴

(ii) *The Tana River Delta*

The Tana river delta is a vast triangle of land from Garsen in the north, Kipini in the east, to the Malindi road in the south and west. It is a vast patchwork of palm savannah, seasonally flooded grassland, forest fragments, lakes, mangroves, sand dunes, beaches and the river itself. It covers an area of 130,000 ha.⁷⁵

Communities living in the delta have adapted to its seasonal extremes. Farmers cultivate on the receding river edges, seasonally fertile floodplains and where the river spills fresh water into their fields with the tidal flow. Other communities raise livestock or engage in fishing.⁷⁶ The Delta is a critical dry season pastureland for pastoralists who come from as far as Somalia during droughts as well as for the local Orma and Wardei peoples. In the dry season cattle numbers can reach in excess of 60,000 while 20,000 are permanent throughout the year.⁷⁷ Farming in the delta is done close to the river banks by the Pokomo people and the Mijikenda who grow rice, maize, cassava, bananas, melons, beans, mango and vegetables for mainly subsistence.⁷⁸

The delta provides important ecological services. It is a flood plain for the Tana river during the rainy season, storing the water for use during dry season. It has a rich diversity of wildlife including elephants, lions hippo, wild dogs, marine turtles, three endangered shark species, molluscs and other invertebrates and provides breeding ground for many species of birds including 22 species which are near extinction.⁷⁹

Apart from the local communities’ subsistence activities, the Tana river delta is largely undeveloped with regard to large scale commercial investments. Land in the delta is either government land or community land held by local authorities or by group ranches. These factors have made it attractive to investors both foreign and local who would want to profit from the opportunities available in the region. In this respect various land acquisition deals are in various stages for investment in agricultural production. These include sugarcane plantations, biofuel farms, titanium extraction and vegetable farms.

a. Oil Seed farming – Wachu Ranch

A British company, G4 Industries, registered in England in 2008 is proposing to grow crambe, castor and sunflower on 28,911ha in the delta. The Company will lease land from the management/directors of a

⁷⁴ From a report of a skills-share exchange mission conducted by Institute for Law and Environmental Governance (ILEG) where environmental lawyers and activists from 9 countries visited selected environmental hotspots in Kenya. The exchange mission was conducted from 21 -27 October 2007

⁷⁵ <http://www.naturekenya.org/conservation/advocacy/tana%20delta>

⁷⁶ Ibid.

⁷⁷ <http://www.tanariverdelta.org/tana/about.html>

⁷⁸ Ibid

⁷⁹ Ibid

group ranch called Wachu ranch. In addition to growing the crops the company intends to put up a factory for oil processing. The crops will be grown through irrigation (from harvested rain water) and from the Tana river.⁸⁰

The environmental and social impact assessment the company has done indicates that there are ‘500 households on squatting terms’ who will be displaced by the investment. However, some of the ‘squatters’ had acquired land by paying a fee to village heads on the understanding that Wachu Ranch management had lost ownership of the land and that the land had reverted back to the government. In the Company’s settlement plan, the intention is to compensate the said ‘squatters’ for their structures. They claim that the squatters have no legal claim of the land (Wachu ranch) and therefore were not entitled to be allocated alternative land for settlement by the investor either in the neighbourhood or within unused areas of the ranch.

b. Biofuel Farm - Bedford Inc

According to tanariverdelta.org, a website developed by conservation NGOs to raise awareness and support against the threats to the Tana river delta, Bedford Biofuels, a multinational company incorporated in Canada, begun the process of acquiring over 90,000ha of land in the Tana delta for cultivation of biofuel crops including jatropha. However, according to their own website, Bedford Biofuels claims to already have 160,000 ha in Kenya’s coastal region for jatropha cultivation and is in the process of acquiring another 200,000 ha⁸¹. The Bedford farm land is to be acquired from five local group ranches and the land is either in or adjacent to the Tana delta.

c. Sugar Plantation - Mat International

The Tana and Athi River Development Authority (TARDA) and Mat International signed a partnership agreement in 2006 to put up the Tana Delta Sugar Company.⁸² [Tanariverdelta.org](http://tanariverdelta.org) reports that Mat International is in the process of acquiring 30,000ha of land in the Tana delta and has already acquired another 90,000ha adjacent to that allocated Mumias Sugar in the delta⁸³. Media reports indicate that Mat International’s intention is to invest USD 2 billion in the sugarcane projects including factories however, there are no available environmental and social impact assessments reports on the proposed projects.

d. Sugar Plantation – Mumias Sugar Company

In 1995, the Tana and Athi River Development Authority (TARDA) was allocated by the government 28,680 ha of land in the Tana delta. 2,000 ha of this land was to be put under rice cultivation and the rest under sugar cane cultivation. A memorandum of understanding (MOU) was signed between TARDA

⁸⁰ Environment and Social Impact Assessment, Kenya Project feasibility, Issued 22nd December 2009 accessed from <http://www.g4-group.com/g4industries.html>

⁸¹ <http://www.bedfordbiofuels.com/company/plantations/>

⁸² <http://www.sucre-ethique.org/Kenya-to-build-new-300m-sugar.html>, in a news post dated October 30, 2006.

⁸³ http://news.nationalgeographic.com/news/2007/09/070924-kenya-sugar_2.html

and Mumias Sugar Company for collaboration in the cultivation of sugarcane in the delta. Conservation NGOs, however, took the issue to court in June 2008 but in June 2009 the High Court of Kenya threw out the case on a technicality. But by then the bad press surrounding the case against the project prompted the funders to pull out.

e. Fruit and vegetable farming – Government of Qatar (/ China?)

Following Kenya’s president Kibaki’s visit to Qatar, the two governments agreed on a deal where the Qatari’s would fund a KES 3.5 billion loan for the construction of second sea port in Lamu and in return, Kenya would lease 40,000 ha in the Tana river delta for cultivation of fruits and vegetables to be exported back to Qatar.⁸⁴ Public outcry over the deal, however, lead to it being put on hold and further developments indicate that the Kenyan government was courting China to fund the construction of the port as China was willing to also develop a road and rail network that would open up northern Kenya from Lamu to the border with Sudan⁸⁵. What is not clear though, is whether the land deal in the Qatari negotiation is to be included should the Chinese sign the deal to construct the Lamu port.

f. Jatropha Plantation – Jatropha Kenya Ltd

Jatropha Kenya Ltd, a Kenyan subsidiary of an Italian company has leased 50,000 ha of land in Bungale, Malindi district to grow jatropha for biofuel extraction. The proposed land is community land held in trust by the Malindi municipal council on behalf of the local communities. The Malindi land control board and municipal council were in favour of the lease of the land even though part of the plantation would be in Dakacha woodland, an important indigenous coastal forest which also acts as a migratory corridor for wildlife including elephants. The area has also been recognized as an Important Bird Area (IBA). Although various government departments such as the National Museums of Kenya and Kenya Wildlife service (KWS) together with conservation NGO’s were against the lease, the project proponents proceeded early this year (March 2010) to start clearing the forest even before they had received an environmental impact assessment (EIA) license from the National Environment Management Authority (NEMA), the government body mandated to protect the environment.

Impacts of the land grabs and implications on communities and their livelihoods in the Tana river delta

The consultant carried out interviews with a cross section of local people in Malindi, which falls within the Tana delta, in order to get an understanding of the perception and the implications of the land grabs by the local communities. Respondents included farmers, a representative of a local branch of a farmer’s organization, members of a group ranch, representatives of environmental conservation NGOs and government officers.

⁸⁴ <http://www.nation.co.ke/News/-/1056/504642/-/u0n6yu/-/index.html>

⁸⁵ <http://store.businessmonitor.com/article/297240>

There are many impacts of large scale agricultural investments on the local communities. One can speculate that should all the proposed agricultural investments take off in the Tana delta, it will result in massive food deficit in the area as communities will have to import all food items or rely on food aid. Secondly, conflicts over natural resources will increase. There already exists tension between the farmers and pastoralists over water and grazing land with farming communities accusing pastoralists of grazing their livestock on their farms. As the available land drastically reduces, it can only mean exacerbation of existing conflicts. Although not exhaustive, other impacts include;

a. Misconceptions, lack of information and deceptions

At the community level, there was a general lack of information among the local people with regard to the acquisition by the various companies. Many of the people rely on media reports and what their political leaders such as the counselors tell them. In other instances, they rely on local NGO workers to provide them with accurate information. In the case of acquisition of the 50,000 ha of land for jatropha in Bungale, a resident interviewed said that the company representatives told the community members that they would not be affected by the plantation activities but rather they would acquire jobs. However, after a while, some people were evicted because they were supposedly living on what was going to be the access road to the farm. As required by the EIA process, the Jatropha Energy Ltd called several community meetings to inform them of the planned development. However, people, particularly women, from another area that would not be directly affected by the project, were ferried to the meetings to support the project. When any community members from the affected area, NGO representatives, or government officers raised objections to the proposed project, they were loudly jeered by the ‘imported’ community. Another interview revealed that there is allegation that for this particular project, the investing company bribed municipal counselors (it is alleged that each got Ksh 21,000 to raise support for the project from their wards). In turn, the counselors passed the resolution to accept the project at the Municipal council level without any consultation with community members.

b. Insecure land rights

In the Tana delta, as well as the entire coastal province, the issue of land ownership and access has a complicated history to the extent that historical injustices in this region have a special emphasis in the National Land Policy⁸⁶. In this regard, a very large number of people in this region are squatters on their own ancestral land having no legal ownership rights over the land on which they live and derive their livelihood. Most of the land in the region has previously been held as government land – in which case the government has not been obligated to consider community user rights over the land before allocating for lease to private investors whether foreign or local⁸⁷. Another large segment of land is community land some of which is unregistered and hence held by relevant Municipal or County councils

⁸⁶ Chapter 3.6.4, para 184 – 193, Sessional paper No 3 Of 2009 on National Land Policy, highlights the issues in detail and proposes measures that need to be taken to address the issues.

⁸⁷ This is the root issue involving the conflicts between local communities and the salt mining companies in Magarini division in Malindi district. See the report of the Kenya National Commission on Human Rights (KNCHR) on allegations of human rights violations in Malindi (accessible at http://www.knchr.org/dmdocuments/Malindi_Inquiry.pdf)

on behalf of the communities while some of it is registered under group ranches. Land held by the local authorities has been easy to access by interested investors. All an investor needs to do is approach the council or municipal officials with a development proposal and pay required fees (or bribes). A community member interviewed intimated that the Malindi Municipal Council would receive an annual lease fee of KES 1 million for the *Jatropha* project in Bungale and that the Malindi CDF Committee received a one- off payment of KES 3 million to support the project.⁸⁸ In most cases the local authorities do not present the proposals to the communities that will be affected. They do, however, in some cases, hold public meetings to introduce the investor and inform the communities why they need to support the new investment project. Communities are thus asked to support (or reject) proposed projects which they do not understand on the premise that the ‘developments will bring jobs, infrastructure and social amenities’.

With regard to land under group ranches, an interview with Mzee Jacob Seth Mazoea, was quite an eye opener. He explained that from the 1960s the government sought to assist the communities by giving them land to own communally as group ranches. This was a nation wide effort and not just in the coastal region. Several group ranches were formed in the Tana delta and they formed limited companies to manage the ranches on behalf of the communities. The group ranch members then contributed money and took loans to undertake cattle ranching and other projects. Unfortunately due to various reasons including poor management and droughts, such as the one in 1984, most of the group ranches lost their livestock and were no longer profitable. However, over time, group ranch members were allocated land within the ranches to cultivate food crops for subsistence. These allotments did not have any legal documents to support ownership. Over the years, the population within the group ranches has continued to grow as the original members’ got children and grandchildren. For example, a group ranch that had 70 original members now has over 20,000 persons claiming right of ownership/use. When proposals to lease out land to investors are brought, the original 70 members (or the sons who replaced their fathers) are the ones who are consulted while the majority of the land users have no say in the matter. In some ranches, like the ranch mzee Mazoea belongs to, even the original members are not consulted, only the officials of the Ranch Company make the decision.

When a group ranch decides to lease out its land to an investor, as has happened in the case of Wachu ranch, in the mind of the community, their intention is that they will be allowed by neighbouring ranches to graze their livestock in those ranches. From time immemorial livestock from the ranches and from outside have roamed freely in the different ranches depending on the season. Once the ranches are leased for commercial crop production they will be fenced off. Not only will group ranch members not access this land for grazing, other group ranches will no longer have access to this land as well. Unfortunately, the group ranches are not talking to each other and agreeing on how they will share unleased land.

⁸⁸ The researcher has not interviewed the Municipal council or Malindi CDF Committee to substantiate these claims.

A second issue that is arising is that group ranches that have not yet begun discussion with foreign investors are actively looking for investors to lease their land to. In fact, according to Mr. Francis Kagema of Nature Kenya, a conservation NGO that is part of the Tana delta conservation group, the group ranches do not want the government proposed projects on their land but rather prefer foreign investors because the foreigners are prompt to pay compensation to the ranch officials and members. There is a perception that leasing out land is financially rewarding. Communities are not looking into the fact that these leases are for long periods of time such as 50 – 99 years. If one was to divide the financial compensation each family is entitled to get over the entire lease period they would realize the amount is insignificant compared to what they would benefit by being on the land and continue with their subsistence farming and livestock keeping.

In the not so distant future, conflicts over land, pasture and water will become severe in the delta as more group ranches lease out the land and it gets fenced off. The issue of where these people are going to be settled is not being looked into adequately. The delta also acts as a dry season pasture land for other pastoralists communities from northern Kenya, Somalia and even as far as Kajiado. This lifeline will be effectively cut off when the different large scale projects start off.

Discussions with the local representative of a nationwide farmer’s association, KENFAP indicated that farmers in the region were a disenfranchised lot. The organization was not very strong in this area because there were few committed members. The main reason being that most farmers did not have title deeds to their land. Farmers were not willing to agitate for their rights as users of the land and natural resources. Many groups across the coastal region have had ongoing evictions every time a new investor comes in. From the Tiomin the titanium mining project and the reviving of the sugar plantation in Kwale, to the Rea Vipingo sisal plantation, which in turn has sold part of the land to a company that is developing a luxury golf course resulting in additional evictions in Kilifi, to the salt mining companies in Malindi. The upcoming evictions from the jatropa, sugar, sunflower and vegetable plantations in the delta, is just another wave of evictions. There is a general fatigue in the region among the communities to continue fighting for their rights with regard to land and natural resources especially because they lack champions. Some expect the politicians they elect to parliament to champion their rights but these are the very people who are used by investors. Many have pinned their hope on the new constitution.

c. Environmental destruction and socio economic impacts

The Tana delta is a very pristine ecological region where a delicate balance exists between different land uses. The biodiversity value of the delta has been demonstrated by various studies done by the conservation NGOs and the government bodies in including National Museums of Kenya and the Kenya Wildlife Service.⁸⁹ Except for the rising incidences of charcoal burning, existing economic use of the delta has been in a threat to the ecological and biodiversity balance. Local communities engage in pastoralism and subsistence agriculture. The potential for tourism in the delta has not been fully explored and

⁸⁹ The Delta has been earmarked to come under the 1971 Convention on Wetlands a proposal put forward by KWS and is identified internationally as an Important Bird Area

conservation groups in the area claim that returns from eco-tourism investment would benefit the region and the country much more than proposed large scale crop cultivation.

Investments in large scale commercial farming of sugarcane jatropha, sunflower, and other oil seeds will result in huge tracts of land under a single crop. The resultant monoculture will turn the entire delta into an ecological desert. The increase and maintain productivity of the single crop plantations, large amounts of pesticides and fertilizers will have to be used causing pollution to the soil, air and water both surface and ground.

In the farms where jatropha is the intended crop there is uncertainty as to whether the crop will do well and produce expected results. In discussions with Mzee Mwangemi, a respected farmer who himself operates a demonstration farm for jatropha growing in Malindi, he said that from his experience of growing jatropha, he would not encourage large scale growing of the crop as a large scale commercial operation. He encourages the local farmers to plant it as part of their hedges and instead grow food crops. Although the oil pressed from the jatropha seeds can change the fortunes of local communities, using it for lighting instead of kerosene, making soaps and other cottage industry level production. Large scale production for export as proposed by Jatropha Kenya Energy Ltd and G4 Industries is not viable. In support of this argument, the district lands officer reiterated that he had expressed his opinion to the municipal council with regard to leasing land to Jatropha Kenya Energy Ltd. which was that the council should lease a small portion between 500 – 1000 acres to the investor for a period of 5 years so that he can clearly demonstrate the viability of the project that is being proposed rather than leasing the entire 50,000ha.

With regard to proposed vegetable farming on 40,000 ha for the Qatari government (now unknown) and an additional 40,000ha for local consumption, issues were raised by Mr. Jackson from A Rocha, a conservation NGO that is part of the Tana river delta conservation group. Mr. Jackson highlighted the fact that vegetable growing in the delta currently does not do well, almost all vegetables consumed in Malindi districts (and most of coast province) are imported from inland. He was curious to know how the Qatari’s (or whoever is now getting this land) is planning to successfully grow the vegetables. In addition, it was not clear on the ground where the land that was to be allocated to the Qatari government was actually located in the delta. Even the district lands officer was not privy to the information. He indicated that he was not under any instructions from the headquarters in Nairobi to identify such land and demarcate it. Therefore as far as he was concerned, the issue of the Qatari land was not formal but possible deliberations at the very high political level.

All the land acquisitions deals in the delta have come with promises of providing jobs for the local communities who are ‘very poor’. Discussions with NGO representatives indicated that whereas the local communities living in the affected areas were ‘poor’ in terms of actual money received (from wages or sales of produce) they currently had many factors to their advantage. For example, they are able to meet their daily nutritional needs from their small shambas and livestock. Other food and income avenues include fishing, and collection of fruits, honey and other forest products. Once they investors take over the land, the communities will be evicted. They will have no access to land to

cultivate. Most of the group ranch land that is under negotiation for lease surround the river and once the investors take possession they will fence it off and the pastoralists and possibly even the fishermen, will have no access to the river. Whereas the investors will possibly employ community members, they will concentrate on employing the young males. Other family members, such as the older people, women especially those with children to look after will not be employed. In the existing socio-economic structures each group within the society has a specific way of earning income. For example, among the pastoralist, the milk belongs to the women who decide on how much should be used in the home and sell the rest. Money from milk sale is for women and men are not allowed to ask for it.

When one looks at the precedent in the country where foreign investors have leased land for large scale farming, in the initial stages a large number of the local community is employed doing menial work including clearing the land and taking care of the young seedlings. Once the farm is established, it begins to become more mechanized and with this loss of jobs for the local people. In addition, large plantations attract labour from other regions in the country, many of whom are more skilled than the local people who then lose out of the job opportunities.

Responses to land grabbing at local, national and regional level

The current trend of large scale agricultural investments in Kenya have resulted in an outcry of condemnation from the general public and concerted efforts by civil society organisations and farmers organisations. Leaders of farmers organisations such as Kenya National Federation of Agricultural Producers (KENFAP)⁹⁰ and the East African Farmers Federation⁹¹ as well as local such as the Kenya Land Alliance and international NGOs such as IUCN and Oxfam are warning that these deals are most likely to increase poverty in the long run as the country loses its natural capital. Natural resources such as water, soil nutrients, biodiversity are not being taken into account when the deal are being negotiated. More significantly, the greatest losers of these deals are communities who are being deprived of the opportunity to earn a livelihood from land that, although they do not have ownership rights, they have user rights. It is a fact that subsistence farming meets the food demand for rural communities and rather than being denied access, subsistence farmers should be assisted to improve their productivity with the aim of increasing surplus production for sale.

Actions being taken in response to land grabbing in the country include;

- a. Seeking legal intervention through court

The Tana River Delta Conservation group took the Mumias sugar company to court to prevent it from converting over 25,000 ha of the Tana delta into sugar plantations. However, the court ruled in favour of

⁹⁰ Quoted in a report published by IPS on April 19, 2010 (accessed at <http://farmlandgrab.org/12213>)

⁹¹ Quoted in a report published by Arusha Times on August 8, 2009 9accessed at <http://farmlandgrab.org/7053>)

the investors due to a technicality. A coalition of communities living in the Tana delta has recently gone to court to seek stoppage of all large scale agricultural investments in the delta, especially the deals being struck between investors and group ranches. The groups that have taken this court action include Wema Ngatana Co-operative Society limited, Hewani Farmers Co-operative Society and two individuals Abdalla R Hiribae and Maulidi K Diwayu. The group has sued the National Environment Management Authority (NEMA), Tana and Athi River Development Authority (TARDA), Tana River County Council, Commissioner of Lands and the Water Resources Management Authority (WARMA) seeking to stop all proposed development activities in the Tana delta and demand for respondent, in consultation with all stakeholders to develop a comprehensive master plan and conduct a cost benefit analysis of current ecological value of the delta versus the proposed development.⁹² The next hearing was expected to take place on August 19th 2010, however, no orders were given.

b. Gathering information, conducting scientific research and disseminating

NGOs are trying to find and dispense information about the land deals. Most of the deals are done behind closed doors without inclusion of other stakeholders such as communities and civil society organisations. Nature Kenya conducted a cost benefit analysis on the Delta and the proposed integrated sugar project in the Tana delta⁹³ while Ujamaa centre conducted an independent EIA of the proposed development on the Yala Swamp.

By gathering information and publicising it organisations are allowing for public response. This publicity has had the effect of causing some of the investors to reconsider the investments, such as the funders of the Mumias sugar plantation deal in the Tana delta, or to at least to offer better deals to all affected stakeholders.

c. Strengthening community based organisations and lobbying

Communities in the affected areas are coming together to form associations and strengthening the existing ones. Such groups include the Dakatcha Woodland Conservation Group to lobby against the jatropa plantation in Bungale, Malindi. In addition, NGOs are also forming coalitions such as the Tana river delta conservation group and the Friends of Yala Swamp and using such means as developing a website and providing regular information as they collect it on the ground and using it to lobby friends nationally and internationally to bear pressure on the government to sanction such deals without ensuring that they will be beneficial to all stakeholders.

⁹² Judy Ogutu, Group Moves to Stop Tana Delta Projects, published in the East African Standard Newspaper on 13th August 2010.

⁹³ ‘The Economic Valuation of the Proposed Tana Integrated Sugar Project’ is accessible at http://www.tanariverdelta.org/tana/1059-DSY/version/default/part/AttachmentData/data/TanaRD_CBA_Report_June2008.pdf

Alternative business models for FDI in agriculture

The government should put in place measures to ensure that outright sale of land to foreign investors for agricultural production is the least attractive option in agricultural investments. There are various business models available for FDI in agriculture that do not involve large scale land acquisition and transfer of land rights. Agricultural investment policy should promote these alternative models since they enhance collaboration between local farmers and foreign investors. In their survey of existing agricultural business models, Vermeulen and Cotula⁹⁴ listed six models that are currently in practice worldwide. These include contract farming, management contracts, tenant farming and share cropping, joint ventures, farmer owned businesses and upstream/downstream business links. In the Kenyan context, I find that only two of these models are suitable, contract farming and joint ventures.

a. Contract farming

This typically involves bundles of separate contracts between a company and groupings of local farmers. The farmers grow and deliver agricultural produces of specified quantity and quality at an agreed date, in exchange the company provides upfront inputs such as seeds, fertilizer pesticides and technical advice.⁹⁵ This model of agribusiness has taken root in some parts of the country such as in Kirinyaga district where farmers are contracted to grow french beans and other types of vegetables for the export market. This business model is most successful where the farmers own the land and have titles to the land.

Under contract farming, there are various ways in which it can be undertaken. In the case of french bean farming in Kirinyaga, the ‘investor’ has contracts with individual farmers. In other cases farmers come together and form a cooperative which signs an agreement with the ‘investor’. Each farmer has an agreement with the cooperative which provides inputs such as seeds and fertilizers on credit against the harvested produce. An example of this type of farming is the Mwea rice irrigation scheme and various sugar cane out-growers schemes across the country.

Contract farming is a viable option for investors in the agricultural sector especially in proposed vegetable production and even biofuel crops growing. The underlying factor, however, is security of tenure for local farmers. If the farmers are deemed to be squatters on the land with no legal ownership or user rights contract farming is not possible.

b. Joint ventures

⁹⁴ Vermeulen S. and Cotula L, Making the Most of Agricultural Investment: A Survey of Business Models That Provide Opportunities for Small Holders, FAO/ IIED/IFAD/SDC, 2010

⁹⁵ *ibid*

This involves where two or more parties jointly run a business venture. Each contributes to the business whether in cash (capital), or in kind (land, natural resource rights, technology) and participates in any profits and losses made by it. This business model has been in practice in the semi-arid areas adjacent to national game parks and game reserves. Local communities who own land as group ranches agree with interested investors to put up tourism facilities and share from the proceeds. The local communities contribute land, building materials, labour as well as set aside part of their land to act as wildlife dispersal areas or corridors while the investor provides cash capital, management and marketing of the facility. This arrangement has been successful in varying degrees in the rangelands.⁹⁶

In the farming sector, this business model can be explored especially in area where the land is owned communally. Instead outright lease of the land to foreign companies such as is going on in the Tana delta group ranch farms, the agricultural policy should encourage the investor to engage with the already existing farmers/community members even if it means extensive training and transfer of improved farming techniques to the locals. Each group farm would then internally decide on whether to farm as a business employing group members or to sub lease pieces of the land to group members for production of the crop.

Appropriate alternative business models for investment in agriculture that will work in Kenya as opposed outright leasing and management of farm investments by foreign companies is an area that requires further in-depth study due to the diverse cultural and socio-economic factors across the country. A combination of several existing models or development of new models would probably be the way to go.

Recommendations

This report has barely scratched the surface with regard to the current extent of land grabbing in Kenya. There is still need for more need for further detailed study on the subject. However, from this brief analysis a few recommendations can be deduced.

- (i) Monitoring land grabbing

⁹⁶ Examples include Shompole area in Magadi (www.loisiilodgeshompole), (www.theartofventures.com),

All stakeholders including farmers, farmers’ organisations, NGOs and civil society organisations and communities need to be alert with regard to large scale land acquisitions. A collaborative effort is needed as reports from interviews with communities in the Tana river delta show, affected community members are often the last to know of such land acquisitions. They are often informed on the new developments when they are being evicted, offered compensation to vacate or when they see large tracts of land in the neighbourhood being fenced off. The role of media is critical in highlighting these developments. Civil society and NGOs can use their influence to gather information on the details of the deals and pass this information on to communities. Coalitions and partnerships should be encouraged. Each member can bring their diverse expertise to bear in a situation such as the Tana river delta where impacts of large scale monocrop plantations go beyond loss of land for local subsistence livelihood and affect other areas including biodiversity.

The land grab phenomenon is not limited to Kenya or Africa but is taking place across the globe. Local organisations should tap into international NGOs that are keeping a watch at the international level so as to feed into the information flowing to these organisations at that level and feed from information from the international level. Such linkages are important because these organisations are able to lobby from the international level including to the UN, and the World Bank who are funding some of the land grabs.

The new constitution of Kenya provides the right of access to information.⁹⁷ Under this provision the government and businesses have the obligation to not only provide information that has been requested by members of the public but to also pro-actively provide information on intended developments that will greatly affect the lives and livelihood of community members. Community organisations and civil society organisations now have constitutional backing to demand for information regarding large scale from government and companies including the details of the deals. Civil society and community organisations should lobby the government to pass legislation on access to information to facilitate enjoyment of this constitutional right by Kenyans.

(ii) Enhancing and securing land rights

Most of the land grab deals in Kenya are taking place where the community have the weakest land rights, where the land is considered either government land or communal land vested in the local governing authority. User rights over the land and its natural resources take a secondary position as governments and authorities lease out the land for perceived economic returns. There is lack of detailed cost benefit analysis between actual income derived from existing use, including ecosystem services and expected benefits from investment projects. The new land policy and new constitution tightens the

⁹⁷ Sec 35, The proposed Constitution of Kenya

loopholes that existed in the previous legal regime and it is expected that it will now be extremely difficult to lease out large areas of land whether community owned or publicly held without due diligence and legal protection of all stakeholders through an Act of Parliament. However, strong laws need to be put in place requiring not only cost benefit analysis of proposed large scale agricultural investments but also review of the environmental law, the environmental management and coordination act, law to strengthen the EIA procedures. At the present, the project component commissions an EIA and the law makes no provision for independent EIA to be done by any other interested party nor for such EIA to be reviewed alongside the project proponents EIA by the government technical committee.

(iii) Strategic environmental planning

Whereas the new constitution provides for sustainable utilisation of land⁹⁸ there is need for strategic environmental in all ecological zones of the country. These evaluations should ideally be conducted by the ministry of planning and other relevant ministries including agriculture and environment. With this information readily available all stakeholders including civil society, communities and potential investors will be able to easily identify the most ideal agricultural investment in any region of the country. In this way, fragile areas including wetlands, rangelands and semi-arid areas will be put to optimum but sustainable use.

(iv) Policy against speculative land holdings

The new constitution provides for the taxation of idle land, although this may deter aggressive purchase of large parcels of land for speculation, a stronger policy and practice should be put in place by the government. Land is a very emotive issue in Kenya and has been at heart of many conflicts in the recent years. Foreign and local investors interested in acquiring large holdings should first be able to demonstrate the viability of their proposed agricultural investment on smaller acreage over a shorter period of time, say 5- 10 years especially with regard to investment in crops for biofuel that are new to the country.

(v) Strengthening FDI agricultural contracts

Contracts negotiated between governments, local authorities and private land owners should be not be shrouded in secrecy. The public and interested organisations should be privy to certain information. Land and natural resources, whether as private or public, is still a shared resource. Governments and host countries should be careful in drawing these contracts so that any expected benefits promised by

⁹⁸ Sec 60 (1), The Proposed Constitution of Kenya

investors should be included in the contract rather than remain vague promises. Leases should also include what should happen if the investor does not meet his part of the deal including not meeting the percentage employment of local communities and not putting up social amenities indicated in the contract. Contracts should be binding such that investors who do not meet their obligation can forfeit the leased land to other willing investors.

Conclusion

Large scale agricultural investment or land grabbing is a phenomenon that is taking root in Kenya. Land grabbing is fuelled by global factors such as the climate change regime that is calling for biofuel crop production, global food insecurity and the move toward acquiring agricultural land as the new frontier for financial investment including the need for increased foreign exchange and agricultural development. The impacts of the land grabs in Kenya has been threatening of the livelihoods of local communities including small scale farmers and pastoralist who use the land and its natural resources for subsistence. Most of the land grabbing is taking place where the land users do not have legal ownership rights over the land regardless of whether or not they have used the land for generations. Land is held by local authorities or is considered government land and thus communities using it are not a factor that is considered in the negotiated deals. Proposed investments are mainly large scale plantation farms to grow biofuel feedstock such as jatropha and sugarcane and food crops for export. Real benefits from land grabs for local communities and for the country’s economy cannot be guaranteed if these investments are carried out as planned.

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