

**REPUBLIC OF KENYA**



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**THE COUNTY ASSEMBLY OF SIAYA**

**FIRST ASSEMBLY –THIRD SESSION-2015**

**REPORT OF THE JOINT COMMITTEE ON AGRICULTURE,  
TOURISM, WATER AND DELEGATED LEGISLATION ON  
YALA SWAMP**

**CLERK’S CHAMBERS,  
COUNTY ASSEMBLY OF SIAYA,  
ASSEMBLY BUILDINGS, SIAYA DECEMBER, 2015**

## **ACRONYMS**

<b>CGS</b>	County Government of Siaya
<b>MoU</b>	Memorandum of Understanding
<b>NEMA</b>	National Environmental Management Authority
<b>KWS</b>	Kenya Wildlife Services
<b>SOPA</b>	Seeds of Peace Africa
<b>WARMA</b>	Water Resource Management Authority
<b>EMCA</b>	Environmental Management and Coordination Act
<b>EIA</b>	Environmental Impact Assessment
<b>NGC</b>	National Governing Council
<b>DDC</b>	District Development Committee
<b>CECM</b>	Chief Executive Committee Member
<b>LBDA</b>	Lake Basin Development Authority
<b>CSOs</b>	Civil Society Organizations
<b>SEA</b>	Strategic Environmental Assessment
<b>LUP</b>	Land Use Plan
<b>FOYS</b>	Friends of Yala Swamp
<b>CIAG</b>	Community Initiative Action Group Kenya
<b>NLP</b>	National Land Policy
<b>YSGF</b>	Yala Swamp group of Farmers
<b>CECM</b>	County Executive Committee Member

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## **1.0 PREFACE**

*Mr. Speaker Sir,*

It is my honor and pleasure to present to this Honorable House, the report of the Joint committee on Agriculture, Tourism, Water and Delegated Legislation on Yala Swamp.

## **2.0 BACKGROUND**

*Mr. Speaker Sir,*

The Task Force on Yala Swamp was formed on 28<sup>th</sup> April, 2014 by His Excellency the Governor, County Government of Siaya Cornell RasangaAmoth, with a view to looking into certain specific issues of concerns to the people around the swamp, especially those living around the areas where Dominion farms have a presence. The main terms of reference for the task force were;

1. Establish the full physical extent of the Yala Swamp falling within the jurisdiction of Siaya County;
2. Establish the extent and utilization by acreage of the swamp including the activities being undertaken therein;
3. Establish the impact of the activities on the community and county and benefits thereto e.g. environmental, economic, social, Political etc.
4. Establish the various allocations and whether they are shared or individually owned;
5. Establish who allocated the swamp to whom and what procedures, if any, was used in allocation;
6. Establish the current status of the agreement(s) and validity thereof
7. Secure the necessary documentations touching on the swamp, among other issues that His Excellency the Governor or the task force may determine to do in the course of undertaking its activities.

**Mr. Speaker Sir**, the report was tabled in the plenary and the Chair directed that a Joint Committee be formed comprising of Committees on Agriculture, Livestock, Fisheries and Irrigation; Environment, Water & Sanitation, Tourism, Wildlife Conservation and ICT and Delegated Legislation & Legal Affairs for action.

### 3.0 COMMITTEE'S MANDATE

*Mr. Speaker Sir,*

The Joint Committee was established under Standing order No. 183 and was mandated to conduct an in-depth analysis of the recommendations of the Task force report on Yala swamp and determine their legal, economic, environmental and socio-political implications on the local community and the swamp. The committee was also to consider the challenges facing the swamp in general, and make recommendation on how to resolve them with the view to enhancing sustainable utilization of the natural resource for the benefit of the residents of Siaya County.

### 4.0 COMMITTEE COMPOSITION

*Mr. Speaker Sir,*

The Joint Committee was constituted through the Chair's ruling on 25<sup>th</sup> March 2015 and comprised of fourteen (14) Members as follows:

<b>NO</b>	<b>NAME</b>	<b>POSITION</b>	<b>COMMITTEE REPRESENTATION</b>
1	Hon. Jared Abayo	Chairman	Tourism & Wildlife Conservation & ICT
2	Hon. Joseph Agoko	Vice Chairman	Agriculture, Livestock, Fisheries & Irrigation
3	Hon. Elisha OmondiOkuku	Member	Environment, Water & Sanitation
4	Hon. Sylvester Madialo	Member	Delegated Legislation & Legal Affairs
5	Hon Nicholas Aneme	Member	Tourism & Wildlife Conservation
6	Hon. Hilda Otieno	Member	Delegated Legislation & Legal Affairs
7	Hon Willis Ochieng	Member	Agriculture, Livestock, Fisheries & Irrigation
8	Hon. Sylvia Migaya	Member	Tourism & Wildlife Conservation
9	Hon. Pamela Midumbi	Member	Environment & Water
10	Hon. ZilpaOmondi	Member	Agriculture, Livestock, Fisheries & Irrigation
11	Hon. Joshua Osuri	Member	MCA South East Alego
12	Hon. Peter Muhula	Member	Delegated Legislation & MCA, West Alego
13	Hon. Peter LolweOmbee	Member	Water & Environment
14	Hon. Leonard Oriaro	Member	MCA, Central Alego
15	Hon. Booker Otieno	Member	Delegated Legislation & Legal Affairs

## **5.0 EXECUTIVE SUMMARY**

*Mr. Speaker Sir*, Yala Swamp is a wetland region that borders Busia and Siaya Counties. The size of the wetland is contested but estimates put the size at approximately 17,500Ha according to some studies, it is therefore not clear how much of the swamp is found within Siaya County.

In 2004, the Dominion Farms Limited was allowed to get into the Yala Swamp through an MoU and Lease Agreement signed by the defunct Siaya and Bondo County Councils. The arrival of the investor brought hope to the local community but unfortunately certain unresolved challenges arose. Sir, His Excellency the Governor therefore formed a Task Force team on 28<sup>th</sup> April 2014 with a view to looking into these challenges within the jurisdiction of Siaya and any other issues that affect the swamp and its surrounding communities.

The taskforce report was then tabled in the Assembly Plenary and the Chair directed that a Joint Committee be formed comprising of selected membership from the Committees on Agriculture, Water, Tourism and Delegated Legislation to scrutinize and critique the task force report with a view of coming up with lasting solution to the eminent issues bewildering Yala swamp. The joint Committee adopted several methodologies in a bid to execute its mandate, which included interaction with various stakeholders, field visits and review of the existing secondary information among others.

One of the key findings that the Joint Committee makes; is the glaring absence of land demarcation plan that delineates the varied land uses within the Swamp especially the area under Dominion Farms and the community land boundaries. The lack of clarity on where the farm starts and ends and where the community land begins is the major cause of constant conflict between the community and Dominion Farms. The Committee further noted that Dominion farms appear to have started using 3,200ha, of land that had not been officially leased to them, which if established to be true constitutes an illegality.

This scenario provides justification for the committee's strong recommendation that a comprehensive survey of Yala Swamp should be undertaken to map out the extent of community land against the land that has been leased to Dominion Farms. The committee further recommends that the MoU and the Lease Agreement be re-visited to become instruments for peaceful co-existence between the investor and the community.

## **6.0 INTRODUCTION**

*Mr. Speaker Sir,*

Yala swamp wetland is a trans-boundary wetland lying between Siaya and Busia Counties, located on the north-eastern, shoreline of Lake Victoria. It is a biodiversity conservation habitat for indigenous and endangered fish, bird and mammal species. It is one of the most important riparian and floodplain wetlands around the lake, and indeed the third largest in Kenya after Lorian Swamp and the Tana Delta, covering an area of approx 17,500 Ha. The swamp forms the mouths of both rivers Nzoia and Yala and is a freshwater wetland arising from backflow of water of Lake Victoria as well as the rivers' floodwaters. The swamp contains three freshwater lakes, Kanyaboli, Sare, and Nyamboye. It is a highly productive ecosystem and therefore a major source of livelihood to the local communities.

The Yala swamp is one of the most fragile ecosystems around Lake Victoria and to conservationists the swamp should be treated as Kenya/East Africa's national heritage, shared resource of Lake Victoria and one of the wetlands in E. A. with the highest number of biodiversity and a museum for lost species of Lake Victoria. The swamp has a filtering effect on the waters draining into Lake Victoria. It buffers the lake by retaining nutrients, sediments and prevents organic pollution load from reaching the lake. The lake is at risk from over exploitation of the natural resources by the heavy investments by the Dominion Farms Ltd, a host of other private developers as well as the communities within this ecosystem. In this regard, its unique values and importance are in the process of being permanently damaged.

The swamp harbours endangered fish species, some of which have disappeared from Lake Victoria. The critically endangered sitatunga antelope still lives in the swamps' papyrus. Ramogi hills, a sacred site to the Luopeople, is also found within the swamp. Birdlife International classifies the Yala Swamp among Kenya's 60 important bird areas for its large flocks of birds and endemic species. Yala swamp is a Ramsar site and therefore a wetland of international importance. Kenya as a signatory of the Ramsar Convention is obligated to ensure the wise-use of the wetland. However, currently Dominion Farms Limited, an Oklahoma-based company has with authority from the County Government converted part of Yala Swamp into a massive industrial agricultural operation that produces rice, sugarcane, bananas, and tilapia etc.

***Mr. Speaker Sir,***

Yala Swamp is a major natural resource to Siaya County and Kenya at large with a lot of unexploited potential. The Swamp has great socio-economic potential in the area of tourism with the existence of lake Kanyaboli, Ramogi hills and the rare *Sitatunga*, sports tourism-including boat racing on L. Kanyaboli; commercial agriculture notably aquaculture, livestock production, and horticulture.

Despite the great potentiality depicted above, Yala Swamp has continued to experience a myriad of problems such as over exploitation of Swamp resources by local community, poor road networks within the swamp, destruction of natural breeding grounds in the ecosystem, perennial flooding, and human- wildlife conflict of which, this report seeks to propose interventions with the view to finding a lasting solution. In addition, in 2004, the Dominion Farms limited was allowed to get into the Yala Swamp through an MoU and Lease Agreement signed by the defunct Siaya County and Bondo County Councils. The arrival of the investor brought hope to the local community but unfortunately certain unresolved challenges arose.

***Mr. Speaker Sir,***

AlegoUsonga Constituency of which Yala Swamp is part covers three (3) divisions of Boro, Karemo and Uranga with a total of four (4) locations and nine (9) sub-locations. The total population according to 2009 census was 30,951 within an area of 192 Km<sup>2</sup>. The most densely populated sub-location is Kaugagi/Hawinga with a population density of (313) while the least is Sumba at 114. The details of population of the area are given in Table 1.

**Table 1: Population of Divisions of Siaya County covered by Yala Swamp**

DIVISION	LOCATION	SUB/LOC	NO. HHS	MALE	FEMALE	TOTAL	AREA KM <sup>2</sup>	DENSITY
BORO	SOUTH	Obambo	851	1557	1778	3335	19.5	171
	CENTRAL	Kadenge	1124	2167	2023	4190	18.5	226
KAREMO	SOUTH	Bar Olengo	682	1384	1561	2945	21.7	136
	ALEGO	Mur Malanga	815	1598	1820	3418	23.6	145
URANGA	SOUTH	Gangu	940	1771	2120	3891	13.9	280
	WEST	Kaugagi/Hawinga	967	1786	2163	3949	12.6	313
	ALEGO	Sumba	985	1882	2127	4009	35.3	114
	USONGA	Nyadorera `A`	1413	2349	2865	5214	20.4	256
		Nyadorera `B`	1144	2037	2341	4378	26.5	165

*Data Source: Kenya Population Census-2009*

Bondo Constituency has two divisions covered by the Yala Swamp; Usigu, which is composed of four locations of Central Yimbo, East Yimbo, North Yimbo and West Yimbo with seven (7) sub-location. Of these, the most densely populated sub-location is Usenge (820) and the least Got Ramogi (111). Maranda Division, which forms the second division in Bondo, has one (West Sakwa) location located within the wider Yala swamp with only one sub-location of Usire with a population density of 132. The entire population of the two divisions is 44,754. Other details are included in the table below;

**Table 2: Population of Division of Bondo County covered by Yala Swamp**

DIVISION	LOCATION	SUB/LOC	NO. HHS	MALE	FEMALE	TOTAL	AREA KM <sup>2</sup>	DENSITY
USIGU	CENTRAL	Got Ramogi	791	1658	1773	3431	30.9	111
	YIMBO	Usigu	1100	2326	2460	4786	24.6	195
	EAST	Othach	1136	2437	2645	5082	30.2	168
	YIMBO	Pala	955	2098	2179	4277	21.1	203
	NORTH	Barkanyango	536	1211	1141	2352	17.0	138
	YIMBO	Got Agulu	1338	2726	2779	5505	13.5	408
	YIMBO	Usenge	4142	7964	8237	16201	19.8	820
MARANDA	WEST SAKWA	Usire	720	1570	1550	3120	23.7	132

*Honorable Speaker,*

In an endeavor to execute its mandate, the Committee adopted a multi-dimensional approach by undertaking the following:

1. Reviewing of the Task force report
2. Attending relevant workshops and seminars on Yala Swamp
3. Convening consultative meetings with stakeholders including the CSOs, Dominion Farms Limited, and relevant government agencies
4. Public hearings and field visits.
5. Reviewing of Secondary data/information on Yala swamp
6. Reviewing the status of compliance with MoU and Lease Agreements by Dominion Farms Ltd.

## **7.0 COMMITTEE MEETINGS**

### **7.1 Review of the task force report**

*The Honorable Speaker,*

The first step the Joint Committee took was to analyze the task force report with special emphasis on the findings and recommendations. The objective of this analysis was to verify the facts stated in the report, consider the findings and recommendations and find out gaps if any. This analysis therefore informed subsequent work plan of the Joint Committee.

It's important to note that the committee concurred with the Taskforce on a number of issues on one hand but also challenged others as covered later in this report. For instance both the Taskforce and the Joint committee agree on the need to re-look at the MOU with the view to determining the extent of compliance. On the other hand, recommendation by the Taskforce to reduce the height of the weir to 5.5m as recommended by the government in order to reduce flooding, the committee could not determine the source of this information. It therefore requires validation. In this regard, the committee could only confirm the height of 4.6m as specified in the WARMA permit of 2006.

## **7.2 Attending workshops and seminars on Yala Swamp**

*Mr. Speaker Sir,*

Prior to the presentation of the taskforce report to the County Assembly and subsequent ruling by the Chair that led to the formation of a joint committee, the Committee on Tourism, Wildlife Conservation & ITC had organized a retreat on 13<sup>th</sup> January 2015 at Namsagali hotel with the aim of reviewing the development plans for Yala swamp and the associated challenges arising thereon. The CECs, Chief Officers, directors and chairpersons of Tourism, Agriculture & Environment & Water sectors/committees, Tourism committee members, representatives of KWS, NEMA, WARMA, Nature Kenya and Members of County Assembly of the 5 wards surrounding the swamp totaling to 29 attended this seminar. This retreat laid the foundation for this work and its recommendation for the formation of a joint working committee is noteworthy.

Secondly, on 19<sup>th</sup> August 2015, 5 members of the committee attended the Yala Swamp Land Use Plan (LUP)/Strategic Environmental Assessment (SEA) process workshop with county leaders and stakeholders at Villa hotel, Siaya. The workshop was organized by Nature Kenya in collaboration with other national government agencies and departments i.e. NEMA, National Land Commission, Ministry of Water & Sanitation including representation from Busia County Government. The ultimate goal is to develop a land use plan for River Yala delta borrowing on the previous experiences from the successful development of the Strategic Environmental Assessment and R. Tana Delta Land use plan (*copies available*). A similar stakeholders consultative meeting was held on 25<sup>th</sup> and 27<sup>th</sup> Nov 2015 at Rastopark Hotel, Busia where Yala Swamp SEA and Land use plan progress report was presented to the stakeholders from Siaya and Busia counties for input. The County Government was well represented in these meetings

## **7.3 Meeting with Government Agencies/Departments**

*Mr. Speaker Sir,*

The Committee organized consultative workshops and meetings where key stakeholders gave their views. These stakeholders include; taskforce members, National Environment Management Authority (NEMA), Kenya Wildlife Service (KWS) etc. On 7<sup>th</sup> April 2015, the Joint Committee held a meeting with the Task force Members from the Executive. The meeting was convened to further interrogate the task force members on their scope, methodology, findings,

recommendations and any other incidental issues that may have not been fully addressed in the content of their report. The Joint Committee made a commitment to pursue the areas of controversy with all the affected parties to bring into view a clearer understanding of the facts and propose solutions thereafter.

***Mr. Speaker Sir,***

The Joint Committee also held a meeting with Mr. Peter Ombweke, the Kenya Wildlife Service Warden at Lake Kanyaboli. This meeting's objective was to receive updates on the experiences of KWS as they worked in the swamp with regard to the gazetted Lake Kanyaboli National Game Reserve. It was further meant to interrogate and come up with recommendations on the challenges and possible opportunities within the swamp with regard to the Wildlife Conservation & Tourism development in the County.

The Joint Committee explored the current potential of Yala swamp in-terms of tourism and more importantly the conservation of the ecosystem. He stated that peaceful and sustainable co-existence between the local communities, Dominion Farms and KWS and the human and wildlife conflicts were crucial agenda that needed to be explored. The committee observed that the local people had extensively cleared large tracks of land particularly in Yimbo East and Usonga for agriculture and other uses leading to loss of trees, papyrus, and habitats for various animals and fish species. He added that wild pig is the greatest danger to the farms and that the areas where there is constant human- wildlife conflict include West Alego, Yimbo East, and Usonga. .

The Joint Committee further held a meeting on 20<sup>th</sup> April, 2015 with MrLeonardOfula, the County Director of NEMA to brief the committee on their past activities within Yala Swamp. NEMA is a regulatory authority established under the Environmental Management and Coordination Act (EMCA) No.8 of 1999 as the principal instrument of government in the implementation of all policies to the environment. Mr. Ofula explained that there has been an allegation that the Dominion Farm Limited had compromised them and he made it clear that this was not the case. It was also clear that NEMA has not approved a number of activities in the swamp hence there could have been disregard to environmental regulations that govern usage of such wetlands.

## **7.4 Meeting with other stakeholders**

### ***The Honorable Speaker,***

In a bid to get a deeper understanding of the issues bedeviling Yala Swamp, the committee felt that there was need to engage with other stakeholders. In this regard, the committee met Dominion Farms Limited Management and the Farms Legal Team, representatives of Seeds of Peace Africa (SOPA), Friends of Yala Swamp Network and Nature Kenya. The Joint Committee therefore met and interrogated the Managing Director of Dominion Farms Limited, Mr Philip Otieno Abir on 18<sup>th</sup> May 2015. The purpose of this meeting was to get first hand responses on critical issues that had been raised against the farm management by the local community and the other stakeholders who have worked in the swamp and its environs.

During the engagements, Mr. Abir was of the opinion that majority of the residents were not fully conversant with the potential benefits the farm had in store for them; and this was one of the reasons for occasional hostility and misunderstanding between the two parties. He felt that there is increased interest in the swamp by new players, each with its own unrevealed objective. He added that some had even taken them to court, hampering their progress in meeting their crucial timelines.

In addition to this, the Joint Committee discussed the two legal instruments (MOU and Lease Agreement) in detail and raised pertinent issues about compliance with the MoU by the Dominion Farm. It was therefore imperative that the committee solicits views of the Farm's legal team and probe areas of discontent. As a consequence, the committee developed a questionnaire and submitted it to Dominion Farms to respond as they had requested. Dominion later submitted their responses in writing (*see dominion responses attached*). In view of this, the Joint Committee held two meetings with Dominion legal team on 22<sup>nd</sup> June 2015 and 6<sup>th</sup> July 2015 to further shed light on the contentious issues in the MoU and Lease Agreements.

### ***Mr. Speaker Sir,***

On 20<sup>th</sup> April 2015, the Joint committee met with Civil Society Organizations namely Seeds of Peace (SOPA), Action Aid International, Friends of Yala Swamp (FOYS) and Nature Kenya. Friends of Yala Swamp is a lobby group that formed itself into a network comprising of a number of CSOs notably Community Initiative Action Group Kenya (CIAG-K), Action Aid

Kenya, Seed of Peace Africa (SOPA), Ujamaa Centre, Kenya Organization on Environment Education, Wetland Forum, Institute of Law and Environmental Governance, Bondo Resident Association, Ugunja Resource Centre, RECONCILE and Kenya Land Alliance with the view to mobilizing the residents who were approximate to the swamp to secure space in the governance and management of the Yala swamp.

The establishment of the network was largely informed by the coming of Dominion Farms Ltd into the region in 2003 for the purpose of economically developing the swamp by reclaiming the wetland and transforming it into an agribusiness environment. They asserted that as much as Dominion Farm Ltd and associates were able to inject economic life in the region, the contest has been that, the living condition of the residents of Siaya and Bondo has failed to match the economic gains made by the farm. FOYS therefore informed the committee that the main focus of the FOYS lobby entailed the following: land and natural resource issues; environmental justice; legal framework relating to investment, trust land and the environment; wetland management; corporate governance and advocacy and community organizing.

In a nutshell, the Joint Committee found that FOYS campaign position was based on the fact Dominion Farms project had paid scanty attention to the numerous negative effects of the various stages of its implementation; that the socio-economic dimensions of the project had been ignored and the local communities had to contend with serious transgressions on their rights to land, livelihoods, grazing land, water, fishing areas and swamp resources; that the defunct county councils of Siaya and Bondo did not exercise their mandate of trusteeship fairly and entered into a contract without consulting the people on whose behalf the land was held.

***Mr. Speaker Sir,***

Nature Kenya is a Non- Governmental organization undertaking conservation of Yala swamp ecosystem. During a meeting with the Joint Committee, Nature Kenya Coordinator in the County Ms Emily Mateche stated that their main objective within the swamp 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 have a major influence on wetland management not only in Kenya but East Africa. She stated that the organization had

launched a programme to secure the future of Yala swamp, recognizing both development and conservation needs and provide similar models for other Kenyan deltas.

***Mr. Speaker Sir,***

The committee also held a special session on 14<sup>th</sup> August 2015 at Siaya ATC with Seeds of Peace Africa (SOPA). They made a presentation to the committee with the heading: Harnessing the Yala Swamp Ecosystem Capital for Sustainable Development presented by Prof. Romulus Abila Ph.D and Margaret Awuor Owuor MSc. SOPA asserts that the ecosystem capital in question includes the ecological and environmental issues – water quality, biodiversity & carbon sequestration and socio-economic – livelihood support systems & agro-industrial development activities with the view to addressing abject poverty in the midst of plenty witnessed in Yala swamp and its environs today.

They emphasized on the need to undertake a baseline survey and mapping of Yala swamp wetland resources as a first step towards developing and implementing a Community Development Action Plan and an integrated natural resource management plan for the wetland. As a way forward, SOPA and her technical team in environmental management and natural resource management promised to offer expertise in this process when called upon. To demonstrate their commitment to making a difference in the conservation of the swamp, SOPA presented a Declaration of Intent for the conservation of Yala swamp wetland – Lake Kanyaboli ecosystem and biodiversity for sustainable development to be signed between SOPA and the County Government of Siaya. This declaration would suffice as a template for engagement with any other organization willing to undertake any activity in the swamp.

***Mr. Speaker Sir,***

The joint committee also held meetings with various political and opinion leaders from Siaya County in an endeavour to get a lasting solution to the issues surrounding Yala Swamp.

On 15<sup>th</sup> August 2015 at Siaya ATC, the Joint Committee met with Mr. Oscar Wambia, Personal Assistant to Hon Muluan Omondi who is the sitting Member of Parliament of Alego -Usonga where the Yala Swamp partly lies and on 21<sup>st</sup> August 2015 met with Mr. Sammy Weya, former MP for Alego Usonga constituency. There were obvious reasons for them to be invited by the Joint Committee to express their views and experiences in the swamp on behalf and for the

benefit of people of Alego-Usonga. On the 15<sup>th</sup> August 2015, the committee met with Hon. Gideon Ochanda, MP for Bondo Constituency where part of the swamp falls to express his views in terms of challenges that face his people and how they can be solved. He shared his expectations with the committee moving forward.

Similarly, the committee met with Hon. JakoyoMidiwo MP for Gem Constituency on 16<sup>th</sup> August 2015 at Miriam Hotel, Kisumu to give his perspective on the role the District Development Committee played when Dominion Farms Ltd ventured into Yala Swamp. In 2004 Hon. Midiwo was a Member of the District Development Committee (DDC). District Development Committees were mandated to approve development/investment projects within the former Siaya and Bondo County Councils.

***Mr. Speaker Sir,***

It is important to note that the committee also invited Mr. Edwin Ngonga and Mr. William Oduol but could not attend due to their pre-planned engagements elsewhere. The two were invited to appear before the committee due to some of the activities that they undertake around Lake Kanyaboli and to provide the requisite support documents that gave them authority for the same. Besides, they are opinion leaders in the area and could therefore provide great insights on their experiences in the swamp as residents of the area.

It is also worth mentioning that two other key meetings took place in Siaya County that were relevant to the committee's jurisdiction with regard to the sugarcane production and establishment of sugar mill at the swamp by Dominion Farms Ltd. On 4<sup>th</sup> September 2015, Agriculture, Fisheries and Food Authority (AFFA) through the Sugar Directorate convened a stakeholders meeting at Dominion Farms to get views/opinion of the public on the setting up of a sugar-milling factory by Dominion Farms Ltd. However, the meeting never took place due to disagreements between two opposing groups to the process

Similarly, another meeting was organized by NEMA on the 30<sup>th</sup> September 2015, at Obambo Chiefs camp to get the views of the public on the Environmental Impact Assessment for the proposed sugarcane plantation and processing mill developed by Dominion Farms at the swamp. The County Commissioner moderated the meeting and NEMA was supposed to submit its final report within two weeks from the meeting date. The report of the meeting is already out.

## **8.0 PUBLIC HEARINGS AND FIELD VISITS**

The Joint Committee held two public meetings at Gendro village-Kadenge in Central Alego ward and Darajacentre in East Yimbo ward to engage with the community members on their experiences with Dominion Farms Ltd and in the swamp and what they think needs to be done to mitigate the causes of conflicts that had characterized their existence within the swamp

### **8.1 Meeting at Gendro Village, Kadenge Sub-location**

The Joint Committee visited Gendro village-Kadenge Sub-location in the morning on 1<sup>st</sup> April 2015 and held a meeting with the residents to seek their views regarding the disputed land boundaries between the community and the Dominion farms as well as looking into the effects of the artificial flooding on the community farmlands. The residents made the following submissions:

They complained that Dominion farms increased the height of the weir, which has resulted to flooding of their upland farms, and hence they are not able to cultivate their land and there are also occasions when Dominion Farms open sluice gates resulting into flooding of nearby community farms thus destroying their crops. This is a case that the committee physically witnessed with disbelief. The vegetables farms were progressively flooded and when the Dominion Farm management saw the committee, they dashed to go and close the sluice gates.

The Residents also raised the issue of lack of grazing land for their animals as Dominion Farms had fenced off the areas in which they used to graze their animals. One of the residents Mr. Peter Ouma Osodo mentioned that on 28<sup>th</sup> March 2015 Dominion Farms, Director Mr. Chris Abir accompanied by police officers chased their animals that were grazing in the farm.

The residents also stated that the public road linking Alego and Yimbo had been closed by the investor and this makes the community travel a longer distance from Yimbo to Alego and vice versa posing a challenge during emergency cases as most residents from Yimbo are treated at Kadenge- Ratuoro health centre. .

Mr. Stephen Ochieng Odera a resident in Kadenge village claimed that he works in Dominion Farms and they are paid Kshs. 205 per day and work from 6.00am to 6.00pm. He added that the firm does not provide any protective clothing or gears to its employees hence predisposes them

to many health hazards. Mr. Abir confirmed to the committee that for cost effectiveness, the employees are meant to buy their own gears

## **8.2 Meeting at Daraja Centre, Yimbo East**

The Joint Committee visited Daraja Centre in Yimbo East on 1<sup>st</sup> April 2015 and held a meeting in the afternoon with the residents to seek their views regarding their co-existence with Dominion Farms. They made the following submissions:

There is no clear boundary demarcation of the land to be farmed by Dominion Farms and Community land and this normally leads to conflicts because any time the community farm their land, Dominion farms would destroy their crops.

Dominion Farms sometimes blocks water that passes under the bridge thereby exposing the residents to diseases since the mud that flows at times carry dead animals, which can be a health hazard. The residents also claimed that Dominion Farms sometimes restricts them from using the bridge.

Mr. Alex Oonje noted that Dominion Farms has not fulfilled its corporate social responsibilities, which included; rehabilitation of Ulungo and Ogam hospitals, maintenance of roads and electricity provision. There are poor working conditions in Dominion Farms, staff work from 6.00am to 6.00pm without any protective gears like boots exposing them to grave dangers.

## **8.3 Agricultural Activities**

Dominion Farm Ltd came into operation in 2004 and has been engaged in various agricultural activities. Mr. Abir informed the committee that besides commercial rice production, which covers over 3000 acres, there is fish production (200 acres) in 14 ponds with projected production of 2 tons per month and fingerlings- 1 million pieces per month; bananas (10 acres), livestock production in a test for dairy and beef production (Zebus- 260, Pure Jersey – 7, F1 – 59, F2 – 21 and steers – 95); soya beans (600 acres), Sugarcane (400 acres) planted. With the sugar mill it is expected to produce 9000 bags of sugar per day and feed mill for the production of chicken and fish feeds. The Company is also selling fingerlings at Ksh 7 per fingerling. There is great contention as to whether Dominion Farms is authorized to undertake livestock production as may/may not have been envisaged in the MOU and Lease Agreement.

#### **8.4 Prime Harvest Academy**

The Joint Committee visited the Prime Harvest Academy hosted in the Farm on 7<sup>th</sup> July 2015 and noted that that the total number of students was 38 in and the total number of teachers was 13. It runs from class one to class five. The pupils are picked from the local community by an academy bus at the rate of between Kshs. 600 – 1000 per pupil per month depending on the location. The committee was provided with the enrolment data and the fee structures. This is a private enterprise.

#### **8.5 Dominion Training Centre**

*Mr. Speaker sir,*

The farm also hosts a residential vocational centre – Dominion Training Centre to train youth in modern agricultural practices in rice, dairy, and poultry farming and small-scale aquaculture. The fee paid by the students was Ksh. 6500 per month. Registration of the college with the relevant authorities is still pending. The committee was informed that the training centre is targeting youth out of school and farmers to advance their capacity to build a better life by developing them into agricultural entrepreneurs. It is sited on 200 acres of land with livestock, fishponds, poultry houses and horticulture farms for training. There is also a large established repair workshop for electrical, welding, motor mechanics and tractor maintenance /repair works.

On staff establishment, Dominion farms provided a report that detailed the following staffing position:

<b>NO</b>	<b>SECTION</b>	<b>CASUALS</b>	<b>CONTRACTED</b>	<b>PERMANENT</b>	<b>TOTAL</b>
1	Rice Production	500	22	5	527
2.	Livestock	10	4	-	14
3.	Aquaculture	11	11	3	25
4.	Soya	10	1	-	11
5.	Sugarcane	200	3	-	203
6.	Training Centre	9	7	1	17
7.	Academy	8	4	-	12
8.	Workshop	4	19	7	30
9.	Stores & Maintenance	7	4	2	13
10.	Security	-	65	1	66
11	Finance/ Administration	9	9	2	20
12.	Banana	-	1	1	2
13.	Marketing	5	8	2	15
	<b>Total</b>				<b>955</b>

**N.B: The Committee could not determine how many of the staff employed came from the local community or from Siaya County**

### **8.6 Flooding Area**

Flooding is one of the major issues causing conflict between the investor and the people. It is said that artificial flooding from Dominion farms, is a great hindrance to farmers realizing their harvest after planting. The people of Aduwa and Abidha areas raised this complaint. It is alleged that the weir constructed by Dominion Farm whose height is higher than what was recommended is the major cause of this kind of flooding upstream. They proposed that Dominion lowers the height of the weir to 5.5m as proposed by the Government. Sometimes artificial flooding is also caused when dominion open the floodgates which results to destruction of the surrounding

community. The Committee witnessed actual flooding of private parcels at Gendro village. The committee was informed that the most affected areas by flooding include but not limited to Magombe, Achuodho, Barkanyango, Got Ramogi, Goye, Yimbo West, Aduwa, Abidha, Gendro, Seje, Kanyumba, Ndisi, Kalule, and Ulungo

### **8.7 KadengeRatuoro Health Centre**

The committee visited Ratuoro health centre on 6<sup>th</sup> July 2015 as part of the corporate social responsibility of Dominion Farms to determine the actual rehabilitation works that may have been done to the facility. The facility in charge confirmed that Dominion Farms assists in the provision of a vehicle in cases of referrals, partially funded the installation of two water tanks, construction of a laboratory and extension of electricity to the facility particularly provision of wiring materials and underground cables.

### **8.8 Use of Riparian Areas**

#### ***The Honourable Speaker,***

A riparian area is the interface between land and watercourses and water bodies. Typical examples include flood plains and stream banks. They are distinctly different from surrounding lands because of unique soil and vegetation characteristics that are strongly influenced by the presence of water. Riparian areas are significant in ecology and environmental management because of their role in conservation, habitat diversity and the influence they have on fauna and aquatic ecosystems.

On 24<sup>th</sup> August 2015, the Joint Committee visited the surrounding areas adjacent to Lake Kanyaboli and noted that various places had been encroached by some people who have gone ahead to construct jetties (*a structure that projects from land out into water*) particularly next to Sammy Weya, Edwin Ngonga and William Oduol's homes without due regard to the rule of law. For example Environmental Management and Coordination Act, 1999, Section 42 (1) a – g reinforced by Legal Notice no. 19 of 13<sup>th</sup> February 2009- The Environmental Management and Coordination (Wetlands, River banks, Lakeshores and Sea shore Management) Regulation, 2009. Regulation no. 12 on Wetland Resource use permit: states that *Subject to the provisions of Section 42 of the Act, no person shall carry any of the following activities stipulated therein*

*without a permit issued by the relevant lead agency and an Environmental Impact Assessment license issued by the Authority where applicable*

Read together with Regulation 14 (1) on Duty of land owners, users and occupiers: which states that *Every owner, occupier or user of land which is adjacent or contiguous to a wetland shall, with advice from the Authority, have a duty to prevent the degradation or destruction of the wetland, and shall maintain the ecological and other functions of the wetland. (2) Any person who fails neglects or refuses to protect a wetland under sub-regulation (1) commits an offence*

**Mr. Speaker Sir,**

Mr Weya on his part provided a letter ref. no SCC/AGR/1/6/20(27) dated 13<sup>th</sup> August **2008** from the defunct Siaya County Council authorising him to use the lake Kanyaboli frontage and a copy of the receipt confirming payment of Kshs. 35,000 to the council for survey, application, permit and development plan fees. What is quite interesting is that the miscellaneous receipt to Four Winds Communications for this payment was written on 28<sup>th</sup> July **2005**. What a contradiction in the two dates. In a nutshell, the committee is not in possession of relevant documentation as required by law for the said activities within the riparian area not even in the lake. The regulations were clear on the process of change of use under Trust land Act Cap 288 and defunct local authority Cap 265, which provide for full council resolution before the Commissioner of Land seals the process. So if this was not done then the allocation is an illegality.

But even if it were that they had the documents, following the provisions of EMCA, Legal Notice No. 8 of 1999 Section 12, Dr. Ayub Macharia AG Director General of NEMA wrote to the Permanent Secretary, Ministry of Lands revoked all land allocations in the riparian areas within three months through a Press release on March 8<sup>th</sup> 2011 entitled ***NEMA orders those encroaching into Wetlands adjacent Riparian land to vacate***, In this communiqué, he directed that those who fail to comply with the provisions of Environmental Management and Coordination Act, 1999, would on conviction lead to imprisonment for a term of 24 months or fine of Kshs. 2 Millions or both as provided for in the Act.

## **9.0 REVIEW OF SECONDARY DATA/INFORMATION ON YALA SWAMP**

*Mr Speaker Sir,*

The challenges that have characterized Yala swamp for over 10 years now, have raised a lot of interest in the swamp and therefore a number of studies, reports and research papers have been done by various organizations, scholars/ researchers, environmentalists, media, local community groups and individuals etc. Consequently, the committee undertake a systematic review of the secondary information/documentation available to inform some of its observations/findings and recommendations. These documents form part of the annexure to this report.

Similarly, the committee noted that the Kenyan Government has undertaken reforms aimed at conservation of environmental resources including wetlands. This includes enactment of legislations related to conservation and management of wetlands in the country. The relevant laws include the Environment Management and Coordination Act (section 42), the Lakes and Rivers Act (Cap 409), the Wildlife policy and Acts and the Water Act (2002), which deals with management, conservation and control of water sources.

The government has also developed strategies for water services development and waterResources management. It has also gazetted regulations geared towards protection of wetlands. These include the EMCA Water Quality Regulations, 2006 that sets stringent standards for effluent discharge into aquatic bodies. In spite of the above reforms, Yala swamp is still greatly threatened by degradation. The committee explored to what extent various laws related to Environment were being implemented at the swamp and its environs.

## **10. COMMITTEE OBSERVATIONS&FINDINGS**

*The Honorable Speaker,*

In the process of the Joint Committee's interaction with the local communities and stakeholders, it became evident that the relationship between the local residents and the Dominion Farms Ltd were very conflictual. When Dominion farm came to the region it made promises to transform the region by creating jobs, improving infrastructure and transfer of technology to the locals. Apart from job creation through agribusiness, the project would also ensure accessibility of clean water, improved health services, improved and well equipped primary schools thereby alleviating poverty in the area. Instead of cooperation between the Dominion farm and the locals as had been envisaged, what transpired was and continue to be series of accusations and counter accusations. The residents have raised a flurry of issues regarding the farm operation to date. The findings therefore clearly reveal that the conflict has been attributed to the following factors:

### **1. Poor working condition**

*Mr. Speaker sir,*

Most of the people working for Dominion Farms are subjected to pathetic and inhumane conditions. Women stand in cold water in rice plantations for very long hours (12 hours from 6 am to 6pm) at a meagre pay of Kshs. 205 per day or even less. Labour laws are not followed and the workers are not allowed overtime pay or even to join labour unions. There are no protective gadgets as workers handle corrosive chemicals and no compensations for injuries arising there from. The farm is mechanized hence laying off most of the local community members without any regard to the due process. The workers deserve better and favourable working conditions. Residents have complained of not being paid for days for their hard work, only to be relieved off their jobs when they complain, others are threatened by the farm management.

## **2. The land issue**

***Mr. Speaker Sir,***

The Government of Kenya enacted a comprehensive National Land Policy ('NLP') to deal with the thorny issue of land in Kenya. The Vision of the NLP is *"To guide the country towards efficient, sustainable and equitable use of land for prosperity and posterity"*. Its main objective is: to promote and ensure wise use of land, guide allocations, prevent degradation and resolve conflicts. The area residents especially blame the farm for lack of consultation in the purchase of the community land. The increasing landlessness being reported by the residents, has consequently led to a number of open confrontation between the Dominion farm workers and the local people. There have been for example, compulsory eviction and resettlement arrangements for communities that are being forced to vacate their lands for Ksh. 45, 000 per acre, a factor that has contributed to the increasing degree of landlessness within the region.

***Mr. Speaker Sir,***

To make matters worse, even the 300 acres that was to be set apart by Dominion Farms for community use as per the MOU was never done or used for the intended purpose, leave alone the failure to process the land and give it to the local people. In clause (xviii) (a) 7 , it was agreed that *Dominion set aside 300 acres for the local community use – 150 for Siaya and 150 for Bondo*. However, in order to actualize this provision, Yala Swamp Group of Farmers Committee (YSGF) and Dominion Farms got into another Community Agreement signed on 8<sup>th</sup> October 2007 between Calvin R, Burgess, President/Director representing Dominion Farms on one hand and the chairman, Gilbert Obare and secretary, Caleb O. Obonyo representing YSGF on the other hand. The agreement state in part that *'Dominion agrees to give 1500 bags (50kg) of rice per year to the communities (750 bags to Bondo and 750 bags to Siaya) for payment for use of a total of 300 acres of land, otherwise to be utilized by the community*. An addition of 100 bags (50 Siaya and 50 Bondo) will be added each year for 15 years. This undertaking took place just for a few years and not in the proportions stated thus a major cause of conflict. What should the local people do to address this height of injustice?

### **3. Issue of pasture and frequent flooding**

*Honourable Speaker,*

The need by local residents for land to graze animals is another source of conflict. Since the size of land is reducing courtesy of forced evictions and the frequent floods caused by the farms activities, local residents have been forced to trespass the boarders into the Dominion farm, for the sake of looking for greener pastures for their livestock. The Dominion farm has put up a perimeter fence, which denies local residents easy access to pasture and water within secured places near the swamp. The conflict has been propagated by the community's fear that all the secured areas around the swamp are communal, yet snatched from them.

The Committee noted that the height of the weir might have exceeded the recommended height of 5.5m as was stated in the Taskforce report which causes flooding to community land and thus the community cannot cultivate their land. The committee also found out that Dominion farm has been buying neighbouring pieces of lands, which get flooded due to back flows. The farm believes that doing so compensates the communities for the submerged lands near to R.Yala banks and the Yala swamp.

The weir causes the backflow with regulated openings constructed across river Yala, to redirect water to canals for irrigation. The residents have been compelled by the frequent flooding to sell off their land to the Dominion Farm, something that they see as a motive to render them landless. More than 500 acres of land have been submerged. Dominion Farms controls water through sluice gates and when it opens water, it causes flooding that affects the neighbouring homes forcing them to flee without any compensation. The homes affected do not constitute the land given to Dominion but the government has constantly failed to intervene.

Hampered by more harsh condition and lack of enough space for grazing, the residents have consistently disrespected the issue of property rights conferred to Dominion farm. The Dominion farm in retaliation has been reported to have purportedly poisoned the grass and waters along their perimeter fences, resulting into the death of many animals belonging to the local residents. There are cases of the villagers encroaching on the farm's land, cutting the security wires to access the farm resources without consulting or informing the concerned authorities.

According to Mr. Philip Abir, “the farm was allocated 6,900 hectares of land at the swamp with the first face accounting for 3,700 hectares and the second phase, which is yet to be reclaimed accounting for 3,200 hectares. Mr. Abir showed the committee a revised MoU, by both the county councils which read in part: “The land to be held by Dominion as tenant for a period of 50 years from 26, May 2009”. The MoU is a revised one from the first agreement where the company had been given a 25-year lease but with equal acreage of land. According to the committee the second MOU is null and void because the relevant authorities did not officially sign it. On the same strength, it is the position of the committee that the second phase of 3200 hectares is not owned by Dominion Farms and therefore they should not use it despite the fact that they have been paying the land rent for the same.

#### **4. The Memorandum of Understanding discrepancies**

*Mr. Speaker Sir,*

The residents also point out that the Dominion farm has failed to respect the MoU that they had entered into. The Dominion farm and the two county councils of Bondo and Siaya signed an MoU, stipulating how the farm was to carry out its operations and how the returns would be distributed for the purposes of economically developing specific areas in the two districts. The farm was to build and renovate schools, health centres and establish recreation centre. The communities therefore accuse the Dominion farm of disrespecting the MoU by under developing the two regions, taking advantage of poverty status of the people in the two-districts to exploit their natural resources with impunity.

The farm however claims to be a caring neighbour, citing various activities it sponsors in the communities. The Dominion farm for example boasts of rehabilitating five schools and two medical dispensaries as part of the ongoing community development programme. The community members on their part have denounced any initiative conducted by the Dominion farm within the two county councils of Siaya and Bondo, arguing that they were spearheaded with sectarian interests betraying the stipulations of the MoU. The community in Bondo in particular close to the wetland for example, refutes claims by Dominion of any school and health facility renovations.

On the Lease Agreement, it was noted that in Clause 3, Dominion Farms was supposed to submit from time to time triplicate copies of the plans, drawings and building specifications of buildings that Dominion proposes to erect... To this day, Dominion Farm has not complied with this clause. There is no evidence of the plans, drawings and building specification provided by the Dominion farm.

## 5. Corporate Social Responsibility

Arising from the findings above, Mr. Abir provided a detailed account of Dominion Farms undertakings as records of corporate social responsibility to the local community upon which the committee has reiterated its findings as follows:

No.	Activities undertaken	Stated Cost	Committee Findings
1	Maintaining and repairing Dominion to Nyamonye and Dominion to Siaya roads for the last 6 years	6.9 million	Only the ring road within the farm has been repaired by Dominion Farms.
2	Maintaining canals namely the one feeding Lake Kanyaboli and the one keeping the ecosystem alive in the swamp	3 million	Dominion is in the process of maintaining the canals but the committee could not establish the costs.
3	Reclaiming 1000 acres of the swamp for community, which is 700 acres over and above that which was agreed on and upon which they even pay the rates.		The residents informed the committee that this is not true. They are the areas the community reclaims and then taken over by Dominion by force claiming that they have encroached.
4	Maintaining and repairing dykes ie Southern dyke to Usonga and the main dyke from Aduwa to Nyamboyo	5 million	Dominion has constructed the dykes but the community have accused them of closing the dykes which results to flooding of the community farms.
5	Construction of two new classrooms (Form 3 & 4) at St. Joseph Nyalula sec school	1 million	Dominion donated construction materials for the school and the committee could not establish the cost involved.

6	Construction of two new 1 million classrooms at Magungupri. School		Dominion donated construction materials for the school and the committee could not establish the cost involved.
7	Ratuoro Health Centre: Kshs. 400,000 -Provision of orthopaedics equipment and hospital beds  -Providing a maximum of Kshs. 240,000 per year for the purchase of drugs Ksh. 500,000  -Construction of laboratory  -Installation of electricity, wiring materials & underground cables Kshs. 500,000		The equipment are now old and kept in the store  This money paid specially for the medical bills incurred by Dominion farm employees and is not a grant  Supports the payment of electricity bills and pumps water to the facility
8	Putting up one new school on Yimbo side called Prime Harvest academy 11 million		This a private school owned by Dominion and set up due to piling pressure that they had not fulfilled the MOU by putting up a school in Yimbo side
9	Provision of scholarships to students, some at the university - 2005 to date, 9 years x 2 = 18 million  3 girls at Yatta (Mulis children family) training on various aspects		The Director for dominion Mr. Chris Abir reported to the committee that the schorlaship programme is ongoing.
10	Extension of power from Nyamonye to Ratuoro health centre		May have been in collaboration with Rural Electricity Authority

The other areas of support to the community as stated by Dominion Farms include creating a market at Ratuoro/shopping centre; provision of ambulance services from Ratuoro to Siaya and Bondo referral hospitals; training of youth on aquaculture, machine operations and entrepreneurship; ecotourism for schools, colleges and foreigners – 1500; restocking of L-Kanyaboli with fingerlings – 50,000 fingerlings since 2010; provision of anti-snake venom to Siaya referral hospital saving over 50 lives of people bitten by snakes; major medical operation in Siaya and Bondo which did over 800 surgeries costing 3.5 million in 2013 through Siaya referral hospital; creation of business support for registered youth groups who do supply to the company notably 2 in Siaya and 1 in Bondo; creation of sugarcane/soya out-grower projects of about 150 cane out-growers programme with a donation of about 4.3 million for land preparation and provision of seed etc. It is important to note that the committee was not in a position to authenticate or verify the expenditures outlined above.

An investigation of these undertakings by the committee however indicates that the farm has renovated only one school (Nyalula sec) and one health centre (Ratuoro Health Centre), but it was not easy to establish how much money the two institutions had been given to help in the renovations. According to the MoU, the renovation of public schools and health centers is well stipulated in Clause xviii (a) 8. This is depicted as a commitment drawn within a legal framework, which consequently attracts community attention and question on the same. The areas around the wetland indeed lack adequate health facilities, and are characterized by poorly constructed primary schools ieKanyaboli primary school.

## **6. Issue of biodiversity**

*Mr. Speaker Sir,*

The committee observed with concern that the ecology of Yala swamp (a wetland) is gradually being distorted. The Papyrus which is the swamp's most dominant vegetation and which provides resources for handcraft, mats making and animal feeds is for example, slowly disappearing. The sitatunga, a reedbuck and a bird called gonolek which used to inhabit the wetland, are also decreasing in numbers as the wetland is being reclaimed. The filtering effect of the swamp of the pollutants from R. Yalabefore the water is discharged to the lake has also been tampered with and the breeding and nursery grounds for fish and birds have technically ceased to exist. The fish species e.g. *mbiru, fulu, kamongo, okoko, nyamami, ningu, fwani, and adel* that

used to be common in these three lakes are nowadays rarely found. These birds and animals disappearing is an evidence of the destruction that the swamp has undergone.

## **7. Water management and resulting pollution**

*Mr. Speaker Sir,*

Apart from the ecological destruction, the residents also complained about water pollution citing aerial spraying which contaminated the water from the swamp and R.Yala. Locals have accused the farm for using chemicals harmful to human beings and livestock in killing weeds. They argue that the chemicals find their way into R. Yala and then to the Yala swamp. There are also reports of health complications by the locals who use the water for drinking and cooking purposes. To these locals, prior to the coming of Dominion farm, the swamp water was safe. The swamp has served the adjacent communities since time immemorial as a source of fish, water, agriculture, pastures, wild animals, trees for constructing houses, sources of wood fuel and medicinal plants. The Dominion farm had however promised to transform the area by ensuring provision of clean portable water and improved health service but this has not become a reality

*Mr. Speaker,*

Tests on soil and water samples taken from the Yala River and sections of the swamp, carried out by the government chemists in 2009, at the request of Action Aid International found the existence of heavy metals and presence of chemicals in the water. For instance the analysis revealed the presence of diedrin, a chemical in pesticides linked to breast cancer that was banned in the USA (1987) by Environmental Protection Agency. The pesticides (Fenthion) were used to kill bird's i.equelea. This claim is however refuted by Mr Philip Abir. According to him, the water is not contaminated as the farm also uses the same water for drinking and in their modern fishponds. He asserts that the aerial spray consists majorly of a fertilizer, which is harmless with components of nitrogen, potassium and phosphate. Only 10% of the aerial spray is done to kill weeds and in this regard the farm uses servian and round up, both of which are harmless herbicides.

## **8. Political issues**

*Mr. Speaker Sir,*

Without any fear or favour, the committee waded into the mucky waters of the political overtones of Yala swamp since Dominion Farms made entry into the swamp. There is a group of political leaders opposing the methods used by the Dominion farm to interact with the local people and manage the natural resources. To this lot of politicians, the activities of the Dominion farm are chaotic and directed by greed. On the flip side of it, there is another group of political leaders praising the current activities of the farm, emphasizing their stand as having been informed by the dire need for a catalyst in the region to initiate economic development as a vehicle towards combating illiteracy, ignorance and diseases and thus the best strategy to fight poverty.

It is therefore the considered opinion of the committee that these two opposing groups have failed to resolve their differences, trickling down the net effect to the local residents who in return have been loyal to dance to their (politicians) tune. It is a fact to say the least that Yala swamp has been a political campaign tool in the previous political contests. Owing to the persistent pressure from the villagers, intensified by the local political in fights, Dominion farm has been engulfed in the cobweb of uncertainty and in 2008 threatened to close down its multi-billion shillings rice farming venture and relocate to the neighbouring country-Uganda.

## **9. Issue of Payment of land rent**

*Mr. Speaker Sir,*

According to the financial records availed to the committee by Mr.Abir, its so clear that Dominion farm is not to up-to-date with payments for the land leased to them as per the MOU. The total payments made so far in favour of Siaya County Council/County government from 2009 – 2015 are Kshs. 29,731,219. Out of this Kshs.2,050,000 were paid to the County Government in 2014 and 2015. It is also important to note that as at the time the committee met with Mr.Abir, Dominion Farms Ltd owed the County Government Kshs. 7,098,600 between 2013 -2015. This is a violation of the MOU, which states in part that.... *'the following rent shall be paid in advance each year.....'*

This notwithstanding the fact Dominion Farms Limited never pays sufficient amount of money for leasing this land. For instance Kshs. 1,254,782 per annum for 3,700 hectares translates into Kshs. 339.15 per annum per hectare or a paltry Kshs. 28.00 per hectare per month (Kshs. 70 per acre per month). There is nowhere in this country that arable land can be leased for such a low price. As a result, there is need for re-negotiation of Memorandum of Understanding that brings on board all relevant stakeholders inclusive of effective public participation as per the law.

The committee also reliably found out that Dominion Farm did sub-let some tenants where their offices are (formerly owned by LBDA) against the tenets of the Lease Agreement (Clause 8). These included one Kenya Commercial bank manager and Administration Police Commandant. The question is to whom should such rent be paid and shouldn't Dominion Farms be paying rent for all the buildings (offices) on plot 899 and to whom including any interest as per Local Authority Act (Cap 265)? – LBDA or County government?

On the other hand, the committee found out that Dominion Farms is up to date with the payment of the single business permit as per the provisions of the Siaya County Finance Act, 2014.

## **10. Other investors interested in the swamp**

The committee was informed that there were other interested investors in the swamp as follows:

a.) **Gurmej Industries Ltd** that is based in Kisumu had applied for allocation of land in the swamp to the Siaya County Council through a letter dated 6<sup>th</sup> January 2012 to set up a sugar mill. On 22<sup>nd</sup> March 2012, they received an approval letter and were requested to pay Kshs. 587,000 towards survey, which was done by JRR Aganyo & Associates, August 2012. The committee is in possession of the survey report and the business plan to this effect. It is also important to note that the Committee on PIC/PAC had discussed this application and subsequently presented a report to the House in August 2015. The committee is therefore of the opinion that this company having been approved by the former local authority and having spent money on the survey with the view of investing in the swamp, their application should have been considered by the Executive together with the other two.

b.) Rai Group of Companies operating under the banner of **West Kenya Sugar Company Ltd** also made an application through a proposal to invest in sugarcane farming in Siaya County dated 12th November 2013. Through a letter referenced SYA/CG/AGR/18/1/VOL.II (66) - dated

26<sup>th</sup> October 2015 to the Clerk to the County Assembly, the County Secretary confirms that the County Executive Committee meeting held on 10<sup>th</sup> February, 2015 deliberated, recommended and approved the company to be given an opportunity to operate in Yala swamp. The minutes of the meeting and the project proposal are available.

c.) Farmlands of Africa Inc. USA ([www.farmlandsof africa.com](http://www.farmlandsof africa.com)) through its Kenyan subsidiary **Godavari Enterprises Ltd** (GEL) has expressed interest to invest in organic farming in Siaya County. The company submitted a detailed project report for organic crop development of 6,000 acres and setting up Agro-Processing units. In a letter referenced SYA/CG/SEC/C.ASS/CORR/3/VOL.VI (95) addressed to the Speaker and the Clerk to the County Assembly, the County Secretary again stated that the County Executive Committee in its meeting of 22<sup>nd</sup> October, 2015 under minute No. 24/22/10/2015 considered the company's proposal and approved the allocation of the 6000 acres of land within Yala swamp. The company's proposal and the minutes mentioned were attached to this communiqué to the County Assembly.

## **11. Gazettement of LakeKanyaboliNational Reserve**

*Mr. Speaker Sir,*

The economic potential of Yala swamp within which Lake Kanyaboli falls cannot be over emphasized. It's a wetland of national importance, which has been recognized as an important biodiversity hotspot. It is for this reason; there was the need to establish L. Kanyaboli Conservancy, leading to the gazettement of Lake Kanyaboli National Game Reserve. However, there were those opposed to the conservation of the lake arguing that the plight of the over 200,000 people, who will be displaced by the project, had not been addressed adequately, and wanted the entire process carried out afresh. They alleged that the proponents of the project were serving their own vested interests, and in total disregard to the alternative views and opinions of the local communities who live around the lake. This result into court battles that ultimately quashed the decision on 1st September 2010 vide legal note No. 158 of 2010 revoking the arbitrary award or setting apart of land parcel measuring 41.42 sq Km situated in the swamp for Wildlife conservation purposes.

## **12. Access road within the swamp**

The committee observed that the public road linking Alego and Yimbo had been closed by the investor making the community travel a longer distance from Yimbo to Alego and vice versa posing a challenge during emergency cases as most residents from Yimbo are treated at Kadenge- Ratuoro health centre. The fact that access road was blocked also aggravated their discomfort with the activities of Dominion farms despite the benefits that could have arisen out of their engagement. Public rural access road from Ojur through the former intake to Matera was also completely submerged rendering it completely impassable. It forces people to go through Bar-Olengo to Matera, which is a very long distance, and steep as well. The local community demands that all the roads should be made accessible.

## **13. Wildlife Management Policy**

Committee members observed that there was no domesticated policy regarding management of wildlife and general ecosystem of Yala swamp during its engagement with the stakeholders. This gave rise to lack of awareness and under-utilization of tourism potential of the swamp resource. KWS tried to undertake outreach activities, which were met with resistance due to limited awareness and in limited cases, lack of political support. KWS is in the process of developing a strategic plan for the management of the L. Kanyaboli national game reserve

## **14. Environmental Impact Assessments**

The committee noted with great concern that there was virtually no Environmental Impact Assessment that the farm has undertaken when engaging in new activities besides rice production according to the provisions of Section 58 (1), (4) of EMCA No. 8 of 1999 and as particularly illustrated in the Second schedule of the Act Part 8(e) which states that introduction of new crops and animals must undergo EIA. The schedule therefore clearly stipulates that the following activities at the swamp required EIA as follows: all roads in the wetlands, this includes the dyke (part 3(b), aerial spraying (part5), use of pesticides and use of fertilizers (parts 8(b) and (d) respectively, large scale agriculture- sugarcane, livestock (part 8(a), irrigation (part 8(e)), creation of game reserves and buffer zones (part13 (a)) etc. In addition to this, Dominion Farms

did not obtain authority to breed fish (produce fingerlings) according to Regulations 27 of the Fisheries Act (Cap 378) Laws of Kenya if they are not in possession of a special licence to do so. None of such was produced. It was further noted that the construction of retention dykes at Lake Kanyaboli had hindered the breeding and free movement of fish from both in land and foreign water bodies in contravention of the Fisheries Act.

On the other hand, it's important to note that Dominion Farms provided the following documents to the committee which they had presented to NEMA for consideration: Annual Environmental Audit (EA) report August 2014 (as per Regulation 68 of EMCA, 1999); Environmental Impact assessment (EIA) project report on the proposed sugarcane plantation, November 2013 (Ref. no NEMA/PR/SYA/5/2/129) and Environmental and Social Impact Assessment (ESIA) study report on the proposed sugarcane plantation and processing mill for Dominion Farms (Ref. no. NEMA/EIA/5/2/2010). However, despite the notification by NEMA through a letter dated 31<sup>st</sup> December 2013 that no development works should commence before receiving communication from NEMA, Dominion has gone ahead to plant several acres of sugarcane. The same has happened with the construction of the sugar mill, which has continued unabated despite the stop order. In this regard, the committee awaits the NEMA report on the proposed sugar factory that underwent public participation last month.

## **15. Wetland Management Plan**

*Mr. Speaker Sir,*

The interaction of the committee with various stakeholders revealed that there were several issues, which needed to be addressed in Yala Swamp in order to enhance the co-existence between the community and other stakeholders. These include need for policies and legislations to safeguard the interest all stakeholders, need for social responsibility and conservation of biodiversity, need for designated areas for cultivation, conservation and development and need to empower the locals economically. These issues if addressed will go a long way in protecting the ecosystem thus the need to develop the Wetland Management Plan. NEMA informed the committee that there exists a Yala Swamp Management Plan, which was developed in 2009, and that it will require the involvement of the County government to fast track its completion.

## **17. Compulsory acquisition of land**

The committee was found out that the local communities living around the swamp were majorly fishermen and small scale farmers. Since the entry of Dominion farms into the swamp with mechanized agriculture, the locals have raised several issues including claims of compulsory acquisition of their land without compensation thereby aggravating their poverty level. However, this was informed that some of the affected persons were given meagre compensation of Kshs. 40,000 per acre but without consultation with the affected families. This amount could not help some families to relocate to new sites.

In Kenya, compulsory acquisition arises when the state/Government decides to take over a Property without any private negotiation, thus the term ‘compulsorily’ acquire the property for Public use without the consent of the owner, but with a just compensation. The biggest questions that needs to be asked is if Dominion took private land from people by force, then which law did they use or when did the project change status from private investor to state owned project? It’s only government that is allowed to take land for projects that are meant to benefit the community as a whole using this law.

It is in this light that Action Aid Kenya commissioned a land survey exercise by Winam Surveys in Yala swamp area with the view to establishing legitimacy of community allegations to ownership and encroachment of their land. In the Yala Swamp Encroachment report, Winam Surveys confirms that the government did in deed acquire individual land without compensation as provided for in the Land Acquisition Act Cap 295.

## **18. Water Extraction Permit**

*Mr. Speaker Sir,*

On the authority to extract water by Dominion Farms for irrigation and power generation uses, the committee is in possession of a water extraction permit from WARMA Ref. no. WARMA/LVC/8 of 23<sup>rd</sup> November 2006 as per Water Act 2002. This permit lapsed on

23<sup>rd</sup> November 2011 and no evidence/proof of an extension was provided by Dominion Farms. In addition to this, on the permit is a rider under special conditions which states that “ This permit will be automatically cancelled when the authorised period expires without any further reference to you unless extension of the time is applied for prior to date of expiry of the permit” It therefore implies that Dominion Farms does have a current water extraction permit as the Law and therefore all that is happening is an illegality and should be brought to WRMA’s knowledge for action.

## **19. Future potentials of Lake Kanyaboli**

Mr. Speaker Sir,

Having gone through the above findings the committee is of the opinion that Yala Swamp wetland is in grave danger. It therefore requires a robust comprehensive community driven development and environmentally friendly investments for instance promotion of sports tourism. It is in view of this that the County Government in partnership with SOPA and Athletics Kenya (AK) organized the inaugural Lake Kanyaboli Half Marathon on the 8<sup>th</sup> day of August 2015 with the aim to raise awareness on the conservation of L. Kanyaboli; promotion of community based tourism enterprises; enhancing peaceful co-existence between the local community, existing and future investors around the swamp and finally development of a regional sports talent and community development resource complex. In this regard, one Mr. Ambrose has donated 6 acres of land for the establishment of the complex

Secondly, the committee found out that the Kenya Rowing and Canoe Federation did write to the County Government on 18th May 2015 Ref no. KRACAF/0121/05/2015/03 seeking partnership in the development water sports at L. Kanyaboli particularly rowing and canoeing. It is important to note that a water sport is a flagship project in the Kenya Vision 2030 strategic plan. In their letter they also requested for allocation of a piece of land as a basic requirement for water sports development to the L. Kanyaboli Rowing and canoe club and to develop water sports infrastructure on the allocated land namely water sports ramp and jetties, boat house, water sports stadium, offices, hospitality infrastructure, recreational park and equipment etc. The committee confirmed that there is a 2-acre piece of land strategically located next to the lake that was initially earmarked for a cattle dip.

## **20. Development of Land use plan**

**Mr. Speaker Sir,**

The Government of Kenya has made great strides in institutionalizing the sustainable management of deltas in the country's national development framework. In 2011, the Government established an Inter-Ministerial Technical Committee (IMTC) to oversee policy direction, the planning and conservation of major deltas in the country namely Tana, Yala, Omo, Malewa, Nyando, Sondu-Miru and Nzoia, all of which are experiencing unprecedented threats due to human activities and impacts of climate change. Through the Deltas secretariat, IMTC in collaboration with the County Governments of Siaya and Busia have started working on Strategic Environmental Assessment and Land use plan for Yala swamp. Two meetings have been held as stated above. In addition, an Inter-County LUP Steering Committee has been put in place drive the agenda with representation from both the Assembly and Executive wings of Siaya and Busia County Governments. The process is progressing well and it's expected that the final draft will be ready by April 2016.

### **CONCLUSION**

***Mr. Speaker Sir,***

This distinguished Joint Committee wishes to submit that this matter is a very sensitive issue and quite close to hearts of many local people. Many stakeholders, lobby groups and individuals have raised concerns on environmental destruction and injustices by Dominion Farms in Yala Swamp. The main accusation against the Dominion farm by the communities is that the farm is threatening the integrity of the Yala Swamp ecosystem and the health and well-being of hundreds of thousands of residents while at the same time ignoring them in the management of the wetland. The flooding of the private agricultural and grazing lands, is also forcing thousands of people (without compensation) to relocate against their wish. The contaminated water that the people and animals use for drinking is however a result of poor management of the wetland by the farm. In light of these accusations, it is vital that the Dominion Farms' proposed new projects are thoroughly and independently assessed for the impacts they will have on the swamp ecosystem and the human population.

Despite the conflict, what is important to emphasize however is that, the role of the Dominion farm in the development of the areas in discussion cannot be ignored, and that the farm is important in terms of revenue and job creation. What is also true is that the development of the community falling within the wetland environs should form part of the farm's strategic interest if harmony is to be achieved and sustained. County Government and other stakeholders must therefore exhaust all diplomatic mechanisms of settling the dispute between the Dominion Farm and the local community in order to ensure maximum utilization of the natural resource for the benefit of the people of Siaya County and Kenya at large.

## **12. COMMITTEE RECOMMENDATIONS**

The following are recommendations of what County Government of Siaya and members of the community should do so that peaceful co-existence prevails and for commercial exploitation of Yala swamp.

### **1. Land Use Plan**

Following the unprecedented conflicts that have been witnessed at the swamp due to climate change, increasing population, competition for land, declining natural resources, encroachment into the fragile ecosystems as well as escalating poverty levels, there is need for a framework to provide environmental –based evidence for decision-making on how to effectively and sustainably use this resource. Pursuant to Article 189 (2) of the Constitution of Kenya 2010, read together with Inter-Governmental Relations Act, 2012 Part II, Section (1) & (2), Section (12), (14) and (15), there is urgent need for the County governments of Siaya and Busiatio liaise with the Inter-Ministerial Technical Committee (IMTC) to fast track the process of undertaking Strategic Environmental Assessment (SEA) upon which to develop a land use plan for Yala Swamp. The operationalization of the land use plan will be informed by a joint policy on Yala swamp to be passed by both Assemblies.

The Land use plan will assign specific areas of the swamp to various uses for example community use, biodiversity and for development /investment. This will clearly give direction to any private enterprise and place experts on ground to weigh the situation as deemed necessary thus ending the wetland destruction and conflicts that are currently being experienced. In this regard, the County Government should with immediate effect issue a memorandum halting all

new activities by Dominion Farms and overtures that have been made by other interested investors until the land use plan is finalized and approved by the County Assembly.

## **2. Investment Policy**

There is a dire need for a comprehensive investment policy, which captures the interest of the County government and local community including the poor and marginalized. The investment policy must bargain for reasonable shareholding portfolios in all the investment firms that shall be privileged with public license to operate at the Yala Swamp wetland including other places within the county where public land is set apart for public investment. Further that investment policy will also be outlining terms such that local communities are reserved justifiable percentages on gainful employment opportunities. In addition, the County Government of Siaya needs to encourage local-multinational co-operation through entrepreneurial programs in exploiting the local resources for sustenance and maintenance of the public utility with representation of the community.

## **3. Control of Environmental Pollution**

Relevant government agencies/departments as well as the County government must investigate the issue of environmental pollution from aerial spray by the Dominion Farms that kills cattle and affects health of the members of the community. With clear results, it will be easy to know where the causes of water borne, vector borne and other diseases are coming from. This finding will give an insight into the current cause of conflict and the steps to be undertaken. NEMA and WARMA should be consulted to share copies of annual reports with the relevant county departments for information.

In regard to the setting up of the sugar factory in Siaya County, the committee welcomes the idea but is strongly opposed to the establishment of the mill within the swamp and therefore recommends that the factory be located upstream on R. Yala or R. Nzoia and that the current construction be stopped forthwith as per the recommendation of NEMA. The reasons for this are as follows:

1. Following the submissions of the environmentalist during the public participation on the NEMA report regarding the establishment of a factory at the swamp, it was reiterated that the mill would destroy the environment with adverse impact on the flora and fauna for instance the smoke from the factory will kill the birds within the ecosystem
2. Being within the wetland, it is of great concern on where the treatment and discharge of effluents will be done. It's a known fact that negative effects of Mumias sugar factory are at times felt at the swamp. What of a sugar factory within the swamp?

However, the committee is in support of the setting up of sugarcane plantations within the swamp on condition that the local communities are effectively engaged, out grower and shareholding strategies put in place and EIA requirements fulfilled

#### **4. Yala Swamp Consortium**

As it has been noted, there are a number of CSOs and government agencies both at county and national levels that are interested in Yala swamp for various reasons that have been advanced in this report, it is incumbent upon the County Government to take leadership in setting up a joint framework/platform/consortium through which to coordinate the activities of all interested parties in the swamp in a more structured, beneficial and sustainable manner.

#### **5. Review of Dominion MOU and Lease Documents**

The Committee strongly recommends that the MoU that was signed be re-opened for negotiations. Following the commencement of the county system of government, there is good reason to deal with the transition issues that preface this agreement. The MoU in its current form fails to meet the thresholds of public participation of the local communities and input of all stakeholders as required by the Constitution of Kenya, 2010. There is need for clarity on the size of land should be subjected to lease. The externalities that should accrue to the county together with special arrangements on community benefits, which will enable especially the local communities to appreciate the project, own it and identify with it leading to its success should also be made clear. This review is also necessitated by the fact that Dominion has failed to comply with a number of provisions in the MOU and the Lease Agreement as had been stated.

The County Government of Siaya Executive has 3 months (90 days) from the date of submission of this report to fast track a comprehensive review of the Dominion MOU and Lease documents to a logical conclusion.

## **6. Empowerment Opportunities**

Dominion farm should create sustainable empowerment opportunities for the community members to curb unemployment, rather than scouting for cheap labour that is “on and off”. Dominion should focus on its mandate as an enterprise that is here to make profit but must work with the county government and adjacent communities to help in the development of the area and the lives of the locals. The department of agriculture through Siaya Agricultural Training Centre should also explore the possibility of partnering with Dominion Farms on practical trainings for instance in the area of agri-business etc. What the farm should ensure is that as much as it is gaining from the agricultural venture, it should avoid putting the lives and future sustainability of the locals in danger.

## **7. Fresh Survey of Yala Swamp**

The County government through the Ministry of Lands, Physical Planning, Surveying and Housing, and the Ministry of Finance in collaboration with other relevant institution should undertake a survey to establish clear demarcation of the extent of acreage of Dominion farm, the conservancy, community land, public and private road networks and the overall size of the swamp area. The department of Finance should as a matter of priority develop a concept on the survey of the swamp upon which budget allocation shall be made for survey latest in the FY2016/17 if not in the forthcoming supplementary budget in order to end the growing conflict. A conclusive survey of the entire arable land and setting apart land for community use should precede any intended allocation of land to any approved prospective investors. If possible, the survey should be done in consultation with Busia County.

## **8. Welfare of the employees**

With regard to Dominion Farms Ltd, a relationship between the farm and workers must be demanded pursuant to Article 41(1), (2) & (3) of the Constitution of Kenya, 2010 on Labour Relations and the Labour Laws of the Republic of Kenya pertaining to; working hours, protective clothing, fair pay commensurate to the work done, freedom to join and form trade unions, full time employment after consistent engagement for 3 months among other provisions. An audit by the Ministry of Labour should be rolled out immediately to unearth any failure to obey the labour laws so that appropriate action can be undertaken. Terms of engagement of all employees of the Dominion farm should be revised to reflect compliance with current labour laws. The committee recommends that the local community should be given first priority in labour recruitment and capacity building for sustainability. Dominion Farms must be compelled to provide protective clothing to its employees and Workers Unions must be allowed to operate in the farm forthwith.

## **9. Integrated Natural Resource Management Plan**

The committee recommends that the relevant department(s) of the County Government of Siaya should develop an integrated natural resource management plan for the Yala swamp wetland. This may require developing a wetland policy and/or legislation (i.e Natural Resource Management Bill) for approval by the County Assembly to guide management of the Yala swamp and similar ecosystems in the County. This should take into account-cited challenges in this report.

## **10. Unlawful Occupation of riparian land**

The County Government should confirm availability and authenticity of all permits and licenses of all private developers/users within the riparian land within 30 days as per the provisions of the Amended EMCA Act, 2015 Section 64, which states that *the authority may after being satisfied as to the adequacy of an environmental impact assessment study, evaluation or review report, issue an environmental impact assessment license on such terms and conditions as may be appropriately necessary. On the contrary, any environmental impact assessment license that has been issued may be cancelled, revoked or suspended by the authority upon realization that the provisions of the Act were not followed to the latter.*

## **11. Flooding problems**

Flooding is one of the major issues causing conflict between the investor and the people majorly due to the adjusted height of the weir and unpredictable opening of the floodgates. This has been a great hindrance to farmers optimizing their harvest. In this regard the committee recommends that the County Government and Dominion Farms should commission the services of an independent expert with the view to determining the current height of the weir. Should it be confirmed that its higher than the recommended height of 4.6m as re-designed by Log Associates in 1996, the County Government should ensure that Dominion Farms reduces the height of the weir within 60 days. In future, the Agriculture department will be invited by the affected persons to assess the destruction of crops caused by artificial flooding as a result of Dominion Farms' activities so that the Farm is made to pay for the damages caused and/or apprehended for malicious damage

## **12. Environmental Audits**

Moving forward, all investors and players within the swamp must undertake regular environmental audit as per the requirement of EMCA 1999. The Committee noted with concern that Dominion Farms Ltd despite the obvious statutory and contractual obligation to undertake Environmental Audit aforementioned, blatantly and intentionally refused and /or ignored this obligation and responsibility. For example, Dominion Farms Ltd recently displayed gross impunity by ignoring a notice or an order by NEMA to cease the construction of a sugar factory.

The County Government should as a matter of urgency petition NEMA to administer a stop order on all the activities being undertaken by Dominion Farms without EIA to stop with immediate effect as per the provisions of Schedule 2 of EMCA, 1999 Section 58 (1).

## **13. Problem of community land**

Under an order of urgency, the CEC Lands, Physical Planning, Survey and Housing in consultation with the National Land Commission should set apart 3000 acres of land for community use to the local communities living around the swamp in both Bondo and Alego-Usonga constituencies. This should be taken into account as the recommended re-survey exercise is being undertaken in line with the provisions of The Trust Land Act (Cap 288) Section 7(1) which states that “*Where written notice is given to a council, under subsection (1) of section 118*

*of the Constitution, that an area of Trust land is required to be set apart for use and occupation for any of the purposes specified in subsection (2) of that section, the council shall give notice of the requirement and cause the notice to be published in the Gazette”*

In doing this, the CEC in charge of Lands, should be cognizant of the fact that the conflict in usage of land has been dominant in Yimbo East, Central Alego and Usonga Wards where communities are already engaged in farming activities including livestock grazing within the swamp and whose inherent or apparent rights to such usage is a constitutional right.

#### **14. Compensation**

The committee recommends commensurate compensation for the pieces of land that have been submerged in water for the past 10 years and those that were compulsorily acquired by the government as highlighted in the Winam Survey report and according to the provisions of Trust Land Act (Cap 288) Section 8(1) which states that – *“Where land is set apart under section 7 of this Act, full compensation shall be promptly paid by the Government to any resident of the area of land set apart.*

In addition, the committee recommends that County Government should liaise with Dominion Farms Ltd with a view of initiating compensation for community members whose land were made technically unusable as a result of raising the height of the weir

#### **15. Opening of the access roads**

The committee recommends that the County Government order Dominion Farms to open up the Kadenge – Daraja road that is part of the classified Siaya –Nyamonye road within 14 days lest they face prosecution.

#### **16. Payment to the County Government**

It is important to calculate and determine what Dominion Farms owes the County Government of Siaya. The County Government should charge the single business permit on both the privately owned Academy and the Vocational training centre as per the provisions of the Finance Act 2014 and demand all the arrears accrued there from.

Secondly, the department of Finance through the revenue office should verify the pending payments to date as regards the land rent and ensure that the books of Dominion balances, then issue a demand order for all pending payments to be executed within 30 days including a surcharge on any omission or commission on the part of Dominion Farms Ltd. Most importantly, the County Government should stop forthwith receiving the land rent for the phase two 3200Ha for it constitutes an illegality.

## **17. Exploiting the potentials of Lake Kanyaboli**

*Mr. Speaker Sir,*

The future of L. Kanyaboli in terms of tourism potential as has been noted is not in dispute. The County Government of Siaya should therefore:

- i. Through the department of Tourism and Wildlife Conservation & ICT adopt the L. Kanyaboli Half Marathon and Kanyaboli Boat Rowing and Canoeing as annual national sporting events and subsequently make budgetary allocations for the development of the same.
- ii. Through the department of lands and Surveying, ascertain the existence of a 2 acre piece of land (formerly meant for a cattle dip) at L. Kanyaboli; process change of user and allocate the piece of land to the Lake Kanyaboli Boat Rowing and Canoeing club for the development of sports infrastructure. This should be subjected to public participation.
- iii. Through Roads and Infrastructure department, open and/or grade the 42 km ring road around L. Kanyaboli to demarcate the riparian area of the lake from the rest of the individual farms.
- iv. Through the department of Finance, put in place within 60 days, a mechanism to collect revenue from the many visitors who tour the swamp

## **18. Other investors interested in Yala Swamp**

*Mr. Speaker Sir,*

As concerns other interested investors in the swamp, the committee is of the view that Yala swamp is a fragile ecosystem and therefore should not be loaded with all the potential investment opportunities. Similarly, it is worthy to note that some of the new investors are interested in the same activities that are already being undertaken by Dominion Farms. It is therefore the committee's recommendation that the County Executive Committee considers all the three prospective investors interested in the swamp namely: Gurmej Industries Ltd, West Kenya Sugar Company Ltd and Godavari Enterprises Ltd subject to the completion of the ongoing land use planning and the survey of the area. It is only through this process that the County Government can determine where and how much land is available for commercial agriculture and other activities in the swamp.

In addition, databank of all public land in the county should be made available within 60 days, their geographical locations and sizes including their suitability for specific activities so that should the land in the swamp be found to be inadequate then some of the aforementioned and any other potential investors can be accommodated in other areas of Siaya County other than Yala Swamp for eventual decentralization of investment opportunities county wide.

In all these processes, there is need to consider all the legal requirements, undertake effective public participation and appropriately engage relevant public institutions and the County Assembly of Siaya where required by Law.

I now call upon the Honorable Members of this house to adopt this report

**Thank You**

**Signed .....**

**Hon. Jared Abayo**

**Chairperson,**

**Joint Committee on Yala Swamp**

**Date.....**



## ANNEXTURE

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