

# **The global land grab: beyond the hype**

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### 3 | Kenya and the 'global land grab': a view from below

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#### Introduction

During the food crisis in 2007/08, 'global land grabbing' – the acquisition or long-term lease of land in Africa, Asia and Latin America by investors, usually foreign – emerged as a serious concern among smallholder farmers and advocates of food security. Kenya is one country that directly experienced this global land grab; a number of new large-scale foreign investments in land-based enterprises occurred around the 2007/08 crisis,<sup>1</sup> especially in the rich Tana River Delta. However, to Kenya this grabbing was not a fundamentally new phenomenon. In fact, land grabbing is both popularly perceived and academically theorized in Kenya as part of the way Kenyan politics has operated since the days of imperial conquest and colonization, and continuing up to the present.

The protectorate and subsequent colonial government of Kenya set up a system of land administration and governance that privileged access to land for colonial state projects and a narrow band of foreign citizens, companies and investors. In contrast, 'natives' became 'tenants of the crown' (Okoth-Ogendo 1991). In the post-colonial period, local elites consolidated their power and position through exploitation of unreformed laws and the existing administrative system and practices around land. This overall system continued to favour centralized and unaccountable control over land, allowing politically connected actors to accumulate and speculate in land, all the while continuing a history of marginalization and dispossession of the poorer groups in society. It is thus hardly surprising that severe inequality in land access and ownership afflicts the country and, in fact, is getting worse (World Bank 2008).

As a result of this history, land grabbing in Kenya is more broadly understood as the irregular and illegal allocation of a wide array of public land (Republic of Kenya 2002, 2004). Such public land could include anything from small public utility plots to large swathes of forest, as well as agricultural land, which is the primary focus of a growing group of international actors. This means land grabbing impacts not only farmers and pastoralists, agricultural production, food security and forests but also cities. Cities are where rural migrants take refuge and where foreign and local investors also have hotels and other real

estate, and where both informal settlements and inequality are growing. In turn, as these growing urban areas sprawl, often via these same problematic land transactions, this feeds into pressures on valuable ecosystems and agricultural land (Mundia and Aniya 2006). Overall, this makes land grabbing at the local level a more complex phenomenon than is often portrayed in current global discourses, where the notion of a land grab tends to be a 'catch-all phrase to describe and analyze the current explosion of large-scale (trans) national commercial land transactions' (Borras et al. 2011: 210) – usually rural.

Out of this experience, networks of land reform advocates in Kenya focus not only on resisting land grabbing and improving the regulatory environment around land transactions, but also on a deeper transformation of unaccountable land laws and management systems – and on the practices and values that have grown up to normalize and legitimize these systems. This means that the common focus of attention in discussions of the 'global land grab' – large-scale foreign investment in agricultural land – is just a subset of the many kinds of 'grabbing' that are taking place, one of many fronts in the struggle against the manipulation of land rights by powerful politicians and state actors who – as in colonial times – are also the partners and brokers in deals with large-scale investors, if not 'investors' themselves.

For these reasons, this chapter aims to explain and examine the Kenyan experience with land grabbing and the light it can shed on the global land grab debates. We argue for a deeper historical understanding of the political economy and sociology of locally experienced land grabbing – and, very importantly, the movement that aims to transform the current dynamics around land and power. This local lens provides one way to better grasp the kinds of contextual and specific institutional changes required to combat manipulation of land rights by the powerful (indigenous or foreign) and move towards a more just and sustainable order with regard to land tenure and management.

To begin, we briefly show how key land governance institutions, born within conquest, have persisted into the post-colonial period and how they allow for massive manipulation of land – which primarily benefits local elites, especially those with privileged access to state institutions, particularly the Ministry of Lands and the President's Office. While most recent land grabbing in Kenya is domestic, the same institutional structure and network of actors who facilitate local land grabbing also mediate foreign investors' access to land. As a result, as in other parts of Africa, a number of opaque deals have been struck in Kenya for leasing land, exacerbating an already contentious and inequitable situation. However, we situate these large-scale foreign acquisitions of land within a continuous land grabbing practice in existence since colonial times. Without key reforms, increasing pressures stemming from growing demand for arable land, other land-based natural resources and energy are bound to make the existing situation worse.

We also show how resistance to land grabbing – a central part of Kenya's colonial history – re-emerged in force in the 1990s and has continued up to the present, culminating in a movement for reform. This struggle has led to a new policy and institutional and legal framework, including a National Land Policy (Republic of Kenya 2009), Chapter 5 in Kenya's new Constitution (Republic of Kenya 2010), and a set of new land laws aimed at dismantling the old institutions and developing stronger public oversight in land allocations and management. In theory, some of these reforms could dramatically alter general public accountability and decision-making around land allocation, control and use, including the way in which negotiations with external investors will be conducted. However, these changes, emerging out of a long and difficult internal struggle, might yet be subverted and reversed, precisely because the interests around the old system are so great. Finally, we argue that even though the global discourse on the global land grab differs from more localized understandings of land grabbing, this discourse has been helpful to local struggles. By drawing more global attention to the details of how land transactions are conducted and for whose benefit, the focus on the global land grab has helped foster more welcome scrutiny and generate broader support for the kinds of deep institutional reform that need to take place locally.

### **The origins of the system of land grabbing**

The intimate connection between state power and the dynamics of land tenure is central to Kenya's history. Conquest of territory and land, spurred on by geopolitical manoeuvring, resulted in a British Protectorate (1895) and later a settler colony of Kenya (1920). Within this struggle a dualistic land tenure system was set up by the evolving colonial state. This system privileged settlers with individual leasehold (sometimes leases were for a unique 999 years in rural areas) or freehold rights to land. In contrast, using notions from feudal law, Africans were subjects of 'customary law' and as such effectively deemed 'tenants of the crown' (Okoth-Ogendo 1991). This meant that large tracts of fertile land were appropriated for settler or colonial government use, while the state tried to contain 'natives' in ethnically defined reserves. By reducing access to land, common resources and mobility, this reserve system helped generate pressures for Africans to search for labour in settler farms, plantations or the growing towns dotting the railway lines that brought in supplies and moved goods to the ports.

The colonial land tenure system thus entrenched inequality of rights between settlers and natives and gave opaque administrative structures linked to the most powerful office (the governor, later the president and his principal agent, the Commissioner of Lands) enormous discretionary power to blatantly manipulate land rights. This system also created enormous inequalities. By 1944, the amount of land alienated to Europeans, including multinational

corporations, was estimated to be 3 million hectares, of which only 350,000 were actually in cultivation; the number of settlers was 2,000; the number of farms 2,700; and the 'amount of undeveloped land was so extensive that the government was considering the necessity of introducing a tax on undeveloped land' (Meek 1949: 79). To make this land productive, white settlers hired African labourers from reserves who were often allowed to farm some of the land. In this way these 'squatters' put labour into this land and understood this to mean they had legitimate rights over it (Kanogo 1987). In the 1950s, a series of crackdowns, including evictions of African labourer/farmers, precipitated the bloody struggle over land and freedom that would become known to the world as 'Mau Mau'.

As part of what was a vicious counter-insurgency strategy, the state initiated land reform in the native reserves, extending leasehold land rights to certain Africans. The Swynnerton Plan of 1954 involved a break from allowing private land for settlers and 'public' or 'trust' land for natives. It extended land registration, consolidation and leasehold land to the reserves; and with the broad discretionary powers of the state, it did so in a way that favoured collaboration and punished supporters of Mau Mau, some of whom were also put to work in the Mwea rice farm, a state-run agricultural scheme<sup>2</sup> (Clough 1998). The reforms were structured to effectively create allies among collaborating Africans for the existing legal and institutional framework around land. The plan noted that 'in future these able, energetic or rich Africans will be able to acquire more land and the bad or poor farmers less, creating a landed and landless class. This is the normal step in the evolution of a country' (Swynnerton 1954: 10). Ultimately, the violent upheavals of Mau Mau and the horrifying, brutal colonial response helped catalyse independence by 1963.

At independence, how to deal with the thorny questions around land became a central political issue. One political faction, led by Oginga Odinga and Bildad Kaggia, argued for the reappropriation of white farms to settle the landless. In contrast, another faction, led by Kenyatta and Mboya, argued for a gradual approach of buying out white farms. When Kenyatta won the first election and became prime minister (and then later president), this meant that both the gradualist view of land reform and the centralization of power won out (Kanyinga et al. 2008). Land reform in the post-colonial period largely consisted of buying out European farms with World Bank and British government loans and creating settlement schemes.

The aim of these schemes, including the famous One Million Acre Scheme, was to ease the pressures of former Mau Mau and other landless and also to build a multi-ethnic country, with people buying land in schemes if they could afford it or could access a political connection. Scholars throughout the 1970s and 1980s noted that the way these settlement schemes unfolded allowed for manipulation by politicians and administrators and the incorporation of

scheme access into patronage networks (Harbeson 1971; Leys 1975; Hunt 1984; Leo 1984). In line with the Swynnerton Plan vision of the 'wealthy progressive farmer', grants of large farms were made to Kenyatta, his family and politicians associated with him, making them wealthy and often politically influential. Indeed, the Kenyatta family continues to have both large tracts of land and a large stake in Kenyan politics.<sup>3</sup>

### **The Kenyan experience of land grabbing**

While the problems with settlement programmes are widely known and documented, less recognized is the extent to which the colonial land laws and administrative apparatus (including state-run agriculture through entities like the National Irrigation Board) also remained in place in the post-colonial period, facilitating irregular and illegal land accumulation or 'grabbing'. This institutional structure included centralized control by the President's Office and the president's principal agent, the Commissioner of Lands (located in the Ministry of Lands), over lands appropriated by the colonial state and managed by the governor during the colonial period.

Most land in post-colonial Kenya fell under the categories of government (former Crown lands) and trust land (from the 'native reserves'). Both categories of land were highly open to directives from the president via the Commissioner of Lands in the Ministry of Lands. The ministry, which has land offices in the districts, also manages the registries where records of land transfers are made. While some provisions for public input through auctions were originally required for land to be allocated to individuals or companies, this requirement was routinely ignored and eventually dropped altogether. As in other parts of Africa, 'customary' rights were eroded and common property poorly protected within this system (Wily 2011), which was in many ways designed precisely to legalize alienation of those lands.

What this means in practice is that the land-accumulating practices of the connected and powerful, now the African political elite with state ties, persist to this day. This involves exploiting the opaque bureaucratic administrative mechanisms of the Ministry of Lands and a legal framework designed to facilitate land acquisition for the few. In fact, the costs of following the land and planning laws are exorbitant and involve so many actors (who can demand bribes) that this leads to the ubiquity of informal processes whereby networks of politicians and bureaucrats in the Ministry of Lands act as gatekeepers (Musyoka 2004; Ayonga et al. 2010). Those who are in a position to benefit from these processes, both in terms of extracting payments and in terms of accessing land, are bureaucrats and politicians and their financiers and supporters, as well as the many professionals among lawyers, surveyors and developers who assist them (Manji 2012). As in colonial times, manipulating access to land and preying on the dependency created by this system remained

and remains a useful political tool (Klopp 2008; Onoma 2008). Evidence of this is the way that land grabbing tends to spike prior to elections (Klopp 2000; Republic of Kenya 2004; Onyango 2012).

### **From resistance to reform**

While Kenya's history has been filled until recently with struggles around land, its management and distribution, democratic space did not exist for a national public dialogue on how to address the glaring problems of land maldistribution, misgovernance and mismanagement. The opening of political space through the often violent and difficult struggles for democratic change in the 1990s allowed for much more public exposure of what Kenyans called 'land grabbing' or the irregular and illegal accumulation of public lands by the politically connected. An emboldened and often courageous press began to report on irregular accumulation of key public lands such as forests, school compounds and High Court grounds by politicians and bureaucrats, and also chronicled the numerous public protests against this 'grabbing' (Klopp 2000).

In response to mounting public alarm and civil society activism, in November 1999 the government appointed a commission led by former attorney-general Charles Njonjo to look into the land law system. The resulting report revealed widespread public concern over the need to curb presidential powers over land, to harmonize and clarify the law, and overall to add more public oversight to land matters more generally (Republic of Kenya 2002). This concern also emerged within countrywide consultations on constitutional review at the time. Indeed, an overview report on Kenya's constitutional review process in 2001/02 identified land as a key issue of public concern and noted that 'the majority of those interviewed complained bitterly about a repeat of what happened during the colonial period. People in positions of authority are grabbing land left, right and centre' (Kituo cha Katiba 2002: 24).

In December 2002, an opposition coalition won a historic election. This resulted in the first transfer of power from the political party (the Kenya African National Union) which had been in power since independence and which had effectively colonized the state, to the National Rainbow Coalition (NARC), led by Mwai Kibaki. Mwai Kibaki was sworn in as the new president with promises to reform the Constitution. Widespread anger at land grabbing in the run-up to the election prompted the new president to appoint the Presidential Commission of Inquiry into the Illegal and/or Irregular Allocation of Public Land (Ndung'u Commission). Unsurprisingly, it faced many challenges in terms of adequate budget and also lack of cooperation by the lands' administration and provincial administration under the President's Office. Despite the fact that the commission included several permanent secretaries, including the one in charge of corruption in the President's Office, many officials colluded in forestalling investigations and public hearings on knotty land grab cases

involving the former president and other public officials. Clearly, these officials had an interest in holding back crucial self-incriminating information. Nevertheless, the final report from the commission revealed an enormous loss of public lands (at least 246,965 hectares of trust and government lands) in irregular and outright illegal deals, often linked to politicians, bureaucrats and their briefcase companies registered for the purpose of acquiring land in an irregular way (Republic of Kenya 2004; Syagga and Mwenda 2010). The costs to the public purse are staggering to consider.<sup>4</sup>

In 2003, the NARC government, which included some reformers, moved forward slowly on a fledgling land policy reform process. Significantly, for the first time this process led by the Ministry of Lands engaged civil society organizations. Fourteen regional consultations and other stakeholder meetings took place to review and critique emerging issues and recommend their redress in a new draft land policy, which now included civil society feedback.<sup>5</sup> Key to the process was the Kenya Land Alliance (KLA), which emerged as a way to constructively engage in the complex land problems and struggles that had intensified in the 1990s. The KLA is 'a not-for-profit and non-partisan umbrella network of Civil Society Organisations and Individuals committed to effective advocacy for the reform of policies and laws governing land in Kenya',<sup>6</sup> and it involves a variety of civil society organizations, which made up the thematic teams that looked at specific categories of land problems, ranging from pastoralist to urban informal settlement issues. The KLA very capably led the effort, organizing meetings and pushing the government towards change.

One interesting element to the reform process was the shifting position of international donors. During the Cold War, land reform, associated with leftist politics, fell off the agenda. In the 1980s and 1990s, which were dominated by the 'Washington Consensus', the focus was on protecting private property rights within structural adjustment. With the end of the Cold War, the failure of structural adjustment programmes and deepening concerns about both poverty and growing inequality, land reform has since returned as a focus, bolstered by research suggesting the importance of equitable land distributions and policies for development (De Janvry and Sadoulet 2002; World Bank 2005). Yet land reform had never fallen off the agenda in Africa; rather, it was simply suppressed. With democratization, concerns around land inequalities and problematic land-use decisions leading to poverty, deforestation, urban sprawl and other issues became part of a public debate that international development actors could hardly ignore.

In Kenya we see this shift in global development discourse and its impact. After years of shying away from land issues as 'too sensitive', a number of key donors began to encourage the government-led land policy reform initiative by providing technical and financial support to both the government and the KLA. In 2004 the Kenya Development Partners Group on Land (DPGL)<sup>7</sup>

came together to support the Ministry of Lands 'in the development of a land policy framework, which deals with historical injustices, informal settlement upgrading and urban land management'.<sup>8</sup> However, despite this rhetoric, most support has been for the more technical, ostensibly less political, goal of introducing a better Land Information Management System.

Current progress on land reform also accelerated in response to the violence emerging out of the highly contested election in December 2007.<sup>9</sup> The National Accord brokered by Kofi Annan and signed by the two warring sides, Mwai Kibaki (Party of National Unity) and Raila Odinga (Orange Democratic Movement), stipulated the need for constitutional change, including reform of land governance. Some progress has been made five years on. On 3 December 2009, Sessional Paper No. 3 of 2009 on National Land Policy was passed and became official policy. Many of the changes proposed in the Sessional Paper made it into Chapter 5 of the new Constitution on Land and Environment. In 2011 an Environment and Land Court Act was passed, and, as of November 2012, sixteen judges have been appointed to the court and more will be needed for deployment in more marginalized areas with major land problems.

Key land legislation has also been repealed and replaced by three Land Acts that passed and became law in 2012 (the Land Act, the National Land Commission Act, and the Land Registration Act). And yet another key piece of legislation, to manage 'community lands' (including former trust lands), is in the process of being formulated.

Overall, key elements of existing reform include establishing an independent National Land Commission, rewriting and harmonizing fragmented and overlapping land laws, digitizing and rendering land records transparent to the public, and creating instruments to provide disincentives to hoarding land (better records and taxation, land ceilings). While these reforms could foster new levels of transparency and accountability around land transactions, all of them are facing various levels of resistance in the implementation phase.

Take, for example, the establishment of an independent National Land Commission. According to the Constitution (Section 67, Chapter 5), this new body is to a) manage public land on behalf of the national and county governments; b) recommend a national land policy to the government; c) advise the national government on a comprehensive programme for the registration of title in land throughout Kenya; d) conduct research related to land and the use of natural resources; e) initiate investigations on its own initiative, or on a complaint, into historical land injustices and recommend appropriate redress; f) encourage the application of traditional dispute resolution mechanisms in land conflicts; g) assess tax on land and premiums on immovable property in any area designated by law; and h) monitor and have oversight responsibilities over land-use planning in the country. Public land is now defined (Section 62, Chapter 5) as including the former unalienated government land that was

previously governed by the now repealed Government Lands Act. It was this Act which gave the president and his principal agent, the Commissioner of Lands, too many opaque powers of allocation. Thus, this reform is designed to give local people more say over public land through direct participation and indirect representation through democratic county assemblies, with the National Land Commission helping them administer land and set land policy. This is intended to help curb the abuses so clearly articulated in the Njonjo and Ndung'u commissions (Republic of Kenya 2002, 2004) and democratize decision-making over land use.

Despite the passage of the National Land Commission Act (2012), which stipulates that the president should appoint the commissioners seven days after receiving their names, the president delayed in appointing the commissioners vetted by parliament. It was only after two citizens (one from Turkana and the other from Mombasa), supported by the Economic and Social Rights Centre (Hakijamii) and the Kenya Land Alliance, took the president to court and he was deemed in violation of the law that he formally gazetted the commissioners. Fears further exist that the commission will be undermined by both lack of budget appropriations in the 2012/13 National Budget for its functioning and the attempt by the Ministry of Lands to have the commission hire ministry officials and have the new commission generally dependent on the ministry. Furthermore, the current law maintains the land registry within the ministry, and sorting through ministry records and rendering them open and transparent will be a serious struggle for the commission and civil society. Finally, the process of developing the new land laws, led by consultants, has been poorly organized, with inadequate discussion and participation by independent experts and the public (Manji forthcoming). This fact and the existence of errors and inconsistencies in language have given rise to pressures for review, which is currently taking place. Overall, then, the process of reform is only just beginning; but if the intent and spirit of the new legal and policy framework are followed, it will be more difficult to allocate large tracts of public or community land against the will and interest of local communities.

### The 'global land grab' viewed from Kenya

At the same time as reform networks such as the KLA struggled to get new policy, legal and institutional frameworks into place to create more transparency, accountability and inclusion in decision-making about land, the spike in global food prices hit in 2007/08. Like other parts of the world, Kenya experienced a number of new large-scale investments in land-based enterprises. In Table 3.1 we have tried to summarize these investments, although – because of the poor transparency of some of these deals – it was not always easy to access up-to-date and accurate information (Makutsa 2010; Nunow 2013). What

is shown in the table is derived from various media and policy sources and was cross-checked whenever possible.

From this summary, we can make a number of observations. First, a number of these investments preceded the 2007/08 crisis, the most prominent case being the ongoing and controversial Yala Swamp project of Dominion Farms Ltd. Begun in 2003, it aims to produce food, some ostensibly for local consumption.<sup>10</sup> This project reflects the fact that prior to the food crisis, Kenya had a long history of large-scale commercial farming and an official policy of encouraging foreign investment in such farms, dating from colonial times to the present (Smalley and Corbera 2012). Institutions that allow political access to trust land (now community land) facilitate this process by providing access to large tracts of land to companies via political brokers within the system. In the Yala Swamp case, politicians, including the then prime minister's brother and local councillors from Siaya and Bondo county councils, were the brokers (FIAN 2010; Makutsa 2010). Local councils, custodians of former 'trust lands', have been notorious for withholding information, failing to hold public consultations, and distorting decisions for private gain (KARA 2011). Makutsa, in her study for the Eastern Africa Farmers' Federation, noted that 'in most cases the local authorities do not present the proposals to the communities that will be affected', although they do sometimes hold meetings to introduce the investor (2010: 28).

Secondly, we observe that many proposed investments have stalled, becoming entangled in legal battles and facing resistance from below. If a project has begun at all, such as in the case of Bedford Biofuels, farming is occurring on only small portions of the entire land ostensibly allotted. Another obstacle for a number of companies, including Bedford Biofuels, is obtaining a licence from NEMA,<sup>11</sup> a process that can take many years. In the cases of Jatropha Kenya Ltd, which had already cut down precious Dakatcha forest to plant part of its crop in Malindi, a licence was denied. The environmental and social impact assessment process in Kenya is still flawed from the point of view of protection of local communities and their environment. Little emphasis is placed on the social impacts within the assessment process. Furthermore, the way environmental impact assessments are conducted by investors themselves can raise conflicts of interest that corrupt the process (Barczewski 2013). Nevertheless, the licensing process has slowed down a number of these projects, creating space for more public dialogue and mobilization.

It is worth noting that some projects have in fact been cancelled. One of the most prominent cases is the proposed project by the Emirate of Qatar to grow food for export in exchange for financing to build a port at Lamu, on the Kenyan coast.<sup>12</sup> Another is G4 Industries, which pulled out citing environmental concerns. Overall, one striking aspect is the extent and success of local resistance to these deals. This resistance emerges both from local

TABLE 3.1 Summary table of some recent large-scale land investments in Kenya

Investor	Investor country	Sector	Crop	Hectares	Location	Official start date and status
HG Consulting	Belgium	Food	Sugar cane	42,000	Homa Bay	Begun in 2007. Continuing
Bedford Biofuels	Canada	Energy	Jatropha (60,000 ha)	160,000 (perhaps acquiring an additional 200,000)	Tana River Delta	Begun in 2008. First crops planted 2011 (19,000 ha). Ended in 2013.
Biwako Bio-Laboratory	Japan	Energy	Jatropha	30,000	Kwale	Begun in 2007. Status unclear
Bioenergy International	Switzerland	Energy	Jatropha	93,000		
Green Power Holding AG	Switzerland	Energy	Jatropha	30,000		
Tiomin Kenya Ltd	Canada/ local subsidiary China	Mining	Titanium	20,000	Kwale	Begun in 2006 (mining licence acquired). Project stalled
Galole Horticulture Project	Kenya	Food	Maize	5,000	Tana River Delta	Status unclear
Xenerga & Eurofuel tech	Germany/ USA	Energy	Jatropha	100,000		Status unclear
Emirate of Qatar	Qatar	Food		40,000	Tana River Delta	Begun in 2008. Frozen and cancelled

Investor	Investor country	Sector	Crop	Hectares	Location	Official start date and status
G4 Industries	England	Energy	Oil seed	28,911	Tana River Delta	Begun in 2008. Cancelled 2011
Tana and Athi Rivers Development Authority (TARDA)-Mat International		Food	Sugar	120,000	Tana River Delta	Agreement signed in 2005. Ongoing
TARDA-Mumias Sugar Company	Kenya Govt/ Para-statal	Food	Sugar/rice	28,680 Possible additional 40,000 for food	Tana River Delta	Lease 1995; title 2008. NEMA grants conditional licence for 5,000 ha rice farm 2009. Court ruling upholds rights. Ongoing
Yala Swamp-Dominion Farm	USA	Food	Rice/fish	6,900	Nyanza	Begun in 2003. Ongoing
Jatropha Kenya Ltd/ Nuove Iniziative Industriali	Italy/ Kenyan subsidiary	Energy	Jatropha	50,000	Malindi	Begun in 2009 NEMA denies licence for 10,000 ha pilot (2012)



actors who feel excluded from the negotiation process and access to resources, and from environmental organizations, local and foreign (Dixon 2013). Often these groups work in tandem to form a coalition, challenging the viability and raising questions about the likely impacts of these projects, using the media, protests and institutional mechanisms – such as public meetings, the environmental impact assessment and licensing process, and the High Court – to argue their case.

Another important observation is that a considerable number of investors are in fact government bodies, Kenyan companies or Kenyan individuals. In particular, the Tana and Athi River Development Authority (TARDA), a state corporation, has been involved in separate deals with Mumias Sugar Company, a public company, and Mat International, a private Kenyan company, to develop large-scale sugar cane plantations and create energy from the waste. Interestingly, in their study comparing the TARDA-Mumias Sugar and Bedford Biofuel deals, Smalley and Corbera found that the outside investor, Bedford, negotiated to formalize and recognize local land rights in a more collaborative way, while TARDA attempted to override local claims (2012: 1065).

Finally, a number of these investments are clearly linked to the push for biofuels and the new opportunities arising in this area. To the extent that critiques of jatropha as a biofuel gain force,<sup>13</sup> we can expect some of the pressure on farmland for this crop to possibly decline. However, the struggle to appropriate the last remaining commons in Kenya, such as in the Tana River Delta or Yala Swamp, will no doubt continue.<sup>14</sup>

## Conclusions

The struggle to appropriate land for large-scale farming in Kenya against the claims of local people, including smallholder farmers and pastoralists, and without recognition of the environmental functions of many commons, has deep historical roots. Thus, even prior to the food crisis in 2007/08, Kenya was experiencing attempts by new foreign investors to access land for plantation farming, a practice which has continued uninterrupted from colonial times in many parts of the country. Current investment and agricultural policy and institutional frameworks around land are skewed in favour of opaque, top-down and politically negotiated deals, not only with foreign companies but also with Kenyan firms and public entities such as TARDA. Strikingly, official discourse still tends to favour 'progressive (i.e. wealthy, large-scale) farmers', much as the Swynnerton Plan did in 1954. This is to the disadvantage of smallholder farmers, who require more critical assistance to access land and improve productivity, but still provide the best bet for food security, environmental stewardship and equitable economic growth in the region (Rugasira 2013).

Nevertheless, large-scale deals to acquire or lease land have been confronted by substantial resistance, resistance that we expect to grow in the context of

Kenya's reform movement. We have shown that advocacy efforts in the last two decades have led to nascent, fundamental reforms, which, if successful, will help open up decision-making around land and rein in all forms of what Kenyans understand as land grabbing, including large-scale allocations of agricultural land. These reforms will also open up new venues such as the Environment and Land Court, county government and County Land Management Boards for local citizens and experts to have more say in how their land is managed and used and by whom. We have seen that movements against large-scale farming have already effectively used political spaces to mobilize, stall or halt a number of projects. With a more level legal and institutional environment, we can expect these public dialogues and mobilizations to gain strength.

Kenya has made impressive strides in terms of putting land governance and management on a more equitable, sustainable and ethical foundation; but relative to the need for change, the progress in implementing the new land governance system is slow. Members of the political class who have gained access to land by irregular and illegal means, their companies and foreign partners, and the banks, which have lent large sums of money based on land as collateral, will all try to undermine and stall changes to the status quo. Another roadblock to reform is the link between the political class and the landed and bureaucratic class that has benefited from facilitating these transactions. This is a strong and powerful constituency, which will resist land tenure reform and any measures, such as taxation, that hint at redistribution. Thus, it is hardly surprising that the Kenya Landowners Association has emerged as the National Land Policy's fiercest overt critic, determined to sabotage the new land policy and laws through legislative revision.

As the details of the land reform agenda are worked out through legislation and negotiation, there is a strong possibility that it can be undermined. For example, there are deliberate inconsistencies and typology errors in the new land laws that can either defeat or undermine the accountability and independence of the National Land Commission, and its yet-to-be-established devolved offices at county government level. Finally, implementation and institutionalization of legislation may also be subverted at the stage of providing guidelines, budget and staff for new institutions. Strong public awareness, pressure and input will be critical to avoid this.

Much will also depend on reformers within the state who are not aligned with these interests, and their supporters in civil society and among the wider public. Wider reforms will require resources, facilitation and careful implementation by the state. Since the current land tenure system and land distribution adversely affect large numbers of people, including businesses and developers locked out of land by the opaque dealings of the politically connected, a broad and populous coalition for reform is possible, utilizing democratic spaces.



In the end, the current large-scale land acquisitions in Kenya, exacerbated by global trends, including the search for biofuels and new investment opportunities by Wall Street, represent the last frontier of expansion for large-scale farming into the remaining rangelands, commons and areas where smallholder farmers have particularly poorly protected claims for historical reasons. Whether internal democratic and constitutional reform movements can finally enable a break from Kenya's long history of land injustice and dispossession and put the country on to a more equitable and sustainable trajectory remains to be seen. For now, to the extent that debates over the 'global land grab' help to raise critical questions about Africa's often weak and, in many cases, still-to-be-decolonized land governance systems, these debates play a constructive role. However, we need to get beyond the hype and move towards concrete, constructive support for local movements struggling with the complex and difficult task of transforming existing governance systems. These are the systems that enable the sidelining of large numbers of citizens and the allocation of shockingly large tracts of land to small numbers of state entities, companies and individuals for their often problematic and destructive projects.

## **Latin America**