

**"No matter how loud the frogs croak, the cow still drinks the water"**  
**Ethnography of a Large-Scale Land Acquisition in West Kenya.**

Master Thesis



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## **Abstract**

In Kenya, land is one of the most discussed subjects, as agriculture is the source of livelihood of 85% of Kenya's population. Large-scale land investment is a rather new phenomenon in the Nyanza region in West Kenya. The arid climate and the low infrastructure of the region did not seem attractive to investors for a long time. In 2003 – before the new investment boom in Africa – an American investor leased an area covering 6'900 hectares of a swamp for 45 years in order to grow rice, claiming that this would ensure food security and fight poverty in the region. The aim of my fieldwork in West Kenya was to gain deeper knowledge about the perception of the people affected by this project. Based on qualitative methods, such as participatory observation and qualitative interview techniques, the focus was on the various local interests and the identification of different actors and decision makers who implemented the project.

This fieldwork is part of a larger comparative Master project called *Ethnography of Land Deals*, which has the goal of looking at large-scale land acquisitions from a local emic perspective – the horizontal level – and from an investor's perspective – the vertical level. This comparative Master project was carried out by different students on different selected land deals in various countries in Africa and Asia. This thesis addresses the perception of the investor and the state officials on the vertical level, while my colleague Anna von Sury, in her thesis about the same case, focuses on the horizontal level.

The analysis of the vertical level reveals that the implementation of the project was motivated by the investor's cultural and religious views on the one hand and by political arguments on the other hand. The implementation process is characterized by insensitivity regarding local culture and society, which leads to various conflicts between the different levels. On the horizontal level, the project causes side effects such as new conflicts over land and the loss of resources – such as grazing land and land for cultivation – which have necessarily changed the livelihood of the local people over the years. Based on social anthropological fieldwork and the focus on the different heterogeneous perspectives, this research discloses contested views on Dominion Farms' investment in West Kenya.

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## 1 Introduction

*When we think of all the conflicts we have – whether those conflicts are local, whether they are regional or global – these conflicts are often over the management, the distribution of resources. If these resources are very valuable, if these resources are scarce, if these resources are degraded, there is going to be competition.*

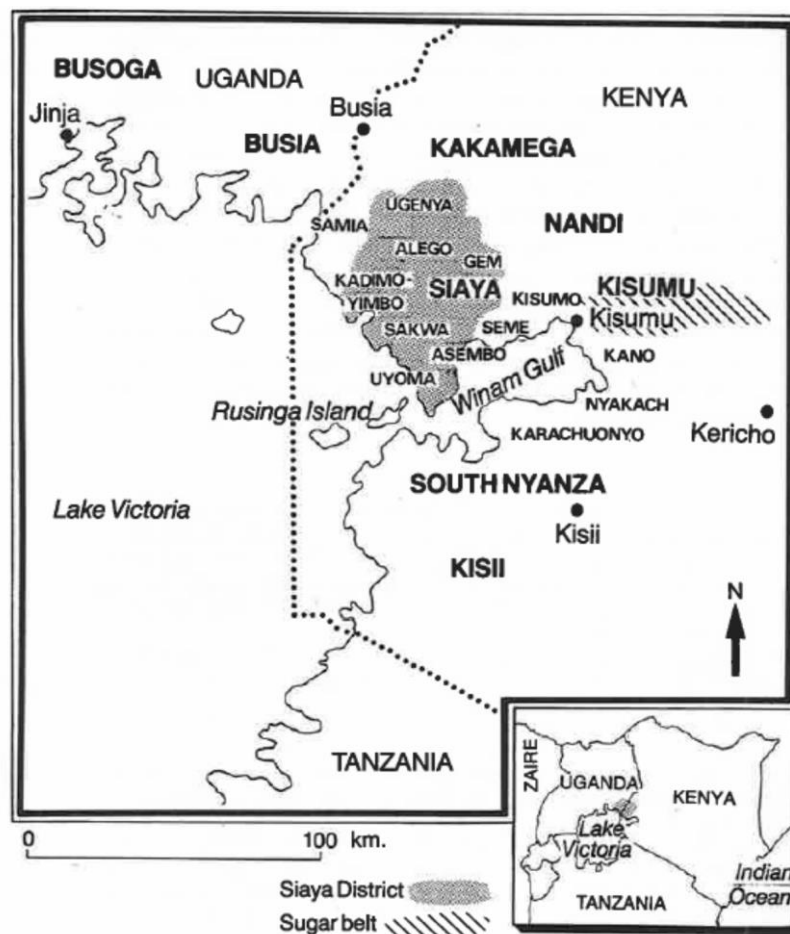
Wangari Maathai, Kenyan environmental and political activist



Picture 2. View of the Yala Swamp from Ramogi hill (picture by Anna von Sury).

## 1.1 Preface

“We, the Luo, are Nilotic peoples. My peoples migrated in the end of the 15th century from South Sudan along the river Nile to South Uganda. A young, energetic warrior named Ramogi Ajwang sent a group of scouts to south-east with the mission to find a better land. The leader of this mission Idi, the son of Imbo, came to a hill, where he saw that people lived happy, because they had grazing land for their cattle and plenty of fish in the Lake Victoria. Impressed of the fertile land the Luo settled to the hill’s region which now is called Yimbo. Since this time the Got Ramogi, meaning “Ramogi’s Hill”, is a holy hill for all Luo people. It is the hill where our founding father fought against our enemies. His sons were Alego, Gem, Samia and Ugenya. They all settled here in Siaya County. Women cultivated the soil while men reared the cattle. Alego was married to Aloo, their sons were Serje and Kadenge. That’s the reason why our village is called after the sons of the sons of Ramogi. This is the land of my forefathers”<sup>2</sup>.

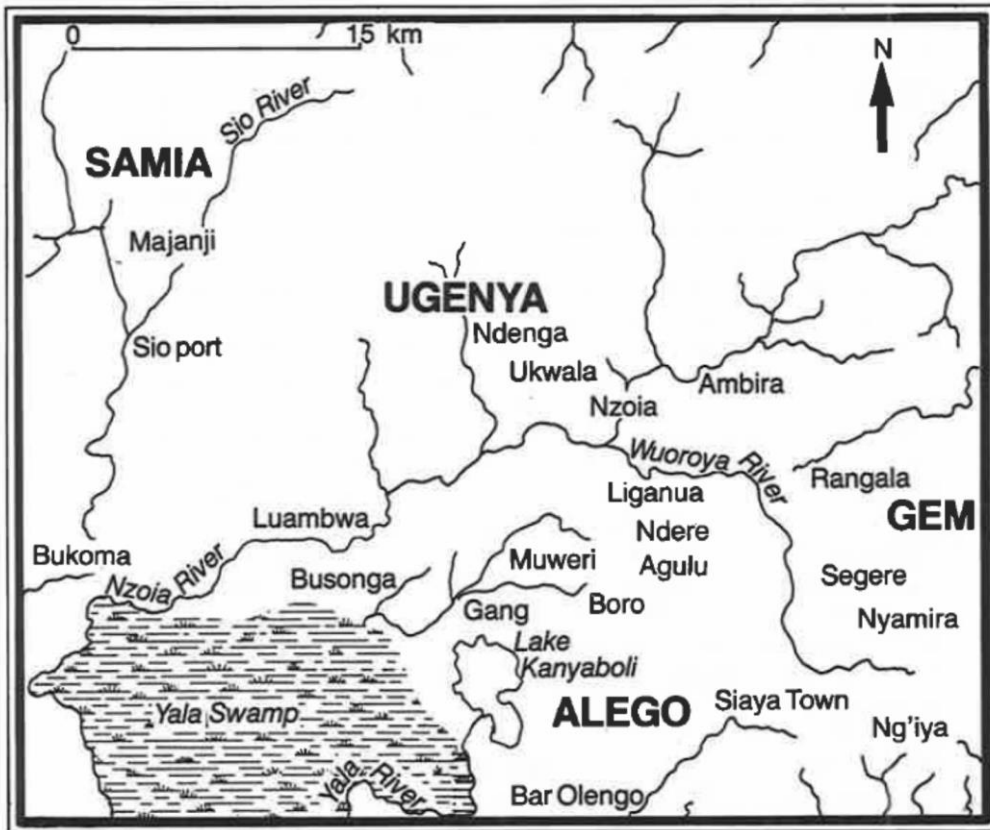


Map 1: East Africa, Nyanza and Siaya

Map 1. Map of Siaya (Ochieng, Cohen & Odhiambo 1989: 5).

<sup>2</sup> Author’s field notes, April 2014: Young villager tells us the story of the Luo ancestors.





Map 2 Upper Siaya (Alego, Gem, Samia, Ugenya)

Map 2. Map of the region (Ochieng, Cohen & Odhiambo 1989: 5).

## 1.2 An Ethnography of a Land Deal

The story above tells us something about the setting of my study in west Kenya, Siaya County, at the Lake Victoria, where the third biggest ethnic group of Kenya, the Luo, lives. It is a story about Luo identity and a story about their relatedness to the land and its resources. It shows us that the regions are related to their ancestors as well as to economic activities.

Thus, it makes sense to bear this story in mind when we are dealing with land issues on the following pages of this master thesis. To get a better understanding of the multiple importance of the land for the people living in the area, the historical background is fundamental. This land, in the west of Kenya, northern part of the Lake Victoria, has been contested by national and international interests. For example, an American investor who took over 40% of a 17'000 ha swamp for rice production.

This work deals with the ethnography of this concrete example of a large-scale land acquisition, concentrating on local as well as national and international levels. An ethnography, as a genre, is a product of scientific ethnographic writing and a process of fieldwork and participatory observation. According to the Encyclopaedia of Social and Cultural Anthropology, an ethnography is a written account which focuses on a particular population, at a specific place and time, with the express goal of describing it to others (Bernard & Spencer 2010: 193). This kind of old-fashioned image of 19th century ethnography, of course, has been contested by scholars who ask for more contextualization, less ethnocentrism and exoticization and focus more on power relations. Besides these critiques of ethnography, what matters is “that the reader of an ethnography have a clear picture of what the ethnographer did and why, whom they talked to and learned from, and what they brought back to document it” (Bernard & Spencer 2010: 198). Thus, the goal of this thesis is not an ethnography, the way we know it from Malinowski and his *Argonauts of the Western Pacific* (1922) or Evans-Pritchard’s ethnography on *The Nuer* (1940), but to provide a precise description of contested views on a specific large-scale land acquisition.

### 1.2.1 The Field

The place of interest, the lake zone in Siaya County, Kenya, is situated in the land rising up to 1'200 m altitude on the equator<sup>3</sup>. The region hosts the three peripheral lakes Kanyaboli, Sare and Namboyo. The river Yala in the south and the Hwiro and Nzoia rivers in the north floating

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<sup>3</sup> Google Earth.

<<http://www.gosur.com/map/?gclid=COD6oqatlkCFQsCwwod5LUeA&z=12&ll=0.03165,34.143224&t=hybrid&lang=en>>.

a 17'500 swampy area, the Yala Swamp. Despite the existence of many water bodies in the this area, rainfall is reliable in the rainy seasons in spring and autumn, when people cultivate the dry soil with maize, sorghum, millet and beans. Rearing of cattle and fishing are the two main agricultural activities of peasants in the region.

The Nyanza region around the lake shore is also called the Luo land, according to the ethnic group that lives in the area. A lot of the people live in one of the villages which are evenly spread in the region. The murram roads (dirt roads) which connect the counties' capital Siaya with the villages are in poor condition after each heavy rain. The villages lack electricity and running water. Healthcare is scarce and education is expensive. Because of this conditions, young men and women are likely to migrate to the county's capital, Siaya, or to one of Kenya's main migration plots, such as Kisumu, Nairobi or Mombasa, for their economic activities.

Therefore, this region might seem unlikely for international agricultural investment. The swampy land, in the heart of Siaya County, has seen an increase in its agricultural potential since the construction of a dam in the 1970s. The swampy area was taken into consideration by the state of Kenya for agro-industrial exploitation. Because of a lack of financial capacity, international investment was welcomed to develop the Yala Swamp. Hence, in 2003, 6'900 ha of the Yala Swamp have been leased by an American investor for large-scale rice cultivation. This investment of a foreign person has been labelled a "land grabbing" by different actors, media or opponents. The deal has been marked by insensitivity towards the culture of the Luos as well as by the total lack of power of the local community to guarantee a fair consultation in the implementation process. The locals' frustration about these circumstances is expressed in the following Luo proverb: "No matter how loud the frogs croak, the cow still drinks the water"<sup>4</sup>. The frog (on the pond) refers to the people on the ground; while the cow, which is a highly valued animal for the Luos, represents the powerful leaders. Those cows (leaders), according to the proverb, have the power to drink the water in which the frogs (people on the ground) are living, and it does not matter how loud the frogs (people) protest against these circumstances. This proverb is so symbolic for the processes of the large-scale land acquisition of the Yala Swamp that I want the reader to bear it in mind while reading this thesis, which addresses the perception of the investor and the state officials on the vertical level.

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<sup>4</sup> Luo often translate it following: "As much as the frog croaks, the cow still drinks the water".

### **1.2.2 Content of the Thesis**

The thesis is divided in five parts. In the introduction I deal with basic theories about large-scale land acquisition and methodological and theoretical approaches. After giving some basic information about the field of study, the aim of the master thesis and the methods used, I will concentrate on questions of large-scale land acquisition – the so-called “land grabbing”. As I will show, there is a vast scientific literature on these phenomena, but concrete examples and the related processes have not been investigated. Therefore, The New Institutionalism approach of Jean Ensminger will be helpful to analyse the broader contexts (see Ensminger 1992). Ensminger claims to concentrate on internal factors such as organizations, ideologies (including narratives and discourses), and bargaining power and institutions on the ground, as well as on external factors such as technological change, population, environment (social and physical) and how those factors affect changes in relative prices. I therefore conclude that it makes sense to describe the deal on different levels, to give a better insight into the implementation of the American investor’s rice farm project. I argue, that with the New Institutional approach from Ensminger and the focus on narratives, ideologies and discourses, I can gain a better understanding of the large-scale land acquisition in West Kenya.

In part two, I will give a deeper insight into the historical background of Kenya and of the contested wetland, the Yala Swamp. I will show how the colonialization of Kenya by Great Britain started a process of defragmentation and reduction of land. Resistance to this loss of land may have led to the independence of Kenya, but the new Kenyan government followed some of the pre-independence land policies like using land to secure their political support. The insights in the historical background led us to the fundamental finding that foreign investment in land is just a part of a long history of land acquisition and is deeply related to the manipulation of land rights by the first colonial rulers and, later, by Kenyan’s powerful politicians and state actors. Furthermore, the second part of the thesis addresses the history of the Yala Swamp, to show how different interest groups claim the right to use the Yala Swamp. Development planners see the potential of the swamp in the agro-business, while conservationists call for a wildlife reserve and mention the potential of tourism. The local community, on the other hand, is socially related to the land and uses the common-pool resources for their subsistence. The American Investor Calvin Burgess and his Dominion Farms project are new players in the fight over the Yala Swamp. After a short introduction to Burgess’s background and motives, I will finally address the question of the labour market in the region, to analyse how the introduction of money changed the needs of the Luo people.

In the third part of this thesis, I will analyse the legal bases which made this deal possible. I try to show how legal pluralism and power relations interfered in the process. Therefore, the thesis discusses the different categories of land which coexist in Kenya's land act. I argue that these categories led to uncertainty about the legal owner of the land, which meant that decisions about the Yala Swamp could be made without consultation of the affected community. Based on assumptions recalling Garret Hardin's *Tragedy of the Commons*, the Kenyan state owns water, forest and other lands and is free to use them on behalf of the people. To legally use the land, the government as well as the investor try to define the cultural landscape as idle land to legitimize their large-scale agriculture business. A lack of financial power of the state to manage the potential validation of the so-called idle land led to an outsourcing of management to foreign investors.

The fourth part deals with different actors and their bargaining power through contracts and institution shopping. Through explaining the different contracts and assessments which have been made to safeguard disputes, it is possible to focus on different ideologies, discourses and narratives which have been used by different agents. I argue that assessments and contracts, which should have enforced the bargaining power of the local community, became a political tool. Further, the focus on different actors and their multiple ways to gain power in the negotiations shows the paradox of a state that is both present and absent. Present through rules and regulations, giving people legal bases to their rights as citizens, but absent in the implementation of rules or as controlling authority. The example of an environmentalist will show us how political leaders instrumentalized rural conflicts for their own gain, by calling ethnicity responsible for the underdevelopment of the region, whereas questions of environmental damages have been swept under the carpet.

The fifth part will focus on how the investor legitimize his large-scale land acquisition through religious ideology and narratives. The religious approach of the investor remind of Max Weber's theory of *Protestant Ethics* (Weber 1934). It seems that Burgess sees Christianity as the religion that helps to save the people from their "backward" "traditional" way of living, which is responsible for their calamity. Burgess stands not alone with this kind of ideas, the world's biggest development industries follow similar principles in using religion as a potential development driver. This kind of development approach is characterized by insensitivity

regarding local culture and society. I therefore try to show how the Christian ideology, brought by the American investor, changes ideologies, bargaining power and institutions on the ground.

The final chapter aims to gain a better understanding of the phenomenon of large-scale land acquisition through Ensminger's New Institutionalism approach. Relations between the external factors, such as technological and environmental changes influence the internal factors, such as bargaining power of different actors on the ground. The environment in the area changes because of new irrigation systems and the fencing of the farm. This circumstance reduces the access of the local residents to their common-pool resource and influence on the relative price of land. The relative prices makes certain resources, for example land, suddenly more valuable than others. Narratives, for example the constant referring to official ways, were used to legitimize the acquisition of the common-pool resource. Modernity and development, became powerful ideologies towards NGOs, which aimed to protect local people and environment. The final chapter discuss these different factors which influence each other on different levels and shows large-scale land acquisition as a dynamic process on a vertical level.

### **1.3 Aim of the Master Thesis**

The growing body of literature describes the phenomena of large-scale land acquisition from different perspectives but only sparsely does it analyse the implementation of specific land deals in practice. Further, most of the literature fails to show how land deals and agriculture investment are perceived by the local communities. The disregard in the current debate concerning local people's heterogeneous perspectives call for a better investigation. Moreover, we have to better investigate how land deals are embedded into local, national and international contexts. Social anthropologists often pay attention to local communities, ignoring the position of the agents involved at a higher level. It is therefore important to describe the investor's position and to pay attention to the process of the land acquisition, as well as to how the investor is reasoning. Despite an incredible output in literature and research activity in the last years on the topic, we lack ethnographic fieldwork data and a long-term field study in order to do an ethnography of land deals.

To escape the one-sided ethnographic trap, this project will be part of an interdisciplinary research project named "Ethnography of land deal". An anthropological as well as human geographical research will be done based on a comparative approach on selected land deals in various countries in Africa, Asia and Latin America. These research projects will be carried out by different students and the findings will be first analysed individually before they are

compared with the other findings. The theoretical overview is based on a seminar about the topic at the University of Berne in 2012 led by the Institute of Social Anthropology and the Centre for Development and Environment (CDE) and on further analysis of literature on the topic. To gain comparable findings, the research questions were developed in collaboration with the different research teams led by Prof. Dr. Tobias Haller (Institute of Social Anthropology) and Dr. habil. Stephan Rist (CDE), and were then adopted to the specific research context. The methods will be similar in all researches and were therefore developed in collaboration.

This master thesis aims to fill the described gaps by exploring how a specific land deal in the west of Kenya, Siaya County, was implemented and how affected people perceived the implementation process. The thesis is based on a three-month research in the affected community. The following general questions were central to the research:

- How do/did different affected heterogeneous actors (age, class, gender, wealth etc.) perceive the project implementation process?
- How does the project affect local people directly (e.g. economic displacement, income generation) and indirectly (e.g. reinforcing of social hierarchies, emergence of new values)? And, how are these impacts experienced and assessed by different affected actors?
- How do different local people deal in practice with such a project and its direct and indirect impacts, and how do they react to the companies and government strategies?

To answer these questions and to gain a deeper understanding of these processes, we conducted extensive fieldwork in Kenya in a team of two social anthropologists. Based on qualitative methodologies such as participatory observation and qualitative interview techniques, the focus was on the various interests and strategies on the horizontal level and on the identification of different actors and decision makers on the vertical level.

### **1.3.1 Vertical Interrelations and Implications**

The focus of this thesis is on the vertical level, which means that I pay attention to the various actors and their role in the implementation process. It is important to concentrate on the influence of different agents on the processes as brokers, translators or facilitators. It is important to produce a manifold image and to include the perception of powerful actors like the

companies as well as the view and strategies of powerful leaders on the local level. Narratives<sup>5</sup>, ideologies<sup>6</sup> and discourses<sup>7</sup> which are produced by the different interest groups have to be discovered to understand how legitimacy is produced. I therefore aim to answer the following three questions:

- What was the legal base on which bargaining power is based?
- What are the political and religious implications that make such a deal possible?
- How is legitimacy produced by ideologies, narratives and discourses?

We know very little about how large-scale land investments are made on a vertical level. With vertical level I mean the interrelations on different levels of power. The horizontal level pays attention to the local community's perception and on community's strategies. Normally, the horizontal level is in the interest of social anthropologists and vertical interrelations are not subject of their studies. But it is important to understand such a deal in its wider context. The local level is hardly connected to global events and changes. Decision on the global level influence state level, and they ultimately influence the local communities. These interrelations must be traced if we want more than just adding another case study about a local community struggling in this global world. When paying attention to the vertical interrelations, it is important to understand the processes behind such large-scale land acquisition. It is important to detect the decisions made by the actors deciding within the company, as well as to notice the platform the Kenyan state provide for a foreign investor. We must also pay attention to agents acting as brokers and translators who facilitate the process. It is essential to pay attention to the notions and ideologies produced by the different agents. How is knowledge produced and used? What notions and narratives does the company use? What was the role of the local community and local stakeholders in the negotiations of the land acquisition? It is important to show different interests and capacities of the different community members. I do not want to show the community as a homogenous mass with the same level of bargaining power. The local community is heterogeneous, composed by people of different ages and educational backgrounds, such as children, peasants, businesspeople, and female and masculine leaders.

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<sup>5</sup> Narrative: "coherent stories how things came about" (Haller 2013: 23). Assumptions, based on causal relationships or explanations offered by different actors within the context of their ideology (Lund 2001: 144).

<sup>6</sup> "Ideology is the way people explain the world and how they value things. [...] Ideology was referred to an often statically used coherent worldview, which related discourses () and narratives [...]" (Haller 2013: 21).

<sup>7</sup> Discourse: "coherent way of logically argumentation" (Haller 2013: 23). "Discourse is the act of talking or writing itself; it is a body of knowledge content, and it is a set of conditions and procedures that regulate how people appropriately may communicate and use knowledge" (Lindstrom 2010: 200).



Some of them are part of governmental agents, while others work for Non-Governmental Organizations or in Community-Based Organizations. It is therefore important to have a theoretical concept which collects all of these different levels and pays attention to its heterogeneity. Consequently, the New Institutionalism approach of Ensminger seems to provide an appropriate theory for our purpose, because land has to be seen as a commodity, whose relative price changes according to external changes such as technology, politics and environment. The relative price then changes the bargaining power of local actors, and influences also the ideologies, organizations and institutions. Ensminger's model provides us with a tool to understand these interrelations. We will come back to Ensminger's approach after speaking about the methods I used to answer the research questions.

#### **1.4 Method**

In order to consider these questions and to classify findings, it is necessary to get an overview of the local history, ethnicity, political structure, institutional compound, and power relations. To contribute to an insight into the emic views of different actors about the investment project, it is necessary to study how different affected heterogeneous actors (age, class, gender, wealth etc.) perceive the project implementation process.

To explore direct (e.g. economic displacement, income generation) and indirect (e.g. reinforcing of social hierarchies, generation of new values) impacts of this project and the way these are assessed by different affected actors, it is necessary to have a closer look at the historical transformation of land rights and common property organization and institutions (for example, on land and common-pool resources, like fish), social organization, food security and access to water, means of subsistence security, concepts of development and how these impacts are assessed by affected people.

In order to examine how different local actors deal with the project and its direct and indirect impacts in practice, and how they react to the companies and government strategies, we investigate how different people deal with the impacts described above. We are also interested in how Dominion Farms – the investor, the white-collar employees (such as manager) and blue-collar employees (such as casuals and security staff) – perceived the implementation process and how they perceive the impacts of the project.

We therefore used a mixed-method approach. The participatory observation, as one of the common methods in social anthropology, means that the researcher participates in daily activities of the researched community. The level of participation can vary from a more passive

form to active participation, but the researcher maintains a low profile (Hauser-Schäublin 2003). Depending on whether it is an open or a systematic observation, the researcher notes everything he or she observes to get an overview, or only aspects that concern a specific aspect she/he wants to understand (Beer 2003). Participatory observation is important in the explorative research phase in the beginning of the research and helps to evaluate research questions and allows a verification of aspects mentioned in interviews. Therefore, it remains important during the whole research (Hauser-Schäublin 2003).

Our team of two students lived for 10 weeks with a Luo family in one of the affected villages. The village in which we lived, Kadenge, was not adjacent to the swamp but in the same area. At this distance – approximately five minutes by motorbike – we were able to see that the people in the region are affected differently by the project, depending, among other things, on how near they live to the swamp. Our hosts lived in a rather poor homestead in Kadenge<sup>8</sup>. The 45-year-old woman and her two teenage sons welcomed us to live in their dala (Luo house) and let us participate in their daily life<sup>9</sup>. Living so close with a family gave us insight into the daily challenges of a woman in Kadenge. The hosting Luos gave us the opportunity to visit lots of different people and to get an impression of their situation and lifestyle. Participatory observation was important in the exploratory phase of our research, when we joined the people on the fields, helped in the household, and discovered the area and the people. This preliminary phase was to gain a better understanding of the field. This phase went hand in hand with a daily writing of a journal and constant taking of field notes, which have been used for the later, structured research phase.

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<sup>8</sup> A homestead consists of one main dala (house) which belongs to the head of the family (normally the man) and the houses to left and right belong to his wives and their sons.

<sup>9</sup> Her husband and other children live in Siaya town. She and her husband live separately but are still married. The homestead where she lives belongs to her mother-in-law, who is a healer. She has owned her own piece of land since her husband died.

Besides the participatory observation and our field notes, different kinds of anthropological interview techniques such as informal<sup>10</sup>, unstructured<sup>11</sup>, semi-structured<sup>12</sup>, biographic<sup>13</sup> and structured interviews and focus group<sup>14</sup> discussions have been used. These methods have been used in a second, structured research phase, in which we had already identified different relevant actors. According to Schlehe, interviews open the access to the emic perspective, the construction of reality from the perspective of the interviewed and his subjective interpretation, and are therefore an important research tool (Schlehe 2003: 73). In different methodological literature, these techniques are called diversely. For this thesis I will use the aforementioned terms, also used by Bernard (2002).

Interview techniques can also be distinguished by types of persons interviewed. Schlehe notes two types of specific persons that can be interviewed: Key informants (a), that are members of a researched community with special knowledge about a topic, and experts (b), that have specific knowledge about a topic without necessarily being member of the researched community. Both informants can give important information, especially in the beginning of a research, but never will give all-encompassing information about a topic (2003: 80-81). We therefore tried to reach as many different people as possible. Our interviewees included young

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<sup>10</sup> Informal interviews are open talks, conversations without the feeling of an interview. This form of interview happens all the time at all places during the research. They are useful especially in the beginning of the field stay and during the research to help uncover new topics of interest that might have been overlooked (Bernard 2002: 204).

<sup>11</sup> Unstructured interviews are conversations in which the interviewed is conscious to be interviewed but there is not a classic question-answer scheme. Schlehe (2003) divides two types of unstructured interviews: the narrative interview, in which the interviewee is asked to talk freely about a topic and the interviewer does not interfere at all, and the topic specific interview, in which the interviewee is also asked to talk free about a topic but can be interrupted by the interviewer to come back to the topic. These two forms of interview give maximum space for the interviewee to express himself in his terms, at his own pace (Bernard 2002: 205) and sometimes give information which the interviewer had not even thought to ask (Schlehe 2003: 73). These methods were used during the whole research.

<sup>12</sup> Semi-structured interviews are based on an interview guide but keep the qualities of unstructured interviews. The interviewer notes the topics he wants to address and the order in which to do so. Such interviews are good if there is only one chance to make an interview with a person, to be sure to cover everything needed with that interview. This kind of interview also shows the interviewee that the interviewer is prepared and competent, but does not try to exercise excessive control over the performance of the interview (Bernard 2002: 205, Schlehe 2003: 78).

<sup>13</sup> Schlehe also counts biographic interviews in this form of interview techniques. Biographic interviews give insight into the conscious, memory, interpretation, structuring and concepts of identity of the interviewee (2003: 79-80). For further information on biographic interviews see also Rosenthal (1995) and Bourdieu (1986).

<sup>14</sup> Focus group discussions mean that a group of people meets to discuss a specific topic. With this method, the interests of a specific group about a specific topic can be found (Chang and Cook 2007). Focus group discussions present solutions to specific problems that have been found by the focus group and therefore by the studied community or parts of them. Focus group discussions also need previous knowledge and are better conducted with two researchers.

men and women, students, politicians, employees, and the oldest women and men in the affected villages.

Interviews were conducted in English and Dholuo with a translator. Contrary to the information we got, most of the people in Siaya and the villages had enough knowledge of the English language, so a permanent translator was not necessary. The collaboration with the research assistant made the conditions rather difficult. Unfortunately, through the permanent presence of a Luo, often only Dholuo was spoken and lots of things were not explained to us. That we could not speak enough Dholuo – except for some small talk – was a constraint, because we could not understand lots of things going on around us.

However, it was possible to establish some valuable contacts with villagers as well as politically relevant people and to gain some interesting insights into the different perceptions of the project. Our interviewees seemed very cautious, neither criticising the project openly nor making very clear statements. It took my research partner and me some time to recognise and understand the excessive way of speaking about a topic. Nevertheless, the people welcomed us openly and were willing to speak with us. The Luo's hosting character helped us gain a deeper understanding about ongoing conflicts and their daily struggles, which are deeply related to the loss of their land. Therefore, the next chapter treats existing literature about large-scale land acquisition and discussions about land deals and land investments in conflict zones as well as in the daily life of the affected communities.

### **1.5 Large-Scale Land Acquisition – Theoretical Background**

Man has fought for land for longer than anybody can tell. Land – and its acquisition – is the source of most conflicts in this world. To understand the significance of land questions, the term land, therefore, has to be understood in its broader sense. Land is more than just a territory; it is a place where people and animals live and it is a source of nutrition and minerals, a ground for water, trees, grass or fertile soil. James Ferguson (2013: 168) mentions the following twelve uses for land:

- to live cheaply, often while retreating temporarily from expensive urban life to hunt or forage;
- to collect firewood, medicinal and other useful plants, and other natural resources;
- to provide a home base for trading;
- to bury their dead properly, and to properly respect, remember and tend to them;

- to bury the umbilical cords of their children;
- to anchor kinship and other social networks by providing a place of connection and return for an interrelated group of people;
- to reward political allies through processes of allocation or sale;
- to establish continuity with the past, including, but not only, via ancestors;
- to shore up male control over women;
- to underpin the powers of traditional authorities;
- to have a place to rest and to be cared for when ill;
- and last, but certainly not least, to symbolize collective identity, belonging, pride and liberation.

Ferguson further mentions that land, besides being used for cultivating crops and grazing livestock, has a distributive quality. “Poor people often do use land to make their livelihoods. But the mechanisms that turn land into livelihood are as much social as they are technical, and may turn less on producing goods than on accessing sources of cash and other support from others. Often, that is, land leads to livelihood via processes not of production, but of distribution” (Ferguson 2013: 169).

Besides these multiple uses of land, there is the simple economical interest of land as a secure investment commodity. Since the food, finance, and fuel crisis, which started in 2008, the demand for land by foreign investors has been rapidly growing, mainly in Africa but also in Asia, Latin America, and Eastern Europe (Anseeuw, Boch et al. 2012: 6 and the Land Matrix for the newest trends<sup>15</sup>). The drivers for the land rush are reflected in the large body of literature. One of them, mentioned by De Schutter (2011: 251), is the growing search for a vertical integration of global supply chains in agrifood companies for several reasons. Since prices for agricultural commodities rose, investments in this sector have become more profitable. With the financial crisis in 2008 and 2009, investors discovered the agricultural sector as secure and profitable for investments (Cotula et al. 2011: 102, Cotula et al 2009: 52, Grain 2008). Other investors, mainly food import-dependent countries, reminded of their subjection to volatile global food prices by the food price crisis of 2007 and 2008, started to invest in the agricultural sector to overcome food-import dependency. As some of these countries have insufficient suitable land for agricultural development, they sought appropriate land abroad to produce agricultural products for the domestic market (Deininger and Byerlee 2001: 1, De Schutter 2011: 251-253, Anseeuw, Alden et al. 2012: 24, Cotula et al. 2011: 101). The private sector, on

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<sup>15</sup> Landmatrix. <<http://landmatrix.org/>>.

the other hand, expects increasing commercial returns from agriculture and has a growing interest to invest in large-scale development of land (Cotula 2013: 4). Another reason to invest in this sector is the search for alternative energy sources. Since fuel prices rose with the 2007/08 fuel crisis (cf. Hamilton 2009) and climate change is discussed widely, the dependency on fossil fuels is a cause for concern (Anseeuw, Alden et al. 2012: 26, Harvey and Pilgrim 2011). In the search for alternatives, some leading energy consumers have appointed biofuels as a suitable alternative energy source (e.g. the European Union has decided to cover 10% of its transport fuels with renewable energy sources, mainly biofuels, by 2020 (Cotula et al. 2011: 102)<sup>16</sup>. Such investments are not only driven by international investors but are also attracted by national governments. Reasons to attract such investments can be to overcome food crisis or to create employment (Lavers 2012).

At the same time, there has been a growing body of scientific and popular literature that deals with this phenomenon from different perspectives. Depending on the author's perspective, the phenomenon is labelled as "large-scale land investment"<sup>17</sup>, "large-scale land acquisition"<sup>18</sup> or "land grabbing"<sup>19</sup>. The term "large-scale land investment" is used by development agents like the World Bank or the International Monetary Fund (IMF). The stress on the word "investment" reflects the idea that an urgent need for an infusion of cash in agriculture is demanded. It emphasizes that world population is growing and that the demand for agricultural products can be satisfied by optimizing the agricultural production on vast, idle land.

The opponents of this neoliberal reasoning call the phenomenon "land grabbing". The term "grabbing" emphasizes the illegal acquisition of a track of land and is often used by media and NGOs. These critics point out that speculation on land has nothing to do with agricultural production, and that large-scale land investments compete with small-scale farmers and peasants on global markets (Cotula 2013: 5). According to Ansom and Hilhorst, the definition of "land grabbing" given by International Land Coalition (ILC)<sup>20</sup> stresses an involuntary transaction, stealth, deceit, displacement and cheating. Moreover, these authors add that

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<sup>16</sup> To limit global land conversion for biofuel production, the EU limited this target in 2012 to 5%. <[http://ec.europa.eu/energy/renewables/targets\\_en.htm](http://ec.europa.eu/energy/renewables/targets_en.htm)>.

<sup>17</sup> Mainly used by the World Bank (cf. Deiner and Beyerlee 2010).

<sup>18</sup> Used by the Food and Agriculture Organization of the United Nations (FAO), the Centre for Development and Environment (CDE) at the University of Berne and others (cf. HLPE 2011, Anseeuw, Boch et al. 2012).

<sup>19</sup> Used by authors that are critical about this phenomenon (e.g. Anseeuw, Alden et al. 2012, De Schutter 2011 or Borras and Franco 2010).

<sup>20</sup> The International Land Coalition (ILC) is an alliance of World Bank, Food and Agriculture organization of the United Nations (FAO) and civil society organizations (Ansom and Hilhorst 2014: 2).

apparent legality and formalization of a land transfer are not taken into consideration in this definition and therefore masks the reality of so-called legal land deals (Ansom and Hilhorst 2011: 2). Therefore, in this thesis I apply the more comprehensive term “large-scale land acquisition” that takes into consideration that agreed procedures and involving consultations are part of land deals, although the consent of local people may not be necessarily perceived as such by affected locals. The basic definition of large-scale land acquisition, land grabbing or land investment is “the acquisition or long-term lease of large areas of land by investors” (De Schutter 2011: 249).

Furthermore, the notions “land deal” and “agricultural investment” have to be defined. These terms are often used in the same sense, but are slightly different. According to Cotula, a land deal or the acquisition of land is merely a transfer of land rights. An investment generates returns and requires contribution to infrastructure and know-how. An investment can take different forms, such as contract farming or shared ownership, while a land deal means the acquisition of land for plantation agriculture (Cotula 2013: 8). The initial definition from “Land Matrix” project, for example, defines land deals as follows:

“In the Global Observatory, a deal is referred to as an intended, concluded or failed attempt to acquire land through purchase, lease or concession that meets the criteria defined below. The Global Observatory includes deals that are made for agricultural production, timber extraction, carbon trading, industry, renewable energy production, conservation, and tourism in low- and middle-income countries. Deals must entail a transfer of rights to use, control or ownership of land through sale, lease or concession; [...] cover an area of 200 hectares or more; imply the potential conversion of land from smallholder production, local community use or important ecosystem service provision to commercial use”<sup>21</sup>.

Critics say that to define a large-scale land acquisition in terms of extension of land measured in hectares is insufficient, because the economic and social value of the target land might not be measurable in size (Borras et al 2012; Edelman 2013; Scoones et al 2013). The common-pool resources tied to a land, such as water or forest, increase the possibility to gain commercial benefits and should therefore be taken into consideration when we define the phenomena.

To fix a final definition of the phenomena might determine the meaning of the act and its outcome. Framing a phenomenon means evaluating and influencing how such phenomenon is perceived. I therefore have to show in a next step how large-scale land acquisition has been framed in the academic discussion.

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<sup>21</sup> Land Matrix: About. <<http://www.landmatrix.org/en/about/>>.

The phenomenon has been analysed by different authors with different backgrounds. From a neoliberal point of view, “large-scale land investment” or “agricultural investment” finally brings the long awaited investments in the underdeveloped agricultural sector in the global south (Deiniger and Byerlee 2011). It is expected that large-scale agriculture with advanced technology and monetary input will lead to more development and modernization which will also improve the living conditions of the poor. Further, it is presumed that the growing needs for food and other agricultural products such as biofuels, construction materials or cotton will be better covered (Deininger and Byerlee 2011, World Bank 2008). From this point of view, it is further assumed that development can only be sustainable if it is also economically beneficial to the investors. Even if these investments are seen as a great opportunity, the authors mention also that such investments can have negative impacts on local people and environment. Therefore they postulate the implementation of principles or terms of conduct to prevent or mitigate such negative impacts. The World Bank and others strongly support the design and implementation of such principles (cf. Deininger and Byerlee 2011).

The neoliberal perspective is often criticized by authors from different scholar. Above all, the idea that such agricultural investments will bring development and thereby elevate people from poverty and food insecurity is contested. Olivier de Schutter, the UN Special Rapporteur on the Right to Food, states that such investment in farmland “implies huge opportunity costs, as it will result in a type of farming that will have much less powerful poverty-reduction impacts, than if access to land and water were improved for the local farming communities” (De Schutter 2011: 249). A major criticism is that not only do these investments affect marginal lands and unused resources, as stated by the investors, but also suppress other forms of subsistence production, such as small-scale farming, pasture or hunting and gathering (e.g. Lavers 2012, Robertson and Pinstrup-Andersen 2010). These activities are based on common-pool resources previously held as common property and managed by common institutions. Defining the development that such investments should bring mostly in economic terms can be criticised because it automatically refers to a western understanding of the term that does not necessarily coincide with local concepts of development.

From a Marxist point of view, such investments can also constitute primitive accumulation if subsistence farmers are separated from their means of production. In some cases, the dispossessed farmers are incorporated loosely into the capitalistic production as workers for the company. In other cases, these farmers are not absorbed by the capitalistic production and therefore are excluded from their means of production without being incorporated into the capitalistic production (Baird 2011, Li 2011, Peters 2012).



Further Peters (2009) and Toulmin (2008) analyse the impacts of such land investments on traditional land rights. In most contexts where the phenomenon of large-scale land acquisition occurs, most land rights are informal and contain a mixture of private and collective rights, which often include overlapping and reciprocal rights, and also involve use and property rights mostly of common property institutions.

Since 2006, it is estimated that 46 Million hectares of territory were leased out, and up to 70% of the land deals occurred in African countries (Evers et al 2013: 2). Thus, Africa, as an important recipient of land-based investment, is frequently discussed in the literature (Ansoms & Hilhorst 2014; Cotula 2013; Evers, Seagle & Krijtenburg 2013; Matondi et al 2011; inter alia). Common themes emerge from the studies of African countries, such as the power constellations between local elites, state and international agents or the impact of insecurity of land tenure systems (Leewen et al. 2014, Bisoka & Ansoms 2014). A common feature is the historical background of African countries, which is described as the beginning of an African land rush (Peemans 2014; Fahey 2014). During the colonial time, western companies successively rushed land in African countries. After independence, commercialized companies were nationalized or later, in the neoliberal reforms, privatized (Cotula 2013). This historical background formed the object of today's land deals, not only in African countries, but in Asian and North American countries as well.

Academic research on Kenya and large-scale land acquisition is diverse and viewed from different perspectives. The Tana Delta captured the attention of researchers investigating power relations (Smalley & Corbera 2012) or the grabbing of Wetland Markets by political leaders in the post-colonial time (Klopp 2000). Nolte and Vahnt made a comparative analysis on how large-scale agricultural land acquisition is implemented in Ghana and Kenya. They used the Yala Swamp example to focus on the land governance systems (Nolte & Vahnt 2015), while van Heukelom used the Yala Swamp example to make a philosophical advance towards the land grabbing question and food security (van Heukelom 2013).

The literature gives an insight into the cause of the phenomenon and its implications, but there is still uncertainty about the concrete process of land acquisition.

## 1.6 Theoretical-Methodological Considerations - New Institutionalism Perspective

In the debate on large-scale land acquisition, political implications, ecological conclusions and economical logic are often disconnected. Jean Ensminger's New Institutionalism approach is therefore a useful tool to analyse the complex interrelation of large-scale land acquisition. The term *institutionalism* was used by an economic scholar that assumed that rules (in terms of institutions) in a society are important for economic decisions and suggested an alternative to the theory of the rational individual being (Haller 2007: 9)<sup>22</sup>. Ronald Coase's book *The Nature of the Firm* (1937) was important for the new approach of institutionalism. He used the example of a firm to show that transaction costs including information, bargaining and policing, are diminished by the rules of the firm. Thanks to these rules, the costs are lower than they would be if each and every individual member were to make his or her own contracts with one another. Different approaches can be subsumed under the label of New Institutionalism. What these approaches have in common is the definition of institutions: institutions can be formal, for example state institutions (executive, legislative, judicative), or informal, so-called customary law, which is developed by local communities and embedded in the local culture. Further, institutions structure people's lives through rules, constraints, norms, values, laws and regulations. Based on the rational choice paradigm, we can see institutions as the "rule of the game"; they act as incentives for groups and individuals and they structure human interaction (Ensminger 1992).

Moreover, it can be said that institutions regulate access to resources like land. In the context of collectively-used resources, the American political economist Elinor Ostrom described in her book *Governing the Commons, the Evolution of Institutions for Collective Action* (1990), on the basis of anthropological studies, how various local communities were able to develop institutions that allow a sustainable, and thus in the long term more profitable, use of these so-called common-pool resources. Elinor Ostrom focuses on common-pool institutions and argues that institutional diversity among local communities is adapted to the variability and insecurity in chaotic ecosystems (Ostrom 1990; Haller 2007: 12). Ostrom criticizes the dichotomous view of the market as the optimal institution for the production and exchange of private goods, as well as the imposition of rules and taxes by the government to manage non-private goods. This view does not adequately deal with the wide diversity of institutional arrangements that human

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<sup>22</sup> Haller, Tobias 2007: Understanding Institutions and Their Links to Resource Management from the Perspective of New Institutionalism. NCCR North-South Dialogue, no. 2.

beings make to govern, provide, and manage public goods and common-pool resources<sup>23</sup> (Ostrom 2010: 642). A number of studies made by anthropologists, historians, and philosophers show that common-pool resources are managed by different customary laws and therefore are not equal to open-access ones (Netting 1972; McCabe 1990; McCay 2001). Ostrom stresses that so-called informal institutions<sup>24</sup> embedded in a specific culture are successful and should be recognized in preserving resources. Anthropological research has shown that these resources belong to the members of a particular group. Access was monitored and sanctioned by councils of elders, priests, and young men, among others. Ostrom assumed different institutional arrangements for managing natural resources, and described eight “design principles”<sup>25</sup> of stable local common-pool resource management. Ostrom emphasizes that specific institutional solutions to common-pool resources, rather than universal solutions, have to be identified. She also mentions that institutions that failed to sustain resources tend to be characterized by very few of these design principles. One of the principles is the recognition that the users’ formal rights to devise their own institutions are not challenged by external governmental authorities, and that users have long-term tenure rights to the resource (Ostrom 1995: 119). She studies common-pool resource management and studied under which condition people cooperate. Critics mentioned that Ostrom’s approach gives no importance to the historical context in which institutions evolved. Jean Ensminger’s New Institutionalism, on the other hand, is based on an historical approach.

In her book *Making a Market*, Ensminger rejects the image of a completely rational, perfectly informed, narrowly self-interested homo economicus, homo economicus who neglects obvious evidence of considerable behaviour motivated by ideological or altruistic ends. Stripped of its simplistic assumptions, the rational choice theory remains necessary to understand human behaviour and processes. However, the theory cannot deal with asymmetries in power, changing preferences and economic inefficient behaviour, nor the development of institutional constraints that may restrict individuals’ options (Ensminger 1992: 15f). According to Ensminger, individuals are influenced by so-called endogenous aspects of society. These

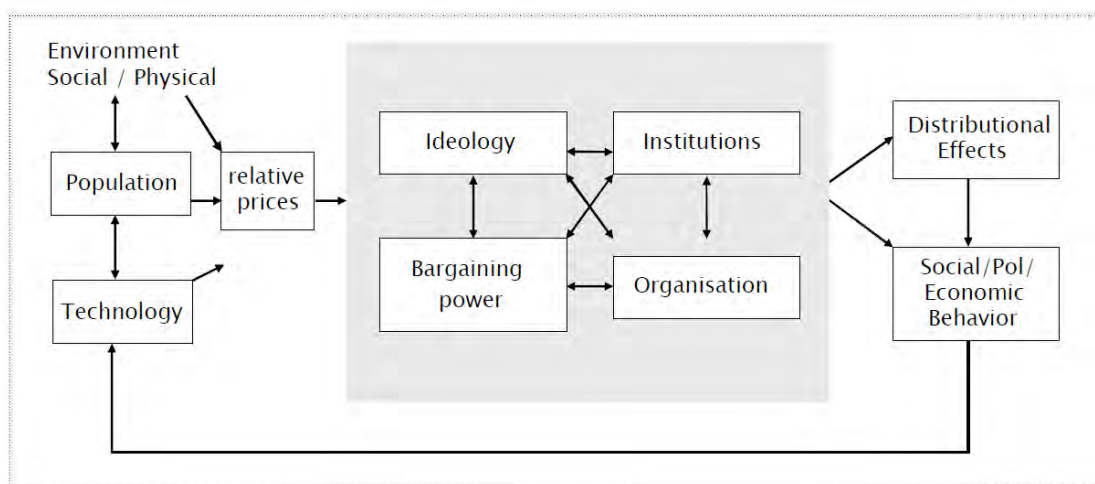
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<sup>23</sup> Ostrom uses the term common-pool resources. Common-pool resources are goods that can be defined only at considerable cost, but are subtractable in consumption. Most natural resources are common-pool goods (Haller 2010: 30).

<sup>24</sup> Institutions are the rules of the game in a society or, more formally, are the humanly devised constraints that shape human interactions (Ensminger 1992: 5).

<sup>25</sup> Design Principles by Elinor Ostrom: 1. Clearly-defined Boundaries; 2. Proportional Equivalence between Benefits and Costs; 3. Collective-Choice Arrangements; 4. Monitoring; 5. Graduated Sanctions; 6. Conflict-Resolution Mechanisms; 7. Minimal Recognition of Rights; 8. Nestend Enterprises (Ostrom 1995: 119).

endogenous aspects are composed of institutions (formal and informal rules), ideologies (the way people explain the world and their values), bargaining power (the ability of an actor to get something through its social status, wealth or the ability to manipulate ideologies) and organizations (a body, in which people organize themselves and act collectively) (Haller 2007: 16; Ensminger 1992: 5f). These four endogenous factors influence each other, but they are also influenced by external factors: the social and physical environment (changes in the socio-political structure and natural environment), population (demographic changes) and technology (technological changes). Together, these external factors influence the so-called relative prices. For Ensminger, relative prices are externally influenced changes in prices for goods, in relation to other goods (for example the raise of land price compared to other goods) (Haller 2007: 16). The political and economic environment (pacification, new urban centres and new markets, monetarisation), state control (laws, police, administrators), and infrastructure and transport systems (lowering costs for marketing or access by other groups, etc.) are incorporated in Ensminger's model.



Source Table: Ensminger, Jean, 1992: 10.

Endogenous factors generally receive the most attention from social anthropologists, while economists have been successful in explaining the following external factors (Ensminger 1992: 10). Ensminger claims that relative prices have an influence on ideology and institutions, although some anthropologists might have assumed that ideology is resistant to outside pressure. Therefore, it is important to alternate between the two poles, “to comprehend these changes we must look both at individual motivation (institutional patterns result from individual choice) and at the socially determined constraints and incentives that influence what individuals strive for and how they go about realizing their goals” (Ensminger 1992: 4).

Haller points out that ideologies change and are used strategically: “When powerful people are able to justify and legitimise their actions through ideologies, they gain acceptance and reduce the information, monitoring and sanctioning costs” (Haller 2010b: 56). According to Haller, next to ideologies, discourses and narratives are in the analysis inevitable. Therefore, the notion of ideology have to be enlarged. “Ideology [refers] to an often strategically used coherent worldview, which includes related discourses (coherent way of logically argumentation) and narratives (coherent stories how things came about). [...]. Ideology including discourses and narratives boost resource of legitimacy of actors actions and increase their bargaining power to establish an institutional design which suits them best” (Haller 2013: 23). I adopt Haller’s definitions, and understand discourse in a Foucauldian sense as a specific way of linking issues and rationalising topics in a logical frame, or as Lindstrom says, “Discourse is the act of talking or writing itself; it is a body of knowledge content, and it is a set of conditions and procedures that regulate how people appropriately may communicate and use knowledge” (Lindstrom 2010: 200). I define narratives, following Lund, as assumptions, based on causal relationships or explanations offered by different actors within the context of their ideology (Lund 2001: 144; Haller 2010b: 57). Ideology refers to the values and beliefs that determine people’s goals and shape their choices, ideologies can also be called worldview (Haller 2010b, Ensminger 1992).

According to these theoretical implications, I assume that, in land deals, land and its related resources become a commodity and, hence, have a great potential to impact relative prices. Therefore, in this thesis, I pay especial attention to these external factors, for example, political implications after Kenya’s independence, environmental change through technical innovation and international interests over land investments. My colleague Anna von Sury describes the internal factors such as the importance of fishing and cattle raising in the Luo livelihood or monetarization in local markets in her thesis.

Further, I argue that the notion of formal and informal institutions mentioned above, does not exist as such. There are many formal aspects in a so-called informal setting, cultural codes and expectations of behaviour. Vice versa, a formal institution deals with informal actions, such as bribery or nepotism. In this thesis, I will focus especially on the interrelation between these different forms of institutions and how actors within institutions try to gain bargaining power through different narratives, ideologies and discourses.

## 2 The Setting



Picture 3. View from the South of the Yala Swamp to the North. Cows are grazing at the border of the swampy land (picture Anna von Sury 2014).



Picture 4. Luo homestead in Kadenge (picture by Elisabeth Schubiger 2014).

## 2.1 Kenya and its History of Conflicts over Land

Kenya is a diverse country with its five climate and agricultural zones (Hornsby 2012: 20). It stretches from the Indian Ocean to Lake Victoria and from the northern point of Lake Turkana to Kilimanjaro. Kenya's total surface is 582'646 km<sup>2</sup> from which 13'396 km<sup>2</sup> are water bodies (Leifer 1977: 21ff). The costal line to the Indian Ocean is 402 km long and Kenya borders in the east on Somalia, in the north on Ethiopia and South Sudan, in the west on Uganda and in the south on Tanzania. The altitude differences from 0 to 5'200 meters above sea level explain the different average of temperature. The climate changes from tropical along the coast to arid in the interior. While the soil in the high lands is fertile, other regions are desert-like. Only about 20% of the land is agriculturally productive and useable for intensive livestock farming (FIAN 2010: 7).

Kenya's population of about 45'000'000 people (July 2013), can be divided in five big ethnic groups: Kikuyu, Luhya, Luo, Kamba and the Kalenjin (Hornsby 2012: 21ff.). The average age is 18.9 years, caused by high birth rates and short life expectation. 24% of the total population lives in urban areas. The poverty rate, at 56%, is very high, for which the lack of access to land is an essential factor. 75% of Kenya's population lives in the middle or high potential agricultural land, which implies a high population pressure<sup>26</sup>. Furthermore, 50% of Kenya's GDP and 80% of the export earnings come from agriculture (Makutsa 2010: 19). The five main export goods are tea (21%), cut flowers (13%), coffee (6.1%), legumes (3.9%) and passenger and cargo ships (1.8%)<sup>27</sup>. Agriculture provides the livelihood of 85% of the population (FIAN 2010). The medium and high potential agricultural land is primarily used for commercial agriculture with food crop occupying about 31% (FIAN 2010).

Peemans criticises the historical perspective in most contemporary literature for being very limited. Recent research almost exclusively focuses on recent events of large-scale land acquisition, as if those events were *sui generis* (Peemans 2014: 11f). Fahey mentions that contemporary land disputes have ties to historical events and processes and should be understood in relation to their historical context. She also mentions that recent land grabs have ties to historical policies that favoured certain groups over others (Fahey 2014: 37). Thus, in a next step I need to contextualize Kenya's land issues by providing historical background information.

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<sup>26</sup> Central Intelligence Agency: The World Factbook 2013: <<https://www.cia.gov/library/publications/the-world-factbook/geos/ke.html>>.

<sup>27</sup> Observatory of Economic Complexity: Learn more about trade in Kenya. <<https://atlas.media.mit.edu/en/profile/country/ken/>>.

### **2.1.1 Colonialization and its Impacts on Kenya's Land**

Some authors rightly claim that the colonization of Africa was in itself an act of a successive large-scale land grab, and the roots of all land disputes (Klopp 2000: 15; Klopp & Lumumba 2014: 54 inter alia). According to Leifer, the coastal region and Mombasa were an important transshipment centre for Arabic trade in the first century A.D.. The proximity to the Arabian Peninsula invited trade from merchants from Egypt and the Persian Gulf. These traders had little incentive to enter the interior of the land because the needed goods were gathered by local people and brought to the coastal regions by hunters and manufacturers. In the 16th century, Mombasa was an important port for German and Portuguese ships during the crossing to India. The importance of the region increased after the opening of the Suez Canal in 1869 (Leifer 1977). The region has always been important for trade and was part of the international trading chain and not an idle, untouched land as it is usually described in fiction books<sup>28</sup>.

Kenya's colonial history dates from the establishment of a German Protectorate in 1885. In 1888 the British-East-Africa Company made a deal with Germany and in 1895 the British-East-Africa Protectorate was formed by the British Government (van Heukelom 2013: 152f). With the establishment of the East Africa Protectorate under British administration in 1895, the boundaries of present-day Kenya were set (Hornsby 2012: 21). The inner Kenya had until this moment no administration significance and became only important when the British started to construct the Uganda Railway in 1886. The railway started in Mombasa, went through Nairobi and ended in Kisumu. The Uganda Railway made the highlands accessible for white settlers and Nairobi slightly became the centre of trade and politics. In 1920 Kenya became an official Crown-Colony (van Heukelom 2013: 152f).

The British administration began to alienate wealthy fertile land in Kenya for European settlers in 1902. A great part of the fertile highlands in the region of Mount Kenya was alienated by colonial administrators because it was suitable for European agriculture. Following the Foreign Jurisdiction Act 1890, the East-African Protectorate claimed control over territory deemed unoccupied wasteland; land where there was no settlement or ruling government and which had not been appropriated either by the local sovereign or by individuals (Klopp 2000: 15). Land not physically occupied was considered free or wasteland. The British ruler ignored that, for example, pastoral nomads move from place to place, depending on the environmental condition prevailing at certain seasons, a reason why the land is not constantly occupied (Onyango et al. 2007). The British Government referred to the Foreign Jurisdiction Act 1890 and expelled the local people from their land, mostly from the best land available. By 1934, 20% most high

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<sup>28</sup> For example *Green City in the Sun* by Barbara Wood 1988 (roman).



potential agricultural land remained as Crown Land and was distributed to a small number of white settlers (van Heukelom 2013: 153). As a result, tensions rose between the settlers and the indigenous people, especially the Kikuyu, which were affected most by the land alienations (Klopp 2000: 16; Otieno & Opiyo 2004: 1; Hauck 2001: 155). In 1938, the Kenya Land Commission designed native reserves, so-called Native Land, to calm down conflicts between settlers and the native Kenyans. The administration of this lands was transferred from the Crown Lands Ordinance to the community to rule it through customary right. But, simultaneously, these communities lost all rights to land outside of the native lands.

The most affected community, the Kikuyu, did not accept anymore the alienation of the best agricultural land to a relative small number of white settlers, while native Kenyans lost all their subsistence resources. As a result, they built a rebel group called Mau Mau in the 1950s. Their goal was to fight against the British rulers through sabotage in the farms. Mau Mau did not achieve its aims of claiming back and redistributing the fertile lands of the settlers, but they prepared the way for a constitutional reform and political developments in the following years and accelerated the transition to Kenya's independence in 1963 (Klopp 2010: 16; Otieno & Opiyo 2004: 1).

Meanwhile the Mau Mau fought in the backcountry the Swynnerton Plan was implemented from 1954 to 1959 by the colonial government (Wangari et al. 1996: 130). The Swynnerton Plan could be called Kenya's first development and privatization programme. The aim of the plan was to increase colonial production of goods through state intervention. The solution was to improve native people's production and to introduce cash crops. It was an answer to the Mau Mau claims for land because it allowed native Africans to buy land, but it was also an answer to the economic bottleneck of the British Crown. Based on research, the British administration decided that the land was not too small, but the native production mode was poor (Thurston 1987<sup>29</sup>). Nevertheless the privatization of land was achieved and individual land titles became available for Africans.

The land question was also the central problem during the independence discussions (Hauck 2001: 188). On one hand, expropriation without any compensation was unthinkable for the Europeans, while on the other hand local groups rejected the idea that the highlands remained in the hands of white people. Therefore the repurchase of the land through the local groups seemed to be the ideal solution. This should be achieved through credits from the Kenyan

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<sup>29</sup> Thurston, Anne 1987: *Smallholders Agriculture in Colonial Kenya: The Official Mind and the Swynnerton Plan*. Cambridge African Monographs 8. African Studies Centre.  
<<http://www.african.cam.ac.uk/images/files/titles/smallholder>>.

government, which received them from the British government and the World Bank. After the independence in 1963, the New Constitution of the newly founded republic “gave the citizens the right to purchase land anywhere in Kenya, a policy that would long serve the country well – at least those with some capital, but not so much for the poor and landless” (van Heukelom 2013: 154). President Jomo Kenyatta, as well as the following President Daniel Arap Moi, failed to implement new rules to return the country’s alienated land after the independence. Therefore a system of patronage was established; land acted as the wealthy resource to win elections and buy key supporters (Klopp 2000: 15). A reason why White Highland swiftly became property of wealthy Kenyans through dubious deals with elites or favourable political connections (van Heukelom 2013: 154). During the Kenyatta era (1963-1978), the conflicts over land, wealth and power led Kenya to a one-party-state and a growing dominance of the Kikuyu, to which Kenyatta belonged, over the other ethnic groups (Bates 1989: 46; Hauck 2001: 189 f). The postcolonial government carried on the colonial politics and the implementation of the Swynnerton Plan continued under Kenyatta. A great number of the political positions, as well as the fertile highlands, was dedicated to loyal Kikuyus. Nevertheless, until 1970 around 53'000 families and previous squatters received land, although primarily it was the former Kikuyu loyalists who profited from this deal, whereas almost none of the other Mau Mau activists got land (Hauck 2001). Also under Kenyatta’s successor, Daniel Arap Moi, who ruled Kenya from 1978 to 2002, land was used to secure political support. The position of the governing and agricultural active European elite was transferred to the native elite and no central structural changes took place in the colonial inherited economy (Klopp 2010: 16; Otieno & Opiyo 2004: 1).

### **2.1.2 The New Constitution of 2010**

In 2002, Mwai Kibaki became president of Kenya. Kibaki’s legal period is contested, because of corruption scandals. The government of Kibaki promised a new constitution, a promise which has not been fulfilled. This circumstance was the backdrop against which the 2007 elections occurred. The election ended with post-election violence which claimed 1’500 lives and displaced around 350’000 people<sup>30</sup>. The violence occurred after Kibaki was declared the winner of the election, while his opponent, Raila Odinga (Orange Democratic Movement) alleged electoral manipulation. Kanyinga argues that the post-election violence bases on the land reform of the Kenyan government, which ethnicizes the land in question (Kanyinga 2009).

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<sup>30</sup> Department for International Development. Elections in Kenya 2007. UNaid. <[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/67654/elections-ke-2007.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/67654/elections-ke-2007.pdf)>.

Therefore, the post-election violence was fuelled by land issues and not primarily by ethnical clashes, which were most recognized by international media (Nolte & Väh 2015: 78). After diplomatic efforts, Kibaki was recognized as the legal winner of the elections.

Despite this political instability, the government managed to establish a new constitution in 2010. The new constitution was an important step with regard to security of land rights for Kenyans. The reclassification of land changed the administrative power significantly. “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 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 use” (Makutsa 2010: 19f). This positive image of the new land law is contested by Klopp and Lumumba, who mention that the key land governance institutions persisted post-colonial time and the Ministry of Land and the President’s office still privilege their supporters with access to land. These actors who facilitate local land grabbing also mediate foreign investors’ access to land. Klopp and Lumumba assume that the result of Kenyans’ history is an irregular and illegal allocation of a wide array of public land. This circumstance makes the understanding of a land deal more complex because it shows that common focus on foreign investment in agricultural land is just a subset of the manipulation of land rights by powerful politicians and state actors who are the partners and brokers in deals with large-scale investors (Klopp & Lumumba 2014: 54f).

Since 2013, Uhuru Kenyatta is in power and Kenya is still in the middle of implementing the new constitution. Confusion about land management will prevail for as long as the old and the new constitution with the land reform coexist (Nolte und Väh 2015: 78). This coexistence led to a legal pluralism as well as to an institutional pluralism, which make questions over land highly complex, as we will see in our case in the Yala Swamp. After this short overview about the Kenyan historical background, I will give further insights into the place of interest: The Yala Swamp. I want to highlight the significance of the place for the people in the region as well as to trace briefly the historical as well as the physical facts about the swamp.

## **2.2 Yala Swamp**

The Yala Swamp is the biggest wetland in Kenya, covering an area of 17’500 ha (Abila 2002: 89). The wetland is surrounded by three lakes: Kanyaboli, Sare and Namboyo, and is situated in the north of Lake Victoria and fed by the river Yala in the south and the Hwirot and Nzoia

river in the north. This wetland hosts important plant and animal species, including the threatened Sitatunga Antelope and Haplochromine Fish (Abila 2002: 89).

The literature reflects the potential of the Yala Swamp in different ways. The region has a great socio-economic value for the local communities, for whom the wetland has long been a source of fish, vegetables, medical plants, building materials, and agricultural land. Furthermore, the swampland has a population of about half a million people, who, according to FIAN, accessed and used it in their daily activities on a free-access basis for a long time. The Yala Swamp is an important site for the local fishery of the Luhya and Luo people, who live to its north and south (FIAN 2010: 21). The community living around the Yala Swamp obtain important resources from the Swamp, and this land has a social value for the residents (Abila 1998: 89).

Schlosser describes this swampy and occasionally flooded westernmost section of Siaya District to hamper agricultural development. According to him, proper drainage and regulated irrigation in this area reduce this problem, because the soil in the plains is the fertile black cotton soil, while in most of the hilly parts of the territory soil consists of the moderately fertile pink, red and grey granite (Schlosser 1982: 116). The Yala Swamp has always been earmarked for reclamation since Sir Alexander Gibb and Partners made the first proposal in their study Kenya Nile Basin Water Resources in 1954-6<sup>31</sup>. In 1963, before Kenya became independent, the Kenyan Government requested assistance from the United Nations Special Fund in carrying out pre-investment surveys and pilot irrigation schemes to study the potential of reclaiming the Yala Swamp (van Heukelom 2013: 164). In 1965, the Government of Kenya and the UN Special Fund signed a Plan of Operation and the Food and Agriculture Organization (FAO), inherited the role as United Nations executing agency. The Implementation of the Plan of Operation commenced in 1966. Between 1965 and 1970 the Yala River was successfully channelled and lake Kanyaboli was separated from the swamp with the construction of a dyke (van Heukelom 2013; FAO 1970; ILACO 1975). The reclamation program project had produced 2.300 hectares of agricultural land in the swamp, which soon became cultivated by the people from nearby villages (van Heukelom 2013; ILAO 1975; OSIENALA 1998). Between 1973 and 1974, a new Yala Swamp Investigation Project was carried out by the Dutch consultancy company ILACO. Both, the UNDP/FAO project and the ILACO project, suggested a three-phase reclamation (van Heukelom 2013: 165). A range of technical reports had been accumulated by the Kenyan Government in the early 1980s from different agents like the Japan International Cooperation Agency (1986 – 87), the Dutch companies HVA International and

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31 Farmlandgrab: <<http://farmlandgrab.org/post/view/19073-dominion-domination-the-scandal-of-yala-swamp#sthash.R33EUSUn.dpuf>>

ILACO (1975 and 1982) and UNDP/FAO (1965 – 1970). So far the projects were made to gain land for the people living next to the swamp, for small-scale farming as well as cash crops production. According to van Heukelom, the conversion of the swamp put greater emphasis on making the reclamation of the swamp part of a broader development programme (van Heukelom 2013: 165f). In 1979, the Lake Basin Development Authority (LBDA) was established to manage the implementation and development of the 2'300 hectares of reclaimed land in the Yala Swamp. Financial assistance for the conversion of the swamp was mainly provided by international development and aid channels (van Heukelom 2013: 167). At the turn of the millennium, projects and plans for a conversion of the Swamp were made but willing investors to realise the reclamation project were lacking (van Heukelom 2013: 168).

According to Abila, the different projects occurring over the years did not consider the environmental damages of such a reclamation. Abila reflects the preliminary valuation of the resources and compare these with the costs and benefits of conversion. He sees the wetland as vulnerable to overexploitation, since it is not protected. Further Abila criticizes, for example, the proposals from Okondo in 1989, supported by the local politicians, to fully reclaim the swamp for agro-industrial sugar cane and rice plantation (Abila 1998: 89). Taking the economic value of the swamp into account, he proposes a sustainable development programme through papyrus industry, brick making, aquaculture and tourism. For him, conservation and wise use rather than conversion of the area should be pursued (Abila 1998: 92). Environmentalists mention that a large part of these wetlands are subjected to intensive agricultural practices, which have several ecological impacts<sup>32</sup>.

The various types of use of the Yala Swamp led to conflicts between three competing interests: The first group is the local community, whose interests are agriculture, fishing, and grazing as well as the social value (Luo shrines inter alia) of the Yala Swam. The second group are the development planners, who see potential agro-industrial development possibilities in the area. The third group are the conservationists, who are concerned with conserving the wetlands for ecological reasons. With the coming of the American investor into the contested area, these three parties are competing more intensively. I therefore have to present in a next step the investor himself.

### **2.3 The Investor**

The Dominion case is particularly interesting, because the project has not been implemented by a (foreign) state or a company, but it seems to be the project of a single person. For a better

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<sup>32</sup> Environmentalist, interview with the author, April 2014.

understanding, it is important to introduce briefly the investor himself, Calvin Burgess. He is the founder and owner of Dominion Farms Ltd., which is a subsidiary of the Dominion Group of Companies based in Oklahoma, USA. Dominion Group of Companies' core business is the construction of high-security complexes. Thanks to this, Burgess became a millionaire (Meister 2012).

In 1977, Burgess established a large construction firm called the Canam Construction Company. As a subsidiary company, Dominion Leasing was formed in 1986. Dominion Leasing owns, manages and leases properties to the Services Administration in the states of Oklahoma, Texas, Kansas and New Mexico<sup>33</sup>. Among these properties are two border patrol stations, a prison and different high security buildings, for example, laboratories and federal buildings. One of the aims of the Dominion Group of Companies is “[to respond] to opportunities to privatize governmental functions and projects for which state and federal agencies lacked the funding or flexibility to deliver themselves”<sup>34</sup>. The success in the privatization of previously traditional governmental functions led to the creation of a number of affiliated companies providing a broad range of services to federal, state and local governments. These companies are involved in diverse range of services, aircraft maintenance and modifications, lodging, manufacturing and commercial farming. Their activities take place in North America, Central America and Africa<sup>35</sup>.

In 2002, Burgess established Dominion Farms Limited, and started his farming project in Kenya. Dominion Farms Limited is an American-based Kenyan registered company “that operates a modern, irrigated farm on a 17,000-acre leasehold in western Kenya. [Dominion Farms Limited is] a diversified farming operation in western Kenya producing long grain rice, fish, and other agricultural products under the Prime Harvest brand”<sup>36</sup>. In 2012, Dominion Farms Limited expanded to Nigeria, where they acquired 30,000 hectares of land in Taraba State, with the backing of former President Olusegun Obasanjo<sup>37</sup>.

Burgess's interest for this long-term investment in the Yala Swamp is, according to him, not inspired by a vision of high profit or financial gains. He feels that God has given him the financial ability and spiritual guidance to “grow rice and save souls” (Pearce 2012: 74; van Heukelom 2013: 170). As a good Christian, he feels that God has given him the mission to help

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<sup>33</sup> The Dominion Group (Official Website) 2015: <<http://www.domgp.com/>>.

<sup>34</sup> The Dominion Group (Official Website) 2015: <<http://www.domgp.com/>>.

<sup>35</sup> The Dominion Group (Official Website) 2015: <<http://www.domgp.com/>>.

<sup>36</sup> Dominion Farms (Official Website) 2015: <<http://dominion-farms.com/>>.

<sup>37</sup> Grain (Official Website) 2015: <<https://www.grain.org/article/entries/5061-harvest-of-hardship-yala-swamp-land-grab-destroys-kenyan-farmers-livelihoods>>.

the people in one of the poorest regions in Kenya (van Heukelom 2013: 70; Meister 2012; Pearce 2012). The objective Burgess claims is to “change and repair the desperate lives of the people of Africa” and to take a million people across the African continent out of poverty (van Heukelom 2013: 173; Pearce 2012: 63).

Calvin Burgess has an ambivalent personality; looking at his biography, his position as a businessman following the ideals of privatization is clearly expressed. On the other hand, he mentions his religious motivation to do good things. But he is not just a rich Christian; he has connections with the highest political leaders of the United States, and therefore with political leaders in Kenya. These different settings of the investor play an important role in the implementation of the project and makes this case so interesting for further study. In a next step, I need to speak about the wage labour market in the Yala Swamp region. This is important to get a better image of the hopes and expectations which occurred with Calvin Burgess’s investment.

#### **2.4 The Luos in the Labor Market**

“At that time [2002-2003] we didn’t have any company in Siaya. We didn’t have any investment in Siaya. We are relying on this Lake Victoria. And with Lake Victoria you see just people fish there, and then from there the vehicles come, heavy trucks, then they transport fish away to Nairobi. [...] At that time I take some hopes because I was very happy that, yeah, instead of going to some cities away, let me just work here at home. So I was excited and I was so much happy”<sup>38</sup>.

As this quote shows, some of the young male villagers warmly welcomed investment in their region. Indeed, in Siaya there is no notable industry or other producing companies. The economic outcome of the people in the region is small-scale farming for subsistent use, pastures, fishing and some craft sectors as pottery or basketry. Around 1902, the Nianza Province was subdued by the British colonial administration. Settlers from Europe preferred the moderate climate of the highlands around Mount Kenya. The Indian settlers who came for the construction of the railway from 1896 to 1901 settled in Kisumu at the border of the Lake Victoria. They made business with shops and restaurants and are still known as the traders in the region. The Lake Victoria became a source for fish, but the arid region adjacent to the lake did not attract white settlers and no important investment in agriculture has been made.

However, the colonial government recruited the so-called native labour forces needed for road construction, plantation and transport in the region inhabited by the Luos. The Luo were asked to be capable and adaptive to the new changes (Wilemski 1977: 84f). It is an open question

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<sup>38</sup> Villager and former employee of Dominion Farms, interview with the author, May 2014.

whether this is the reason for the wide spread of Luo working force in Kenya, but the fact is that Luo people became the major labour source for the colonial administration, performing mostly subordinated services in the largest towns, as Nairobi, Mombasa, Nakuru and Kisumu (Wilemski 1977: 86). Siaya is still known to be a “labour reserve” with Kenya’s highest emigration rate (Cohen & Odhiambo 1989: 4).

The imposing of taxes upon every male in 1934 made the need for cash inevitable. Cohen and Odhiambo hold economic changes in the whole region from subsistence to commercial farming responsible. New pressures and tensions were introduced to turn production toward the generation of surpluses for colonial and world markets and to generate cash income to pay various forms of taxation (Cohen & Odhiambo 1989: 71). The lack of large-scale farms and companies forced young men to leave their homeland and search for paid work outside Siaya. However, education is another reason for emigration to larger capitals. Cohen and Odhiambo state that the rural world with its limited production and immense claims upon savings did not offer an opportunity for the new Luo elite. Young educated people have little job opportunities within the region. While the colonial rulers needed the working force, the growing need for money made the Luos migrate to the cities. Young men and women left the villages, which caused that the homeland did not see any improvement.

Nowadays, the Luos see the reason for the so-called underdevelopment of the region also in the political hegemony of the Kikuyu people. The socio-political and past independence history of Nyanza province, which is mostly inhabited by the Luos, plays an important role in the perception of the predominance of the Kikuyu<sup>39</sup>. Also the following President Daniel arap Moi (Kalenjin) and Mwai Kibaki (Kikuyu) did not pay attention to the Nyanza region and the Luo felt they were systematically denied investment and development opportunities. Bearing the perceived historical injustices in mind, we should understand ethical conflicts, which played a role in the Dominion Farms large-scale land investment.

## **2.5 Discussion**

In this second part, the constant reduction and fragmentation of land by colonial powers have been shown. The repression on their native lands led to the Mau Mau revolution, which finally was the starting point of the de-colonialization and the independence of Kenya. But instead of

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<sup>39</sup> The roots of the difficult relationship between the Kikuyu and the Luo lie in the past. After the independence, Jomo Kenyatta was the first president of the new republic of Kenya. He was not only a Kikuyu, but also a former Mau-Mau fighter. His Vice-President, Jaramogi Oginga Odinga, was a Luo from Bondo, a town in Siaya County. Soon after independence, ideological frictions drove the two apart, and 1969 Odinga was arrested after one of Kenyatta’s political rallies in Kisumu resulted in public uproar and deaths (van Heukelom 2013).



giving back the formerly acquired common-pool resources to the Kenyan citizens, these common-pool resources were acquired by the state, which then used them to gain political support or sold them for privatization. Thus, land has been an issue since colonial time and is still the cause of many conflicts in the country.

On the other hand, colonialization did not visibly appear in the Yala Swamp region. After the independence, projects started to add value to the swampy land through the construction of dams. Thus, the interests of the local people, who were used to seeing the swamp as a common-pool resource, were threatened by economists and later by conservationists who saw the potential of the Yala Swamp as a game reserve. Further, since colonial rulers introduced taxes and the need for money, the Luo people are known as wage labour migrants. On the other hand, they feel that their region has always served as labour pool but have never had the opportunity to develop. Therefore, expectations of modernity were quite high. One has to keep in mind that Calvin Burgess and his Dominion Farms project came into a setting which was already contested by different interests and loaded with expectations of modernity and development. Tension in this land and in the affected people has constantly increased since colonial time. It is important to understand the setting under this historical conditions to get a better understanding of the ongoing processes. Therefore, with this setting in mind, I would like to continue with the third part of this thesis, which focuses on the legal basis of the large-scale land acquisition.

### 3 The Legal Basis for Dominion Farms' Large-Scale Land Acquisition



Picture 5. Street surrounding the Dominion Farms along the gate to the Dams and the rice paddies. The School Buildings for agriculture in the farm are visible in the background (Elisabeth Schubiger 2014).

“When Dominion took over we thought it would be good. But in 2005 they started to encroach on people’s private land, demanding our common grazing land, and taking over the river. They told us we have to change; to stop raising cattle. Their tractors ran over our crops. We went to court. But the farm told us they didn’t need to consult with us because we didn’t have the title deeds” (villager in Pearce 2012: 72).

This citation, made by a villager living next to the Yala Swamp, shows a number of problems occurring with the coming of Dominion Farms. These problems, somehow related to the legal state of things, have to be better investigated in a first step.

Calvin Burgess, the president of Dominion Farms Limited, was more than once accused of being a land grabber (Good Fortune (film), and Grain (website), inter alia). But a lot of articles, blogs, and reports do not investigate thoroughly the state agent’s role nor the legal basis of this land transfer. To escape hasty conclusions about land acquisition, it is important to understand the different views of the parties involved, as well as their different opportunities. I will

investigate on which legal basis Dominion's deal could arise. Hopefully, I will be able to detect the different processes behind this land deal, to provide a better understanding of how such deals are made. Therefore, I will first look at the legal basis which made the acquisition of the Yala Swamp possible. In a second step, I will speak about how different agents define "holding in trust for the people of Kenya on their behalf" (Constitution of Kenya 2010: 43). Finally, I will try to conclude in this chapter how the legal basis facilitates Dominion's negotiations.

### **3.1 Concepts of Property Rights**

It is written in the citation above that Dominion Farms was encroaching on people's private land as well as demanding people's common grazing land and their access to water. The statement shows that the villagers living at the Yala Swamp distinguish between privately-owned land and community land. It also shows that these people have a strong feeling of tenure right for the resources in this community land. The speaker, for example, mentions water and graze. According to the village elders and the area chief, the residents surrounding the Yala Swamp farmed on the wet soil in dry seasons, grazed their cattle in that vast area, and caught fish in the papyrus of the swamp during the rainy seasons for centuries<sup>40</sup>. Apart from economic activities, the land inherited social value. The Luo people have a spiritual connection to their land; their history is based on their land as we could see in the preface of this thesis. That is the reason why they call the Yala Swamp their ancestral land. It is therefore not surprising that these people see Calvin Burgess as someone who stole their community's land.

On the other hand, at the Ministry of Land in Siaya they call this perception of the villagers a "misconception", and a "wrong perspective". The fact is that the area called Yala Swamp is a wetland, and as a wetland it is classified as public land<sup>41</sup>. Public land is held by the county government, which states that Dominion Farms did not acquire the land illegally from the villagers, and that a legal contract with the responsible agents exists. The employee of the Ministry of Land repeatedly stated during our personal communication that "Dominion Farms is not breaking any law"<sup>42</sup>. Following this different reasoning, it seems that there is a general confusion regarding the ownership of the land. Different land tenure systems alternated for more than a century; a circumstance which probably caused this confusion.

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<sup>40</sup> Field notes of the author March to May 2014.

<sup>41</sup> Ministry of Land, Siaya City, interview with the author, May 2014.

<sup>42</sup> Ministry of Land, Siaya City, interview with the author, May 2014.

Before colonialism in Kenya, land and its related resources, for example, water and forest, were owned communally and governed by customary law. According to Knjuguna and Mbaya, individual ownership of land was a new concept introduced by colonial rulers (Knjuguna & Mbaya 1999: 6). The Kenyan land tenure system burgeoned in the colonial times. Since then, different systems have overlapped, which makes the land tenure system difficult to understand. The British established their rule over Kenya to push local people forcefully out of the areas with high agricultural potential.

“The English land law is an embodiment of many principles that are foreign and have their origin in the history of England. These laws have come to be in operation, to a large extent, alongside African customary land law. African customary land law embodies principles which have their roots in the traditions and our customs of ancestors; the main difference with English land law being that the latter is an expression of individual or private ownership of land while the former is an expression of communal or family ownership and use of land” (Knjuguna & Mbaya 1999: 11).

Peters adds to this view that multiple types of authority and sets of claims over land were glossed as communal tenure, which became incorporated into the customary law (Peters 2013: 1317). Peters sees the so-called customary tenure itself as a construction, which infused the ways in which different stockholders have sought to attain and maintain rightful access to land (Peters 2013; 2013b; 2009). She explains that “colonial thought and practice regarding property in land were based on the concept of a universalism from barbarism to civilization” (Peters 2013: 539). Private property, therefore, belonged to the “civilised” world, whereas customary tenure or common property belonged to the “barbarism”. This colonial view was replaced and buttressed by modernization theories and development discourses during the 1960s and 1970s. A number of newly independent African countries, encouraged by international aid agencies, for example the World Bank, made programmes of registration and titling to produce property rights (Peters 2013).

The newly-created Kenyan state in 1963 was influenced by colonial concepts of property and continued to believe in liberal economic principles. Economists were the first to suggest that resources with no private owner were prone to serious problems. They concluded that private property results in more efficient use and conservation of resources, and in an increase of wealth that is greater than in less exclusive forms of property (Acheson 1989: 354). According to this logic, property rights mean that internal benefits and costs accrue to the owner. For example, a person who owns some land has the right to produce on gain from the land, and loses if the land is degraded (Acheson 1989: 354). Hence, one could imply that property rights are important for useful and sustainable land management. In the 1960s, a general awareness of the damage

humans had been doing to the environment emerged (loss of agricultural land, pollution, fishery failure, acid rain, toxic waste, and degeneration of forests, among others). A popular explanation for these problems is the theory of common-pool resources, a theory which gained widespread attention with the publication of Garrett Hardin's paper *The Tragedy of the Commons*, which was published in 1968 (Acheson 1989: 351). Hardin stated in his essay that overpopulation cannot be solved with technical improvement and sought to rebut that there is an invisible hand which controls population growth. To explain his theory, Hardin used the example of a common-pool resource held in common:

“Picture a pasture open to all. It is to be expected that each herders-man will try to keep as many cattle as possible on the commons. Such an arrangement may work reasonably satisfactory for centuries because tribal wars, poaching, and disease keep the numbers of both man and beast well below the carrying capacity of the land. Finally, however, comes the day when the long-desired goal of social stability becomes a reality. At this point, the inherent logic of the commons remorselessly generates tragedy” (Hardin 1968: 1244).

Furthermore, Hardin deployed the prisoner's dilemma from game theory, which imagines people locked into a system which compels them to expand without limit, each pursuing his or her own best interest in a society that believes in the freedom of the commons (Hardin 1968: 1244). According to this theory, resources held in common will inevitably be overexploited, because common resources are owned by no one, and thus it is not in anyone's interest to protect them (Acheson 1989: 351). The logic assumption is enforcement of the law (coercion) by the state or privatization of land to govern overexploitation (Hardin 1869: 1247). The theory fits in the economic reasoning that private property results in the best use of resources by society because owners do not wish to waste resources or to misallocate them, whereas common property has the problem of a divergence between the interests of the individual and the interests of society, since it is rational for individuals to overexploit resources that are communally owned (Acheson 1989: 356). Hardin was criticized by many authors for his misinterpretation of common-pool resources as an open-access system. Resources owned by local groups or clans are managed by rules, institutions, including monitoring and sanctioning. Hardin showed people as unable to create rules to regulate resources and driven to maximize personal profit. Hardin ignored both that rules and norms regulate the amount of consumption and that common-pool resources are regulated by institutions.

However, the theory of common-property resources “has become one of the most influential theories guiding resource management policy in the world today” (Acheson 1989: 351). Indeed, watching the land tenure system in Kenya, this patterns are visible. I will proceed to describe

how land has been classified after the independence, and how this classification played an important role in many local land disputes.

### **3.2 The Yala Swamp Classification**

Between the independence and the introduction of the new constitution in 2010, land was classified in the following three types: governmental land, trust land and private land.

The white settlers in the colonial time advocated for grouping the Africans in defined reserves, the so-called native reserves. In 1938, the native reserves were re-designed as native lands and removed from the Crown Lands Ordinance and new laws were created to govern the native lands. The pluralism of both sets of laws –the one for crown lands, the other for native lands– is part of the current state of confusion in land administration (Odyango 2007: 178f). The most extensive tenure type was trust land. Trust land was the former native areas “which have not been consolidated, adjudicated and registered in individuals or group names and native land that has not been taken over by the government” (Kameri-Mbote 2005: 4). Governmental land was held by the government in trust for the people of Kenya, while trust land was held in trust by the local authorities for the residents in the area (Benschop 2002: 145). All resources within the trust land was, according to the Trust Land Act, managed by local councils to control the development of that land. Kameri-Mbote noted that “The occupiers of the unregistered land have rights, which are in limbo and awaiting confirmation through registration. These rights are in some cases guaranteed under some form of customary tenure” (Kameri-Mbote 2005: 4). After the independence, all lands that were not identified and gazetted for a specific use were held in trust for the community by the local authorities (councils). Trust lands were therefore often perceived as community lands but, as Onyango mentions, a survey established that most trust lands had already been alienated by governmental forces (Odyango 2007: 178). County councils could set apart an area of trust land for public purposes, and any rights or benefits of that land previously vested by local community under African customary law were extinguished. After the land had been set away, the Kenyan Government was able, after consultation with the county council, to require the land for public purposes (Benschop 2002: 146). The trust status changed to ownership by individuals, legally constituted groups, and the state.

The Yala Swamp was classified, according to the Gazette Notice NO 2570 of 27th of August 1970, as a trust land, under the trust land act, Chapter 288 (Assembly of Kenya 1996). On the other hand, it is argued that the swamp is a body of water and belongs to the state. “Categories of government land include forest reserves, other government reserves, alienated and

unalienated government land, national parks, townships and other urban centres and open water bodies” (Waiganjo et al. 2001: 5). Benschop mentions that in Kenya 22 laws dealt directly with land issues and another 20 to 30 laws indirectly dealt with its resources. Therefore, the land tenure system has been characterised by abuse of trust, lack of clear legal process and policy process (Benschop 2002: 145). In 2003, when Dominion Farms came, the Yala Swamp’s classification was not certain. Furthermore, the land’s associated resources, including fish and wildlife, were regulated under different acts, which made the management of the Yala Swamp complicated.

In 2010, with the introduction of the new constitution of Kenya, the naming of these land types changed, but they are still classified into three categories:

“(2) Land in Kenya is classified as public, community or private” (Constitution 2010: 42). With the introduction of the new constitution in 2010, the Yala Swamp was classified as public land, because “62. (1) Public land is – land which at the effective date was unalienated government land as defined by an Act of Parliament in force at the effective date; [...] all rivers, lakes and other water bodies as defined by an Act of Parliament; (m) any land not classified as private or community land under this Constitution; [...]” (Constitution of Kenya 2010: 42f).

What the people at the Yala Swamp call a community land, according to this legal basis, did not exist at the time when the land acquisition in the Yala Swamp took place. Community land is a newly introduced land type, and the current definition of a community land is:

“63. (1) Community land shall vest in and be held by communities identified on the basis of ethnicity, culture or similar community of interest. [...] (a) land lawfully registered in the name of group representatives under the provisions of any law; [...] (d) land that is— (i) lawfully held, managed or used by specific communities as community forests, grazing areas or shrines; (ii) ancestral lands and lands traditionally occupied by hunter-gatherer communities; or (iii) lawfully held as trust land by the county governments” (Constitution of Kenya 2010: 44).

Basically, community land is land lawfully held by a specific community registered in the name of group representatives, and it is occupied and used by a community. Communities, for example, the Massai, used to register their land as a community grazing land. These were the lands classified as community lands<sup>43</sup>. According to the employee of the Ministry of Land in Siaya, after the independence, the government started adjudicating and demarcating the land. The government was supposed to leave some land to the communities, but the latter were never involved in this process. The people were not aware of what the government was doing, and

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<sup>43</sup> Ministry of land, interview with the author, May 2014.

they did not know about the adjudication process nor did they know that a lot of the land was required by the government. They continued to graze the cattle and to fish because they were convinced that it was still their land after the independence<sup>44</sup>. This means that, even if the residents surrounding the Yala Swamp perceive it as their land, the land has never been registered as a communal grazing or fishing ground, and does not, therefore, according to the Kenyan Constitution, belong to the community living in the swamp, but is held instead in trust by the responsible authority.

As I showed, there were different types of land existing in parallel after Kenya's independence: private (which was defined as a modern way of land management) communal (which was still ruled through custom), public (which was ruled by the state) and land with open-access (because nobody knew who actually manages it, so everybody could rush to use the land). Further, three different entities own land in Kenya, namely the government, county councils, and individuals and groups (Kameri-Mbote 2005: 4).

Different overlapping laws and definitions of land make the Kenyan land tenure system difficult to understand and manage. I showed that in the tradition of Hardin's *The Tragedy of the Commons*, the Kenyan state does abolish communities' right to manage land by themselves. State forces favour the expropriation of resources, to manage them on behalf of the citizens of Kenya. Next, I will focus on the question of who manages the swamp and for what purpose, and what "holding in trust for the people" concretely means.

### **3.3 Holding in Trust on People's Behalf**

"(3) Public land classified under clause (1) (f) to (m) shall vest in and be held by the national government in trust for the people of Kenya and shall be administered on their behalf by the National Land Commission" (Constitution of Kenya 2010: 43).

The quotation above from the Kenyan constitution shows how public land is administered. But, what does "in trust for the people" mean? What is on behalf of the people? Who makes the decisions and what do they refer to? The definition of trust given by an employee of the Ministry of Land was the following: "the county government is doing the management of that land, but on behalf of the community. [...] Take the example of a forest. The forest belongs to the community, but who leads the community? The community can't manage it themselves. If you

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<sup>44</sup> Ministry of land, interview with the author, May 2014.



really want to cut trees there, you seek for permission at the county government”<sup>45</sup>. Managing the land means in this case, having the authority to control and permit activities on the land, which is in fact state property. For Dominion’s manager it seems clear that the swamp must be held by governmental agents: “[...] because of selfishness they cannot be allowed to manage it themselves because they will go and demand it, so the government manages it for them. So the government can put an investor or something. [...] We can have a lease on it to produce something that helps the community”<sup>46</sup>. This statement calls to mind Hardin’s *Tragedy of the Commons*. Dominion’s manager speaks about the selfishness of the people and the fear that everybody may want to come to the swamp and use it. He makes the assumption that common-pool resources led to overexploitation of the swamp, because of the (selfish) individualistic profit maximizers driven by economic goals (Hardin 1968; see Acheson 1989: 359). The manager further says that only the government can manage the Yala Swamp for the people, and concludes that local-level communities cannot or will not establish effective institutions to protect the resource they live in. He thinks that the exploitation (or lack of use) of the collectively-owned resource can be halted only by instituting private property, and sees leasing the land as the best option (Acheson 1989: 358).

The Kenyan government and its responsible organs ignore that the community managed the swamp for centuries, through their own institutions, which included rules, regulations and restrictions. The area chief names a number of institutions by which daily life among the Luos was controlled in pre-colonial times.

“The Luo people were governed by a Ruoth<sup>47</sup> and a council of elders, coming from different clans. This council dealt with matters of insecurity and culture. The Ruoth was to guide people in moral issues and treat conflicts, and he directed wars”<sup>48</sup>.

These institutions, the Ruoth and the council of elders based on kinship and structures, were created to manage land and its related resources. In the 1930s, anthropologists helped colonial administrations to establish authoritative restatements of customary law, whereby the anthropologists tried to rebut mistaken official views about communal tenure. But pre-existing customary law along with communal tenure was shaped by the colonial situation, serving

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<sup>45</sup> Ministry of land, interview with the author, May 2014.

<sup>46</sup> Chris Abir, Dominion’s manager, interview with the author, March 2014.

<sup>47</sup> The Ruoth, (a rich man with power, nowadays a chief) inherited often the role of a Jabilo. The Jabilo, practiced beneficial magic and served as more spiritual leader for his people, he had the role of a prophet (Wilemski 1977: 63).

<sup>48</sup> Chief, interview with the author, April 2014. Read more about traditional institutions in the thesis of Anna von Sury.

European states and elite African interests (Peters 2009: 1318). After the independence, the former Luo institutions shifted to state-governed institutions and local leaders lost their power.

“While the system [demarcated areas of range land to a group of pastoralists] was meant to capitalise on traditional institutions to institutionalise sustainable resource management, the group representative lack the authority of traditional leaders. [...] Governmental policy has tended to emphasise individual rights and there is a prevalent view that the group rights would eventually mature into individual ones” (Kameri-Mbote 2005: 4).

Authority shifted from the local people to the national government and its organs and common-pool resources became state property. Take the example of the local area chiefs. They might be seen as the ancient traditional leader, like a Ruoth, and called to be the representative of the local communities. But today chiefs are appointed by the state, and therefore employed by county governments. As representative of the state, the chiefs act as translators and informants between state and local community. Thus, chiefs are called to be corrupt and the eye of the state. Even though there seems to be a community representative, the position of a chief, for example, is highly contested within the community.

According to Ostrom, community arrangements should be taken into account to manage common-pool resources for their effective and sustainable use. But, as we can read in the following statement, the trust in the government seems to be strong: “It is only the government that can do agreements and they can only do the agreements if they own the land [...] you cannot do the management of land, if it is owned by the people”<sup>49</sup>. Further, it shows that community arrangements are not taken into account in Kenya’s land tenure system. Former institutions and local knowledge are said to be backwards and this narrative seems accepted by state officials, who thereby strengthen their bargaining power. The government and Dominion’s investor claim that the local people cannot manage the swamp by themselves. “This land [Yala Swamp] is called trust land, that means in theory it belongs to the public but it’s managed by the existing government. Under the old system there was what you called the county councils. [...] When you get into Africa and you want to reach a community, there are set up leaderships. You come to a village, you look for the chief of the area. Then the chief will call a politician. Then they will make you hook up with somebody, for example, the District Commissioner or the Provincial Commissioner”<sup>50</sup>. The hierarchy of the different agents is respected in the Kenyan setting. Dominion’s manager explains that different governmental levels and Ministries

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<sup>49</sup> Ministry of Land, Siaya, interview with the author, May 2014.

<sup>50</sup> Chris Abir, Dominion’s manager, interview with the author, March 2014.

have to be consulted first, to reach the community. The question therefore is, do this political leader consult the community afterwards? Based on the previous discussion I conclude that former local institutions have been ignored and local communities were said to be unable to manage the land and its resources. While state control over the resources was introduced, common-pool regimes were not maintained by the government. Therefore, I conclude that “holding in trust for the people of Kenya on their behalf” means that the control over land and its associated resources lies in the state’s hand. In the next section I will show, how the government used narratives and ideologies such as that the land is unused (or incorrectly used) by the community, and therefore can be used “in behalf of the people” for their best, to legitimize the land lease.

### **3.4 The Idle Land**

It is of interest, how media, politicians and Dominion Farms speak about the Yala Swamp as an idly, vast land. In a report about Dominion Farms on NTV, Burgess says that “This was not land, it wasn’t gazetted, it didn’t exist, this was a swamp”<sup>51</sup>. Burgess declared, that nobody lived there –whereby he does not differentiate between living in the swamp, which indeed nobody did, and living by the swamp and using its common-pool resources. The use of multiple resources which are connected to the swampy area are simply ignored. In an interview with Pearce, Burgess says, “Whatever the locals say, they didn’t use the swamp. They couldn’t get in. Now they want to go there of course, because we are drying it out. But they didn’t before” (Pearce 2012: 78). These kinds of statements are intriguing because Burgess took over a part of the swamp where the parastatal organization Lake Basin Development Authority had been cultivating 2’600 ha of the swamp since the 1970s. They produced oranges and other food crops together with the community. The Kenyan government had had the intention to transform parts of the Yala Swamp into agricultural land since the early 1970s. The ministry of Foreign Affairs of the Netherlands was consulted by the Kenyan government for technical assistance in reclamation of the swamp and the feasibility of agricultural production (van Heukelom 2011: 14). Throughout the 1980s, numerous reports were commissioned focussing in depth on the potential of the development of the swamp (van Heukelom 2011: 14).

In the 1970s, the Government of Kenya and the UN Special Fund and the Food and Agriculture Organization (FAO) started to drain the water and building dikes according to the signed Plan of Operation. At this time nobody was restricted to go to the swamp for farming.

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<sup>51</sup> Irrigation in Yala Swamp (2’ of Film): Dominion Farms Kenya Blogspot. <<http://dominionfarmskenya.blogspot.ch/>>.

“The water being thus drained we used to grow crops there and leave their produce to grow there and no one would carry away someone else’s crops. And there used to be great harvests. [...] Dominion just came onto the scene recently and with its arrival there also came trouble. Because there was a great number of cows, donkeys and all sorts of things. There was food. With Dominion came restrictions. No one was allowed to go to the swamp”<sup>52</sup>.

Thus the draining in the 1970s of 2’600 ha indeed had a positive impact for the local community. On the other hand, the swamp was already useful before the 1970s for different activities, as the following statement shows: “I saw the swamp filled with water when I was still a child. That was in the year 1954. And it was filled with crops that people grew within it. [...] I used to accompany my mother when she used to go there to harvest crops like maize”<sup>53</sup>.

The neoliberal advocates of investments in land often stress the valuation of useless land, and present their project as a solution for empty unused lands, “but investors are likely to lease higher valued lands for their agricultural investment” (Cotula 2009: 62). This is also the case in the Yala Swamp. The soil in the swampy area is fertile and the access to water is easy.

This begs the question as to why the Kenyan government then provides a land deal on its fertile land. The aim of the long-term national planning strategy “vision 2030” is “making Kenya a newly industrializing, middle income country providing high quality life for all its citizen by the year 2030” (Kenya Vision 2030, 2007: 1). They defined six key sectors for achieving the goals of the vision: tourism, agriculture, trade sector, regional market, business process off shoring and financial services. All those sectors are somehow linked with land, and how it can be used in an improved economic sense. “This will be done through an innovative, commercially oriented and modern agriculture, livestock and fisheries sector. [...] mainly through better yields in key crops, increased smallholder specialisation (2-3 crops per plot), utilising a million hectares of currently idle land, and new cultivation of up to 1.2 million hectares of newly opened lands” (Kenya Vision 2030, 2007: 6). This vision is just one example of future visions conducting the valuation of land. Once again, the notion of idle land is central in Kenyans’ development visions. Cheap prices of the land and the perception that it is underused make it seem like an economic gold mine. What is ignored is the fact that the land is not laying idle; instead, it is an important source of the local’s livelihood for food and cash (see Anna von Sury’s thesis). One of the key reasons for Africa’s attractiveness to outside investors is the perceived abundance of land (Cotula 2009: 59). It is therefore important for an

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<sup>52</sup> Village elder, focus group interview with the author, May 2014.

<sup>53</sup> Village elder, focus group interview with the author, May 2014.

investor and other interest bodies to show the land as empty and useless. Concepts such as “available”, “idle” or “vast” land used to justify land allocation (Cotula et al 2009: 62). The view of idle, useless no-man’s-land was repeated by the manager of Dominion Farms, when we asked him why Dominion chose the Yala Swamp for rice farming.

“The vision...the objective of Dominion Farms was to try and help the government with food security, try and improve on...our agricultural practices so that people can start to embrace more than agriculture. [...] And when he came here the area was a swamp, people used to go by canoes to cross it. [...] It was just full of water so instead of having a conflict with the community on an already existing arable land you’re trying to get land that is not already rigidly used”<sup>54</sup>.

The above citation presents a number of narratives. Kenya has a problem: food security. In order to find a solution to their problem, they need an idle land. The quote also shows the discourse that the Luos in the village are backwards (still crossing the swamp with canoes), and that Dominion Farms (or the modern American investor) need to show them how to embrace more than agriculture. Ideologies like modernity or backwardness become a powerful narrative, as well as the idle and useless land (it was just full of water; a land that is not already rigidly used). These narratives became important for the legitimization of Yala Swamp’s acquisition.

### **3.5 Discussion**

To make a short summary, although the residents of the Yala Swamp perceive it as their ancestral land, it is not classified as community land by law. Wetlands are public lands (former trust land) and are held in trust by the government of Kenya and are managed by the counties. The Yala Swamp was managed through local institutions which were developed in precolonial times. In the colonial era, British rulers tried to adapt some of the institutions, but changed the property system from a common-pool resource, which was commonly managed, to state property. This system led to a legal pluralism and to overlapping land tenure systems. Today, the local rules and regulations have lost their effectiveness, and a number of Acts, Ministries<sup>55</sup> and governmental agents control the Yala Swamp. The common management of resources is said to be unsustainable and therefore the state must manage them. The Kenyan state officially controls the Yala Swamp but lacks the financial capacity to boost the swamp. According to the government’s discourse, foreign investment seems to be a good solution for the development of the region. As a consequence, the Yala Swamp has been called to be idle, useless land, and

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<sup>54</sup> Manager of Dominion Farms, interview with the author, April 2014.

<sup>55</sup>Housing and Urban Development, Ministry of Environment, Water and Natural Resource, Ministry of Agriculture, Livestock and Fisheries, Ministry of Industrialization and Enterprise Development.

has been leased to a foreign investor. It is worth noticing that the area has been a cultural landscape for a long time the swamp has never been pure nature, and since the 1970s dams and other technological innovations have changed the swamp's environment. Nevertheless, debates of non-sustainable use come up as the company claims the land. The ideology of modernity together with the "the-land-is-lying-idle" narrative was a strategy of legitimacy of the Dominion Farms land lease.

After having outlined how the Kenyan legal system made Dominion's project possible, in the next part of this thesis I pay attention to discourses, narratives and ideological patterns about Dominion's deal in the Yala Swamp and discuss the political enmeshments.

## 4 Politics in the Yala Swamp



Picture 6. Village elders in front of the school of Kadenge which is their meeting place once a week (picture by Anna von Sury).

Picture 7. Calvin Burgess with the ex-president Kibaki in 2006<sup>56</sup>.

“This land was called trust land that means in theory it belongs to the public but it’s managed by the existing government. So we had to mobilize the community, the county council and say, what we are going to do and how it’s going to benefit them in terms of jobs, corporate social responsibilities and all those sort of things. Then the community agreed. Then the company’s advocates and the county council advocates worked the Memorandum of Understanding on how the land can be utilised by the investor. That is the process. You have to bring everyone on board, you have to convince the community they will get employment and food. Then their leadership have to come in and transact something on their behalf<sup>57</sup>.”

In the cited quote, Dominion’s manager nicely explains how Dominion’s leasing contract has been concluded. This simple list of events shows a number of ideologies (modernity), discourses (development through investment) and narratives (following the official way provided by the Kenyan state), which Dominion Farms use to legitimate their own goals. The

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<sup>56</sup> Farmlandgrabs.org 2006: President Mwai Kibaki shakes hands with the Chief Executive Officer of Dominion Farms, Calvin Burgess, who called on him at State House, Nairobi. - See more at: <http://farmlandgrab.org/post/view/19073-dominion-domination-the-scandal-of-yala-swamp#sthash.0wOIPqkA.dpuf> <<http://farmlandgrab.org/post/view/19073-dominion-domination-the-scandal-of-yala-swamp>>.

<sup>57</sup> Manager of Dominion Farms, interview with the author, May 2015.

land and its related common-pool resources is defined as state property, which has to be managed by the state.

The process of leasing the Yala Swamp to a foreign investor has to be understood in the light of the neoliberal approach of Kenya's land policy. The land policy, manifested in the Land Act of Kenya, reproduced the development discourse of the International Monetary Fund and the World Bank. Modernity can therefore be seen as the umbrella ideology within Dominion Farms and their advocates are promoting their investment. Dominion Farms promoted their plans to convert the swampy land into a modern irrigated farm capable of producing rice, rotation crops, tilapia fish and a number of by-products. They further published plans for cooperated social responsibility in education and health care. The Kenyan state policy has operated on a development paradigm that privileges development through foreign investment. To be able to accommodate the foreign investment, the power of the local political institutions were undermined. The villagers surrounding the project's area were looking forward to job opportunities, a better health system and schools for their children. The vision of development for Kenya's population is the root of many problems and disputes over land (see conflicts over land in the Tana Delta for example: Smalley & Corbera 2012).

As I will show in the next chapter of this thesis, it is obvious that policies, which follow the development and modernity discourse and narratives, play an important role in the legitimacy of Dominion's project. In the previous chapter, we learned that with the supporting legal basis, trust land and governmental land was likely to be used for development projects. In this part of the thesis, it remains to investigate how different political institutions and Dominion's investor legitimized this project on different levels. The long process of the land acquisition is central in this part of the thesis. The focus is on the different agents' perception on the process and on their participation in the process. Further, it will be necessary to demonstrate with care how Dominion Farms Limited concluded the leasing agreements in the Yala Swamp. I will also evaluate how the community has been included in the negotiations. Political interrelations played an important role in the conflict about the Yala Swamp. As has been pointed out in the chapter on New Institutionalism, it is important to evaluate the bargaining power of the different actors involved. I will pay attention to the behaviour of the different agents involved, and to the discourses, ideologies and narratives which have been used during the negotiation and implementation of Dominion's land acquisition.



#### **4.1 Decentralization, Legal Pluralism and Institution Shopping**

In the 1990s, with the awareness that economic principles as such cannot solve the problems of the so-called Third World, development policies moved towards decentralization and community-based organizations. Failures attributed to state management and market-oriented policies have made communities attractive to many policy makers as alternative actors (Agrawal 2003: 243). Programmes, intended to decentralize authority in favour of “grass-roots” users, were made in the name of democracy and improved governance. But national and local elites capture the benefits supposed to accrue to local and traditional managers (Peters 2009: 1320). As a consequence, new institutions were created to manage state property, while pre-colonial and colonial institutions still existed.

This means that, in addition to different regulations emanating from the historical phases (former resource regimes, colonial regimes), different state parties are involved in land politics and policies. These different institutions do not just act under different contracting jurisdiction, but regulations vary for each resource. For example, overlapping resources as fish and water are controlled by separate authorities or departments. This plurality of overlapping and competing traditional and contemporary law and international rules and regulations is what is called legal pluralism (Haller 2010: 431ff). However, right to land is not only dependent on regulations, but on different systems of authority, including community councils, local governments, traditional leadership, land agency and city councils. The power relations between the different legal institutions are unequal and relay for example on legal judgement, spiritual value or physical force. “This multiplicity of structures brings contradictions and insecurity regarding whose rights count, whose will be supported in the event of contest and which decision-making structures are paramount. It has led to what has been termed institution shopping [...]” (Toulmin 2008: 13). The term institution shopping refers to the early work of von Benda-Beckmann, who calls the overlapping of jurisdiction of institutions, in analogy to private international law, forum shopping. What von Benda-Beckmann means with forum shopping is that disputants have a choice between different legal forums and they base their choice on what they hope benefits them most. He also says that not only parties shop, but that the individual functionaries use the processing of disputes to pursue these interests and “shop forums”, which means that they manipulate disputes from which they expect to gain political advantage (von Benda-Beckmann 1981: 117). Haller concludes that the complexity of institutions provides the possibility of forum shopping. Different actors have a huge array of tools at their disposal for legitimizing the way in which things are accomplished. Forum shopping provides an impression of legality and related discourses and narratives undermine

the position of weaker actors (Haller 2010: 433). Haller's approach outline that institutional insecurity might not be the case but power differences still matter. Powerful actors determine which institutions shall be used; they "shop institutions".

We therefore have to pay attention to narratives which refer to decentralized political bodies, because such labelling probably underscores the actor's power position. Slogans like "nature reserves", "privatization", "individual transferable quotas" "integrated rural development projects" and "joint management schemes" belong, according to Ostrom (2013), to the universal solutions. These schemes are probably meant to go back to a community-based management but, as long as the government does not acknowledge the local community as an entity, the bargaining power of the local community is reduced by the state. Even in programs intended to decentralize authority to "grass-roots" users, too often national and local elites capture the benefits supposed to accrue to "local" and "traditional" managers (Carney & Farrington, 1998; Ribot, 2000; Woodhouse, Bernstein, & Hulme, 2000; Peters 2009: 1320). Cotula points out that, although some countries have progressive laws and procedures that seek to increase local voice and benefits, big gaps between theory and practice result in unsatisfactory processes to negotiate land access (Cotula et al. 2009: 7). Haller concludes that participation and decentralization have become major discourses producing legitimacy for strategic action of powerful users on different scales of governance, for example in the context of protected areas (see Haller & Galvin 2011; Haller 2013).

We therefore have to pay attention when Dominion Farms refers to the contracts they signed with the existing local government. Local residents, for example, point out that the Yala Swamp is held in trust by the relevant County Council for the community. "The County Council should therefore initiate consultations with the local communities and residents to get their approval to lease the land to third parties" (van Heukelom 2011: 14). The most common complaint concerning the rice farm among the villagers is that Dominion Farms did not include the community into the negotiations surrounding the implementation of the farming project. In the name of development, local communities get involved in development projects without consultation, even if they are most affected by the change of lifestyle, landscape and environment. It seems that on the front stage participation was used as a common narrative, such as "we had to mobilize the community" or "you have to bring everyone on board, then their leadership will have to come". On the back stage, the decisions were made top down, referring to the legal base, which says that the land belongs to the state. Dominion Farms recall official channels which they used to inform the villagers. The narrative of the official way is

obvious; for example, Dominion Farms and politicians underline constantly that they made the requested consolidation and assessments. Therefore, in the following part of the thesis, I will pay attention to the negotiation process, contract making and the different agents which have been involved in the implementation of Dominion's project.

## **4.2 The Lease**

It is hard to trace back the exact procedures and the individuals that were involved in the transfer of land use to Dominion Farms. Around 2001, the initial proposal was that Dominion Farms would take over the 2'700 ha in the south of the swamp, where the Lake Basin Development Authority was cultivating fruit and other food crops since 1970 (van Heukelom 2013; Owala 2010). The Lake Basin Development Authority was the governmental authority which claimed the Yala Swamp under its jurisdiction back then. The Lake Basin Development Authority had the task "to sustainably exploit and develop the immense natural resources in the region in collaboration with other development agencies and investors to create wealth and employment and alleviate poverty" (van Heukelom 2013: 173). Findings from the fieldwork reveal that in the beginning several misunderstandings occurred. The villagers and their local village councils thought Dominion Farms would only take over the small part in the southeast of the swamp where the Lake Basin Development Authority produced commodities such as oranges, other food crops and fish, together with the community. The Lake Basin Development Authority itself was not very popular in the community; it was said to be corrupt and people blamed it to employ people only from outside. A new (white and therefore, according to the locals, trustful) investor in the 2'700 ha Lake Basin project land was therefore welcomed. Burgess on his side says that he went to Africa to help the poorest of the poor. Why Kenya is uncertain, but as I suspect he came with his friend the Kenyan pastor Ken Nyagudi (Member of Parliament). According to Burgess, he planned first a project in the Kenyan Tana Delta, but was advised by his friend Ken Nyagudi to invest in the less contested lands in Siaya County. It is also said that Raila Odinga, the prime Minister, welcomed Burgess and his investment, since Raila is a Luo and was therefore pushing for the development of "his" homeland.

First, Dominion Farms moved into the swamp through an arrangement with the Lake Basin Development Authority in 2003. It seems that the Lake Basin Development Authority was leading the negotiations with Burgess until the district governments of Bondo and Siaya reclaimed the land because the swamp did not belong to the Lake Basin Development Authority but was held in trust by the districts<sup>58</sup>. The local governments won the case and the Lake Basin

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<sup>58</sup> Chief, interview with the author, April/May 2014.

Development Authority was excluded from the negotiation with Dominion Farms. According to rumours, Burgess seized the chance during this fight over jurisdiction to lease more land than the previously offered 2'700 ha.

In 2004, Dominion Farms signed a 25-year leasing agreement for the failed project area of the Lake Basin Development Authority. The lease agreement for the allocated land was signed by Bondo and Siaya County Councils, which were at this time the district<sup>59</sup> agents who held the Yala Swamp in behalf of the people. The Busia County Council was excluded, although it presides over a significant part of the river and the swamp (Owala 2010: 17). The County Councils signed a Memorandum of Understanding in which it is written that the lease of 6'900 hectares of the Yala Swamp has been pushed by the counties and Dominion Farms.

Why and when the initial 2'700 ha expanded to 6'900 ha get lost in discussions about the legal land holder. All we know is that the first leasing contract from 2004 over 3'700 ha of the Yala Swamp has been changed to a much higher section of the Swamp, 6'900 ha, and the 25-year lease was extended to 45 years. It is still unclear when the additional hectares were leased to Dominion Farms since the lease contract remains elusive (van Heukelom 2013: 174). This is how I could reconstruct the different stages of the negotiation.

My research thus focused on trying to collect information on this process. Our interviewees repeatedly told us that politicians representing the area organized meetings in the city of Kisumu and Siaya and made treaties without further consulting the local community. Agreements about the price and the size of the area were negotiated in the city of Kisumu. Assignments concerning corporate social responsibility and environmental impacts have been discussed in the cities as well. Villagers stress that, later on, the community had to accept the already signed agreements<sup>60</sup>. Therefore there was no prior informed consent by local people. The conflict between Dominion Farms and the community started, when unconfirmed reports indicated that the duration of the lease has been increased from 25 years to 45 years, and that the land Dominion Farms Limited acquired exceeded the 2'700 ha, being 6.900 ha instead (van Heukelom 2013; Owala 2010).

The people living next to the Yala Swamp expressed their disappointment, because Dominion could acquire 40% of the swampy area without any proper consultation of the affected community. The village elders, CBOs and private activists state that their legal rights have been

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<sup>59</sup> In 2010 Kenyan districts were restructured into counties, the Yala Swamp (including the former Bondo district) belongs nowadays fully to Siaya County, and the responsible executive is placed in Siaya County.

<sup>60</sup> Village elders, focus group interview with the author, May 2014; chief, interview with the author, April/May 2014.

undermined. In the Trust land Act all consolidation steps are clearly mentioned: villagers have the right to obtain answers from experts from different sectors, such as the Wildlife Service and its attached ministries. These meetings should take place in the villages and all parties (affected location, ministries, political agents and locals) should be able to ask and answer questions<sup>61,62</sup>. Although this official consultation did not take place, Dominion Farms claim that they informed the local people (it can be pointed out that “to inform” is not what is actually meant by consultation, which should rather be an open dialogue and exchange of ideas) through church channels and, therefore, did their duty. Of course, it is easy to blame the company for the lack of local consultation, but the responsible political representatives and ministries did not pay any attention to the involvement of the local people either. It could be part of the deal, taking into consideration the informality of formal institutions I mentioned in the introduction: such deals have a front stage and a back stage on which different things are done and said, for example, bribery. As has been shown above, some basic information was given to the people, but Cotula recalls that the information provided about deals often inform about benefits, not about costs (Cotula 2013: 93).

The pillars of decentralization and community involvement are assessments and memoranda of understanding. Such contracts and agreements have to be made prior to a leasing contract to make sure that all involved parties had a voice. Indeed, this required agreements were done by Dominion Farms and the political representatives. But as Cotula notes: the problem with contracts such as land leases is that only few local people knew about the negotiations. Furthermore, these contracts are often not transparent or public, creating not only a breeding ground for corruption, but also making it difficult to scrutinize the legality of the agreements (Cotula 2013: 113). A Social and Environmental Impact Assessment<sup>63</sup> is aimed to ensure the well-being of local residents and of the environment, and a Memorandum of Understanding<sup>64</sup> describes a multilateral agreement between stakeholders, which expresses convergence of will

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<sup>61</sup> Notes from the field diary.

<sup>62</sup> Trust Land Act (revised edition 2009 (1970)): Chapter 288, Part IV.  
<[http://theredddesk.org/sites/default/files/trust\\_land\\_act\\_cap\\_288\\_kenya\\_1.pdf](http://theredddesk.org/sites/default/files/trust_land_act_cap_288_kenya_1.pdf)>.

<sup>63</sup> “EIA is defined as a methodology for gathering information about the potential environmental impacts of a proposed development and making that information available for use in decision making. EIA does not itself determine whether or not a proposed development may proceed. It places information before decision makers which decision makers must take into account alongside other information in order to come to a conclusion whether to permit the project to proceed”. Kenya Law Resource Centre: Environmental Impact Assessment.  
<<http://www.kenyalawresourcecenter.org/2011/07/environmental-impact-assessment.html#sthash.GKOjbuHL.dpuf>>.

<sup>64</sup> “A document that describes the general principles of an agreement between parties, but does not amount to a substantive contract”. Dictionary.com.  
<<http://dictionary.reference.com/browse/memorandum+of+understanding>>.

between the parties. Cotula takes a critical position towards these kinds of agreements, and calls them a way to canvass local views about the projects (Cotula 2013: 114). Seeing that the local people concerned were not informed nor asked, I consider these agreements and contracts as a political instrument, instead of as a tool for decentralizing government. For this reason, I have to investigate better the role of the agreements and memoranda in the implementation of Dominion's project in a next step.

### **4.3 The Memorandum of Understanding**

The Memorandum of Understanding for Dominion's rice project in the Yala Swamp was signed by the Company and Siaya and Bondo County Councils in May 2003 (Ochieng<sup>65</sup>; Väh & Nolte 2015: 79). Some people of the affected community were invited to information meetings in the nearest town, Siaya. The village elders complain that no financial compensation, transport nor food was provided to attend this meeting, which took place in the city<sup>66</sup>. At the meeting, people were told that an American investor, instead of the Lake Basin Development Authority, wanted to invest in the Yala Swamp. Thereafter, there were rumours about a Memorandum of Understanding that had been signed. Only few people, like the village elders, have heard about an opportunity to scrutinise the Memorandum of Understanding, but nobody had serious information about the place and time of the negotiations. The chief was invited for some discussions, but he is employed by the government and he was told to support this project<sup>67</sup>. The proper public consultation is therefore highly contested.

According to other rumours, the manager of the Lake Basin Development Authority came back to the community after having been excluded from the negotiations and told the villagers to fight against Dominion Farms. He warned the area chief that politicians make treaties without proper consultation of the local community. The chief then was irritated about this behaviour because the manager of the Lake Basin Development Authority had first promoted Burgess project<sup>68</sup>. The manager of the Lake Basin Development Authority was not the only one who claimed that the Memorandum of Understanding was not properly made. A number of NGOs,

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<sup>65</sup> Ochieng Patrick (unknown Date): Dominion Domination: The Scandal of Yala Swamp. Jaluo dor Kom. [http://www.jaluo.com/wangwach/200703/Patrick\\_Ochieng031407.html](http://www.jaluo.com/wangwach/200703/Patrick_Ochieng031407.html)  
Ochieng Patrick 2006: Dominion Domination: The Scandal of Yala Swamp. Farmlandgrab.org. <[http://www.jaluo.com/wangwach/200703/Patrick\\_Ochieng031407.html](http://www.jaluo.com/wangwach/200703/Patrick_Ochieng031407.html)>.

<sup>66</sup> Village elders, focus group interview with the author, May 2014.

<sup>67</sup> Chief, interview with the author, May 2014.

<sup>68</sup> Chief, interview with the author, May 2014.

environmentalists and Community-Based Organizations called for a closer scrutiny of the Memorandum of Understanding.

In 2008, an analysis of the Institute of Law and Environmental Governance (ILEG) lists the following concerns about the Memorandum of Understanding: the question of ancestral rights should have been acknowledged; there is insufficient provision for displaced squatters; leasing rates are uncompetitive; social and infrastructural obligations for Dominion Farms are insufficient and imprecise, and there are no clauses dealing with water- and soil pollution, water usage rights, community fishing rights, spread of malaria, dispute resolution, local employment, corporate social responsibility, right of re-entry, nor supervision (van Heukelom 2013: 174). According to Cotula, contracts concerning land tend to be short and simple taking into consideration the economic reality of the transaction. Key issues such as strengthening mechanisms to monitor or enforce compliance with the investor's commitments, maximising government revenues and clarifying their distribution, promoting business models that maximise local benefit (such as employment creation and infrastructure development), as well as balancing food-security concerns, both foreign and domestic, are dealt with by vague provisions, if at all (Cotula et al 2009: 7). Van Heukelom also points out that the Institute of Law and Environmental Governance did not analyse the leasing contract, which had somehow voided the Memorandum of Understanding because it deals with several of the deficiencies brought up in the analysis (van Heukelom 2013: 174).

One controversial point in the Memorandum of Understanding was a small area of 150 acres on the leased land destined for community use. In the Memorandum of Understanding, the county council of Siaya requires Dominion Farms to identify and set aside at least 150 acres for each of the county councils for community use (Väh & Nolte 2015: 79). According to different interviewees, 150 acres of community land are not enough for the tree villages which depend on the swamp, so conflicts among the villagers arose: who may get land, and who may not? It was felt that the responsible local governments were working for the rich people, "sitting in a white tower somewhere in Kisumu or Nairobi". The chief ironically said "150 acres is a very small thing, I thought these people were confusing hectares with acres"<sup>69</sup>. To calm the conflict, the chief invited a political agent of the county council (name unknown) to the head office of Dominion Farms, Ratuoro, because the chief feared a mob against Dominion Farms. According to the chief, this official agent seemed to be surprised and told the chief he never thought that someone would only pay 5 million schillings a year for such a large area of land, and that he

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<sup>69</sup> Chief, interview with the author, May 2014.

has never made such a decision<sup>70</sup>. This statement rises questions: does that mean that the council itself was not aware of the size of Dominion's rice farm? When asked the same question, the chief answered that the hands of the councils were tied, because of political leaders on higher level, which were responsible for the conditions in the Memorandum of Understanding. According to some village elders, they realized after the visit of this official agent that they had to discuss with the new landlord and that the government was not helping them with their concerns<sup>71</sup>. Afterwards, in order to fight for more than the proposed 150-acre community land, the village elders and the chief tried to assemble some opinion leaders to explain to Calvin Burgess that the swamp was part of their livelihood, and that people will suffer if they get no community land for their use.

The chief's position seems to be altered. While he is fighting in behalf of the community, he is still employed by the government. Chiefs are not appointed nor elected by the community members. Chiefs have to fill-in an application and are finally employed by the state of Kenya. He therefore tells us that, when it comes to resolving conflicts, he has to follow his employer. He has to support the county councils, which signed the contract on behalf of the state. He sees his role as mediator between the local people and governmental forces. He feels committed to his employer, while he lives within the community. Some of the community leaders call the chief a corrupt man, others think that chiefs do not belong to the community anyway<sup>72</sup>. The chief, on the other hand, feels uncomfortable because his employer could call him to be "an insider" since he was fighting for the community land<sup>73</sup>. This short digression just shows how contested and bounded the power of community representatives sometimes is. The discourse that chiefs represent the community therefore seems elusive, seeing that chiefs have an ambivalent position in relation to the state and the local community.

With help of NGOs (Action Aid, Friend of Yala Swamp), the community challenged the company's 150 acres, and Dominion Farms finally drained a larger part of land for community use. When asked about the additional community land, the farm's leader, Dominion Farms show themselves altruistic: "The MoU said to give them only 150 acres, we gave 450 acres on the Bondo side and 460 acres on the Siaya side. Because by the time...you have to remember population grow. They get married, they produce children and those children also want land"<sup>74</sup>.

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<sup>70</sup> Chief, interview with the author, May 2014.

<sup>71</sup> Chief, interview with the author, May 2014.

<sup>72</sup> Field notes from the field diary of the author.

<sup>73</sup> Chief, interview with the author, May 2014

<sup>74</sup> Manager of Dominion Farms, interview with the author, April 2014.



Population growth is a buzzword, which is lightly used in discussions about sustainability. It is a term which is often used in relation to conflicts, such as loss of land and misleading politics. It is significant that the right of this generation for a rightful share<sup>75</sup> of their ancestors' common-pool resources has not been mentioned (see Ferguson 2015).

Unfortunately, the handover of Dominion's community land to the villagers was not well organized. The boundaries of the additional community land were not clearly defined and rich villagers rushed to take over the land as soon as it was drained. The land rushers employed some young people to cut the papyrus and afterwards took money for the land, which formerly was planned to help the marginalized people in the community<sup>76</sup>. Dominion's management was not aware that the company was creating a conflict by providing the additional acres of land to the community. In the newly-drained land there were no regulations nor responsible institutions, so Dominion Farms created a virtual open access situation. This rush for the newly-created community land is difficult to solve and the local people started to have their own strategies to acquire additional land. The chief, on the other hand, tried to negotiate with the company for a better management of the already raided community land. That is the reason why there were rumours about the reacquisition of the community land. Currently, the chief and Dominion Farms discuss about one possible scenario: to retake the land and redistribute it again; a step which, for sure, would fuel new conflicts within the community<sup>77</sup>.

So far, I have given some insights in one controversial point in the Memorandum of Understanding. I hope to have shown the impact of the Memorandum and to have made visible the bargaining power of the stakeholders. In a next section, I will give details about compensation payments, a subject which is heavily related to the aforementioned discussed agreement.

### **4.3.1 Compensation**

According to the Memorandum of Understanding, 75 peasants have the title deeds for farming land in the Yala Swamp. These farmers were relocated to other areas<sup>78</sup>. Dominion offered

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<sup>75</sup> Ferguson argues that redistribution of the wealth of a country should be divided amongst all citizens, and not through social aid (which looks like gifts) or wage labour (which does not exist for all citizens of a country). These payments are not grants nor credits; those payments are just the rightful share of all citizens of a state (Ferguson 2015).

<sup>76</sup> Chief, interview with the author, May 2014; Alfred, environmentalist, interview with the author, April 2014; notes from the field journal.

<sup>77</sup> See Anna von Sury's thesis about Dominion Farms, where she describes the function of the community land in a wider sense, as well as the strategies with which the people are undermining Dominion's power over the land.

<sup>78</sup> Manager of Dominion Farms, interview with the author, April 2014.

compensations to some residents so they would leave their home (generally 45'000 Kenyan shillings). But many of these people refused to leave their ancestral land or their farming ground (Owalla 2010: 17). Most of the villagers feel that the compensation was not enough for the land which used to feed them and where their ancestors are buried<sup>79</sup>. According to an article in *Reject*, the 45'000 KSh given to the affected landholders is not enough to put up a simple semi-permanent house<sup>80</sup>. So far the number of people who had title deeds, and therefore have been officially compensated, is very small. Dominion Farms needed the lands that border the swamp for the construction of the dam and these lands are not in the swamp itself. However, as already mentioned, some peasants refused to quit their land. The discussions were still running when most of the fields of these peasants were flooded after the heavy rains in 2010. Different documentaries from NGOs and journalists were produced in this period, showing the flooded fields (“Good Fortune”; “Peace Project Dominion Farms”, “Human Rights and Environmental governance-Yala Swamp case” and VOB, among others<sup>81,82</sup>). Local people saw this flooding as a part of the plan to chase them out, while Dominion Farms repeatedly declared that it was a natural disaster caused by unexpected rainfalls. As far as we know, there were indeed heavy rainfalls in 2010, but Burgess had already started with water irrigation and the construction of the dam. This interference with the natural environment might have caused the flooding of the fields next to the swamp. To blame Dominion Farms for having the intention of flooding the field might be interpreted, in a sense, as a discourse used as “weapons of the weak” (Scott 1987). The aforementioned media attention on the events was enormous, and NGOs gained power through national and international assistance and solidarity. This event of flooding the fields next to the swamp stands symbolically for the loss of the whole swamp, and the discussions about compensation payments were no longer limited to people having the title deeds but also included people using the swamp as community land.

In the discussion about the loss of the land, the following statement was repeated over and over again: “This was the main source of our livelihood. My ancestors are buried in this land”. The question is therefore not only about the land’s value (in a monetary sense), but also about the meaning of the loss of a homeland. How can identity be compensated? How does one deal with people who were not directly affected by the loss of land but by the loss of access to the river,

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<sup>79</sup> Clan members are always buried in their homestead behind the main house.

<sup>80</sup> Oongo, Michael 2011: Blessing or curse in marshland as partnership falls apart. *Reject* issue 050, November 1-15. 4. <[http://mdcafrica.org/documents/reject/Reject\\_050.pdf](http://mdcafrica.org/documents/reject/Reject_050.pdf)>.

<sup>81</sup> Human Rights and Environmental governance-Yala Swamp case. VOB. *Youtube*. <<https://www.youtube.com/watch?v=Q75hjBCgsFA>>.

<sup>82</sup> Projects for Peace Dominion Farms. *Youtube*. <<https://www.youtube.com/watch?v=DrITMEcOY30>>.

to a fishing ground, to grazing areas, and so forth? Or in Owalla's words: "the [...] local resident weren't rich but they were self-sufficient. Now they're forced to live on the handouts" (Owalla 2010: 17). With the common-pool resource, the local people could accumulate cash through, for example, feeding their animals, fishing and using the papyrus. When asked about the claims of the villagers, Dominion's manager simply argues:

"The next generation always feels they could have done it smarter than the previous generation. Unfortunately when we came in, the generation that was there, we did it with them to the best [of our knowledge]. Everything was done, the agreement was registered with the Minister of Land, so nobody can change it, but at the same time the next generation are going to see it different. [...] And it was not his [Burgess] mistake that the earlier people would have not done it properly. So currently we are going through with the county committees to look at some things that can be strengthened to make both, the community and the investor, happy and secure"<sup>83</sup>.

While the villagers, who are dependent on the swamp, lost their access to the resource without any compensation, the local government was compensated for the land through the rent which is paid by Dominion Farms to the counties<sup>84</sup>. The question is whether this money is benefitting the community. It seems that the first payment, 15 million Kenyan shillings –according to Burgess, 100'000 US dollars (Meister 2012: 42)– made by Dominion Farms to the District Council of Siaya, disappeared. In the dispute about this money, the Bondo Council, which should have received half of this payment, accuses Dominion Farms of never having made the payment. Burgess explains that he paid the amount by making a deposit in a bank account in Kisumu, which was mysteriously emptied. The administration in Siaya says they never received the money. Burgess guesses that the responsible agents took the money and closed the account as soon as the money was sent (Meister 2012: 43). The money disappeared into unknown hands. My conclusion is that compensation has different levels: one is the compensation of people who effectively had rights to land and the other is the government, which has the right for rent and taxes. Just as some people have been paid a debatable amount of money, the Siaya County gets regular payments, which seem to disappear somehow into unknown hands. Thus the biggest losers are the people who used the swamp as grazing land, fishing ground and water source. They neither get compensation payments nor do they profit from rents and taxes paid to Siaya County. The relative prices of the land and its related resources changed, and the competition between local community and outsiders became more complex. Thus, these outsiders' interests are illustrated in the next chapter on the Environmental Assessment.

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<sup>83</sup> Manager of Dominion Farms, interview with the author, April 2014.

<sup>84</sup> Village elders, focus group discussion with the author, May 2014.

#### 4.4 The Environmental Impact Assessment

In a next step, I will discuss the Environmental Impact Assignment. The environmentalists are a powerful stakeholder in many deals over land. It is therefore important to trace their position vis-à-vis Dominion's irrigation project.

Environmental protection policy in Kenya started with the establishment of an Environmental Management Coordination Act in 1999. The Environmental Management Coordination Act (EMCA) was "enacted against a backdrop of a deteriorating state of Kenya's environment as well as increasing social and economic inequality and their negative impact on the environment"<sup>85</sup>. The responsible body is the National Environment Management Authority (NEMA), which was "established as the principal instrument of government charged with the implementation of all policies relating to the environment, and to exercise general supervision and coordination over all matters relating to the environment"<sup>86</sup>. According to the Environmental Management Coordination Act, for each and every project an Environmental Impact Assessment must be written<sup>87</sup>. The National Environment Management Authority ensures that for all large-scale projects an adequate Environmental Impact Assessment is written and signed by the bodies involved. This has to happen prior to the conclusion of investment agreements (van Heukelom 2013: 174). Moreover, according to this act, wetlands have to be preserved and conserved according to these regulations, as we can see on Kenyan Wetland Forum's website where it is written that "Kenya is also obliged to promote the conservation of wetlands in the country through the establishment of nature reserves, and promote training in wetlands research, management and wardening"<sup>88</sup>.

An Environmental Impact Assessment for the "Rehabilitation and Development of a Rice Irrigation Scheme for Commercial Purpose' at the Yala Swamp was approved by the National Environmental Management Authority in August 2004 (Kenya Wetlands Forum 2006). The Lake Basin Development Authority conducted the Environmental Impact Assessment, but the tentative draft raised concerns about the comprehensiveness of the assessment and the

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<sup>85</sup> National Environment Management Authority (NEMA) 2005: Strategic Plan 2005 - -2010. <<http://www.ecolex.org/server2.php/libcat/docs/LI/MON-083008.pdf>>.

<sup>86</sup> Official Website NEMA. <[http://www.nema.go.ke/index.php?option=com\\_content&view=article&id=132&Itemid=487](http://www.nema.go.ke/index.php?option=com_content&view=article&id=132&Itemid=487)>.

<sup>87</sup> Republic of Kenya 2012: Environmental Management and Co-ordination Act 1999. <<http://faolex.fao.org/docs/pdf/ken41653.pdf>>.

<sup>88</sup> Kenya Wetland Forum (Official Website). <<http://www.kenyawetlandsforum.org/>>.

impartiality of the Lake Basin Development Authority as executive body (van Heukelom 2013: 174).

For the Director of the Ujamaa Centre<sup>89</sup>, Patrick Ochieng, the Environmental Impact Assessment is a scandal. He explains: “Dominion’s initial license issued in 2004 permitted the company to grow rice on 3,700 ha leased from Siaya and Bondo County Councils. All of Dominion’s 9 projects are lumped together in the EIA [Environmental Impact Assessment] submitted to NEMA [National Environmental Management Authority] [...]. The projects therefore lack the kind of detail required before implementation. For example Dominion proposes to construct a fish processing plant, a rice mill, a feed mill, a cotton ginnery, a fuel storage and dispensing station, a dam, barrier dyke, weir and irrigation, a hydro-electric generation plant and agriculture projects for rice, maize, cotton, soya beans, sunflower, artemisia, onion etc. All these projects need a full and independent EIA. As things stand now the company has gone full throttle to implement most of these proposals without due process”<sup>90</sup>. Burgess was already processing when complaints about the contracts were raised. In 2005, when the weir was already completed, the National Environmental Management Authority reacted and wanted to stop the operations of Dominion Farms.

The new president of the Lake Basin Development Authority, Bartholomew Wanyama, sought support to secure amendments to unfavourable terms in the Memorandum of Understanding signed by the former managing director of the Lake Basin Development Authority. Ochieng says that it seems in fact disturbing that the professionals who conducted the Environmental Impact Assessment were employees of the Lake Basin Development Authority who were closely linked to Dominion Farms<sup>91</sup>.

NGOs like the Ujamaa Centre and Action Aid Forum received founding from Ford Foundation to write a new independent Environmental Impact Assessment in 2006<sup>92</sup>. Surprisingly, after noting the need for a separate Environmental Impact Assessment, the new independent Environmental Impact Assessment initiated by the Ujamaa Centre did continue, without any further explanations, to write one report that covers all of Dominion’s activities and projects

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<sup>89</sup> Ujamaa Centre is a community centre devoted to mobilize Kenyan citizens to regain ownership of local natural resources. More information on Official Website <<http://www.ujamaakenya.org/>>.

<sup>90</sup> Ochieng Patrick (unknown Date): Dominion Domination: The Scandal of Yala Swamp. In: Jaluo dor Kom. <[http://www.jaluo.com/wangwach/200703/Patrick\\_Ochieng031407.html](http://www.jaluo.com/wangwach/200703/Patrick_Ochieng031407.html)>.

<sup>91</sup> Ochieng Patrick (unknown Date): Dominion Domination: The Scandal of Yala Swamp. In: Jaluo dor Kom. <[http://www.jaluo.com/wangwach/200703/Patrick\\_Ochieng031407.html](http://www.jaluo.com/wangwach/200703/Patrick_Ochieng031407.html)>.

<sup>92</sup> Ochieng, Patrick 2006: Dominion Domination: The scandal of Yala Swamp. Farmlandgrab.org. the global rush for farmland and peoples’ struggles against it. <<http://farmlandgrab.org/post/view/19073-dominion-domination-the-scandal-of-yala-swamp>>.

(van Heukelom 2013: 175). This is an interesting remark, but the question remains: Why was this new Environmental Impact Assessment as short as the first one?

#### **4.4.1 Ethnicity and Modernity**

In 2003, a cease-and-desist letter from the Ministry of Regional Development, Water Resources and Natural Resources arrived at Dominion's head of operation. At that time, Dominion Farms was occupied with infrastructural developments. In the letter it was stated that "We have noted with concern that the project is about to be implemented without adequate consultation and authorisation by the line ministries. We, therefore, direct that all physical activities being carried out by the Dominion Farms Limited on the Yala farm be halted forthwith and that all Government equipment and houses purportedly taken over the company be surrendered forthwith"<sup>93</sup>. Ministries of Regional Development, Water Resources and Natural Resources claimed that the Environmental Assessment was lacking scientific certainty about serious or irreversible environmental damages which can be caused by Dominion's irrigation (van Heukelom 2013: 179).

The operations on the farm were immediately stopped and Burgess sent the workers back home. Within hours, demonstrations and protests erupted against the Ministries' decision. It must be noted that these protests took place in the urban areas of Kisumu, Bondo and Siaya, while the stakeholders, the directly affected rural workers, have not been involved. The people protesting in the cities made the Ministries responsible for stopping the "only" investment in the Luo community. The political leaders, who belong to the ethnic group of the Kikuyu, were blamed for the deprivation of the Nyanza region. These leaders, the mob complained, want to keep the Luos in poverty (van Heukelom 2013: 178f). The conflict was fuelled by blaming the Kikuyu, who are in power, for intentionally preventing the development of the Luo region. The ethnicization of the conflict is obvious and the discussion centres on ethnicity, not anymore on the environment nor on the project's implementation. In debates over access to land, specific identities of belonging are linked to the perception of interests, meaning that identity is a strategically-used asset. The legitimacy to an exclusive use of a land is linked to ideologies, discourses and narratives of belonging to an ethnicity (Haller & Merten 2008: 14). In the case of the Yala Swamp, because of the paradox of a present and absent state, the bargaining power of outsiders increased with the financial and technical power.

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<sup>93</sup> Oywa, John 2003: Kenya: Tree Ministers and a Rice Project.  
<<http://allafrica.com/stories/200312300212.html>>.

What began with the intention to fight for a clean sustainable rice project was turned into a complot against the Luos by political parties and their leaders by using ethnicity. Finally, the Ministry of Planning and National Development informed that the investment project by Dominion Farms would go ahead as planned. In a next step it will be necessary to investigate the ideologies, discourses and narratives related to development.

#### **4.4.2 Development Discourses, or the Question: What is Best for the People?**

“People understand development differently. You know even these bad things are development. Somebody will simply say: ‘Come and see this is agro tourism! You see, these are big tractors! You see, that is development!’ The existence of even a foreigner like you, that is development!”<sup>94</sup>.

The county representative Leonard Oriaro, who made this statement, gave us an example of how different people use the term development in a different way. He mentions that many Kenyans see mechanization, tourism and the presence of white people as signs of development. All of these signs have been an issue in the Dominion Farms case. Oriaro’s critical statement shows that the idea of development in the Yala Swamp is contested. Acciaioli argues that people use ideologies, discourses and narratives strategically to legitimize self-interested actions and Haller argues that ideologies are a major resource that increases bargaining power by producing legitimacy (Acciaioli 2008, Haller 2010b: 57). Therefore, it is important to deconstruct the development discourse and detect how these ideologies and narratives change and how they are used in the context of land acquisition in the Yala Swamp.

Since the late 1900s, an industrialization discourse was driven by development ideologies like saving the world through, as already mentioned, private property, modern technology and industrialization. Environmental problems and poverty should have been combatted through technical development, and famine through agricultural development, in order to save the backward societies in the east and in the south and level them on the same stage as the already developed West. From the late 1960s to the early 1980s, the land policy promoted in Africa was based on the premise that customary systems did not provide the necessary security to ensure agricultural investment and productive use of the land. Colonial positions based on the experiences of British history promoted ideas of trajectories of growth and modernization (Peters 2009: 1318).

International actors such as the International Monetary Fund and the World Bank were important actors in these neoliberal development attempts. Hayes shows that, after the Cold

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<sup>94</sup> Oriaro, Leonard, County Representative, interview with the author, May 2014.

War came to an end, the rapid conversion of European community governments into capitalism and democracy was reflected by the pre-eminence of the “Washington consensus”, the dominant neoliberal development strategies supported by the International Monetary Fund and the World Bank. This pro market view reflected the failure of development strategies after the World War II. However, it gave insufficient emphasis to the essential developmental role of the state and to the focus on non-state actors in reaching development goals (Haynes 2013).

The World Bank was to replace customary system with titling and private property rights, which was posited as necessary precondition for modernization and development (Peters 2009: 1318). Peters emphasized that titling needs a range of conditions, like access to capital and credit, to be effective. Shipton ironically points out that creditors like the World Bank became worried for their own well-being whenever people in places like equatorial Africa did not borrow money (Shipton 2007: 9).

Development, as a term, became a buzzword. As Ferguson shows in his book *Anti-politics Machine, “development”, depoliticization and bureaucratic Power in Lesotho*, development is a problematic term, which alienates the “less developed”. The powerless and marginalized people in such countries are only the external factors of this underlining undeveloped conditions. Ferguson therefore concludes that it appears evident that these nation states share a common problem and lack a single thing: development. He therefore shows that development has been used as a buzzword in an anti-politics machine, mostly in form of development projects and assistance from an international agency (Ferguson 1994: xiii). The following statement by Odhiambo Tobias Oketch, native from Yimbo, chairman of Yimbo Development Network, was written when he was the councillor in Komarock (Nairobi).

“This is how it is done in the developed world, and through the active support of our political leaders, specifically from Hon Raila [Premier Minister], the Luo could be the first to engage in this type of settlement and farming with huge financial success, and food security to boost. This is a challenge our political leaders should take up. Offering services like water, electricity, hospitals and schools in a centralized settlement would also be economical”<sup>95</sup>.

Thus we can see Oketchs statement as representative for political leaders and their way of thinking about development. Discourses like modernity and innovation are likely used concerning development. To support development, the Kenyan Government aims projects to make use of the resources and to generate income. That is a reason why land is virtually predestined for the acquisition by the Government. The discourse of tradition on the other hand

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<sup>95</sup> Oketch, Tobias Odhiambo 2006: A Visit to the Dominion Farm – Yala Swamp, Rathuoro. *Jaluo dot Kom*. <[http://www.jaluo.com/wangwach/200703/Odhiambo\\_T\\_Oketch031407d.html](http://www.jaluo.com/wangwach/200703/Odhiambo_T_Oketch031407d.html)>.



has the connotation of backwardness. Farmers are called to modernize and stop small-scale farming in favour of large-scale farming. But, peasants do not have the financial possibility to access to the market and have to sell the land to bigger companies. Benefits from investment are commitments on investment level, employment creation and infrastructure development (Cotula & al. 2009: 7).

In Kenya, the scarce fertile land is of the essence to reach goals, for example, food security. Investment into agricultural sectors may create opportunities in economic development or livelihood improvement, also in rural areas where they depend on the food production of the countryside. The transaction costs became too high for the local, less powerful actors. Therefore, existing land users go unrecognized because they are marginalized from formal land rights and access to law and institutions (Cotula & al. 2009: 6).

#### **4.4.3 Notion of Food Security**

“Aah aah those who gave birth to us could not miss food in the house, because there was plenty, plenty of food”<sup>96</sup>.

The statement above, made by the oldest man in Siaya County, has been repeated by different old people. Porridge, they say, was made with milk and they had potatoes with meat or fish for breakfast. Thus, this is a completely different picture than the one which is drawn in a promotion trailer about Dominion Farms: “It is not a secret that Africa is in need. Poverty runs all around. What Africans need is not a handout or a temporary fix, what they need is a sustainable way to support themselves. Dominion Farms provides just that”<sup>97</sup>. Then, Burgess, sitting in his office in the headquarters in Ratuoro, tells the audience that when the company came in, it wanted to build a farm which was capable to feed many, many people: “When we are done to cultivate the whole 17000 acres, we can pick up with around 100’000 tonnes in food between fish and rice a year. And that is about the half the import rice of the county”. Later in this trailer, he adds that “the poverty level from 18.5 % has gone back to 15.5%, 16’000 people came out of poverty”<sup>98</sup>. Where those numbers come from, and which region the 160’000 people belong to, is not stated in the trailer. Burgess came to Kenya because of his mission to contribute something to the need of the people. In his perspective, what people needed was food. He saw

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<sup>96</sup> Melkazedek Lando Rarondo Opiyo Luo Council Alego Usonga Elder, oldest man of Siaya County, interview with the author, May 2015.

<sup>97</sup> Dom Farms 2011. *Youtube*. < <https://www.youtube.com/watch?v=kuODE5zBFfg>>.

<sup>98</sup> Dom Farms 2011. *Youtube*. < <https://www.youtube.com/watch?v=kuODE5zBFfg>>.

that people grow maize but their harvest was bad. He therefore decided that rice could help the people, because it was easier to grow in the swampy area. Additional reasons for the choice of rice were that rice cannot be stolen so easily and that the company did not want to compete in the local people's maize market with large-scale maize production, which finally could have been produced cheaper<sup>99</sup>. But why do people tell another story?

“I don't think they've [Dominion] changed much. You know, what I've been telling people from time to time, development is something that is supposed to make somebody grow. If you are affording some three meals a day some ten years ago and you cannot even afford one meal, then that is not development. That is oppression or suppression”<sup>100</sup>?

Obviously, the villager who made this statement criticizes Dominion's narrative with a counter-narrative and compares development with food security. But he also complains that these promises of food security have not been achieved. According to Cotula, food security is one of the factors underpinning land acquisition. Investors who invest in the agricultural sector are likely backed up by countries with problems of food supply. Problems with food security are likely to be created by constraints in agricultural production due to limited water and arable land, increasing urbanisation rates and changing diets (Cotula & al. 2009: 53f). Rising agricultural commodity prices makes the acquisition of land for agricultural production an attractive option. Kenya became an interesting place for investment in food security because of its political security and policy reforms promoting food security. While rural areas benefit from large-scale land investment, this also results in locals' loss of access to the resources on which they depend for their food security (Cotula 2009: 6). DeSchutter claims that the focus on increasing production in the agricultural sector drove to the malnutrition of the poorest in the world. The agricultural system, promoted by development agencies and investors, has not been designed for the most vulnerable and marginalized rural people. The change of diet to more calories, fat, salt and sugar is responsible for overweight and diabetes in rich countries and for malnutrition and diseases caused by a lack of minerals and vitamins in poor countries (DeSchutter 2011). The increase in population and the decrease in land are related to the diminution of livestock, to overfishing of the river and lakes and to the change of nutrition. These factors will be investigated in more detail in Anna von Sury's thesis.

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<sup>99</sup> Manager of Dominion Farms, interview with the author, April 2014.

<sup>100</sup> Environmentalist, interview with the author, April 2014.

#### 4.4.4 The Environmentalists' Fight

“We have a particular type of a wild animal here within the papyrus, the Sitatunga, we need to conserve it [...]. We have different type of snakes in the swamp, and the local species of fish. We need to conserve them because they are diminishing. That’s good, so my grandchildren can see them. [...] But how are we going to gain? We as the people. Because when you conserve, we don’t want just to conserve it for rich people. That is the question that we are raising”<sup>101</sup>.

Environmental concerns play an important role in the deal in the Yala Swamp because the environmentalist were powerful agents in the negotiations. The Yala Swamp is Kenya’s biggest wetland, it is therefore surprising that the environmental factor was not more controversially discussed. As I already mentioned above (chapter: the Yala Swamp), according to Abila (1998), none of the different projects occurring over the years considered the environmental damages of such a reclamation.

Serious discussion about the environmental damage came up in 2010: the villagers started to claim that the chemicals, used by the company, had contaminated the water. In the documentary *Good Fortune* and short films on the internet, women say that they were having miscarriages, and peasants complain that their domestic animals were dying<sup>102</sup>. About seven civil societies under the umbrella of the organization Friends of Yala Swamp (FOYS) operated from Siaya town to fight for the communities’ rights for a sustainable utilisation of the land. The civil organization Friends of Yala Swamp took a water sample which proved that there was certain pollution. Chris Abir rejects these findings and thinks the claims of environmental degradations serve local politicians and NGOs to gain votes and money. “These claims are not true because we have always been working with relevant government departments to address these issues and there is no way government agencies can betray the public”,<sup>103</sup> he explains. The coordinator of Friends of Yala Swamp, Dalmas Okello, says in an interview with the journal *Reject* that his organization faced hostility from Dominion Farms and governmental officials. We receive threats and are being followed around. At community meetings and even at the office, we get visitors who are clearly out to intimidate us so that we can stop empowering the community in

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<sup>101</sup> Chief, interview with the author, May 2014.

<sup>102</sup> Film: *The Scramble for Yala Swamp* 2012. ILEG Kenya. Directed by Lee Kanyare- Kaguomgo. Paradigm Media Associates Production. <<https://www.youtube.com/watch?v=kn6eHuuIshI>>.

<sup>103</sup> Oongo, Michael 2011: Blessing or curse in marshland as partnership falls apart. *Reject* issue 050, November 1 -15. 4. <[http://mdcafrica.org/documents/reject/Reject\\_050.pdf](http://mdcafrica.org/documents/reject/Reject_050.pdf)>.

addressing their concerns. According to Okello, the effort to bring about a multi-stakeholder to calm the conflicts met resistance<sup>104</sup>.

But let me illustrate this environmental implication with the case of Alfred, a villager of Kadenge who studied wildlife management and environmental studies. In 2005, he was fighting for a proper and environmentally sustainable implementation of Dominion's project. He claims that people misunderstood his position. "They used to say that we were against development but we were trying to put into the people that development should be green. Development should be something that is sustainable even. And you don't have to hurt so many people in the form of development"<sup>105</sup>. The development discourse was so strong that Alfred was physically attacked with a machete by unidentified, masked people. He had to leave the country for several years and came back from his exile in South Sudan after 2010. According to Alfred, the attacks against him started when he was asking the NGO Action Aid Kenya for help. Action Aid is a global movement of people who fight for gender equality and human rights and against poverty<sup>106</sup>. Action Aid, for example, paid the transport of villagers to Kisumu, so they could attend the meeting organized by Action Aid to discuss ways of conserving the swamp<sup>107</sup>. In 2006, the caption of a story in the East African Standard highlighted "MPs want Action Aid to keep off". This claim was attributed to the Members of Parliament Oburur Odinga and Ayiecho Olweny. "We need organizations that bring solution to our problems and not those bent on killing our initiatives"<sup>108</sup>. The Members of Parliament accused the NGO Action Aid of inciting residents to make trouble. The example of Alfred shows that the general hope for development became a powerful discourse in the implementation phase of Dominion's project. NGOs and people who were fighting for the environment became enemies of Dominion Farms and of the State.

In 2014, new initiatives for environmental protection developed. Nature Kenya organized a workshop in the town of Siaya in order to discuss the state of the 175,000 ha of Yala Swamp in

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<sup>104</sup> Oloo, Janak 201: Battle over the Yala Swamp. Multi million investment turns out to be a case of a deal gone sour. *Reject* issue 050, November 1 -15. 6. <[http://mdcafrica.org/documents/reject/Reject\\_050.pdf](http://mdcafrica.org/documents/reject/Reject_050.pdf)>.

<sup>105</sup> Environmentalist; interview with the author, May 2014.

<sup>106</sup> Action Aid Official Website. <<http://www.actionaid.org/kenya>>.

<sup>107</sup> Oongo, Michael 2011: Blessing or curse in marshland as partnership falls apart. *Reject* issue 050, November 1 -15. 5. <[http://mdcafrica.org/documents/reject/Reject\\_050.pdf](http://mdcafrica.org/documents/reject/Reject_050.pdf)>.

<sup>108</sup> Ochieng, Partick 2006: Dominion Domination: The Scandal of Yala Swamp. <<http://farmlandgrab.org/post/view/19073-dominion-domination-the-scandal-of-yala-swamp#sthash.R33EUSUn.dpuf>>.

Siaya. The organization underlines the importance of Kenya's largest freshwater swamp that filters the water of rivers that flow into Lake Victoria. It is further stated that there is no returning to the original state, but that the balance between development and conservation has to be found as a key resource of the government. The organization has launched a three-year programme to "secure the future of Yala Swamp, recognizing both development and conservation needs and to provide similar models for other Kenyan deltas"<sup>109</sup>. The narrative of the environmentalists obviously changed. They promote it hand in hand with development agents. It is therefore not surprising that one of the key partners of Nature Kenya is Dominion Farms. They promote a sensitive approach when they write that "Our objective is to develop an evidence-based business case for the sustainable management of Yala Swamp, restore and protect wildlife habitats in and upstream of the delta, improve the livelihoods of the local communities in a sustainable way, encourage ecotourism and ensure that lessons learned here have a major influence on wetland management not only in Kenya but East Africa"<sup>110</sup>.

Alfred expresses similar ideas: boats on the lake for tourists, consumption of local fish and bird watching. He also thinks that people should see that conservation means economic activities, like selling baskets instead of polythene bags. He further explains how this nature reserves for tourists are supposed to be created. "The wildlife guys are planning to fence the Lake Kanyaboli. Not only the lake. Even the hill, Got Akara (hill), has a potential area for game reserve. Because there are a lot of hyenas there, there are wild pigs. So I think they could even fence up to that place. Just for wildlife"<sup>111</sup>. According to him, concerns about the community's resettlement are easily solved:

"The counties are competing for revenue. It's also a potential source for revenue. There is a clause in our Constitution that says, the government can compulsory acquire your land because all the land belongs to the government if it deems. If it has something that will benefit the majority of population there. So once the compulsory acquisition is done, you are given the right amount for that land or they look for a land somewhere they can resettle you at. I don't think that is unfair, that is fair because we have to co-exist with wildlife together, isn't it?"<sup>112</sup>.

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<sup>109</sup> Mangat, Rupi 2014: Yala Swamp: To conserve or develop? *The EastAfrican*.  
<<http://www.theeastafrican.co.ke/magazine/Yala-Swamp--To-conserve-or-develop-/-/434746/2411792/-/10syjeg/-/index.html>>.

<sup>110</sup> Mangat, Rupi 2014: Yala Swamp: To conserve or develop? *The EastAfrican*.  
<<http://www.theeastafrican.co.ke/magazine/Yala-Swamp--To-conserve-or-develop-/-/434746/2411792/-/10syjeg/-/index.html>>.

<sup>111</sup> Environmentalist; interview with the author, April 2014.

<sup>112</sup> Environmentalist; interview with the author, April 2014.

Interestingly, Alfred, who was fighting against the implementation of Dominion's irrigation project, argues now eight years later with the same arguments as Dominion's supporters. He uses the narrative that the state has institutions and plans for such cases, and that everything is for the well-being of the population. Alfred believes in compensation and a fair displacement of the affected people. This confidence in a state, which did not help him eight years ago, is surprising. The area chief comments the plans from the Wild Life Service with much more caution: "People talk of bringing development, because that is the trend. [...] there are rich people go there, they fill big restaurants, big clubs and the people from the conservation area gain. You see the white man and the money. And the local people are getting thin and thinner. They will say it's a good thing, but only to themselves"<sup>113</sup>.

#### **4.5 The Frog and the Cows**

"This investment was so much politicised. You know they were giving so much to the politicians and forgetting that the community are also there. [...] Americans are also very arrogant. When they come they think they own everything in the world"<sup>114</sup>.

This statement, made by a villager, shows very well the different vertical interrelations of Dominion's deal. The local community, which was not involved in the negotiation, the local and national government, which used the project on different levels to profit from financial or prestige gains, and the international investor, who is seen as an imperialist or neo-colonial ruler. So far, I have shown that a number of agreements and assessment were instrumentalized by powerful stakeholders. Van Heukelom mentions that the political dimension was the main source for the protracted conflicts about Dominion Farms. According to van Heukelom, the politicians involved made promises to their constituencies on behalf of the investor. They supported the project as long as it gave them prestige, and opposed later when it was useful. According to van Heukelom, this behaviour is the main factor for the underlying mistrust and lack of communication (van Heukelom 2011: 15). Also Chris Abir, the manager of Dominion Farms, sees Dominion Farms as victim of political intrigues. He thinks that politicians are poisoning the locals' minds against the farm, to gain prestige in the community. "There are some leaders and NGOs who have chosen to make Dominion Farms look like a devil. At some point they incited the community to literally chase and stone me and the Chief Executive, Calvin Burgess, in broad daylight!"<sup>115</sup>. Furthermore, Abir thinks that the community cannot claim a

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<sup>113</sup> Chief, interview with the author, May 2014.

<sup>114</sup> Environmentalist, interview with the author, April 2014.

<sup>115</sup> Manager of Dominion Farms, interview with the author, April 2014.

lack of participation and involvement since their councillors participated at every stage through the negotiations and final agreement<sup>116</sup>. Thus, it seems self-evident that the councillors represent the community and inform them at every stage of the negotiations. In this way, it is easy for Dominion Farms to hide behind political concerns. Abir told the journalist of *Reject*: “They are represented by the councillors who signed the agreement with us. If the councillors did not do a good job as they claim, that is not our business. They should engage the two councils which hold the Yala Swamp in trust for them”<sup>117</sup>.

One politician who fights for the villagers is Leonard Oriaro, who is now the county representative of Siaya. He was working for a human rights organization, but came back when he heard that an investor had come to the region. The project was, according to him, the reason why he wanted to become a political leader. He felt that without political power he could not really fight for the community<sup>118</sup>. Oriaro was arrested several times for incitement, for example, after his demonstration in support of some arrested villagers who disputed an area in the leased land. He is a good example to show that people who were fighting against the project were criminalised. Oriaro’s opponents try to slander Oriaro as a free rider.

“In Africa if you run a business like this, I should call the politicians and give them something to support every month, to show that I am helping their objectives with the community. They expect that and there is nothing wrong with that, you can do it. [...] Now if you go for six, seven years and you’re not doing it, they are not going to like you because a politician thinks in terms of four years. After four years he knows you won’t be there, so if you can’t help him within these four years, when he is in power you are probably useless to him, so he is not going to have much to do with you. So because of those feelings always we have a conflict”<sup>119</sup>.

Corruption is easy to blame on politicians. In the case of the Yala Swamp conflict, it is an argument often used to explain why people support or sabotage the project. Dominion’s management likes to use the narrative that politicians who are against them have not been paid bribes. Their fight against corruption is omnipresent, as seen on a youtube video on which Burgess shows a letter from a political leader who is willing to exchange financial support for political support (the video cannot be found anymore on Youtube). Oriaro seems to be disillusioned because his fellow county representatives did not take their duties as trustees of

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<sup>116</sup> Oongo, Michael 2011: Blessing or curse in marshland as partnership falls apart. *Reject* issue 050, November 1 -15. 4. <[http://mdcafrica.org/documents/reject/Reject\\_050.pdf](http://mdcafrica.org/documents/reject/Reject_050.pdf)>.

<sup>117</sup> Oongo, Michael 2011: Blessing or curse in marshland as partnership falls apart. *Reject* issue 050, November 1 -15. 4. <[http://mdcafrica.org/documents/reject/Reject\\_050.pdf](http://mdcafrica.org/documents/reject/Reject_050.pdf)>.

<sup>118</sup> County representative and human rights fighter, interview with the author, April 2014.

<sup>119</sup> Manager of Dominion Farms, interview with the author, April 2014.

the swamp seriously and they cause him problems, because he does not want to follow them loitering (Pearce 2012: 75).

However, these arguments hide the fact that Calvin Burgess has relations with the highest political leaders of Kenya. Calvin Burgess became a millionaire with the construction of high security buildings in the United States; his tenant was the State. Therefore he has relations with important political bodies in the United States. To show how powerful he is, Van Heukelom retells the following story which was told by Burgess in an interview with Van Heukelom in 2011:

“In 2003 we [Dominion Farms] imported 22 containers with equipment, shipped over from the United States. When the containers reached Mombasa they got stuck in the port because the authorities wanted some bribes to release it. Of course we did not pay any money to release them, so I was told we would be charged for storage. But I told them we were not going to pay any of it, and would just wait for them to release it. After three months there was an upcoming visit of President Kibaki to President Bush in the States. I used this opportunity to inform then Ambassador John Carsson of our problems, which he relayed back to Washington. Straight after Kibaki was back in Kenya the containers got released” (van Heukelom 2013: 187).

This story shows that Burgess has connections with influential political leaders and that his project was supported by a number of Members of Parliament like Hon Raila Odinga (Prime Minister), Hon Oburu Odinga (Assistant Minister of Finance, brother of Raila Odinga), Hon Sammy Weya (Member of Parliament), Hon Ken Nyagudi (Member of Parliament)<sup>120</sup>. Local initiative against the project seems to come to nothing in front of this powerful opponent. The village elders realised this fact when the former Prime Minister, Raila Odinga, himself a Luo, came for the official launch of Dominion Farms<sup>121</sup>. Most of the opponents realised that Burgess has powerful friends when Raila Odinga used the Luo proverb “kuot ogwal oksind dhiang mdho kata matin” (meaning “No matter how loud the frogs croak, the cow still drinks the water”) at an official meeting in Ratuoro<sup>122</sup>. The frog (on the pond) refers to the people on the ground, while the cow, which is a highly valued animal for the Luos, represents the powerful leaders. Those cows (leaders), it is said in the proverb, have the power to drink the water in which the frogs (people on the ground) live, and it does not matter how loud the frogs (people) protest against this circumstance. According to the village elders, at this meeting in the village they

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<sup>120</sup> Oketch, Odhiambo Tobias 2006: A visit to the Dominion Farms - Yala Swamp, Ratuoro. <[http://www.jaluo.com/wangwach/200703/Odhiambo\\_T\\_Oketch031407d.html](http://www.jaluo.com/wangwach/200703/Odhiambo_T_Oketch031407d.html)>.

<sup>121</sup> Film: Raila and the Grabbing of Yala Swamp 2013. *Youtube*. <<https://www.youtube.com/watch?v=Q75hjBCgsFA>>.

<sup>122</sup> Village elders, focus group interview with the author, May 2014.



realised that the politicians are part of the farm and that politicians were not there to help them with their concerns.

#### **4.6 Discussion**

On the previous pages I showed how the people use different institutions and change partners for different concerns. A number of acts and contracts were established to safeguard land disputes. But, as I showed, these contracts became a political tool, instead of enforcing the bargaining power of the local community. The discourse of development enforced the ideology of ethnicity, while narratives of the different parties changed between modernity and backwardness. The environmentalists' story reflects the power of the discourse of the Wild Life Service, which, in its position as powerful governmental agency, wants to turn the rest of the swamp into a game park. Their main argument is that sustainable nature is validated through tourism. Action Aid refused to work together with Kenya Wild Life Service; they see the idea of fencing and converting as the final indignity for the locals.

Politicians, on the other hand, agreed on what such an investment in development means for the region. They support Dominion Farms and reject all the doubts of environmentalists and human rights fighters within the ideology of development, using the narrative of food security. This is a reason why different agents fight each other rather than work together.

The agents accuse each other of different things. For example, NGOs accuse the Kenyan Wild Life Service of only wanting to gain money from tourism and national foundation, and of excluding local people from the benefits. The other side criticizes Action Aid for profiting from the fight in the Yala Swamp by gaining money from donors while they did not change anything for the local labour market. Thereby, local villagers and their relation with the land seem less important; they are rather seen as the destroyers of the natural resource by conservationists, among others. They are blamed for poaching (rare) species and for burning the papyrus for farming<sup>123</sup>. These arguments usually come up in discussions about environmental protection. The conflict surrounding the environmentalist's fight for the Yala Swamp showed that different parties use different acts for their justification. Van Heukelom regards the controversy around the Memorandum of Understanding and the Environmental Impact Assessment as important, since they present a legal and procedural framework to safeguard environmental and social

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<sup>123</sup> Fire clearance can be seen on the image Google Earth:

<<http://www.gosur.com/map/?gclid=COD6oqatlckCFQsCwwod5LUaEa&z=15&ll=0.056347,34.102583&t=hybrid&lang=en>>.

practices by the investor. But he sees the documents also as political tools, between domestic political divides (van Heukelom 2013: 76). We therefore should understand most of the resentments over the community's loss of the Yala Swamp not only directed at Burgess but rather attributed to governmental procedures. This case shows the paradox of an absent and present state, which fosters the recourse to ethnically- or autochthony-shaped strategies and identities (Haller & Merten 2008). Different interests from outside and inside are contesting as well as influencing each other's narratives. Ideologies, such as "sustainability" and "modernity", were intended to boost the bargaining power of the different actors. Thus, this influenced the organizations on the ground as well as a range of institutions. Part four of this thesis nicely showed how external factors, such as political change, technological improvements and environmental change are related to the relative prices of a good. Further, this relative price of, in our case, land and its related resources changed the whole context on the ground, like the bargaining power of different agents. These agents tried to influence ideologies and institutions on their side for their purpose, through using narratives to legitimize their actions. Taking together all of these factors, we get a brighter image of the ongoing processes on the vertical level.

## 5 Religion and Development in the Yala Swamp



Picture 8. Cross on the fenced Sigulu hill in the middle of Dominion's rice paddies (picture by Elisabeth Schubiger 2014).

“Early Friday morning we rose to go to see the hundreds of women that work the fields of the farm. These women meet to sing and pray before they begin the job of pulling and chopping weeds. There is life in these ladies. There is joy in their hearts, and food in the mouths of their children because there are jobs to be done and money to be made. This is the love of God in practice, not some preacher screaming at them. They know who God is and now they know: He answers their prayers, by giving them a job. [...] They call me Daddy because they are treated like daughters, and their problems often are my problems as well. No, I cannot fix everything but what I can fix, will be fixed”<sup>124</sup>.

Calvin Burgess introduced his rice project as an essential contribution to food security on the idle useless land, on the one hand. On the other hand, he derived a Christian reasoning, making the locals see the project as social welfare for the people and development for the region.

Scholars in the end of the nineteenth century expected the role of religion to lose its importance and science to overtake the role of religion (Tylor 1871; Durkheim 1912; Frazer 1922). These

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<sup>124</sup> Dominion Farms Blogspot. < <http://dominionfarmskenya.blogspot.ch/>>.

scholars' assumption was simply wrong; nowadays, we know that issues of religion still play an important role. Nevertheless, to date, there has been little scholarship about how religious discourses and ideologies are instrumentalized in development projects. Therefore, in this part of the thesis, I will detect how religious ideologies and development discourses and narratives are interwoven in the implementation process of Dominion's project. A concentration on ideologies means to analyse who has the social status, wealth or the ability to manipulate ideologies and therefore has a better bargaining power (Ensminger 1992: 5ff).

While the overwhelming role of neoliberal scholars in development is used to be certain, there is a recent rise in discussions about the relevance of religion to development activities. Development agents realised that religion plays an important role in the everyday life of many affected people and that Faith Based Organizations (FBOs) are important development agents. Religion is often seen as a moral and ethical entity which can be fruitfully used in development issues. Even global development agents like the World Bank consider religious approaches on their agenda.

This requires, first, a review of recent literature about the topic to have a better understanding of current discussions surrounding development and religion on an international level. Afterwards, I try to detect the role of religious ideologies, discourses and narratives during the implementation of Dominion's rice project in the Yala Swamp.

## **5.1 Max Weber and Economic Development**

According to the statement given above, Calvin Burgess's interest in the long-term investment in Yala Swamp is not inspired by financial gain, but by the mission to help the poorest in the world. The assumption that "jobs and work make the ladies happy" recalls Max Weber's work *the Protestant Ethic and the spirit of Capitalism* (1904 - 1905)<sup>125</sup>.

In this seminal book, Max Weber explores the interrelation between religion and modern capitalism. Weber compares different countries with regard to their religious affiliation and their market system. He argues that there is a correlation between the social consequence of religious belief and the market system. Calvinists believe that they are predestined for heaven or hell. Wealth, success in business and leading a good life are signs of being predestined by God, and these are the bases of Protestant work ethic. Weber concludes that the Protestant work

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<sup>125</sup> This assumption is also made by Gerhard Meister in his article about the Yala Swamp, where he writes that: „Aber ist es nötig, sich für eine der Alternativen zu entscheiden bei einem Mann, der so präzise dem Verhaltensmuster folgt, das Max Weber in seiner klassischen Studie über die protestantische Ethik und den Geist des Kapitalismus beschrieben hat? Bei einem Mann also, der rastlos nach Gewinn strebt und damit genau das tut, was sein Gott von ihm verlangt?“ (Meister 2012: 43).

ethic, for example, absolute obedience and belief in authority, is the perfect breeding ground for modern capitalism. Therefore, he finally suggests that societies with a high rate of Protestants are typically highly developed capitalist economies (Max Weber 1904/1905; Georg Ritzer 2009). Even though Max Weber's theory might be disputed, his reflection about the role of religion in markets is still valuable.

Looking back on the statement above, Burgess's assumption that the love of God is shown in a practical way by giving the people jobs and money resembles the reasoning behind the Protestant ethic. For Burgess, God seems to manifest himself in the accumulation of money, in the form of economic growth, and not in the form of a church or preachers. Compared to Catholic reasoning, Burgess shows his Protestant ethic while rejecting "just donations", and thinks that the answer to prayers is jobs. Burgess does not want to be perceived as an NGO, and calls them just profiteers on poverty, living from the calamity of others. He does not want to give presents to poor people. According to him, business is the only thing that can help such countries, the only development aid programme that really works (see also Meister 2012: 37). His arguments for his motivation to do farming in Kenya are religious, but he shows himself as a rational businessman. In a promotional trailer of Dominion Farms, Burgess makes the following statement: "Dominion Farms is an agent of transformation. We are not a church, but we are a mission. This mission is manifest through business. But it's a business with a heart. [...] When we came here it was a vast deep water [...]. This is a place which needs transformation, this is a place where God is gonna show himself"<sup>126</sup>. If we analyse Burgess's strategy, it becomes evident that he follows two main ideologies: the notion of neoliberalism<sup>127</sup> and Christian ethics. Burgess legitimates his project on two different levels: As (first) a business with (second) good intentions. With this ideology, he pursues the discourse of the Protestant ethic. In this discourse, he proclaims the positive effects of his rice farm which is based on Christian ideologies. Those ideologies and discourses can be seen as Dominion Farms legitimacy to attract support from people with different affiliation –the "modern" youth, who

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<sup>126</sup> Promotion Film Dominion Farm 2011: Dom Farms. Farmland in Kenya is changing a nation. <<https://www.youtube.com/watch?v=kuODE5zBFfg>>.

<sup>127</sup> According to John Gledhill occurred neoliberalism as ideology in the first 30 years after World War II, when Britain under Thatcher and the United States under Reagan strived an advanced capitalism, in which state intervention and welfare was replaced by a regime of flexible accumulation. The neoliberalism developed in subsequent years is defined thus: "Neoliberalism is not simply the response to a crisis of accumulation and a readjustment of the relation between capital and labor following the formation of truly global markets. It is the ideology of the period in which capitalism deepened to embrace the production of social life itself, seeking to commoditize the most intimate of human relations and the production of identity and personhood" (1995: 340).

believe in a capitalistic world, and the people who believe in Christian welfare. In the next part, I will show how these ideologies are reproduced on academic agendas.

## **5.2 Rethinking of Development and Religion**

A body of new literature mostly titled “religion and development” appeared in the last ten years. Carbonnier mentions that the assumption that religion would lose its power in an industrialized developed world has been proved dramatically wrong (Carbonnier 2013: 1). On the contrary, the development industry and the donors have always been engaged with religious organizations (Fontaine 2013). Carbonnier thinks that the separation of church and state, which is typical in western secularisation, was responsible for the disconnection of religion and development –and therefore also responsible for the absence of religion on the academic development agenda. Development discourses are embedded in the ideas of the Enlightenment and the modernization ideals occurring at the end of the 19th century (Carbonnier 2013). Deneulin, on the other hand, claims that development studies have rightly been suspicious of religion because of the historical background religion played in colonization. This notwithstanding, she stresses the powerful force Christianity plays in defending human rights and providing aid in education and healthcare services (Deneline 2008: 51f). These authors call for more investigation in this field of study because of the paramount role of religion in the daily lives of individuals, but also because of policies based on religious beliefs and ideologies. The literature shows manifold ways of thinking about the role of religion in development issues. Deneulin, for example, summarizes that technological and economic means are not sufficient in promoting development. She sees the origin of injustices in a failure to turn away from God and therefore in a lack of moral entity. Deneulin therefore concludes that the Christian vision on development “is not to make the world Christian but to reveal the face of God and restore communion between human beings” (Deunelin 2008: 64). This view on religion as fundamental for successful development because of its morality is especially interesting in the case of the Yala Swamp. Religion is seen as a way to introduce ethics, which help to improve business. This stresses the assumption of most articles that development is equated with economic growth.

Marquette further shows a number of scholars dealing with religion as a moral force in the fight against corruption (Marquette 2013). Theologians and “religionists” assume that people derive their ethical framework from their religion and, hence, see a positive correlation between religiosity and morality, which further promotes honesty and fairness and makes people less susceptible to criminal acts. Marquette takes a critical position and concludes that “there is little

evidence to suggest that religion in terms of religious content, impacts upon individuals' attitudes towards public morality" (Marquette 2013: 234).

When addressing the relationship between religion and development, anthropological scholars often take a critical position, claiming either that faith-based organizations or NGOs offer material goods and expect a change of behaviour in order to conform to the ideals of the NGO in return (Stirrat and Henkel 1997), or that development agencies tend to construct the image of a poor underdeveloped "other" to whom all interventions are directed, which blocks the emergence of a complex picture of life in this region (Brandley 2005). The definition of religion is mostly reduced to the so-called world religions, such as Christianity, Islam, Judaism, Hinduism and Buddhism. Other so-called "animistic", "indigenous" or "folk" religions are mostly completely missing in the discussion<sup>128</sup>.

The reason why most of the literature linking religion and development is of recent date, according to Hayes, is the return of religion in development after a decade of development failures with the absolute neoliberal-driven politics. In the 1990s, the development picture was poor: Widespread poverty, lack of clean water, basic health care, and educational opportunities (Hayes 2013: 51). The declaration of the United Nation Millennium Declaration in 2000 focused on the fight against poverty and human deprivation. The Millennium Development Goals strategy came to the assumption that both, state and non-state, secular and faith-based organizations have to work together. At the same time, the recognition of faith-based organizations by the development industry, led by the World Bank, was noted<sup>129</sup> (Hayes 2013: 53f). The World Bank's change of thinking occurred during the 1990s under James Wolfensohn, who was the president of the World Bank between 1995 and 2005 (Hayes 2013: 55f). He was the driving force behind the establishment of various initiatives with faith-based organizations because he saw the potential of faith for reaching development goals (Hayes 2013: 56f). Between 2000 and 2006, Katherine Marshall in her position as a World Bank counsellor inherited the mandate covering ethics, values, and faith in development work. Her book *Mind, Heart and Soul in the Fight Against Poverty* (2004), co-written with Lucy Keough, shows that a separation of religion and development is unnecessary. Hence, she calls for a rapprochement

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<sup>128</sup> In this thesis I prefer the term "local belief systems". Religion in the Nyanza region is often a syncretistic mix of witchcraft beliefs and Christianity or Islam and therefore not easy to classify.

<sup>129</sup> For example, the Swiss Agency for Development and Cooperation (DEZA) introduced the project "Entwicklung und Religion" in 2010. (Anne-Marie Holenstein 2010: Religion Matters – Why and How? Impulse für Diskussion und Praxis der Entwicklungszusammenarbeit. Ein Synthesebericht. DEZA-Tagung, 26. November 2010. <[http://www.interaction-schweiz.ch/uploads/media/Synthesebericht\\_Tagung\\_Religion\\_Matters\\_26.11.2010.pdf](http://www.interaction-schweiz.ch/uploads/media/Synthesebericht_Tagung_Religion_Matters_26.11.2010.pdf)>).

between the two forces (Fountain 2013: 15f). Wolfersohn mentions that the growing influence of religious agency has three main reasons: the criticism from faith-based organizations against the World Bank, the perception of faith-based organizations as the largest distribution systems in the world, and the important role faith-based organizations play in education and health. The interest of the World Bank into religion is therefore secular instrumental and not sacral (Rees 2013: 278f).

So far, it is obvious that in academic and international discussion changed the discourse from an absolute neoliberal development policy to a more religious development approach. Religious ideologies became suitable in development agencies where formerly only scientific and neoliberal ideologies were accepted. It seems that the instrumentalization of religion became respectable to development in this period. It is remarkable that this religious development turn on an international level was concurrent with the large-scale land investment in the Yala Swamp. Burgess echoes the current discourses of global development agencies when he promotes his Christian approach to development.

### **5.3 A Rice Farm for the Poorest of the Poor**

These contested views in the literature can be traced back to the narratives occurring about the large-scale development project by Dominion Farms in the Yala Swamp. Calvin Burgess's mission in the Yala Swamp is, according to him, a project for the poorest of the poor in Kenya and not just a rice farm (van Heukelom 2013). The story is told that "as a boy of 12, [Burgess] had entered into a covenant with God to bless him and make him rich, and in return, he would be of positive service to humanity and help the less fortunate members of the society"<sup>130</sup>. Hence, Oketch calls Dominion's project a pay-back venture "modelled on the Christian teachings of loving your neighbour as you love yourself"<sup>131</sup>.

A critical position is taken by Leonard Oriaro, the county representative and human right fighter. He sees Burgess's constant referring to God as a method to gain the confidence of the villagers. For Oriaro, the Christian approach to the community was simply cultural imperialism. "The language involved was more cultural in so far as communicating with the people. They dug into our practices"<sup>132</sup>. Chris Owalla, the leader of the NGO friends of Yala Swamp,

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<sup>130</sup> Oketch, Odhiambo T. 2006: A visit to the Dominion Farm – Yala Swamp, Rathuoro. In: Yimbo Development Network. Jalu dot Kom. <[http://www.jaluo.com/wangwach/200703/Odhiambo\\_T\\_Oketch031407d.html](http://www.jaluo.com/wangwach/200703/Odhiambo_T_Oketch031407d.html)>.

<sup>131</sup> Oketch, Odhiambo T. 2006: A visit to the Dominion Farm – Yala Swamp, Rathuoro. Yimbo Development Network. Jalu dot Kom. <[http://www.jaluo.com/wangwach/200703/Odhiambo\\_T\\_Oketch031407d.html](http://www.jaluo.com/wangwach/200703/Odhiambo_T_Oketch031407d.html)>.

<sup>132</sup> County representative and human right fighter, interview with the author, April 2014.



expresses similar feelings in an interview with Meister and notes that the white man has always come with the bible or with guns to steal the land (Meister 2012: 42). The proverb –“Before the white man came, we had the land and they had the bible; now we have the bible and they have the land” (Deneulin 2013: 51)– repeated by Owalla, shows clearly how the colonization of the African continent went hand in hand with the evangelization of Africans.

It is not surprising that the narrative of imperialism is used in the conflict over Dominion Farms. Large-scale land acquisition is often set together with neo-colonialism. Christianity, on the other hand, served the imperialistic rulers in the 15th century to justify the colonial powers’ superiority. Critics are suspicious of Burgess’s religious mission and refer to the historical background of religion in colonization, while supporters stress the positive motivation of Burgess’s project. Oketch, for example, tries to reject this image of neo-colonization and notes that locals are working under the guidance of fellow Kenyans and the presence of white expatriates is not overbearing. That is a reason why Oketch calls the project “truly and surely an inspired investment as a service to humanity and to God”<sup>133</sup>. Supporters deal with the narrative of Christian ethics, referring to the goodwill of the investors. They adopt the notion that a Christian project is a good project and believe in a Christian ideology of welfare. Opponents recall the colonial past and the influence of Christianity on the process of acquiring land and culture on the African continent. The narrative of the historical background is strong, because it exposes religion as the instrument of imperialism. Therefore I will briefly analyse the name of the farm, Dominion, which is in itself strongly associated with imperialism.

#### **5.4 Dominion – A Term of Power**

The name of the farm, “Dominion Farms”, has a strong religious connotation and is related to religious ideology. The notion of the farm’s name is a source of conflicts. From a historical point of view, the term is often associated with the self-governing territories of the British Commonwealth. *Dominion* means sovereignty or control, a territory or a sovereign. *Dominum* is another form of the same term, which comes from Latin and means ownership and control over property. The term *Dominion* is further related to domination, the exercise of power or influence over someone or something<sup>134</sup>. Additionally, *Dominionism* is a theological term, meaning a branch of the Protestant church in the United States which believes in a Christian nation with the bible as constitutional law. Despite the strong Christian values of Calvin

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<sup>133</sup> Oketch, Odhiambo T. 2006: A visit to the Dominion Farm – Yala Swamp, Rathuoro. Yimbo Development Network. Jalu dot Kom. <[http://www.jaluo.com/wangwach/200703/Odhiambo\\_T\\_Oketch031407d.html](http://www.jaluo.com/wangwach/200703/Odhiambo_T_Oketch031407d.html)>.

<sup>134</sup> Oxford dictionaries. Language matters. 2015  
<<http://www.oxforddictionaries.com/definition/english/dominion?searchDictCode=all>>.

Burgess, he claims that he is not an advocate of *Dominionism* (Pearce 2012: 64). *Dominion* has different meanings, but all of them inherit Christian ideology and its power. Paul, a grassroots development leader, expresses the potential of the farm's name in the short film *Projects for Peace Dominion Farms*. He says that even the project's name, *Dominion*, is in itself a sign of a real conflict<sup>135</sup>. Why the farm and the associated company chose this name remains elusive. However, the name leaves room for every kind of speculation, as seen in the article by Pearce entitled "One man's Dominion", in which he sees the farm in the swampy area as Burgess's subject of philanthropy –whereby Burgess is the only ruler over his Dominion (Pearce 2012: 74).

### 5.5 Churches as Information Channels

The appearance of Burgess in the region is summarized in the following sentence frequently used by the local people: "They came as Christian. But they didn't build a church". In a documentary produced by ILEG Kenya with the title *The scramble for Yala Swamp*<sup>136</sup> the commentator states that Burgess was known after establishing a church and was welcomed as a friendly missionary. This simple statement shows that the expectations of local people about what Burgess stands for were different from the reality. It seems that most of the villagers knew Burgess first as a preacher. People even saw him in church and told him to be a good preacher "who knew how to use word, how to motivate the people" (Meister 2012). It was the Pastor Ken Nyagudi<sup>137</sup> who opened the door to the community and made it possible that Burgess could communicate through church channels or, at least, to the part of the community which attended the mass. That is the reason why the local community perceived Burgess as a priest, as a missionary coming to the swamp to help them.

The village elders remember the first time they saw Burgess. It was at the marketplace in Rathuoro, where now the farms headquarters is. "They preached the word of God and slaughtered a cow. A number of pastors were around. Also Ken Nyagudi, which later became a member of the Parliament. Another pastor, who was present, became the Director of the company in the beginning"<sup>138</sup>. The two levels of the retelling the first contact with Burgess are interesting: firstly, they tell how Calvin Burgess and his fellows penetrated the community

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<sup>135</sup> Trailer 2012: Project for Peace Dominion Farms. Film <<https://www.youtube.com/watch?v=DrITMEcOY30>>.

<sup>136</sup> Film ILEG Kenya: Scramble for Yala Swamp. < <https://www.youtube.com/watch?v=kn6eHuuIshI>>.

<sup>137</sup> More about the influence of Ken Nyagudi in part VI.

<sup>138</sup> Village elders, focus group interview with the author, May 2014.

through religious rituals; secondly, the village elders refer to the nepotism which took place within Dominion Farms headquarters and politics. This statement makes visible not only the political relation of the project's implementation but also the religious legitimization process which took place in the beginning. The public meetings which were thought to inform the local people led by some important church leaders and connected to local ceremonies (the slaughtering of a cow).

Burgess was spreading the feeling that he is a churchman and, therefore, stands for trust and Christian values. Burgess rejects the critics that he never informed the community, and refers to the sessions in the church, where he told the people what he is planning to do with the Yala Swamp. He used churches and their leaders as a channel to inform people about his project. But because he did not choose the official way to inform people, Burgess was perceived as a missionary and not as an investor. Thus, I see the de-politization of the land acquisition. Christian ideologies are easy to adapt in development concerns to have a better legitimization for a large-scale farming project. Official information channels failed while religious welfare was stressed. Hence, the political dimension of the project was hushed up in Christian narratives. Villagers say that they were surprised when Burgess suddenly started producing rice and when they saw how big the project was. With time the belief in Burgess religious motivation lost its power and people started to call it a pretence. One of the village elders see the approach of Burgess as “a show in order to break into the community and gain acceptance. [...] When I recall it, all of this prayer were just to penetrate in the community”. Local people started to claim that Burgess was telling lies in the name of God and that he was only interested in their land but not in the human beings<sup>139</sup>. As I will show in the next part, Dominion's religious narratives started to be contested by the villagers and NGOs.

## **5.6 Expectations and Human Dignity**

The implementation of Dominion's project created high expectations –not only because of the religious approach– and this was a problem. Promises were made, not just by Burgess, but also by the preachers providing the project. They told the people from the pulpit to provide for the project, in return they promised to make sure that the elderly would gain and that the young would get education and job opportunities. Moreover, local people were told that rice would be given for free and that nobody should be hungry anymore<sup>140</sup>. A lot of the villagers affirm that

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<sup>139</sup> Village elders, focus group interview with the author, May 2014.

<sup>140</sup> Village elders, focus group interview with the author, Mai 2014.

they were very happy and even spontaneously started to dance when they were at this reunions<sup>141</sup>.

While Burgess rejects this assertions and claims that he never made such statements (see in van Heukelom 2013 and Meister 2012), Dominion's manager, Chris Abir, tells us that prior managers gave indeed maize for free, or helped the community with free rice in an unexpected rainless season. Abir thinks that some of these expectations arose in the beginning, and that this was a reason why Dominion Farms had to stop these donations, after realizing that presents do not help the community. He further added that they prefer to give people jobs instead of presents<sup>142</sup>. This statement is repeated by Burgess in an interview in which he says that jobs like chasing birds and weeding grass are explicitly not mechanized, because Dominion wants to create jobs (Meister 2012: 39). On the other hand, Pearce writes that the minimum wage of 150 shillings a day (1.2 CHF)<sup>143</sup> cannot be raised because workers have to be cheaper than herbicides –otherwise there would be no sense in employing them (Pearce 2012: 70). Dominions Farms try to make foodstuffs available at low price but they are not interested in paying decent wages to food producers (De Schutter 2011: 4). Furthermore, the question arises of whether jobs have been created for the people or whether human force is just less expensive. Is this a project for financial gain or for people's welfare?

The jobs are said to disregard human beings, for example the job of “living scarecrows”, as we can read in the following extract of a journalistic article about Dominion Farms:

„Auf riesigen Reisfeldern stehen dort Frauen bis zu den Knien im Morast. Sie haben den Auftrag, als eine Art lebendige Vogelscheuchen gefräßige Vögel fernzuhalten. [...] Ausser für ein paar Dutzend Wächter und menschliche Vogelscheuchen gibt es praktisch keine Arbeit für die lokale Bevölkerung“ (Leonhard 2010).

Van Heukelom is less critical and stated on a blog that “critics argue that these kind of unskilled jobs, such as weeding rice paddies and scaring away birds, are degrading for the local people. Yet, upon questioning the local women in the rice fields there is an overall positive response to their employment and the opportunity it gives them to generate their own incomes. Moreover, skilled jobs and full-time positions are available to the local communities –however, perhaps not in the quantity that most of the communities had hoped or were promised by politicians”<sup>144</sup>.

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<sup>141</sup> Village elders, focus group interview with the author, Mai 2014.

<sup>142</sup> Manager of Dominion Farms, interview with the author, April 2014

<sup>143</sup> A simple meal costs from 80 KSH to 150 KSH, a bottle of Coca-Cola 40 KSH, a Tusker beer 300 KSH. (field-notes Elisabeth Schubiger).

<sup>144</sup> Van Heukelom, Tim 2011: Dominion Farms and food security in Kenya. [farmlandgrabs.org](http://farmlandgrabs.org).

Employees never criticize their work in a direct way. However, their siblings, cousins and children described to us the long working day from the early morning to the late evening, and how workers have to stand on wet ground, be scared of snakes, do without safe working clothes and stand in the sun all day long.

Dominion's argument against these critics is simply: Dominion Farms could also mechanize everything and people would lose their jobs. This argument seems to invalidate religious motives and expose a strictly economic rationale. Human dignity seems no longer important and Christian values go only as far as they provide motivated, trustworthy employees. The conditions under which these people have to work do not come into question; they have to be happy that they have jobs. People living around the Swamp put these kinds of working conditions into question and call for a community-based project. They disagree that they are delivered to Dominion's working conditions if they are only employed<sup>145</sup>. The narrative relies on self-responsibility instead of dependence on the large-scale farm. Some of the peasants demand their own plots in which to produce for Dominion Farms. According to this narrative, this would be a solution to regain the power over their land and to get back their human dignity. Dominion's narrative is based on economic logical thinking. Burgess's wields the arguments of pricing pressure and sound management, which he promotes as the best for all. His economic reasoning is understandable, he rules a big farm, and for him it is easier to make profit if he has the control over production and employees. Nevertheless, this argument contests the Christian ideologies he claims.

### **5.7 Local Belief System and the Narrative of Backwardness**

To date, local indigenous religions and belief systems are not included in the academic discussions about religion and development. Nevertheless, in our Dominion Farms case, these beliefs systems are called to be something backward, something that reduces the offspring of development. Burgess adjudged the practices and tradition of the Luos as responsible for their calamity. He made, for example, the following statement in front of a journalist "I disagree when people say, "Oh, you have to preserve the local culture". If you preserve it, people will starve, and you won't have a culture to preserve"<sup>146</sup>. Burgess enhances the improvement of Luo's life quality by teaching them that their culture and their religious beliefs harm them. As

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<sup>145</sup> At Dominion 400 employees are permanent or under contract. Around 400 to 1000 people are working from time to time as casuals. It depends on the season (Manager of Dominion Farms, interview with the author, April 2014).

<sup>146</sup> Socio Economic Network 2013: Who's behind the land grabs?  
<<http://socioeconomicforum50.blogspot.ch/2013/04/whos-behind-land-grabs.html>>.

a man of the church he told the local people that their way of life is bad and that their tradition has no future. Furthermore, he told them to get rid of their cattle and their houses because they are from the devil and primitive<sup>147</sup>. This enforcement to end the traditional way of life is what van Heukelom calls a “cultural insensitivity”. Further, van Heukelom notices that the communities’ way of life is perceived by Burgess as “backwards” and “nineteenth century” (van Heukelom 2013: 194).

The connotation between backwardness and so-called indigenous religion usually takes place where development is related to local religion. The neglect, according to Alolo and Conell, may be “due to a variety of discourses that have historically worked to eclipse and discredit indigenous religion” (Alolo and Conell 2013: 140). Local belief systems have been marginalized by foreign political, religious and intellectual institutions in an evolutionistic way of thinking, as primitive and archaic nature religions. They saw Christianity and other monotheistic religions as evolutionarily superior to the primal religion (Alolo and Conell 2013: 140). Faith-based organizations reject to work together with local religious leaders. Evangelistic organizations reject “indigenous”, “traditional” or “folk” religions as backward and impeding development activities (Alolo and Conell 2013). It is common that faith-based organizations discredit local religious beliefs and custom as barbaric and from the devil. Thus, they promote their Christian or Islamic values as the one and only way for human dignity and well-being.

### **5.7.1 The Cross on the Luo Shrine**

Burgess cultural imperialism was, according to Oriaro, the county representative, possibly because of the high rate of Christians in the area. Christianity and magic are not sharply differentiated in the Luo beliefs. Within the last century, the Luo belief system became a mixture of Christianity and inherent belief systems. Luos believe since pre-colonial time in a supreme being, who is the creator of man and universe. This omnipresent personalized God is called Nyasaye. The Luos worship also their ancestors and other spirits, which have an influence on their daily life (Ndisi 1973; Berger-Schlosser 1984). Nowadays, 90% of all Luos are members of Christian churches and, according to Berger-Schlosser, they seem particularly receptive to the proliferation of syncretistic sects. According to Berg-Schlosser, one reason of their receptiveness to cults is that one third of the “African Independent Churches” in Kenya have their origin in the Luo country. On the other hand, the Luos are also cynic about their

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<sup>147</sup> County representative and human right fighter, interview with the author, Mai 2014. And village elders, focus group discussion with the author, Mai 2014.

activities and the motives which may lie behind the dealings of their founders and leaders (Berger-Schlosser 1984: 128f).

This willingness to believe the friendly American missionary who claimed to be sent by God was mentioned by Oriaro in the following statement: “So they [Dominion Farm/Calvin Burgess] were spreading the gospel. And they even erected a cross, you see, you were expecting a Christian-centric culture. Most of us love Jesus Christ”<sup>148</sup>. Oriaro refers to the 10-meter white metal cross, erected on top of a hill in the middle of the rice farm, which is visible from all around the rice farm. This strong sign of Christianity was subject to many journalistic pieces because of its powerful statement. This cross, a symbol which stands for Christianity and represents a belief system, is an object that stands for the Christian ideology of Dominion Farms. The cross is a powerful sign –this can be seen in discussions about freedom of religion, where discussions are conducted about the placement of religious symbols in public spaces.

The fact is that the cross is not only placed in a visible spot of the farm and on the equator itself but also erected on a Luo shrine. Luo ancestors or spiritual beings may dwell in a large rock and some of the ancestors reside in certain hills (Ocholla-Ayayo 1976: 177). Mountains, rivers and lakes are not just empty objects but possess forces and are therefore religious objects (Ocholla-Ayayo 1976: 181). The shrine on the hill in the rice farm was used for a long time for different kinds of healers’ and sorcerers’ rituals. It was said to be a very powerful place<sup>149</sup>. The Shrine in the Yala Swamp is fenced twice because of the fence of the whole Dominion Farms area and the fence around the hill itself –according to Dominion’s manager, to prevent people from breaking into the farms by night to perform rituals<sup>150</sup>. The fences are nowadays pulled down –on our tour through the rice farm we did not get an answer regarding why or by whom. The fact is that the shrines were not taken into consideration when the farms area was fenced by the investor. When the Memorandum of Understanding was signed, the district officers did take into consideration that part of the swamp had been traditionally used for spiritual purposes<sup>151</sup>. Since the new constitution was introduced, initiatives have been promoted to give the shrines back to the community. Until now, none of these initiatives has been successful.

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<sup>148</sup> County representative and human right fighter; interview with the author, May 2014.

<sup>149</sup> Another shrine, a stone, which was used by a clan in Gendro, was located where Dominion’s silos stand now. It was used by women who wanted to run away from their husbands. These shrines are now not freely accessible because they are in Dominion’s land, or just disappeared like the stone in Gendro.

<sup>150</sup> Manager of Dominion Farms; tour on the farm with the author, Aril 2014.

<sup>151</sup> Ochieng Patrick (unknown Date): Dominion Domination: The Scandal of Yala Swamp. Jaluo dor Kom. <[http://www.jaluo.com/wangwach/200703/Patrick\\_Ochieng031407.html](http://www.jaluo.com/wangwach/200703/Patrick_Ochieng031407.html)>

### 5.7.2 Rumours about the Cross

The place where the cross was set is more than just a hill. Mysterious rumours and gossip are interwoven in stories about the cross. It is told that Burgess put this cross in the very beginning together with the priests at a celebration. They put the cross all together during a Christian seminary, which took place on the hill. During this event, priests were given bicycles for free in order to go to the people and spread the news that there is a white man bringing development<sup>152</sup>. Rumours circulated about an animal sacrifice which had taken place during the seminary. An ambivalent view about Dominion's Christianity was expressed: "We are wondering why Dominion officials constructed a big cross and then slaughtered and buried a sheep under it. Is that Christianity?"<sup>153</sup>. In Meister's article, a villager makes the statement that Burgess himself threw a live goat into the concrete foundation under the cross (Meister 2012: 44). Additionally, the villagers say that when Burgess comes back to Kenya –which he does once a month– they take a bull and slaughter it on the holy hill. They offer the sacrifice, together with the workers, and, afterwards, all the participants receive 5 kg of rice for free<sup>154</sup>.

The question rises whether Burgess took a step in the direction of the Luo culture when he chose to slaughter animals, as the Luos do. On Luo feasts and rituals, the slaughtering of a bull, a cow or a goat is an obligation. This obligation is seriously treated, on the one hand, because of the social motives but, on the other hand, because of the magic-minded fear of the consequences by offending the custom or ancestral spirits (Wilemski 1977: 134). The sacrifices are used to calm angry ancestors or to please them. As trees, rocks and hills are taught to be sacred places, people gathered to offer animal sacrifices for a good harvest or for rain or for God's blessing (Ochieng 1985: 13).

Is it possible that Burgess used some of the Luo rituals to gain acceptance in the community? Or is the slaughtering story just invented? If so, why? The interpretation of gossips and rumours is a difficult task. Gossip is seen as a weapons of the weak to undermine the hierarchy of repressive systems (see Scott 1885). If we read the stories above, we can interpret the gossips and rumours about Burgess as a way of branding his true motivation as unchristian and as resistance against his mission in the Yala Swamp.

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<sup>152</sup> Village elders, focus group interview with the author, May 2014.

<sup>153</sup> Film: *The Scramble for Yala Swamp* 2012. ILEG Kenya. Directed by Lee Kanyare- Kaguomgo. Paradigm Media Associates Production. <<https://www.youtube.com/watch?v=kn6eHuuIshI>>.

<sup>154</sup> Former employed; interview with the author, April 2014.



### 5.7.3 Science and Demons

When asked why they put a cross on the hill, Dominion's manager first underplayed the cross: "It's just our sign of faith in god. That's all it is" but he then adds: "Although they say that it stops the rainfall. [...] They say it and they believe that. Since the cross was put the rains has reduced. [laughs] It has nothing to do with the cross anyway, it's just...if you are ignorant you can say anything. Do you see any relationship between a metallic cross and rainfall?"<sup>155</sup>. Dominion's manager sees this relation between the cross and the rain as a joke and, again, as the backward ideas of the villagers. Even though there is no scientific evidence, we can see in the following statement that people explain the correlation as following: "We are not satisfied with the cross there. Luos are very funny people you see [laughs]. We are even come out with the suggestion or an idea that before, we had a lot of rain here. But we just realised that the cross there have tampered with our environment. Because you know [Burgess] is using irrigation system. He can plant anything there any season. Without waiting for the raining season or sunny season. We are relying on weather. But we have realised that the cross there has somehow interfered with our environment. That's how we believe. Because it is not our culture at all what Calvin has done there"<sup>156</sup>. It is interesting that he first explains that the Luos are "funny people" to excuse their "backward" beliefs. But at the same time he gives a scientific explanation. The lack of rain/water has in his explanation something to do with irrigation and with spirits. Spirits are angry that irrigation systems have been made. Rain is highly significant for peasants who are dependent on seasonal rainfall in spring and autumn. As long as the swamp flooded the area every season, the soil was fertile in dry seasons. This reasoning of the villagers' recall Evans-Pritchard's studies about witchcraft and magic among the Azante of central Africa. In his work, Evans-Pritchard claims that internal coherence and rationality exist in the witchcraft reasoning of the Azante. Despite the ubiquitous witchcraft belief which plays part in every Zante activity, he concludes that unfortunate situations are not explained in terms of mystical causation alone. He claims that belief in supernatural forces does not imply a contradiction of empirical knowledge of cause and effect or of scientific explanation as we (as Europeans) know them. For example: I hit the stone, the wound was not cleaned and these events caused the infection. Evans-Pritchard explains that we (Europeans) explain events with a chain of causality, but never have an explanation of why this chain intersected at a certain time and in a certain place. Zande philosophy, on the other hand, supplies the missing link

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<sup>155</sup> Manager of Dominion Farms; interview with the authors, April 2014.

<sup>156</sup> Former employed; interview with the author, April 2014.

between this chain of events and its result, due to the action of witchcraft (Evans Pritchard 1976).

This ambivalent view between scientific and spiritual explanations can be detected with the following statement of a village elder: “When they first erected the cross it was destroyed by heavy winds. They were destroyed by heavy winds because of demons”<sup>157</sup>. Evans-Pritchard claims that witchcraft is not the only cause of the calamity, but also the breach of taboo (Evans-Pritchard 176). The putting of a cross on the hill and fencing the holy shrine is for some villagers a breach of a taboo. Nature is in Luo beliefs strongly related to God, spirits and ancestors. Nyasaye, the Luo Supreme Being, manifests himself in the sun, in the lakes, rivers, snakes and natural miracles such as earthquakes and storms (Ndisi 1973: 84)<sup>158</sup>. During occasions such as ploughing, planting of seeds, weeding and harvesting, prayers and rites were performed for protection from evil forces or for the goodwill of the ancestors. As ancestors have strong emotions, it is important to constantly worship them. Slaughtering animals in their honour is a common ritual for this purpose (Ndisi: 1973: 40ff)<sup>159</sup>. To put a cross on a hill, which is inhabited by spiritual beings and ancestors, may be a taboo which causes different events related to the cross.

Dominion’s manager assures that they did not know it was a shrine: “Once we signed the MoU we moved into the swamp but we didn’t know those were shrines. We didn’t know. And of course they don’t tell you directly that the hill is a shrine. You get to hear about it later”<sup>160</sup>. What they did when they knew that it was a shrine is interesting:

“We didn’t know what was going on. We wanted to help them, but they were all rejecting it. The problem, we detected, was a witchcraft belief. The people here are still driven by these beliefs. On the hill there was one of the most important holy shrines in this region. The witch-doctors were seeking for power on the hill. The people told us that we can find a remedy, and that’s what we did. At night at ten o’clock we climbed the hill, which was dangerous; it was dark and there are many

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<sup>157</sup> Village elders; focus group interview with the author, Mai 2014.

<sup>158</sup> Ancestral spirits (Jok) are immanently relevant for the Luos. Ancestors are believed to be in touch with Nyasaye, therefore, everything is done to please the spirits of the death (Ndisi: 1973: 86). Ancestors’ souls/shadows return to earth and inhabit the bodies of animals such as lizards and snakes. Apart from ancestors life free spirits (Juok/juogi) in the air, in the water and on the trees. This supernatural spirits act freely on their own accord. Spirits are able to possess someone, give the possessed person power or make the person sick.

<sup>159</sup> Ocholla-Ayayo mention, that spirits are identified with the wind or the air, they inhabit objects in the environment, and are therefore related to the natural phenomena. These objects and natural beings “provide the means of human existence and since they also have some power and spirits of their own, certain rituals are found to be established with them” (Ocholla-Ayayo 1976: 171).

<sup>160</sup> Manager of Dominion Farms; interview with the author, April 2014.

snakes. We had a priest from Siaya with us. He said, ‘over with your power’, and we put the cross” (Meister 2012: 44, translated by the author).

The conflict in the Yala Swamp is keen to emphasize the irrational, and Burgess’s solution is the distraction of these beliefs. Burgess therefore ignores the political side of the story and depoliticizes the conflict through religion.

But Burgess is right if he calls the shrine a place of conflicts. The shrine is often described as a place where bad/black magic has been practised. Therefore, some people support Dominion’s actions, as we can read in the following statement from a blog about the farm: “We were told of historic sites like shrines and prayer sites. This was to exorcise some allegedly roving spirits which felt disturbed and became restless when some rites were not done. Hence by making these sites Godly, such spirits now rest in peace as Dominion march on in the faith of the 3ps and PUSH<sup>161</sup> mentality”<sup>162</sup>. The notion that this Shrines did not have any significance to the community is often linked to the belief that witchcraft is similar to black magic, and therefore something bad. “Now you guys [Europeans] don’t know what witchcraft is. It’s like black magic ok. So in the whole of the country we have God Ramogi which is the key shrine for witchcraft, and Sigulu Hill, which we have taken back and put a cross on top of it. In the Swamp are three shrines. [...] Now having practiced all these things [witchcraft] all these years, you can imagine the atmosphere how it is”<sup>163</sup>. By “the atmosphere” Abir refers to the competitive atmosphere which is, according to Chris Abir, culturally set by polygamy. This competition leads into jealousy, and finally into black magic practices. In many cases, these shrines were used to influence community leaders in a negative sense. If someone wanted to harm an enemy, he had to go to a local sorcerer, and together they would go to the hill and perform some rituals. The day after was this enemy was dead. The chief also thinks that: “For us he is more or less like a Satan”, and therefore no more important for the Luos, because he was just “eliminating” people. But, on the other hand, the chief mentions that certain herbs grow on the hill, which are important for traditional Luo healing. They know how to use the power of the herbs to treat ill people<sup>164</sup>. Arguments to safeguard these shrines are stifled in the argument that this witchcraft beliefs do not serve the community<sup>165</sup>. Wilemski, for example, concludes in his book about the

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<sup>161</sup> The premise of 3p- prayers, persistence and patience, and the PUSH mentality. (Oketch 2006: Internet source)

<sup>162</sup> Oketch, Odhiambo T. 2006: A visit to the Dominion Farm – Yala Swamp, Rathuoro. *Yimbo Development Network. Jaluo dot Kom*. <[http://www.jaluo.com/wangwach/200703/Odhiambo\\_T\\_Oketch031407d.html](http://www.jaluo.com/wangwach/200703/Odhiambo_T_Oketch031407d.html)>.

<sup>163</sup> Manager of Dominion Farms; interview with the author, April 2014.

<sup>164</sup> Chief; interview with the author, April 2014.

<sup>165</sup> In the literature about the Luo culture it becomes visible that in the sphere of magic there are different specialists responsible for different things. No overlord priest is responsible for all spiritual belongings. The Jabilo practised beneficial magic and served as more than spiritual leader for his people; he had the role of a

economic performance of the Luo that “these magic-religious attitudes make up their personality composed of rational and irrational elements resulting in that the approach of these people to reality and economy is not always motivated by free and rational choice but by irrational motives. [...] These factors are at the same time significant hindrances in making profitable economy and development” (Wilemski 1977: 66).

The people at the Swamp and Dominion Farms reflect the narrative that the local religion is not useful for the offspring of the region. The focus is on witchcraft and sorcery, making it responsible for the bad economic performance of the region. The assumption seems to be that the belief system of the Luos is free of ethics and morals and undermines the modernization of the area. This assumption ignores that, in African indigenous religions, spirits, ancestors and ghosts are moral compasses. Alolo and Corwell claim that ethics in Africa are expressed in myths. Thus, the Siwindhi<sup>166</sup> can be seen as one of the educational institutions of Luo values and moral systems (Oxhollo-Ayayo 1976: 73f).

The general dearth of literature that directly examines relations between indigenous religion and development shows the biased views of development agents. Indigenous beliefs are taken into account, but mostly as important for their moral systems and political implication. The role of religion in the maintenance of individual and public moral and ethical values is often taken for granted. The assumption that Christian values facilitate development goals (Deneulin 2013) or that religions can be used in the fight against corruption as a moral standard (Marquette 2013) is widespread. In the case of the Yala Swamp, it seems to be taken for granted that the Luo religion has no moral or ethical relevance. But the assumption that religion has a positive moral impact is problematic. Evangelistic branches claim the positive influence of the evangelistic churches in development, because of the fostering of a better lifestyle, full education and proper

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prophet. The Ruoth (a rich man with power, nowadays a chief) inherited often the role of a Jabilo. An Ajuoga has the task to identify spirits, who caused illness –he or she is often called a medicine man or diviner. His or her duty is to prescribe the appropriate remedies. The role of a Jabilo and Ajuoga can be inherited by one person, since the woman we were living within the homestead was called to have both capacities, removing spirits and to catch thieves. She offered her services often, a sign that these beliefs are still very common in the society. The Won Koth/ Jajimb Koth is responsible for the rain. The rainmaker is often consulted only for matters concerning the rain, but not for possessions or sicknesses (Berg-Schlosser 1984; Ndisi 1973, Wilemski 1977). A Jakingo has an ambivalent position, because he or she is an expert in black and white magic. Evil forces are associated with Jajuok/Jojuok, persons who practise witchcraft and sorcery. Jajuok, also called wizard or night runner, is believed to bewitch people by a magical action called Ido. Ido causes a witchcraft sickness called Juok (bad spirit, witchcraft). Witchcraft and sorcery are distinguished as follows: A witch Jajuok is someone who harms involuntarily, because he is possessed by a bad spirit (Juok). A sorcerer, Jalipo, has the premeditation to harm someone by applying harmful substances or performing destructive rites (Wilemski 1977: 63). The Jajoks type of magical power is called Nawi, a very dangerous type of magic (Berg-Schlosser 1984; Ndisi 1973, Wilemski 1977).

<sup>166</sup> Siwindhi formerly named the house of a widowed grandmother, where boys and girls of over ten years recited the stories told by the old woman (Ochieng 1885).

exercise of duty (Dietschy 2008: 19) –values which are, according to Weber, a great breeding ground for economy. I assume that Christian morals are instrumentalized for development because of its work ethic. It seems to be taken for granted that western Christian values are the entity for neoliberal development.

I would like to finalize the chapter about religious narratives, discourses and ideologies with the following statement of a proud Christian Luos who concludes the contested views on the cross, and let us think about what it means to change culture in the name of development: “We don’t understand the significance of the cross. [...] I don’t think that’s right. It was a cultural shrine. Because there is no way you can change my culture. We are not satisfied with changing our culture at all. And we are not ready for that. [laughs]. Yeah. We will remain with our culture until to death”<sup>167</sup>.

## 5.8 Discussion

In this part of the thesis, I wished to highlight how religious moral and Christian ethics support western neoliberal ideologies of development and that the acquisition of 6’900 ha of land in the Yala Swamp was disguised via religious ideologies by the investor and his supporters.

The academic discussion about a better inclusion of religion in development issues is a double-edged sword. As part of the reality of the locals’ daily life, religion plays an important role in development activities. Development agencies and policies on international level should therefore not assume a detached scientific, occidental view on such projects. Although this assumption might be right, religion is instrumentalized by the development industry, which has a functionalistic understanding of religion. Therefore, it is not surprising that the narrative of neo-imperialism occurs whenever locals speak about the investor’s religious approach to the community. I note that religion as potential source of conflict and oppression is not yet explored enough.

Further, the case in the Yala Swamp shows that religiously motivated development is less accountable to the state and therefore de-politicized. The investor passes over the official way and informed the villagers through church channels; a reason why this project was perceived as a social project instead of a large-scale farming project. Burgess’s appearance as a Christian development agent on the ground hushed the political dimension of a land deal. Thus, the Christian legitimization risks to de-politicize development processes on different levels. Consequently, locals are suspicious of Dominion’s religious motivation nowadays. They start to accuse Dominion Farms not to fulfil their promises and for the inhuman working conditions.

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<sup>167</sup> Former employee, interview with the author, April 2014.

The case in the Yala Swamp shows that the inclusion of religion in development purposes has negative side effects.

Further I could highlight how local belief systems are excluded in the development and religion discussion. Only main religions like Christianity, Islam, Buddhism and Hinduism are seen as valuable in reaching development goals. Local belief systems are rather shown as backward. This religious approach by Calvin Burgess and his fellows also changed the local ideology on local belief systems and, as they are related to local institutions, also caused a change on power within the local institutions. I therefore see the putting of a cross on a Luo shrine as symbolic of the legitimization of Dominion's project.

## 6 Conclusion



Picture 9. Cattle in the leased Dominion Farms Land drinking in the canal (picture by Anna von Sury 2014).

With this thesis I hope to have described the phenomena of large-scale land acquisition from a different perspective, while analysing the processes of the implementation of a specific land deal in practice. The heterogeneous perspectives have been investigated, and the deal has been analysed on a wider historical, local, national and global level. On a vertical level, I paid attention to the various actors and their role as brokers, translators and facilitators in the process. My main topics concerned, first, the historical background of Kenya and the social and economic circumstances of the affected people and their environment; second, the legal base on which this deal was based; third, I focused on political implications and different stakeholders and, last but not least, I looked at how religious ideologies and development discourses are interrelated. I tried to discover how legitimacy for the rice project and the connected land acquisition was produced through discourses, ideologies and narratives. While I tried to focus on the so-called external factors, my colleague Anna von Sury paid attention to the horizontal level and the internal factors. It therefore makes sense to read additionally to this thesis the work of Anna von Sury, which pays more attention to local strategies and local, traditional institutions.

Based on the approach of New Institutionalism by Jean Ensminger, it is crucial to understand how the local rules and management of the Yala Swamp changed. In the second part of this thesis, I demonstrated how historical constraints changed the Kenyan land tenure system. I made clear that the Yala Swamp, as a wetland, was in the focus of different interest groups over the time. During colonial and post-colonial times, the control and responsibility over common-pool resources were increasingly taken out of the hand of the local users and more and more governed by the Kenyan state. Legal pluralism occurred and colonial, national and local law were coexisting and competing. Land, already during the colonialization as well as after the independence of Kenya, was a breeding ground for conflicts. While the people living next to the Yala Swamp cultivated and used common-pool resources and managed the swampy area for centuries through their own institutions, after the Kenyan independence the swamp has been acquired by the state of Kenya. Since the 1960s, different interest groups such as economists, environmentalists and the local community competed over the swampy land.

In the third chapter of this thesis I showed how the local rules and management systems have been overtaken by Kenyan National Acts and Ministries. Local institutions, which managed the access to the swamp, were replaced by governmental departments and ministries and, therefore, local institutions historically eroded. The Kenyan government defined how to manage the former common-pool resources, and centralized the resource management. With the transmission from the ancient communal use of the Yala Swamp to the state management, the swampy land became a commodity, which could be used for development projects of the state. The construction of dams in the 1970s changed the way of using the land. In the name of modernisation and development, the Yala Swamp became the focus of different development projects. The construction of a dam, for example, took place in the 1970s. As the Kenyan parastatal organization Lake Basin Development Authority had no financial power to manage the Yala Swamp themselves, the agents in power leased the swamp to a foreign investor. In 2003, the Kenyan state leased 40% of the Yala Swamp to the American investor to fulfil food security goals. The common-pool resources changed relative prices, and the different actors tried to gain bargaining power through narratives and change of ideologies. The so-called “idle” land was often used as a narrative to legitimize the acquisition of the Yala Swamp by a foreign investor. The increased incentive for land made investment in land for the American investor Calvin Burgess attractive. On the other hand, it provided the relative weak Kenyan state the necessary legal base to lease the land in the name of development.



Moreover, in 2003, with the arrival of investors, new dams, streets and electricity were provided in the region. These technological changes had an influence on the population in general. This new innovations made the living in the area attractive and young men hoped to find jobs in the area. The technical changes described above, according to Ensminger, changed also the population on a local level, as experts from outside, Americans and Kenyans, came to live and work in the area. These changes had an influence on the relative prices of all sorts of commodities.

Rice, formerly only occasionally used by the villagers, changed nutrition habits and arrival of investors local crops like sorghum and millet produced by the local peasants. Fish from the fishponds, already clean and frozen, became available for a good price from Dominion Farms shop, while local fishers lost their daily income. Further, rice paddies and the fishponds are spread on a big ground, which was formerly used by villagers for grazing and seasonal farming as well as for fishing. The loss of this specific swampy land creates a scarcity of land. Both traditional leaders and ministries criticize new fishing methods, but regulatory institutions on the ground do not exist anymore, and technical change and scarcity of the land changed prices and availability of the land and its associated resources. The technological change from small-scale fishing and farming to a large-scale modernized rice farm changed profoundly the internal factors. People become more and more dependent on commodities and money and have no more chance to cultivate little for their subsistence. Cattle, for example, lost their value because there is no more grazing ground to feed the local species. Lot of households changed to cross-cows, which are fed with grass from the field at home. Also the amount of cows changed, a reason why the systems of bride price changed. Nowadays, the bride price is paid with money, and only partly with cattle. The external factors, such as technical innovation, population and social- and political changes, lead to changes on local ground. Industrialized centres are scarce; job opportunities for wage labour are not widespread in the region. In addition, further external factors like climatic an ecological changes (less rain, construction of dam, change in water quality), political change (development goals, land tenure system), and ethnical conflicts (between Luo and Kikuyu), economic struggle (neglect of agricultural production) made the commercial use of the Yala Swamp attractive.

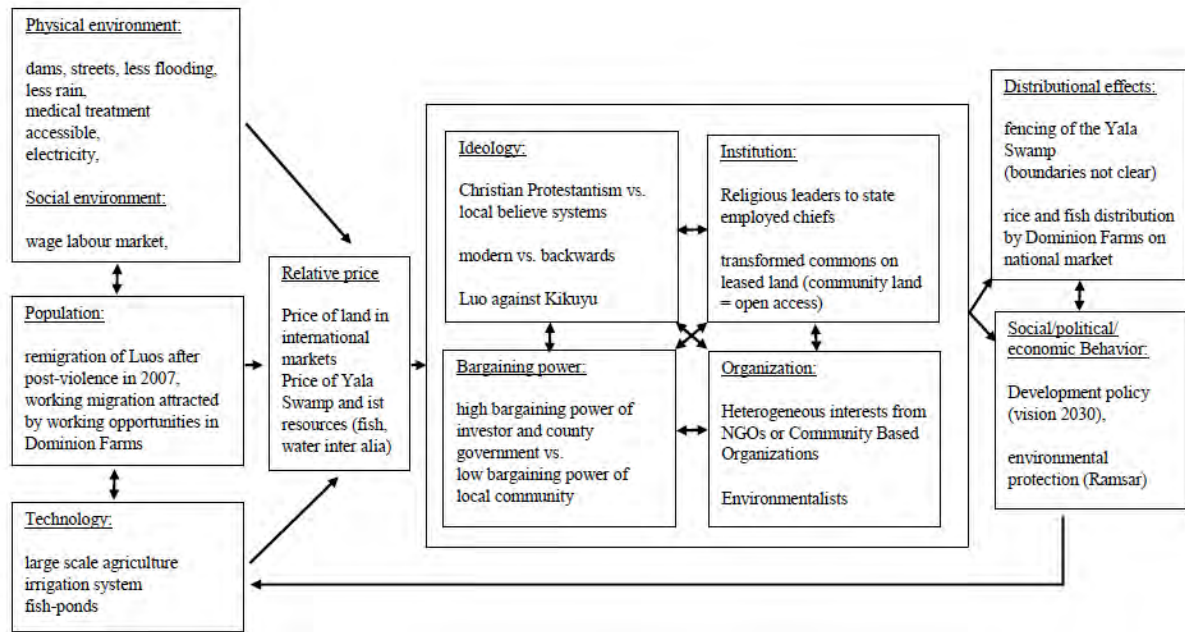


Table 2: Overview on external and internal factors according to Ensmingers' model (by Elisabeth Schubiger)

In the fourth part of this thesis I discussed how actors change or maintain institutional settings which fit best their interests. Famine, economic crisis and political insecurity influenced institutional change, while the ideology of modernity, development and ethnicity was strategically used by the responsible governmental organs. Politically, Calvin Burgess shows his authority by having powerful friends on the highest political levels, relations with the American President Bush and, therefore, very close relations with the Kenyan Prime Minister, Raila Odinga. The bargaining power of the investor was high. Local stakeholders, therefore, used the help of NGOs or conservationists to react to the acquisition of the Yala Swamp. The environmentalists, as big players against Dominion's project, drove the narrative of conservatism of the Wild Life Service, while the villagers wanted to use the swamp instead of close it up for tourism purposes.

Demonstrations and some human right fighters tried to raise consciousness of the circumstances through media. But contestants of the project were physically attacked and demonstrations were suppressed by police. It is easy to silence people through criminalization. Let us take the example of Leonard Oriaro, who was imprisoned several times before he was elected to be the County Representative. The NGOs' fight for a proper implementation of the Dominion Farms' project was turned to an ethnical conflict by political leader in town. Discussions about the misleading politics of Kikuyu leaders against the Luo people obscure the facts that local people were fighting against Dominion Farms.

However, in order to achieve access to land, the production of legitimacy is important. Therefore, the investor refers to the legally-made contracts and assignments, while the Kenyan government uses the development and food security narrative to legitimize the land lease. What was not taken into account by the state is, that the distributive effects changed, according to Ensmingers' model. With fencing the farm, Burgess not only closed access to the common-pool resource but has the power to make decisions about how and where resources are distributed. Goods produced on this land (rice and fish) are distributed by the Dominion Farms into the towns' shops. Access to the goods so is only through wage labour or money exchange possible. This fact affects the bargaining power of local institutions, which became very weak in front of the investor and the government. While the governmental officials were physically absent to control the lease in the Yala Swamp, local authorities like the village elders were not included in the discussions about the acquisition of the land.

In the last part of this thesis, I hope to have highlighted the role of ideology and the related bargaining power of actors. Calvin Burgess uses Christian channels to enforce the power of church leaders and tried to create new ideologies using the narrative of backwardness and danger of local belief systems. Religious ideology played a major role in legitimizing claims of access to the Yala Swamp and its resources. Calvin Burgess and his providers were able to switch between different ideological settings, provided by religion and development ideas, which are not only valuable on the local level, but supported by international institutions like the World Bank. As we saw, Christian values, provided by the international development industry, changed ideologies on the local level. The ideology, which recall Max Webers protestant ethics, driven by the investor and his Christian fellows changed the meaning of local religious systems. These systems had been deeply related to the local political and regulatory institutions. So we saw that people on the ground started to label their local belief systems as backwards and dangerous for development. The religious ideology, and the related organizations, changed on the local level, while Christianity and its values have been promoted as the perfect breeding ground for an economic and social development in the region.

On the model we see that this large-scale acquisition of land, first by the state and later by the American investor, caused side effects such as environmental change, institutional change on the local level and the change of ideology and organizations on the local level. Therefore, it is important to mention these different internal and external factors when we focus on investments which aim to be for the best of the people like Dominion's rice and fish farm in the Yala Swamp.

This ethnography of a large-scale land acquisition was hopefully successful in giving a better understanding of contested views in the Yala Swamp in the west of Kenya.

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