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14/6/17

REPUBLIC OF KENYA



NATIONAL ASSEMBLY

PARLIAMENT
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Paper laid by the
Chairperson, Departmental
Committee on Lands
14/6/17 (cont)

ELEVENTH PARLIAMENT - FIFTH SESSION - 2017



THE DEPARTMENTAL COMMITTEE ON LANDS

REPORT ON THE PETITION BY RESIDENTS OF YALA REGARDING DISPLACEMENT
FROM THEIR ANCESTRAL LAND

DIRECTORATE OF COMMITTEE SERVICES
CLERK'S CHAMBERS,
PARLIAMENT BUILDINGS,
NAIROBI

JUNE, 2017

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CHAIRMAN'S FOREWORD

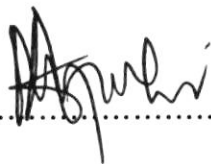
On Thursday 11th, November, 2015 the Speaker of the National Assembly on behalf of residents of Yala conveyed a petition before the House pursuant to Article 119 (1) of the Constitution of Kenya 2010 and Standing Order 219 regarding displacement of Yala residents from their ancestral land.

The House pursuant to Standing Order 227 referred the Petition to the Departmental Committee on Lands for preparation of a Report. The Committee received the Petition on Thursday 12th November, 2015 and set out a procedure for the consideration and to report to the House within 60 days as set out in Standing order no 227(2), however due to the nature of the petition the Committee sought for more time to adequately investigate the matters thereby delaying in reporting back to the House by responding to the prayers sought in the petition.

On my own behalf, I wish to commend Members of the Committee for their patience, endurance and hard work during the long sitting hours under tight schedules which enabled it to complete the tasks. Further, the Committee wishes to express gratitude to the offices of the Speaker of the National Assembly and the Clerk of the National Assembly for the support they accorded it, and acknowledges the contribution of witnesses in the preparation of this report by way of submissions and presentations.

Finally, it is my pleasant duty, on behalf of the Departmental Committee on Lands, to present this report in accordance with the provisions of Standing Order 227 which requires that the committee responds to a petition within sixty days through a report addressed to the petitioner(s) and Laid on the Table of the House.

SIGNED:



DATE:



(HON. ALEX M. MWIRU, MP)
CHAIRPERSON
DEPARTMENTAL COMMITTEE ON LANDS

EXECUTIVE SUMMARY

This report seeks to respond to prayers sought from the House by residents of Yala regarding how they were allegedly displaced from their ancestral land.

In their Petition, the Yala residents prayed that the House through the Departmental Land Committee intervenes and recommends relocation of the inhabitants to their ancestral land held in trust and expedites individual land tenure arrangements and also intervene to ascertain the exact lease acreage and land sizes each of the investing entities in the swamp region.

The Committee held various meetings within Parliament Buildings where it interacted with concerned stakeholders and further undertook a fact-finding tour of Yala in Siaya County. The objective of the visit was to assess the situation on the ground and collect views from residents of Yala area.

The report is divided into four parts in which the beginning it stipulates the mandate of the Committee, the second part is the introduction which introduced the facts as enumerated by the Petitioners, and expounded on the evidences collected by the Committee, the third parts is about finding or observations and the report concludes with recommendations.

MANDATE OF THE COMMITTEE

The Departmental Committee No. K on Lands is established pursuant to the provisions of Standing Order No. 216 (1) and (5) with the following terms of reference: -

1. Investigate, inquire into, and report on all matters relating to the mandate, management, activities, administration, operations, and estimates of the assigned ministries and departments;
2. Study the Programme and policy objectives of Ministries and Departments and effectiveness of the implementation;
3. Study and review all legislation referred to it;
4. Study, assess and analyze the relative success of the Ministries and Departments as measured by the results obtained as compared with their stated objectives;
5. Investigate and inquire into all matters relating to the assigned Ministries and Departments as they may deem necessary, and as they may be referred to them by the House;
6. Vet and report on all appointments where the Constitution or any Law requires the National Assembly to approve, except those under Standing Order 204 (Committee on Appointments);
7. Make reports and recommendations to the House as often as possible, including recommendations on proposed legislation.

The Committee is mandated to Consider the following subjects: -

- a) Land Policy,
- b) Physical Planning,
- c) Land Transactions,
- d) Survey and Mapping,
- e) Land Adjudication,
- f) Settlement,
- g) Land registration,
- h) Land Valuation,
- i) Administration of Private, community and Public Land,
- j) Land Information and Management System.

Oversight

In executing its Mandate, The Committee oversees the following Government Departments, Namely: -

- a) The State Department for Lands
- b) The National Lands Commission

Members of the Committee

Chairperson	The Hon. Alex Mwiru, M.P.
Vice Chairperson	The Hon. Moses Ole Sakuda, M.P.
	The Hon. Mutava Musyimi, M.P.
	The Hon. John Kihagi, M.P.
	The Hon. Francis W. Nderitu, M.P.
	The Hon. Kipruto Moi, M.P.
	The Hon. Hellen Chepkwony, M.P.
	The Hon. Sarah Korere, M.P.
	The Hon. Benson Mbai, M.P.
	The Hon. Suleiman Dori, M.P.
	The Hon. George Oner, M.P.
	The Hon. Mathew L. Lempurkel, M.P.
	The Hon. Shakila Abdallah, M.P.
	The Hon. Dr. Paul Otuoma, M.P.
	The Hon. Thomas Mwadeghu, M.P.
	The Hon. Joseph Magwanga, M.P.
	The Hon. Ali Shariff Athman, M.P.
	The Hon. Francis Njenga, M.P.
	The Hon. Hezron Awiti Bollo, M.P.
	The Hon. Benard Bett, M.P.
	The Hon. Esther Murugi, M.P.
	The Hon. Omar Mwinyi, M.P.
	The Hon. Onesmus Ngunjiri, M.P.
	The Hon. Julius Ndegwa, M.P.
	The Hon. Patrick Kingola, M.P.
	The Hon. Kanini Kega, M.P.
	The Hon. Charles Nyamai, M.P.
	The Hon. Eusilah Ngeny, M.P.
	The Hon. Lawrence Aburi, M.P.

Secretariat

Clerk Assistant I	Mr. James Ginono
Clerk Assistant III	Mr. Joshua Ondari
Clerk Assistant III	Mr. Emmanuel Muyodi
Principal Researcher	Mr. Kefa Omoti

LIST OF RECOMMENDATIONS

Based on the Observations, Investigations, evidence adduced and submission made, the Committee makes the following recommendations.

The Ministry of Lands and Physical Planning and the National Land Commission: -

- a) **Through the Director Land Adjudication and Settlement conclude the exercise of Land Adjudication in Bondo and Siaya County;**
- b) **Through the Director of Survey ascertain the land alienated pursuant to the Memorandum of Understanding of 2003 between Siaya, Bondo County Councils and Dominion Farms Limited with a view of resettling the neighboring community; and**
- c) **Should uphold the lease agreement signed in 2003 between Bondo, Siaya and Dominion Farms Limited and cancel any such lease agreement signed after the promulgation of the Constitution of Kenya, 2010.**

1.0 INTRODUCTION

Yala Residents in their Petition they informed the House that: -

1. The community surrounding the Yala Swamp inhabited and depended on the Yala Swamp land and river line for over 5 decades;
2. The swamp inhabitants were later displaced after the artificial change of the river Yala course and subsequent development activities of the Lake Basin Development Authority and Dominion Farms Limited;
3. During the development of swamp region, the displaced persons were to allocated individual land in the upper region of the swamp area;
4. Over the years this promise of land is yet to be honored by the concerned authorities including the former local authorities and now the county government, putting to risk the lives of inhabitants and escalating susceptibility for conflict within the community;
5. The current land regime re-allocated the land to investors (Dominion Farms) ignoring the local community;
6. Efforts to resolve the matter through alternative dispute resolution mechanism have been fruitless; and
7. The issue in respect in this Petition is made is not pending before any Court of law, Constitutional or any Statutory body; and,
8. The Petitioners pray that the House, through the Departmental Committee on Lands to: -
 - a) Recommends that the land is reverted back to the Community;
 - b) Recommends speedy relocation of the inhabitants to their ancestral land held in trust and expedites individual land tenure agreement;
 - c) Ascertains the exact lease acreages and land sizes of each investing entities in the Swamp region; and
 - d) Recommends that the community be allowed access and use of the rest of the alienated trust land.

2.0 EVIDENCE

2.1 Evidence by Hon. Ogolla, Gideon Ochanda , M.P

The Member of Parliament appeared before the Committee on Thursday 12th November, 2015 and informed the Committee as hereunder: - that

9. The Yala Swamp covers 17, 500 HA and is situated in western Kenya and falls within the Siaya, Bondo and Busia Districts and the Community surrounding the Yala Swamp inhabited and depended on the Yala Swamp land and riverine area for over five decades since the wetland belonged to the Community through a trust land which has been managed for a long time by Siaya and Bondo Counties;
10. In 1972 the government recommended the reclamation of 9,200 hectares for agricultural and 6000 Ha be left for natural condition;
11. The reclaimed area was put under agriculture by Lake Basin Development Authority (LBDA). The LBDA had been established in 1979 to manage resources within the Lake Basin region in general and Yala Swamp in particular;
12. This land portion had been reclaimed before 1970, and previously used by LBDA for agricultural activity, mainly to produce cereals, pulses and horticultural crops;
13. The swamp inhabitants were later displaced after the artificial change of course of River Yala and subsequent development activities of the Lake Basin Development Authority and later the Dominion Farms;
14. Dominion Farms Ltd (DFL) moved into Yala swamp in 2003 through an arrangement with the Lake Basin Development Authority (LBDA). The initial proposal was that Dominion would engage in rice production; Later Dominion Farms Ltd embarked on other additional agricultural and development activities in the swamp, hence a threat to the livelihood of the people of the Yala Swamp Catchment area;
15. Dominion Farms Ltd – a multimillion company is now carrying out farming on large scale near the wetland and the activity of the investments has worsened the current state of the swamp. Since 2003 when Dominion Farms Ltd commenced operations in the area, the swamp's ecological state began deteriorating;
16. Yala swamp residents claim that they were not informed when the land was leased to Dominion Farms Ltd and have no rights to access Yala swamp and use any of its resources and the Swamp has been polluted and People are getting sick from waterborne diseases, due to contamination of water;
17. Community neighboring Yala Swamp don't know their boundaries and at times find themselves encroaching on the swamp land where Dominion farms have dominated while during the development of the Swamp region, the displaced persons were supposed to be allocated 500 hectares of land in the upper regions of the swamp area but over the years, this promise of land is yet to be honored by the concerned authorities, including the former Local Authorities and now the County Government;
18. The initial number of households were 82, but the population has since surged and the residents are still waiting for the land they were promised;

19. The land that was hived out from Dominion Farms use is not known however, Dominion Farm got into an agreement with Siaya County Council and they were allocated 6000 Ha, but there is no demarcation of where the land ends although Dominion Farms have fenced off the land and so the Community cannot access the 19,000 acres to farm and graze their livestock;
20. The current land regime re-allocated the land to the investors (Dominion Farms) resulting into conflicts between the Community neighboring Yala Swamp and the Investor (Dominion Farm) over the access to land for farming and grazing livestock; the community alleges that Dominion Farm fenced the reclaimed land that which is 3000 acres.

2.2 Evidence from Ministry of Lands and Physical Planning

On April 29th, 2016 Prof. Jacob Kaimenyi, Cabinet Secretary, Ministry of Lands and Physical Planning accompanied by the Principal Secretary, Ms. Mariam El. Maawy, Mr. Peter Kahuho, Ag. Secretary Lands, Mr. Augustine Masinde, Director physical Planning, Mr. Cesare N. Mbaria, Director of Surveys, Ms. Terry Gathagu, Head of Legal Services, Mr. Francis K. Orioki, Principal Land Registrar and Mr. Paul Mwangi, appeared before the Committee and informed it as follows: - That,

21. The total acreage of Yala Swamp is approximately 17,000 Ha. The Lake Basin Development Authority has only allowed Dominion to reclaim 3,700 Ha and currently slightly 1,500 Ha is in use with rice, fish and other agricultural products since the total acreage that has been reclaimed by Dominion Farms is 1,500 Ha;
22. There was no transfer of land from Lake Basin Development Authority to Dominion Farms as the swamp is trust land (Community Land) and is vested in the County Government of Siaya by virtue of the Trust Land Act and the Constitution of Kenya. Therefore, this means Lake Basin Authority cannot transfer the farm to Dominion or any other party for that Matter;
23. The lease dated May 2014, is between the County Council of Siaya and County Council of Bondo (now Siaya County) and Dominion Farm Limited;
24. It leased 3,700 acres for a term of 25 years with effect from 1st June, 2003 for a term of twenty-five years with effect from 1st June, 2003 for a sum of Ksh 1,463,913 and Ksh 1,673,043 for the remainder of the term;
25. Most of the Current and past conflicts over Dominion Farm over the development of Yala Swamp can be traced to 3 structural problems; poor communication, social misunderstanding and political involvement; and,
26. There is need for dialogue and genuine engagement to release a balance between conservation, sustainable rural livelihoods, economic growth and agricultural development.

2.3 Evidence from National Lands Commission

The National Lands Commission through a letter presented written submissions with information similar to the oral and written representation submitted to the Committee by the Cabinet

Secretary, Ministry of Lands and Physical Planning on April 29th, 2016.

2.4 Evidence from Lake Basin Development Authority

Dr. Evans Atera Ag. Managing Director, Lake Basin Development Authority informed the Committee as follow, that: -

27. The entire Yala Swamp is approximately 17,500 hectares and the land initially reclaimed in 1970 was 2,300 hectares. However, by the time LBDA moved to Yala Swamp in 1984, only about 1,200 hectares was available. The rest had been re-submerged although LBDA had not entered any formal agreement with the residents for transfer of any acreage of the reclaimed land; the locals were allowed to utilize any land that LBDA was not using;
28. Before the DFL was granted lease of Yala Swamp, it is LBDA that was developing the irrigation infrastructure and undertaking agricultural activities in the farm when the LBDA requested the DFL to invest in large scale Rice Irrigation Project in Yala Swamp, the understanding was to undertake the project as a joint venture. However, the Siaya County Council resolved that it is their mandate to allocate the swamp to any investor;
29. Dominion Farms Ltd is currently in occupation of Yala Swamp. LBDA has no role in the activities of DFL;
30. The 25-year lease for 3,700 hectares of Yala Swamp given to DFL by the County Council of Siaya and Bondo, did not give any role to LBDA in the management and use of Yala Swamp since there exist a Memorandum of Understanding signed between DFL and the County Councils of Siaya and Bondo. They agreed that at least 150 acres on either side of Siaya and Bondo were to be used by the local community; and,
31. When LBDA vacated from the Swamp the adjudication process had not been concluded in some of the plots it occupied i.e plot 899 and despite signing an MOU, DFL refused to pay rent on the building developed on Plot No. 899, it also defaulted in payments to LBDA for provision of technical assistance and expertise.

2.5 Evidence from Yala Residents

On 12th March, 2016, the Committee conducted a field visit where it toured and went round the disputed areas within the reclaimed land and thereafter held a public meeting within the swamp with a view to interact with residents who informed the Committee as hereunder: that: -

32. The Yala Swamp covers 17, 500 HA and is situated in western Kenya and falls within the Siaya, Bondo and Busia Districts; the wetland belonged to the Community through a trust land which has been managed for a long time by Siaya and Bondo Counties;
33. The Community surrounding the Yala swamp inhabited and depended on the Yala Swamp land and riverine area for many decades;
34. In 1962 river Yala broke its banks and as a result the Yala swamp residents were forced to move to higher grounds where they reside to date;
35. In 1960s the United Nations Special Funds and Food and Agriculture Organization of the United Nations reclaimed the upper part of the Swamp;
36. In 1969 the course of river Yala was changed by digging a 7Km canal on the mainland along farms belonging to residents of Mango to Ulango village;

37. The initial plan then was to use the reclaimed land for settlement of displaced people something which has not happened up to date;
38. Later Lake Basin Development Authority took over the management of the swamp. The authority accepted to give 200 Ha of the reclaimed land to the community;
39. In 2003 Dominion Farms Ltd moved into Yala swamp through an arrangement with the Lake Basin Development Authority (LBDA);
40. They had agreed that they were to engage in rice production; Later Dominion Farms Ltd embarked on other additional agricultural and development activities in the swamp, hence a threat to the livelihood of the people of Yala Swamp Catchment area;
41. Several meetings were held and it was agreed that the displaced persons living in the riparian areas were supposed to be allocated land; over the years, this promise of land is yet to be honored by the concerned authorities, including the former Local Authorities and now the County Government; and,
42. The initial number of households were 82, but the population has since grown and the residents are still waiting for the land they were promised.

2.6 Evidence from Dominion Farms limited

The Committee wrote to Dominion on three various occasions and the Chief Executive officer thorough his Lawyer declined to attend the sittings of the Committee leading to the Committee doing summons which were not honored by the said CEO a Mr. Calvin Burgess.

The Committee later instructed the Inspector General of Police to compel the CEO to appear before the Committee on.

3.0 COMMITTEE FINDINGS, OBSERVATIONS AND CONCLUSIONS

Based on the Observation, investigation, evidence adduced and submission made, the Committee made the following Findings, observation and conclusions: -

43. THAT, The MOU to cede part of the Yala Swamp land to the residents was between Dominion Farms Ltd and the then County Council of Siaya and Bondo and not Lake Basin Development Authority;
44. THAT, LBDA ceded all its mandate to Dominion Farms Ltd and it no longer has jurisdiction over the said land;
45. THAT, Dominion Farm Ltd has failed to honour the MOU it entered with the Lake Basin Development Authorities and the then County Councils of Siaya and Bondo;
46. THAT, Lake Basin Development Authority had invested a lot of money in reclamation and development of Yala Swamp. However, these were taken over by Dominion Farms Ltd without any compensation contrary to the MOU signed between LBDA and Dominion Farm;
47. THAT, The community was not displaced due to the reclamation of the swamp; the 82 households were displaced by the act of changing the course of river Yala in 1969;
48. THAT, In 1969 and 1970, 2,300 Ha of land was reclaimed from the swamp by redirecting the course of river Yala;
49. THAT, Dominion Farm Ltd entered into an agreement with County Council of Bondo and Siaya in 2003 of 25-year lease, for a 3,700 Ha of the Swamp and so far, they have reclaimed 1,700 Ha only. The lease required usage of 150 Ha on either side of Bondo and Siaya and there is no agreement that resident have been allowed to use the 150-acre land;
50. THAT, The is lease dated May, 2014 which raises question on constitutionality which appears to contradict article 263 of the Constitution; and,
51. THAT, Most of the Current and past conflicts over Dominion Farm over the development of Yala Swamp can be traced to 3 structural problems; poor communication, social misunderstanding and political involvement.

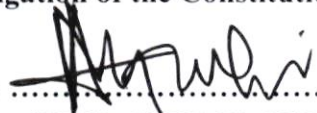
4.0 LIST OF RECOMMENDATIONS

Based on the observations, investigations, evidence adduced and submission made, the Committee makes the following recommendations.

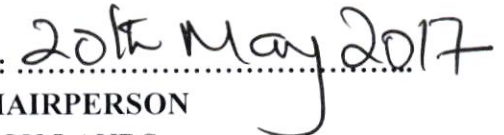
The Ministry of Lands and Physical Planning and the National Land Commission: -

- d) **Through the Director Land Adjudication and Settlement conclude the exercise of Land Adjudication in Bondo and Siaya County;**
- e) **Through the Director of Survey ascertain the land alienated pursuant to the Memorandum of Understanding of 2003 between Siaya, Bondo County Councils and Dominion Farms Limited with a view of resettling the neighboring community; and**
- f) **Should uphold the lease agreement signed in 2003 between Bondo, Siaya and Dominion Farms Limited and cancel any such lease agreement signed after the promulgation of the Constitution of Kenya, 2010.**

SIGNED:



DATE:



(HON. ALEX M. MWIRU, MP) CHAIRPERSON
DEPARTMENTAL COMMITTEE ON LANDS

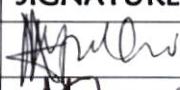





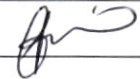
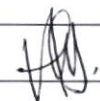



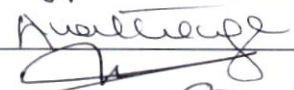





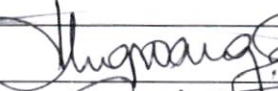
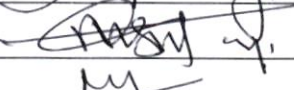
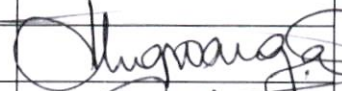
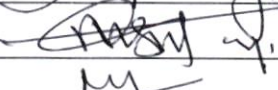

ADOPTION SCHEDULE

DEPARTMENTAL COMMITTEE ON LANDS
ATTENDANCE LIST

Date: May 19th, 2017

Venue: The Pier, English Point Marina, Mombasa

Agenda: Adoption of the report on the Petition by Yala residents regarding displacement from their ancestral land

NO.	NAME	SIGNATURE
1.	The Hon. Alex Mwiru, M.P. (Chairperson)	
2.	The Hon. Moses Ole Sakuda, M.P (Vice-Chairperson)	
3.	The Hon. Onesmas Ngunjiri, M.P.	
4.	The Hon. Mutava Musyimi, M.P.	
5.	The Hon. John Kihagi, M.P.	
6.	The Hon. Francis W. Nderitu, M.P.	
7.	The Hon. Francis Njenga, M.P.	
8.	The Hon. Athman. Shariff, M.P.	
9.	The Hon. Eusilah Jepkosgei, M.P.	
10.	The Hon. Benard Bett, M.P.	
11.	The Hon. Kipruto Moi, M.P.	
12.	The Hon. Hellen Chepkwony, M.P.	
13.	The Hon. Sarah Korere, M.P.	
14.	The Hon. Julius Ndegwa, M.P.	
15.	The Hon. Benson Mbai, M.P.	
16.	The Hon. Kanini Kega, M.P.	
17.	The Hon. Esther Murugi Mathenge, M.P.	
18.	The Hon. Hezron Awiti Bollo, M.P.	
19.	The Hon. Suleiman Dori Ramadhani, M.P.	
20.	The Hon. George Oner Ogalo, M.P.	
21.	The Hon. Lekidime L. Mathew, M.P.	
22.	The Hon. Shakila Abdallah, M.P.	
23.	The Hon. Paul Otuoma, M.P.	
24.	The Hon. Thomas Mwadeghu, M.P.	
25.	The Hon. Patrick Makau, M.P.	
26.	The Hon. Magwanga Joseph Oyugi, M.P.	
27.	The Hon. Omar Mwinyi, M.P.	
28.	The Hon. Charles Nyamai, M.P.	

COPIES OF MINUTES

MINUTES OF THE 56TH SITTING OF THE DEPARTMENTAL COMMITTEE (K) ON LANDS HELD ON SATARDAY 20TH MAY, 2017, IN PIER CONFERENCE ROOM, AT ENGLISH POINT MARINA AT 2.00 PM

PRESENT:

- | | |
|--|-------------------------|
| 1. The Hon. Alex Mwiru, M.P. | Chairperson |
| 2. The Hon. Moses Ole Sakuda, M.P. | Vice Chairperson |
| 3. The Hon. Omar Mwinyi, M.P | |
| 4. The Hon. Kanini Kega, M.P. | |
| 5. The Hon. Dr. Paul Otuoma, M.P. | |
| 6. The Hon. Hellen Chepkwony, M.P. | |
| 7. The Hon. Joseph Oyugi Magwanga, M.P | |
| 8. The Hon. Francis W. Nderitu, M.P | |
| 9. The Hon. John Kihagi, M.P. | |
| 10. The Hon. Francis Njenga Kigo, M.P. | |
| 11. The Hon. George Oner, M.P. | |
| 12. The Hon. Eusilah Ngeny, M.P. | |
| 13. The Hon. Shakila Abdallah, M.P. | |
| 14. The Hon. Julius Ndegwa, M.P. | |
| 15. The Hon. Mathew L. Lempurkel, M.P | |
| 16. The Hon. Esther Murugi, M.P. | |
| 17. The Hon. Benson Mbai, M.P. | |
| 18. The Hon. Suleiman Dori, M.P. | |
| 19. The Hon. Onesmus Ngunjiri, M.P. | |
| 20. The Hon. Hezron Awiti Bollo, M.P. | |
| 21. The Hon. Thomas Mwadeghu, M.P. | |
| 22. The Hon. Charles Nyamai, M.P. | |

ABSENT WITH APOLOGIES:

1. The Hon. Bernard Bett, M.P.
2. The Hon. Kipruto Moi, M.P.
3. The Hon. Athman Shariff, M.P.
4. The Hon. Patrick Makau, M.P.
5. The Hon. Sarah Korere, M.P.
6. The Hon. Mutava Musyimi, M.P.

IN ATTENDANCE:

KENYA NATIONAL ASSEMBLY

- | | |
|------------------------|----------------------|
| 1. Mr. Daniel Mutunga | Principal Clerk I |
| 2. Mr. James Ginono | Clerk Assistant I |
| 3. Mr. Joshua Ondari | Clerk Assistant III |
| 4. Mr. Emmanuel Muyodi | Clerk Assistant III |
| 5. Mr. Kefa Omoti | Principal Researcher |
| 6. Ms. Mercy Wanyonyi | Legal Counsel II |
| 7. Ms. Rose Ometere | Audio Officer |

MINUTE NO. DCL/LN/2017/177

PRELIMINARIES

The chairman called the meeting to order at 2.10 pm with a word of prayer.

MINUTE NO. DCL/LN/2017/178

**ADOPTION OF THE REPORT ON THE
PETITION BY RESIDENTS OF YALA
REGARDING DISPLACEMENT FROM THEIR
ANCESTRAL LAND**

The Committee considered the report and upon deliberations made the following observations: -

- 1) THAT, The MOU to cede part of the Yala Swamp land to the residents was between Dominion Farms Ltd and the then County Council of Siaya and Bondo and not Lake Basin Development Authority;
- 2) THAT, LBDA ceded all its mandate to Dominion Farms Ltd and it no longer has jurisdiction over the said land;
- 3) THAT, Dominion Farm Ltd has failed to honour the MOU it entered with the Lake Basin Development Authorities and the then County Councils of Siaya and Bondo;
- 4) THAT, Lake Basin Development Authority had invested a lot of money in reclamation and development of Yala Swamp. However, these were taken over by Dominion Farms Ltd without any compensation contrary to the MOU signed between LBDA and Dominion Farm;
- 5) THAT, The community was not displaced due to the reclamation of the swamp; the 82 households were displaced by the act of changing the course of river Yala in 1969;
- 6) THAT, In 1969 and 1970, 2,300 Ha of land was reclaimed from the swamp by redirecting the course of river Yala;
- 7) THAT, Dominion Farm Ltd entered into an agreement with County Council of Bondo and Siaya in 2003 of 25-year lease, for a 3,700 Ha of the Swamp and so far, they have reclaimed 1,700 Ha only. The lease required usage of 150 Ha on either side of Bondo and Siaya and there is no agreement that resident have been allowed to use the 150-acre land;
- 8) THAT, The is lease dated May, 2014 which raises question on constitutionality which appears to contradict article 263 of the Constitution; and,
- 9) THAT, Most of the Current and past conflicts over Dominion Farm over the development of Yala Swamp can be traced to 3 structural problems; poor communication, social misunderstanding and political involvement.

Upon making the above-mentioned observations the Committee resolved as hereunder: -

The Ministry of Lands and Physical Planning and the National Land Commission: -

- a) Through the Director Land Adjudication and Settlement conclude the exercise of Land Adjudication in Bondo and Siaya County;
- b) Through the Director of Survey ascertain the land alienated pursuant to the Memorandum of Understanding of 2003 between Siaya, Bondo County Councils and Dominion Farms Limited with a view of resettling the neighboring community; and
- c) Should uphold the lease agreement signed in 2003 between Bondo, Siaya and Dominion Farms Limited and cancel any such lease agreement signed after the promulgation of the Constitution of Kenya, 2010.

Consequently, the report was proposed and adopted unanimously by the Members present and signed by the Chair.

MINUTE NO. DCL/LN/2017/179

ADJOURNMENT

There being no any other business, and the time being 4:05 pm the meeting was adjourned.

SIGNED.....
(CHAIRPERSON)

DATE..... 20-05-2017

MINUTE NO. DCL/LN/2016/262

PRELIMINARIES

The chairman called the meeting to order at 10.20 a.m. with a word of prayer from the Hon. Julius Ndegwa, MP.

MINUTE NO. DCL/LN/2016/263

ADOPTION OF THE AGENDA

The agenda of the meeting was adopted as hereunder after being proposed by the Hon. Suleiman Dori, MP and Seconded by the Hon. Francis Nderitu, M.P.

AGENDA

1. Prayers
2. Preliminaries/introduction
3. Communication from the Chair
4. Matters Arising
5. Bills
6. Petition
7. Papers
8. Statements:-
9. Substantive Agenda:-
 - a) Meeting with the the Managing Director Lake Basin Development Authority regarding a Petition by Mr. Caleb Omondi Obonyo and over two hundred other petitioners on the alleged displacement of Yala Swamp Residents.
10. Any Other Business
11. Date of the Next Sitting

MINUTE NO. DCL/LN/2016/267

**MEETING WITH THE MANAGING DIRECTOR LAKE
BASIN DEVELOPMENT AUTHORITY REGARDING A
PETITION BY MR. CALEB OMONDI OBONYO AND
OVER TWO HUNDRED OTHER PETITIONERS ON THE
ALLEGED DISPLACEMENT OF YALA SWAMP
RESIDENTS**

Dr. Evans Atera Ag. Managing Director, Lake Basin Development Authority tabled information as annexed in the Minutes. He further informed the Committee as follow, that:-

- a) The entire Yala Swamp is approximately 17,500 hectares;
- b) The land initially reclaimed in 1970 was 2,300 hectares. However, by the time LBDA moved to Yala Swamp in 1984, only about 1,200 hectares was available. The rest had been re-submerged;
- c) Although LBDA had not entered any formal agreement with the residents for transfer of any acreage of the reclaimed land, the locals were allowed to utilize any land that LBDA was not using;

- d) Before the DFL was granted lease of Yala Swamp, it is LBDA that was developing the irrigation infrastructure and undertaking agricultural activities in the farm;
- e) When the LABD requested the DFL to invest in large scale Rice Irrigation Project in Yala Swamp, the understanding was to undertake the project as a joint venture. However, the Siaya County Council resolved that it their mandate to allocate the swamp to any investor;
- f) Dominion Farms Ltd is currently in occupation of Yala Swamp. LBDA has no role in the activities of DFL;
- g) The 25 year lease fo 3,700 hectares of Yala Swamp given to DFL by the County Council of Siaya and Bondo, did not give any role to LBDA in the management and use of Yala Swamp;
- h) There exist a Memorandum of Understanding signed between DLF and the County Councils of Siaya and Bondo. They agreed that at least 150 acres on either side of Siaya and Bondo were to be used by the local community;
- i) When LBDA vacated from the Swamp the adjudication process had not been concluded in some of the plots it occupied i.e plot 899;
- j) Despite signing an MOU, DFL refused to pay rent on the building developed on Plot No. 899, it also defaulted in payments to LBDA for provision of technical assistance and expertise;

MINUTE NO. DCL/LN/2016/268

ADJOURNMENT & DATE OF THE NEXT SITTING

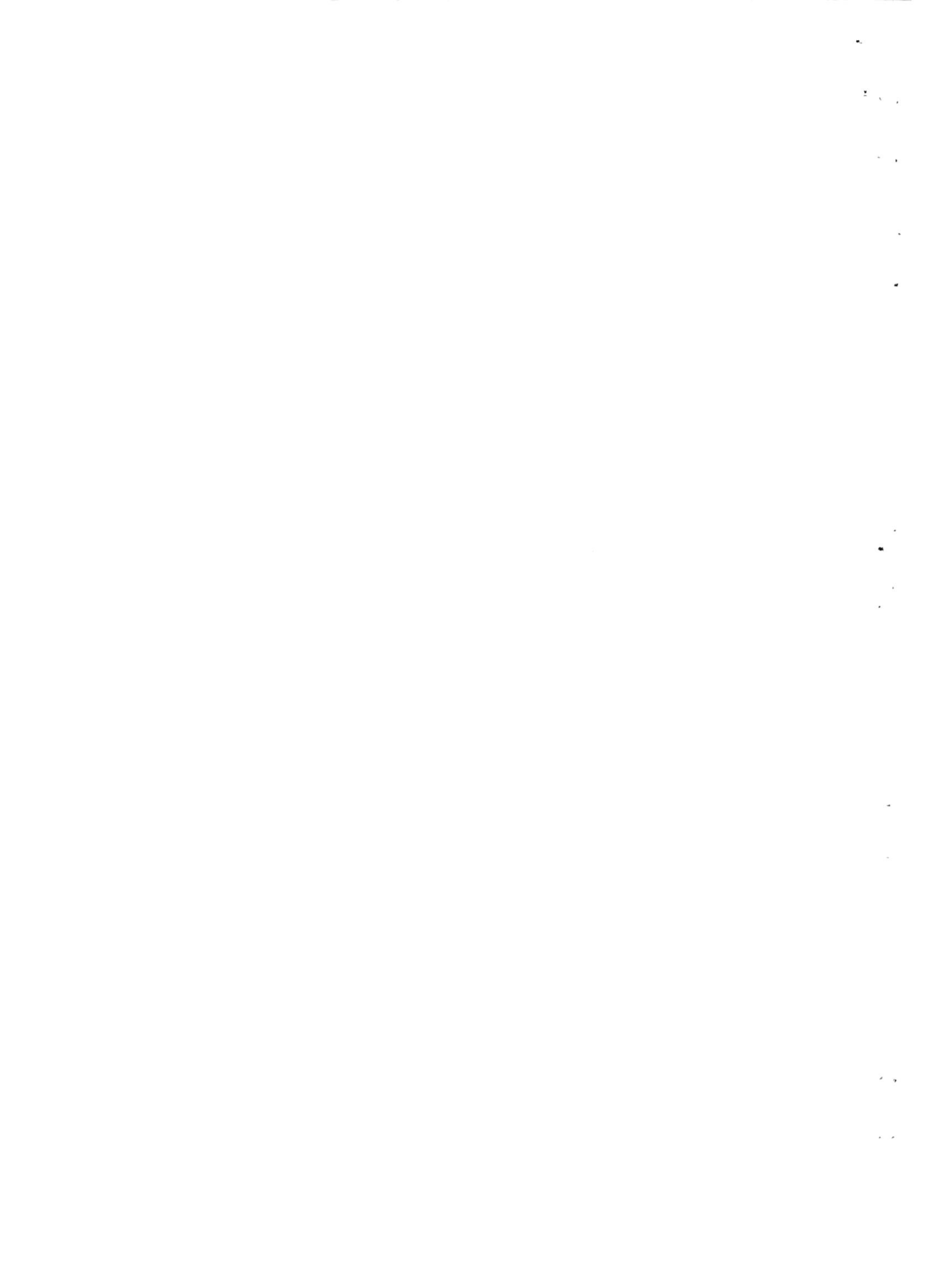
There being no any other business, and the time being 12:05 pm the meeting was adjourned.

SIGNED.....


(CHAIRPERSON)

DATE.....

 20-05-2017



MINUTES OF THE 19th SITTING OF THE DEPARTMENTAL COMMITTEE (K) ON LANDS HELD ON SATURDAY 13TH MARCH 2016, AT YALA, SIAYA COUNTY AT 2.00 AM

PRESENT:

1. The Hon. George Oner, M.P.
2. The Hon. Joseph Oyugi Magwanga, M.P.
3. The Hon. Benson Mbai, M.P.
4. The Hon. Hellen Chepkwony, M.P.
5. The Hon. Patrick Makau, M.P.
6. The Hon. Francis W. Nderitu, M.P.
7. The Hon. Bernard Bett, M.P.
8. The Hon. John Kihagi, M.P.
9. The Hon. Dr. Paul Otuoma, M.P.

ABSENT WITH APOLOGIES:

1. The Hon. Alex Mwiru, M.P. - Chairperson
2. The Hon. Moses Ole Sakuda, M.P. - Vice Chairperson
3. The Hon. Julius Ndegwa, M.P.
4. The Hon. Onesmus Ngunjiri, M.P.
5. The Hon. Mathew L. Lempurkel, M.P.
6. The Hon. A. Shariff, M.P.
7. The Hon. Shakila Abdallah, M.P.
8. The Hon. Sarah Korere, M.P.
9. The Hon. Francis Njenga Kigo, M.P.
10. The Hon. Hezron Awiti Bollo, M.P.
11. The Hon. Kanini Kega, M.P.
12. The Hon. Esther Murugi, M.P.
13. The Hon. Thomas Mwadeghu, M.P.
14. The Hon. Mutava Musyimi, M.P.
15. The Hon. Eusilah Ngeny, M.P.
16. The Hon. Suleiman Dori, M.P.
17. The Hon. Kipruto Moi, M.P.

IN ATTENDANCE:

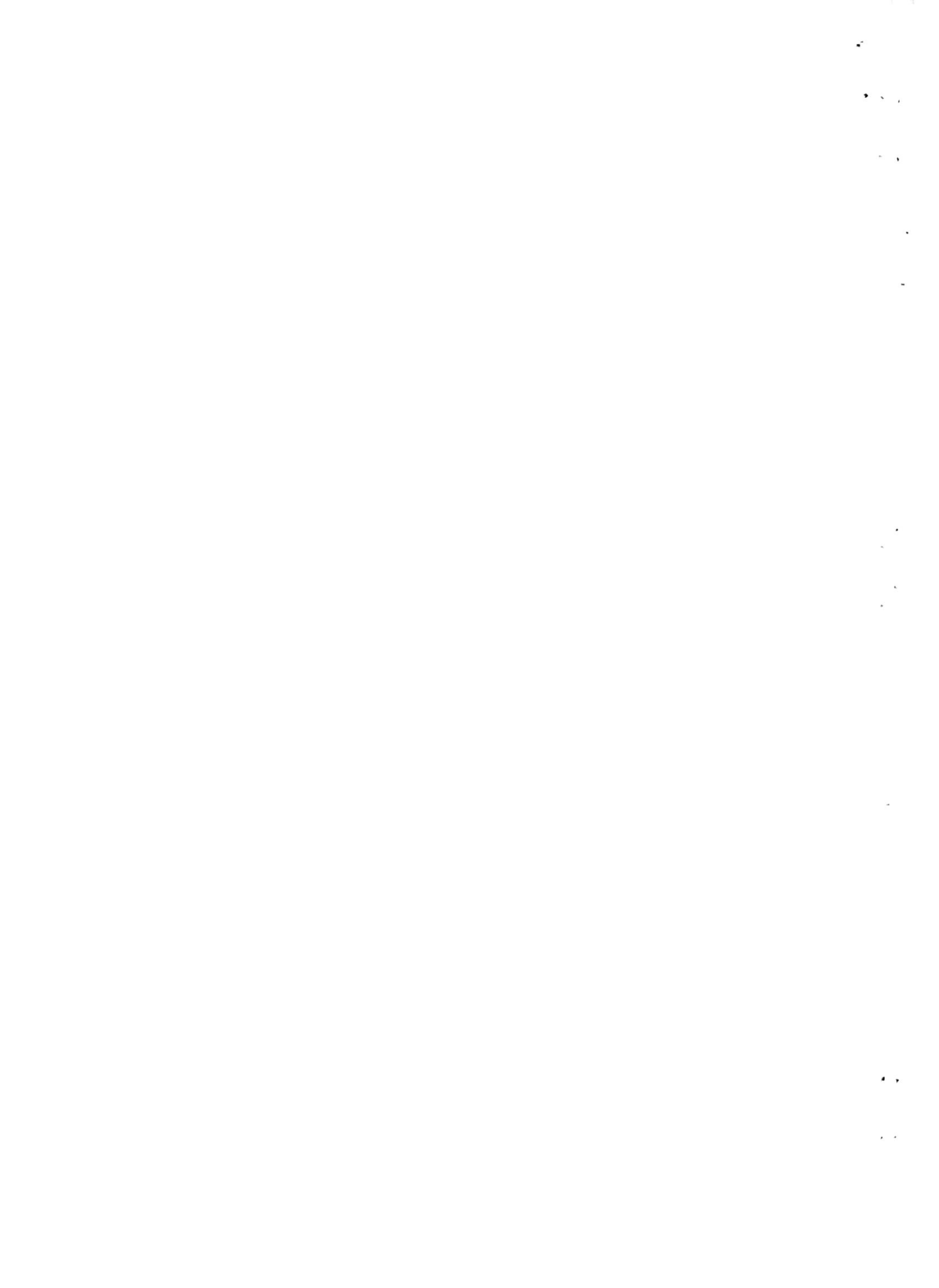
KENYA NATIONAL ASSEMBLY

- | | |
|-------------------------|---------------------|
| 1. Mr. James Ginono | Clerk Assistant I |
| 2. Mr. Emmanuel Muyodi | Clerk Assistant III |
| 3. Mr. Mercy Wanyonyi | Legal Officer II |
| 4. Ms. Rehema Chepkirui | Audio Officer |

MINUTE NO. DCL/LN/2017/52

PRELIMINARIES

The chairman called the meeting to order at 2.15 a.m. with a word of prayer from the Hon. Paul Otuoma, MP



MINUTE NO. DCL/LN/2017/53 **MEETING WITH YALA RESIDENTS**

Yala residents informed the Committee as follows informed the Committee as follows: -

1. The Yala Swamp covers 17, 500 HA and is situated in western Kenya and falls within the Siaya, Bondo and Busia Districts; the wetland belonged to the Community through a trust land which has been managed for a long time by Siaya and Bondo Counties;
2. The Community surrounding the Yala swamp inhabited and depended on the Yala Swamp land and riverine area for many decades;
3. In 1962 river Yala broke its banks and as a result the Yala swamp residents were forced to move to higher grounds where they reside to date;
4. In 1960s the United Nations Special Funds and Food and Agriculture Organization of the United Nations reclaimed the upper part of the Swamp;
5. In 1969 the course of river Yala was changed by digging a 7Km canal on the mainland along farms belonging to residents of Mango to Ulango village;
6. The initial plan then was to use the reclaimed land for settlement of displaced people something which has not happened up to date;
7. Later Lake Basin Development Authority took over the management of the swamp. The authority accepted to give 200 Ha of the reclaimed land to the community;
8. In 2003 Dominion Farms Ltd moved into Yala swamp through an arrangement with the Lake Basin Development Authority (LBDA);
9. They had agreed that they were to engage in rice production; Later Dominion Farms Ltd embarked on other additional agricultural and development activities in the swamp, hence a threat to the livelihood of the people of Yala Swamp Catchment area;
10. Several meetings were held and it was agreed that the displaced persons living in the riparian areas were supposed to be allocated land; over the years, this promise of land is yet to be honored by the concerned authorities, including the former Local Authorities and now the County Government; and,
11. The initial number of households were 82, but the population has since grown and the residents are still waiting for the land they were promised.

MINUTE NO. DCL/LN/2016/54 **ADJOURNMENT**

There being no any other business, and the time being 3:55 pm the Chairman adjourned the meeting.

SIGNED.....
(CHAIRPERSON)

DATE..... 20-05-2017

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ANNEX 3

2327

(2) Comments
pls deal

FA
04/5



MINISTRY OF LANDS, HOUSING & URBAN DEVELOPMENT

Telegrams: "MINILANDS", Nairobi
Telephone: Nairobi 2718050
When replying please quote

ARDHI HOUSE
1st NGONG AVENUE
P.O. Box 30450-00100
NAIROBI, KENYA

April 29, 2016

MOLHUD/ADM/1

Clerk of the National Assembly
Parliament Buildings
NAIROBI

DD/ (Mrs. Ateyo)

3/5/16

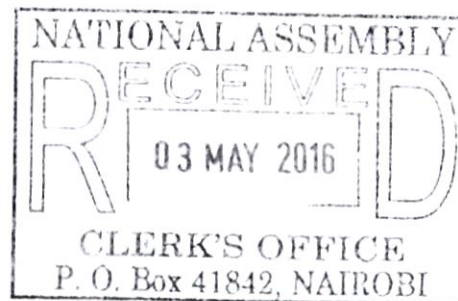
Attn: Florence Atenyo-Abonyo

MEETING WITH DEPARTMENTAL COMMITTEE ON LANDS

This is in reference to your letters KNA/CORR/2016 of 24th March 2016 and Ref. KNA/DCL/CORR/2016 (33) dated 12th April, 2016 on the above subject matter.

Attached please find the responses to the above.

PETER. K. KAHURO
FOR: **PRINCIPAL SECRETARY**





The Legitimacy, mandate or role of this group in the squatter problem in Trans Nzoia need to be established in order to address their grievances conclusively by the same state organs as stated above.

d) Circumstances under which the Kiboroa Squatters were Forcefully Evicted from Olingatongo and Sabwani Farms

Answer

When the white settlers took over the farms in Trans Nzoia, most of these people were hired to work as labourers for the white settlers. After independence, when ADC took over some farms, some of them were retained as workers while others moved to Kiboroa forest.

They embarked on cultivation in the forest until sometimes in 1987 when they were evicted by the Government to pave way for afforestation for the purpose of wood supply to Webuye Panpaper Mills and Tanning Industries.

The evicted people dispersed and are scattered all over the county, but can be traced in rural areas and peri-urban centres, slums dwellings. The majority of them comprise of the larger Bukusu Community within the greater Transnzoia region.

PETITION NO. 4

Alleged displacement of Yala Swamp residents

Hon. Chairman I wish to respond as follows;

A Brief History

The most recent development of the Yala swamp is undertaken by Dominion Farm, a subsidiary of a privately held company from the United

States investing in agricultural development. The reclamation and development of the swamp, however, is far from a new phenomenon.

The intention of the Kenyan government to transform parts of the Yala swamp into agricultural land for food production goes back as far as the early 1970s. Around that time, the Ministry of Foreign Affairs of The Netherlands was consulted extensively by the Kenyan government for technical assistance on reclamation of the swamp and the feasibility of agricultural production.

Throughout the 1980s numerous reports were commissioned by the Kenyan Ministry for Energy and Regional Development and the Lake Basin Development Authority to the Dutch Ministry of Foreign Affairs. Reports like the "Yala Integrated Development Plan" and the "Yala Swamp Reclamation and Development Project" focused in depth on the potential of the development of the swamp and made recommendations on practical matters, such as drainage and irrigation, soil analysis, agriculture, marketing, environmental aspects, employment opportunities, human settlement, management and financial planning.

As a result, small-scale reclamation and development of the swamp land was undertaken throughout the 1980s and 1990s under the supervision of the Lake Basin Development Authority. The development of the swamp was partially successful, yet its scale was small and financial benefits were too marginal. Major investment was therefore required to extend the scale of the project.

Then, in 2003, an American investor expressed interest to make significant long-term investments into bringing parts of the swamp into agricultural production. Subsequently, a lease for 45 years was negotiated between Dominion Farms and the Siaya and Bondo County Councils to bring into agricultural production some 7,000 hectares of the Yala swamp. The whole Yala swamp wetland covers 17,500 hectares, which means that Dominion Farms is allowed to reclaim and develop roughly 40% of the swamp.

a) The total acreage of Yala Swamp and the acreage initially held by Lake Basin Development Authority.

Answer

The total acreage of Yala swamp is approximately 17,500 hectares. The lake Basin Development Authority has only allowed dominion to reclaim 3700 Ha.

b) The current status of the land and the total acreage held by dominion farms

Answer

As stated earlier Dominion Farms is allowed to reclaim and develop roughly 21% (3700Ha) of the swamp. Currently slightly 1500Ha is in use with rice, fish, and other agricultural products.

c) The total acreage that has been reclaimed.

Answer

The total acreage that has been reclaimed by dominion is 1500 Ha in acreage it is 3750acre.

d) Details of the transfer of the land from from the Lake Basin Development Authority to Dominion Farms.

Hon. Chairman we have details of a Memorandum of Understanding (MOU) between Lake Basin Development Authority and Dominion Farm Limited. There is no transfer of land from Lake Basin Development Authority to Dominion as the swamp is Trust Land (Community Land) and is vested in the County Governments of Siaya by virtue of the Trust Land Act and Constitution of Kenya. Therefore, this means Lake Basin Development Authority cannot transfer the swamp to Dominion or any other party for that matter. It is only the County Government of Siaya that can execute the same on behalf of the people of the county. (Appendix 1 copy of the M.O.U)

Memorandum of Understanding

By virtue of CAP 442 that establishes the Lake Basin Development Authority, that gives the mandate to exploit and develop immense natural resources in the region around Lake Victoria.

Yala Swamp that measures 17500ha is one such resource under the jurisdiction of Lake Basin Development Authority. It is for this reason and law that a MOU was made between Lake Basin Development Authority and Dominion Farm Limited.

This Memorandum spells out how Lake Basin Development Authority shall over see the use of the swamp by Dominion Farm Limited.

ANNE. I

MEMORANDUM OF UNDERSTANDING (MOU)

LAKE BASIN DEVELOPMENT AUTHORITY

AND

DOMINION FARMS LIMITED

FOR

DEVELOPMENT OF YALA SWAMP

KAPLAN & STRATTON

Advocates
P.O. Box 40111
Nairobi



EXEMPT FROM STAMP DUTY
Section 15 Chapter 4
LAWS OF KENYA
E. 16. 7

MEMORANDUM OF UNDERSTANDING (MOU) BETWEEN LAKE BASIN
DEVELOPMENT AUTHORITY AND DOMINION FARMS LIMITED FOR INVESTMENT
AT THE YALA SWAMP

A: PREAMBLE.

WHEREAS:-

The Lake Basin Development Authority is a Regional Development Authority established under the Act of Parliament Cap 442 of 1979, to spearhead development in the Lake Victoria catchment area. The area covers approximately 39,000Km², with a population of over 10 million people, according to the 1999 census, and comprises Nyanza, Western and part of Rift Valley Provinces.

WHEREAS:-

The mission of LBDA is to sustainably exploit and develop the immense natural resources in the region in collaboration with other development agencies and investors to create wealth and employment and alleviate poverty.

CONSIDERING THAT:-

The vast Yala Swamp measuring a total of 17,500 ha is one such natural resource under jurisdiction of LBDA. Over the years, LBDA has been involved in adaptive research and agricultural activities at the Swamp in an area measuring 2,300 ha, which was reclaimed by the Government of the Republic of Kenya ("the Government") in 1970.

NOTING THAT:-

As part of these activities, LBDA has completed the construction of 17 No. 1-2-3 bed roomed houses, commenced the construction of an irrigation weir, improved the access roads, maintained the protection dykes and diversion and feeder (Lake Kanyabohi) canals, and established an orchard for demonstration and a source of fruit tree seedlings as well as office facilities. Due to limited capitalisation, LBDA has been unable to utilise the farm to full capacity for agricultural production.

ACKNOWLEDGING THAT:-

The Dominion group of companies is an international group of companies based in Edmond, Oklahoma, USA, whose employees have experience in the establishment and management of state of the art of irrigated agricultural projects and now has a subsidiary registered in Kenya under the Companies Act (Cap 486) under the name of DOMINION FARMS LIMITED.



MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding is made this Nineteenth May 2003 between:

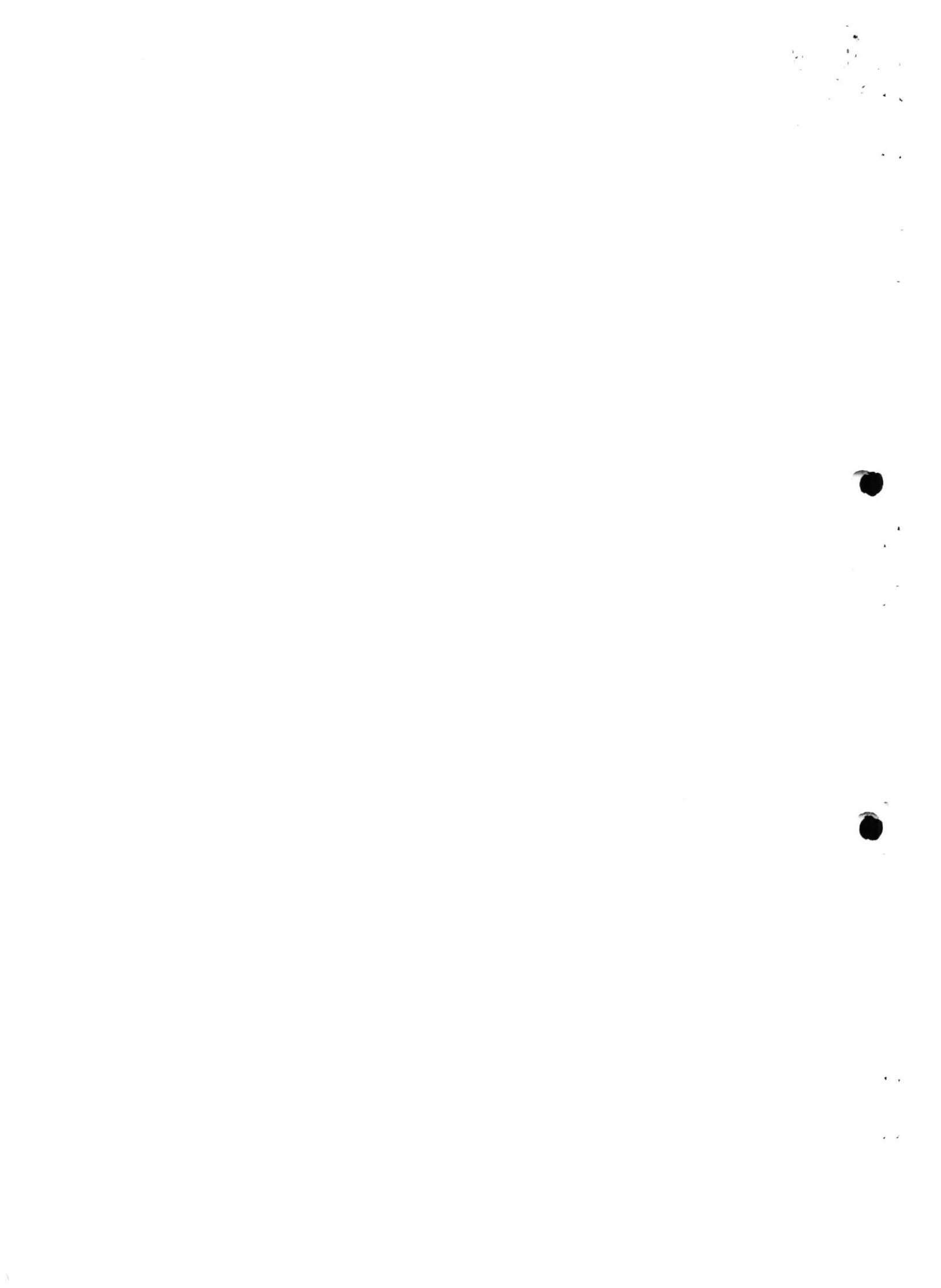
1. THE LAKE BASIN DEVELOPMENT AUTHORITY an authority established under the Lake Basin Development Authority Act (Cap. 442 of the Laws of the Republic of Kenya ("LBDA")); and
2. DOMINION FARMS LIMITED a company incorporated in the Republic of Kenya and having an address of P.O. Box 4659, Kisumu ("Dominion").

WHEREAS:

- A. Dominion wishes to develop and manage a large scale farm at Yala Swamp ("the Swamp") situated in the Nyanza Province with the initial emphasis on rice farming with other varieties of crops grown from time to time as may be necessary and to take a lease of the Swamp jointly from the County Council of Siaya and the County Council of Bondo (together "the Councils").
- B. LBDA wishes to provide technical assistance and expertise to Dominion and have one of its members on the technical committee of the advisory board for the project and one of its members on the board of directors of Dominion.
- C. LBDA holds a Letter of Allotment dated 27th November 1989 relating to Uns. Industrial Plot for Rice Mill (the "Mill") in Kisumu Municipality.
- D. Dominion wishes to have exclusive use of the Mill in order to process its produce.

NOW IT IS AGREED

- AA 1. LBDA being the Government institution with the mandate to initiate, plan, co-ordinate and implement development activities in the region in which the Swamp lies, will collaborate with Dominion in the development of the Swamp. Under this umbrella, LBDA shall therefore, act as the official advising agent on behalf of the Government.
2. LBDA undertakes to assist, co-ordinate and facilitate the activities of Dominion with relevant organisations to ensure the smooth and efficient implementation and management of the project.
3. Both parties agree that, as far as possible, professional staff will be seconded by LBDA to the project in areas of specialisation available in LBDA to avoid importation of expertise and allow for technology transfer to Dominion.
4. Both parties agree LBDA will undertake, in collaboration with KARI, adaptive research, extension activities and demonstration to the local communities at the Swamp dependent upon the project activities. An area of land to be agreed upon by LBDA and Dominion shall be set aside for this purpose. The area to be set aside will be commensurate with the level of research activities envisaged and in any event will

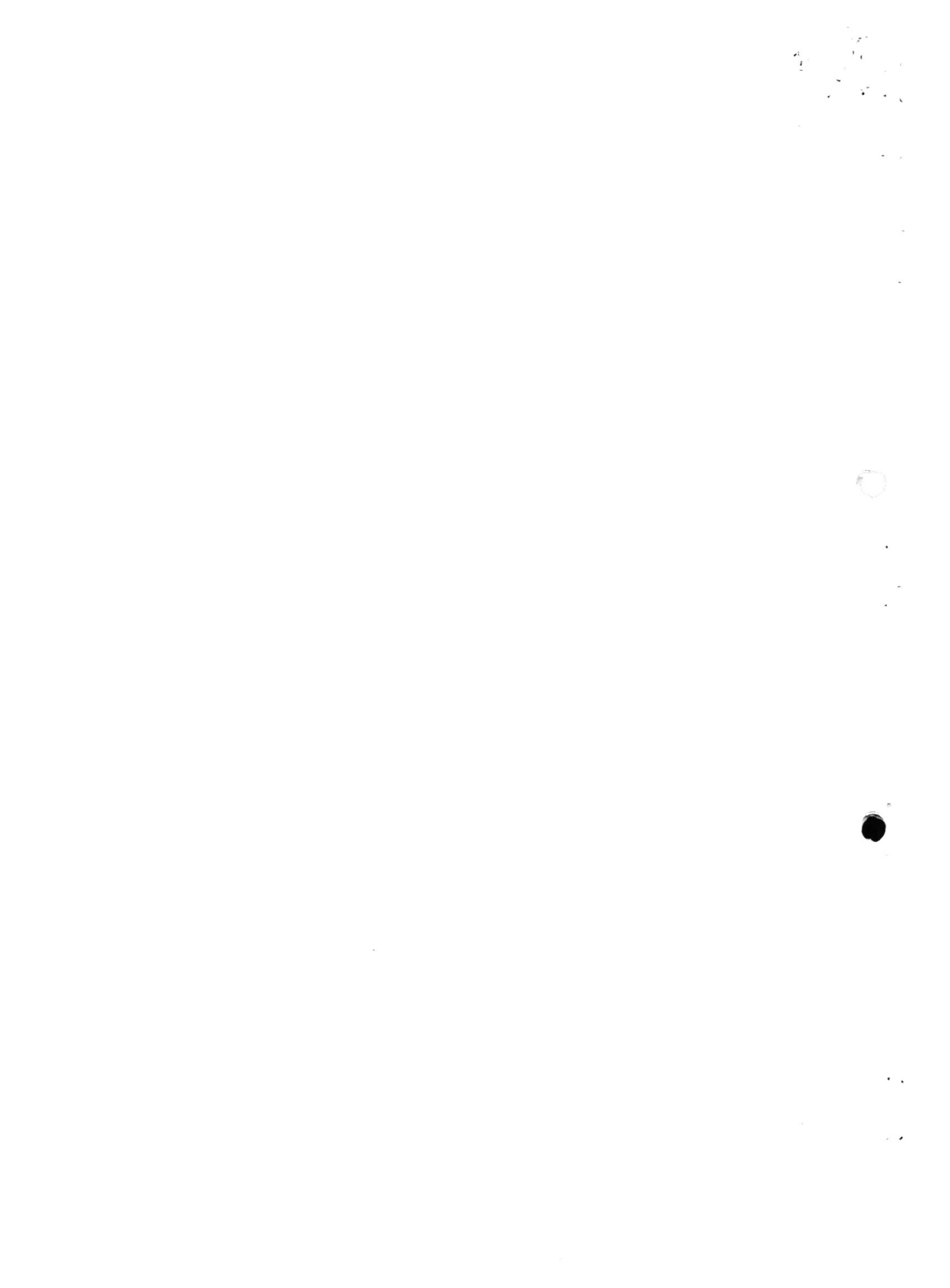


not be more than 20 hectares. Adaptive research shall form part of the project development.

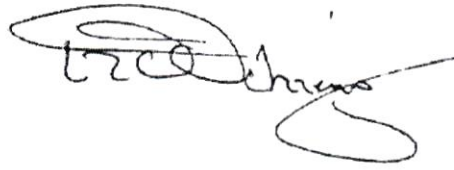
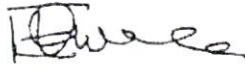
5. Both parties agree that Dominion shall use of LBDA's existing infrastructure as facilities as detailed hereunder.
 6. LBDA agrees to enter into an agreement with Dominion for the processing of farm produce (cereals) and use of facilities at LBDA's Mill at Kisumu. The agreement the use of the Mill and facilities shall be the subject of a separate milling contract and shall be on such terms and conditions as the parties may agree and on commercial viable rates and shall also contain a termination clause of six months notice to be in writing which may be given by either party to the other.
 7. LBDA agrees to enter into a lease agreement with Dominion to use LBDA's heavy machinery (bulldozer, excavator, tractors, water pump etc) for activities of the project.
 8. LBDA agrees to assign and transfer, in accordance with the Water Act (as amended) to Dominion all its water permits that it currently holds that relate to or affect the Swamp.
- BB.
1. LBDA, as the institution with the mandate and technical expertise, will assist Dominion with all engineering and construction designs for irrigation and drainage and facilitate their approval by the relevant authorities. The responsibility for correct implementation of the designs and construction will, however, remain with the design engineer and contractor of Dominion.
 2. LBDA will provide guidance and advice to Dominion from time to time on the construction and land use activities at all times ensuring that such construction and land use activities comply with the laws of the Republic of Kenya and Government regulations.
 3. For the sake of prosperity, Dominion will lodge approved copies and design reports and drawings with LBDA, including any other reports deemed of use and benefit to the Government unless Dominion considers such reports and drawings are of a confidential nature or the release of them to LBDA may damage its reputation or hinder its operations in any way whatsoever.
 4. LBDA has undertaken developments at the Swamp which include canals, roads, weirs and houses of which Dominion will take cognisance provided that LBDA, at no time demand compensation, rent or any other form of re-imbusement for developments from either Dominion or the Councils except as is specifically provided for in this memorandum of understanding.
 5. LBDA shall nominate, by name and not by position, one of its members to the technical committee of the advisory board of the project. LBDA shall nominate, by name and not by position, one member and Dominion shall appoint such member to its main board of directors.

order to safeguard the interests of LBDA and of the Government.


6. LBDA will regularly monitor the environmental impact of the project by carrying out short term 'with Project' assessments in accordance with the Environmental Management and Co-ordination Act. Dominion will avail such records and data as may be necessary for such assessments. Dominion will also put in place remedial measures recommended by the assessments with a view to protecting the environment as may be required from time to time.
- CC.
1. LBDA will have the responsibility to ensure the protection and conservation of areas of special interest in the Swamp including any areas considered of historical significance by the community. Dominion will co-operate with LBDA in this task.
 2. Any logos and other identification marks on the finished agricultural produce shall advertise the rich diversity of Lake Victoria Basin.
 3. Rice production shall be the main agricultural activity unless determined otherwise by Dominion. Periodic crop rotation with other suitable varieties of crops to maintain soil fertility and pest control shall be undertaken in accordance with good land management and farming practices.
 4. In consideration of providing technical assistance and expertise and any other assistance that Dominion may require from time to time Dominion shall pay LBDA the following amounts commencing in 2003:
 - (i) 0-5 years Three million shillings (Kshs.3,000,000) per year.
 - (ii) 5-10 years Three million shillings (Kshs.3,000,000) per year.
 - (iii) 10-15 years Five million shillings (Kshs.5,000,000) per year.
 - (iv) 15-20 years Six million shillings (Kshs.6,000,000) per year.
 - (v) 20-25 years Seven million shillings (Kshs.7,000,000) per year.
- DD.
- In consideration for the use of the leased equipment detailed in clause AA 7 above Dominion shall pay LBDA a single lump sum and/or advance amount being the sum of eleven million shillings (Kshs. 11,000,000). Such sum shall only become due and payable within thirty days of the signing of this agreement, the memorandum of understanding with the Councils and the grant of a licence by the National Environmental Management Agency under the Environmental Management and Co-ordination Act. LBDA shall lease the heavy machinery to Dominion at the approved Government hourly rates and the sum of KShs11,000,000 shall be used as a credit against the rental amount. Dominion shall be responsible for maintenance and repair of the equipment but shall be under no obligation at the end of the lease period to return the equipment to LBDA in working order. Equally if the equipment shall have broken down beyond repair or exhausted its useful life before the end of the lease period, LBDA shall be under no obligation to re-imburse Dominion. LBDA undertakes to use the sum of eleven million shillings (Kshs.11,000,000) for payment of rates and extraction of title deed to the Mill and which amount:

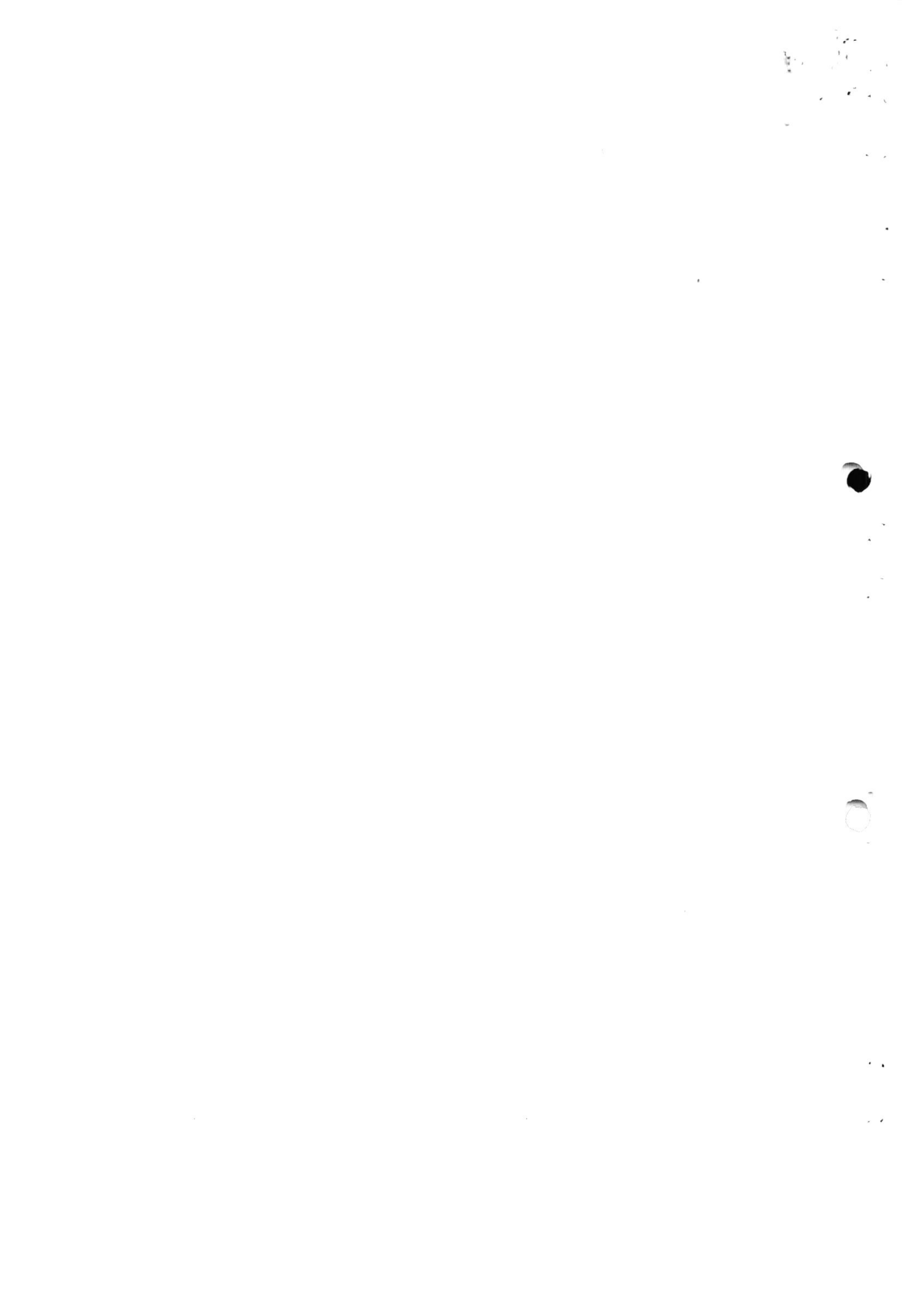


Signed by the MANAGING DIRECTOR
OF THE LAKE BASIN DEVELOPMENT
AUTHORITY in the presence of:

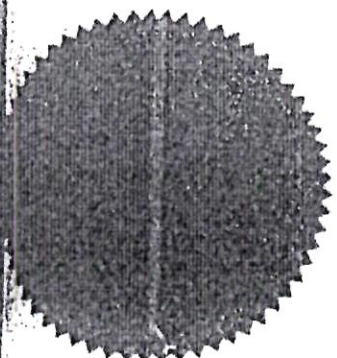


Signed by CALVIN BURGESS the duly
authorised representative of DOMINION
FARMS LIMITED in the presence of:





ANNEX XVII



LEASE

DATED 25th May 2004

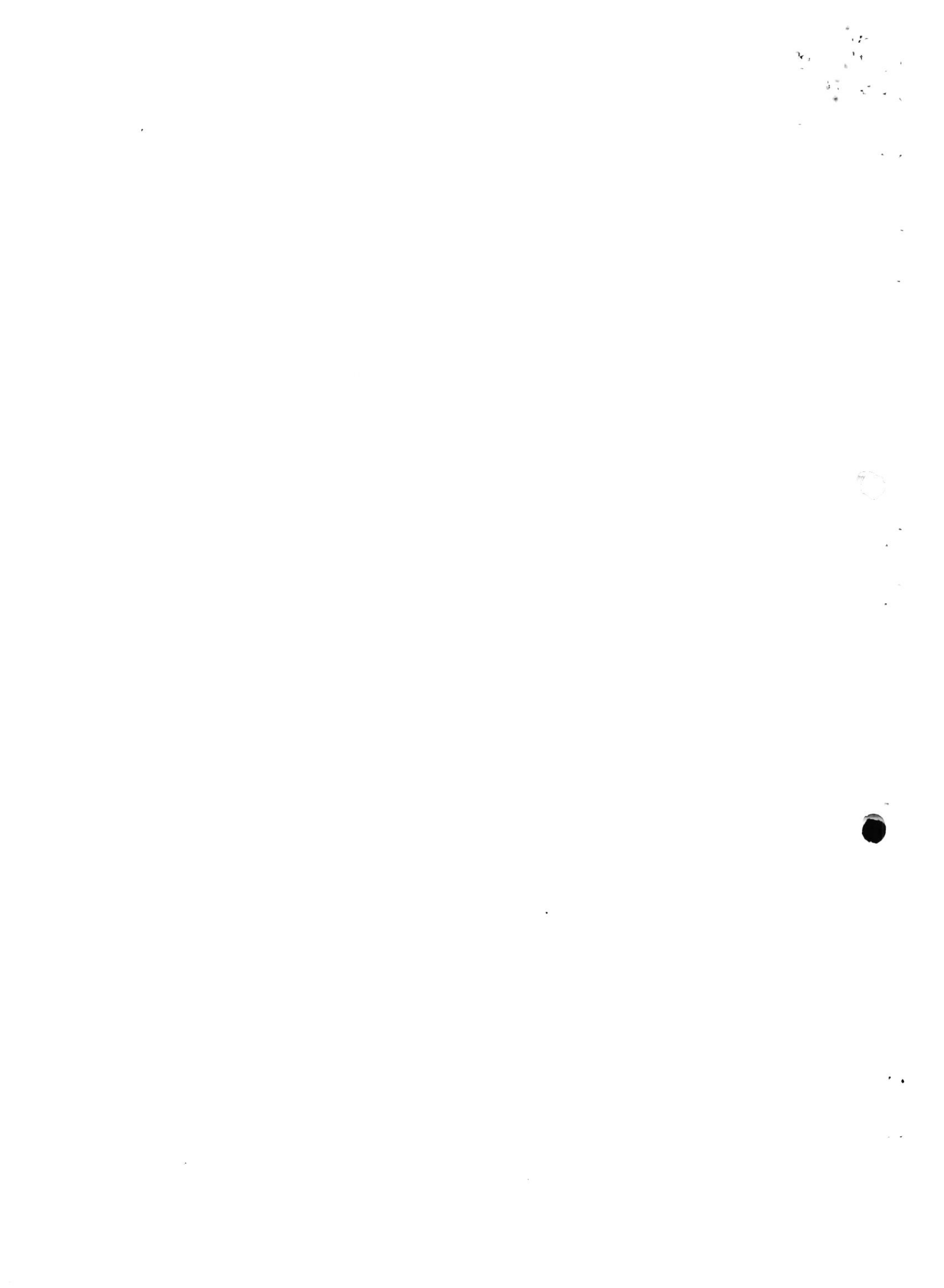
THE COUNTY COUNCIL OF SIAYA
AND
THE COUNTY COUNCIL OF BONDO

- TO -

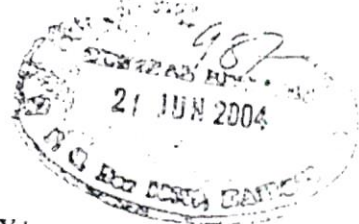
DOMINION FARMS LIMITED

PART OF
YALA SWAMP, NYANZA PROVINCE

KAPLAN & STRATTON
Advocates
P.O. Box 40111
Nairobi



REPUBLIC OF KENYA
THE TRUST LANDS ACT
CHAPTER 288 OF THE LAWS OF KENYA
LEASE



This Lease is made on

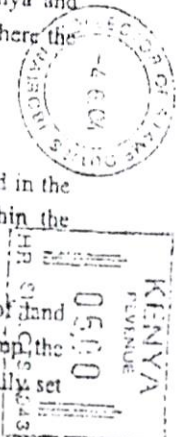
25th May 2004

between:

- (1) THE COUNTY COUNCIL OF SIAYA a local authority established under the Local Government Act (Cap.265 of the Laws of the Republic of Kenya) ("the Siaya County Council" which expression shall where the context so admits includes its successors and assigns); and
- (2) THE COUNTY COUNCIL OF BONDO a local authority established under the Local Government Act (Cap.265 of the Laws of the Republic of Kenya) ("the Bondo County Council" which expression shall where the context so admits includes its successors and assigns); and
- (3) DOMINION FARMS LIMITED a company incorporated in the Republic of Kenya and having an address of P.O. Box 4659, Kisumu ("Dominion" which expression shall where the context so admits includes its successors and assigns).

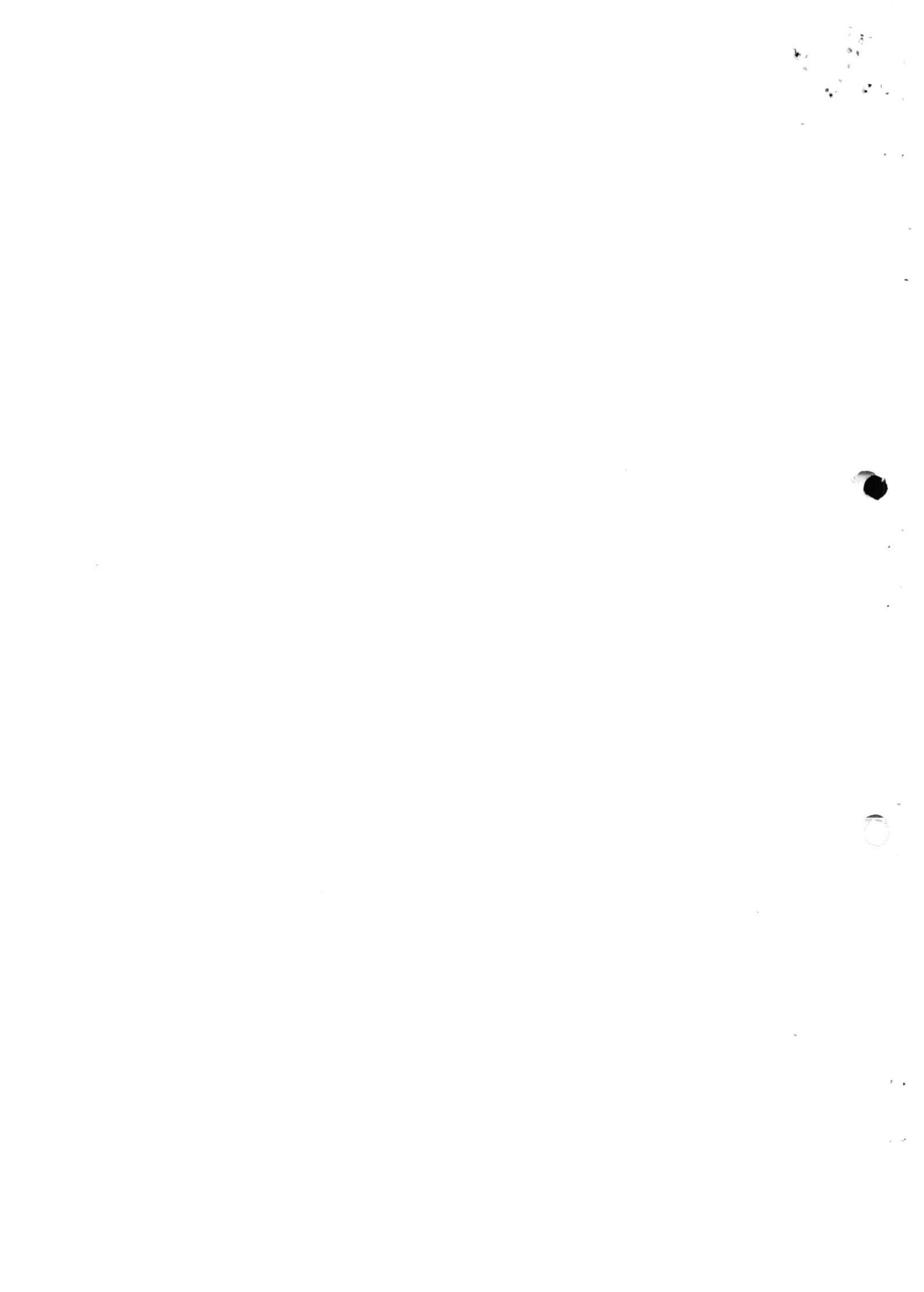
WHEREAS

- (A) The Yala Swamp is situated in the Nyanza Province. A portion of the Land is situated in the District of Siaya and a portion of which is situated in the District of Bondo within the jurisdiction of the County Council of Siaya and the County Council of Bondo.
- (B) By virtue of Gazette Notice No.2570 of 25th August 1970, all that piece or parcel of land comprising approximately 3,700 hectares ("the Land") situated in part of the Swamp, the dimensions and boundaries as more particularly detailed in the schedule hereto was duly set apart in accordance with the provisions of Part IV of the Trust Lands Act.
- (C) Dominion wishes to develop and manage a large scale irrigated farm at the Swamp with the initial emphasis on rice farming and with other varieties of crops grown from time to time as may be necessary and to lease the Gazetted Area from the Siaya County Council and the Bondo County Council (together "the Councils") on the following terms and conditions.



NOW THESE PRESENTS WITNESS

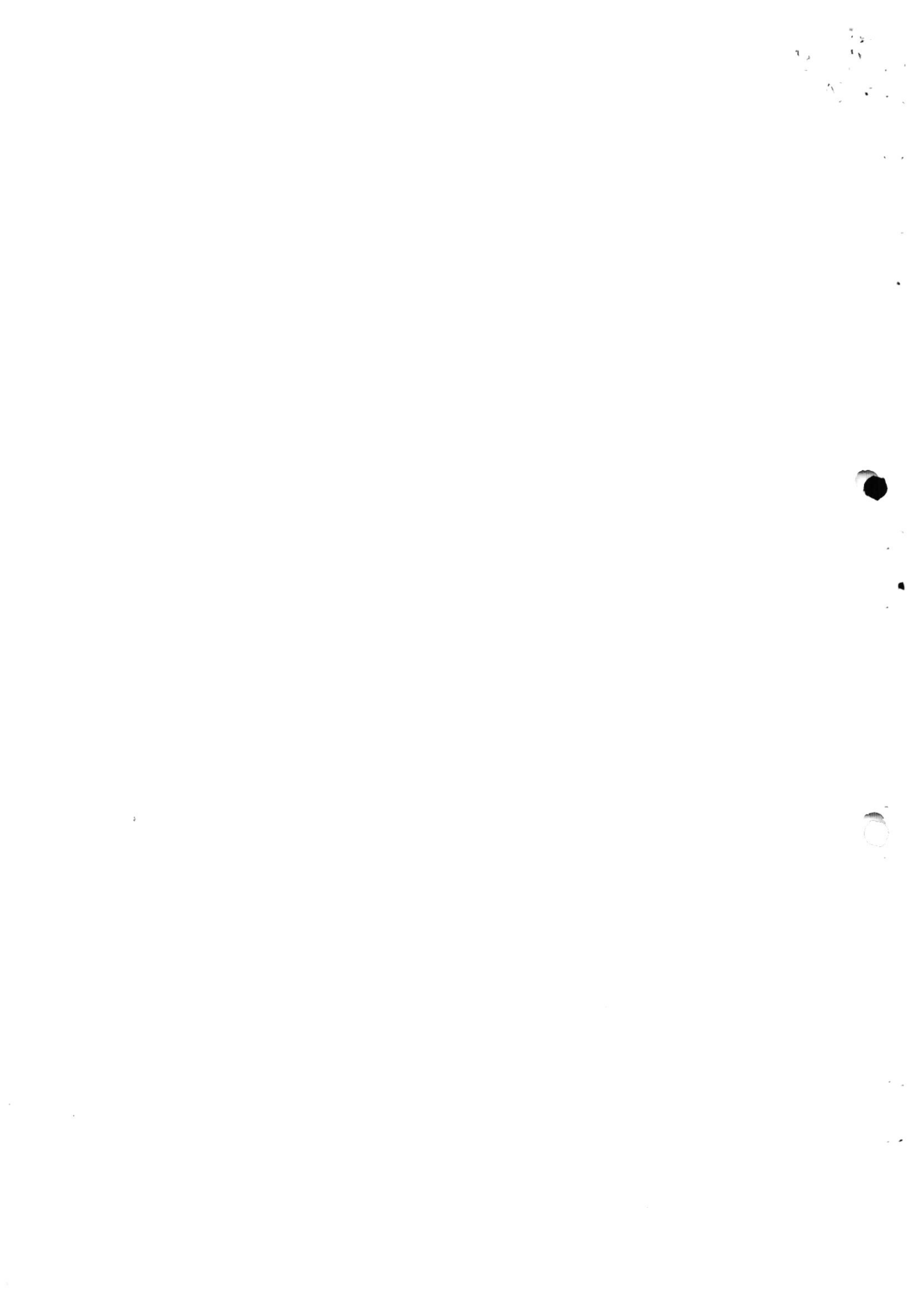
THE COUNCILS being vested with all the rights and interests in and to and having set apart, in accordance with the Trust Lands Act and the Constitution of Kenya, ALL THAT piece or parcel of land comprising three thousand seven hundred (3,700) hectares approximately the dimensions and boundaries of which are more particularly detailed in the schedule hereto respectively and with the consent and approval of the Commissioner of Lands in accordance with the Trust Lands Act the Siaya County Council HEREBY LEASES all that piece or parcel of land situated within the boundaries of the County Council of Siaya and the Bondo County Council HEREBY LEASES all that piece or



parcel of land situated within the boundaries of the County Council of Bendo to Dominion TOGETHER WITH the buildings and improvements erected and being thereon (together "the Land") TO BE HELD by Dominion as tenant for a period of Twenty Five (25) years (the "Term") from 1st June 2003 subject nevertheless to determination as hereinafter provided at the annual rent for the first three years of the Term the sum of one million two hundred and fifty four thousand seven hundred and eight two shillings (Shs.1,254,782/-), the second three years of the Term to sum of one million four hundred and sixty three thousand nine hundred and thirteen shillings (Shs.1,463,913/-) and for the remainder of the Term the sum of one million six hundred and seventy three thousand and forty three shillings (Shs1,673,043/-) such rent to be paid throughout the Term clear of all deductions annually in advance on 1st June in each year of the Term save that the rent for the first three years has been paid in advance as a lump sum (receipt whereof is acknowledged by the Councils) and subject to the following modifications.

Dominion hereby covenants with the Councils, to the intent that the covenants shall be observed and performed by the Lessee throughout the subsistence of this Lease, as follows:

1. To pay the rent hereby reserved on the days and in the manner aforesaid, such rent to be shared between the Councils on a pro rata basis calculated on the percentage area of the Land that is located in each Council which for the purposes of this lease it is agreed between the Councils and deemed to be eighty six per cent (86%) in Siaya County Council and fourteen percent (14%) in Bondo County Council.
2. No buildings shall be erected on the land nor shall material additions or external alterations be made to any buildings otherwise than in conformity with plans and specifications previously approved in writing by the Commissioner of Lands and the Local Authority, such approval shall not be unreasonably withheld conditioned or delayed. The Commissioner shall not give his approval unless he is satisfied that the proposals are such as to develop the land in accordance with the terms of this Lease and with sound business practices.
3. To submit from time to time in triplicate to the Commissioner of Lands and the Councils plans (including block plans showing the positions of the buildings and a system of drainage for the disposal of sewage surface and sullage water) drawings elevations and specifications of the buildings Dominion proposes to erect on the land and such plans will be deemed to have been approved if no formal response is received from the Commissioner of Lands or the Councils within a period of three months after they are submitted and shall within sixty months of the actual submission of such plans complete the erection of such buildings and the construction of the drainage system in conformity with such plans drawings elevations and specifications as reasonably amended (if such be the case) by the Commissioner of Lands or the Councils PROVIDED that such period of sixty months shall be extended if completion is delayed by any circumstance beyond the control of Dominion which Dominion would not have avoided or prevented ("*force majeure*") AND PROVIDED that notwithstanding anything to the contrary contained in or implied by the Government Lands Act (Cap.280) if a material default shall be made in the performance or observance of any of the requirements of this condition and the Commissioner of Lands and the Councils have given Dominion notice of such material default and Dominion has not rectified such default within a period of one year, it shall be lawful for the Commissioner of Lands, Councils or any person authorised by him or them on behalf of the President to re-enter into and upon the land or any part thereof in the name of the whole and thereupon the term hereby created shall cease but without prejudice to any right of action or remedy of the President or the Commissioner of Lands or the Councils in respect of any antecedent breach of any condition herein contained.
4. To maintain in good and substantial repair and condition all buildings at any time erected on the Land.
5. To use the land and buildings, subject to all applicable laws and regulations, for all or any of the following purposes:



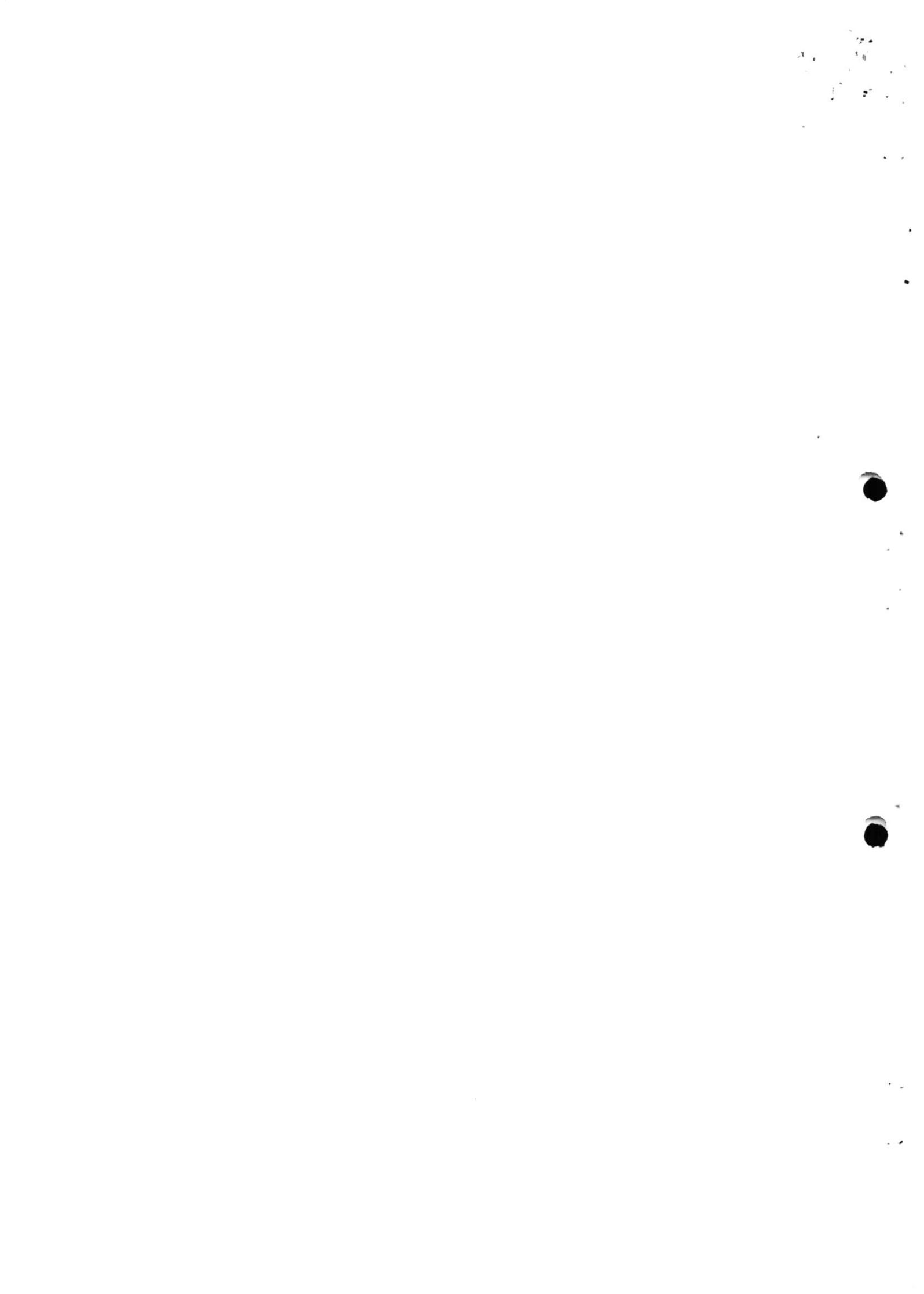
11. At the expiration of the Term to yield up the Land and all permanent erections, structures, buildings offices, stores and improvements thereon to the Councils respectively.

The Councils hereby covenant with Dominion, to the intent that the covenants shall be observed by the Councils throughout the subsistence of this Lease, as follows:

1. That Dominion paying the rent hereby reserved and observing and performing the several covenants and stipulations on the part of Dominion herein contained or implied shall peaceably hold and enjoy the Land during the Term without any interruption by the Councils or any person rightfully claiming under or in trust for the Councils.
2. Not to interfere with the business of Dominion or the project undertaken by Dominion on the Land in any way whatsoever, unless specifically requested to do so by Dominion provided that in the event that Dominion is carrying on an illegal or immoral activity on the Land, the Councils shall immediately give Dominion notice to cease such activity and Dominion shall cease such activity forthwith.
3. To permit Dominion to use and apply such seeds, fertilisers, pesticides and herbicides as it shall think fit provided that such seeds, fertilisers, pesticides and herbicides are not harmful to the environment.
4. To assist and support Dominion in any way possible and within the Councils mandate in respect of any application for such authority, approval, licence or consent as may be required by Dominion from time to time

PROVIDED ALWAYS AND IT IS HEREBY AGREED AND DECLARED as follows:

1. The President or such person or authority as may be appointed for the purpose shall have the right to enter upon the land and lay and have access to sewers, water mains, service pipes and drains, telegraph or telephone wires and electric mains of all description whether overhead or underground PROVIDED that laying or access shall not interfere with the user of the land by Dominion and indemnify Dominion for damage resulting from such installation and Dominion shall not erect any building in such a way as to cover or interfere with any existing alignments of sewers, water, mains, service pipes and drains, telegraph or telephone wires and electric mains.
2. In the event of any licence relating to the land or to the business or operations carried on by Dominion and which is held by Dominion being terminated or the land and buildings not being used for the purposes set out in clause 5 above for a consecutive period of two years except for the reasons of *force majeure* and on the Councils and/or the Government giving Dominion six months notice in writing, then the term of this lease hereby created shall *ipso facto* be determined and the land shall be deemed automatically to have reverted to the Councils and/or the Government as from the date of the expiry of the notice period without the necessity of any formal surrender thereof.
3. In the event that Dominion wishes to renew this lease, from the date of expiry, for a further term, Dominion shall give the Councils written notice of its intention at least one year before the expiry of the Term and on receipt of such notice, the Councils may renew it for a further term of Twenty (20) years at a rent to be agreed between the parties but otherwise on the same terms and conditions of this lease save for this covenant of renewal.
4. If and whenever during the Term the rents or any part of them are outstanding for ninety (90) days after becoming due or there is a breach by the Tenant of any covenant or other term of this lease, the Councils may re-enter the Land or any part of it in the name of the whole provided that Dominion does not rectify such breach within a period of ninety (90) days after receipt of such notice from the Councils and provided that such notice is signed by the appropriate Council and then the Term will absolutely cease. Dominion shall pay interest on any amount



due and outstanding from the day it falls due to the day it is paid at the prevailing rates of interest as may be published by the Central Bank of Kenya from time to time.

Any notice required to be served hereunder shall be in writing and shall be sufficiently served upon the Councils if forwarded to both Councils by registered post or left at both Council's or the address of the advocates of the respective Council's last known address in Kenya. A notice to Dominion shall be sufficiently served upon Dominion if hand delivered and left at its headquarters office and duly acknowledged by Dominion and also served on its advocates for the time being. A notice sent by post shall be deemed to be given four days after the date of posting thereof. The parties shall inform each other of any change of advocates with the address of such advocates.

6. In this Lease, where the context so admits, words importing the singular number only include the plural number and vice versa.

AND Dominion hereby accepts this Lease subject to the above covenants conditions provisions stipulations and agreements.

IN WITNESS WHEREOF this lease has been duly executed.

THE SCHEDULE
The Gazetted Area

All that piece or parcel of land comprising approximately 3,700 hectares situated within part of the area known as the Yala Swamp, the boundaries are demarcated on the ground and are described as follows: Starting from the dyke on Lake Kanyaboli, proceeding along the feeder canal and including the existing way leave, up to the Yala River, then proceeding approximately west along the Yala River Bund on the right bank of the river until the Yala River Diversion Canal when the left bank is included; continuing down to YS 14 camp including the airstrip; then from YS 14 Bench Marsh a line in a northerly direction to YS 34 Bench Marsh and from there in an easterly direction through YS 33 Bench Marsh to Lake Kanyaboli Dyke.

A Plan of the area is available for inspection at the Office of the District Commissioner, Siaya.

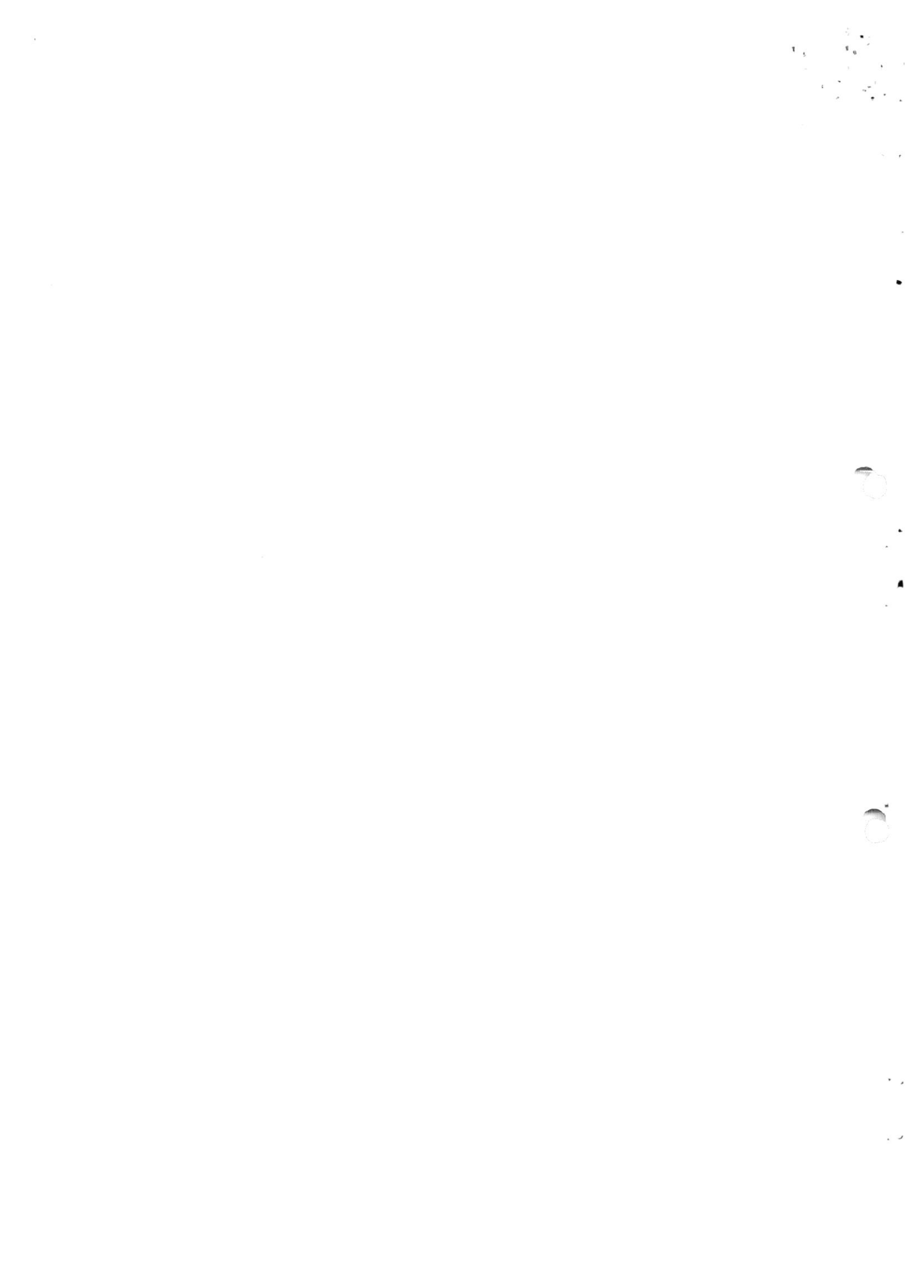
Signed by THE COMMISSIONER OF LANDS)
as agent for and on behalf of THE COUNTY)
COUNCIL OF SIAYA pursuant to section 53(b))
of the Trust Lands Act (Cap 288 of the Laws)
of Kenya) in the presence of:)

Bule

R. N. Mule 0151

REGISTRAR OF TITLES





Signed by THE COMMISSIONER OF LANDS)
 as agent for an on behalf of THE COUNTY)
 COUNCIL OF BONDO pursuant to section 53(b))
 of the Trust Lands Act (Cap 288 of the Laws)
 of Kenya) in the presence of:)

Dull

1st No. 3/10/1987

REGISTRAR OF TITLES

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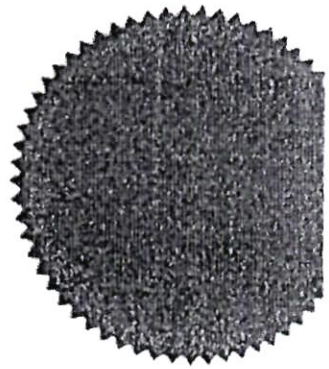
Sealed with the common seal of)
 DOMINION FARMS LIMITED)
 in the presence of:)

[Handwritten signature]

Director

Barbara J. Waterston

Director/Secretary



THE MEMORANDUM

Nil

ENVIRONMENT
 NAIROBI

REPUBLIC OF KENYA			
REGISTRY OF DOCUMENTS			
NAIROBI			
Date: 10/20/87 21/6/87			
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 LBDA

LAKE BASIN



DEVELOPMENT

AUTHORITY

MEETING WITH THE DEPARTMENTAL COMMITTEE ON LANDS
 REGARDING THE ALLEGED DISPLACEMENT OF YALA SWAMP RESIDENTS

Hon Chairperson,

The Lake Basin Development Authority (LBDA) is in receipt of a letter ref: KNA/DCL/CORR/2016(63) dated 28th July 2016 by the Clerk of the National Assembly. The letter informed that this honorable committee is considering a petition by Mr. Caleb Omondi Obonyo and two hundred other petitioners regarding the alleged displacement of Yala Swamp residents.

This honorable committee resolved to invite the LBDA Managing Director for a meeting on Thursday 4th August, 2016 to respond to the following issues:

Question (a)

The acreage of the entire land and the acreage initially held by the Lake Basin Development Authority.

Answer

Hon. Chair, the entire Yala Swamp is approximately 17,500 hectares. The land initially reclaimed in 1970 was 2,300 hectares. However, by the time LBDA moved to Yala Swamp in 1984, only about 1,200 hectares was available. The rest had been re-submerged.

Question (b)

The history of land occupied by Yala Swamp.

Answer

Hon. Chair, Yala Swamp is the flood plain of Yala River through which it flows before entering Lake Victoria. Between 1954 and 1956, Sir Alexander Gibb and Partners conducted the Kenya Nile Basin Water Resources Study.

Among the recommendations of the study was reclamation of Yala Swamp for agricultural development.

With financial assistance from UNDP/FAO, the Kenyan Government commenced the reclamation of the Yala Swamp in 1965 through to 1970. During this period a total of 2,300 hectares was reclaimed. In 1972, the Ministry of Agriculture commissioned a Dutch consulting firm, ILACO, to investigate the possible development options of Yala swamp. ILACO recommended reclamation of a further 9,200 hectares. Their study divided the swamp as follows:

Area I	2,300Ha	Already reclaimed
Area II	9,200Ha	to be reclaimed by gravity ✓
Area III	<u>6,000Ha</u>	to be reclaimed by pumping
Total	17,500Ha	

In 1979, the Ministry of Agriculture engaged a consortium led by F.C. De Weger international to prepare detailed final designs and tender documents for the reclamation of Area II of the Yala Swamp. Area III was to be left as a buffer zone and for ecological balance as it was below the Lake Victoria water level. The consortium completed its works in 1984. Due to lack of funds, reclamation works for Area II did not commence. ✓

Another study conducted by AHV and ILACO in 1980 recommended establishment of a 500 hectare pilot project in the reclaimed area. The pilot project was to demonstrate improved farm operations and practices for a holistic agricultural development of the people in the neighborhoods.

All along, the Ministry of Agriculture was in occupation of Yala Swamp. The Ministry's activities kept dwindling until 1984 when, after consultations, LBDA applied and was granted use of the farm by the Siaya County Council.

Question (c)

The current status of the land in use by Yala Swamp.

Answer

Hon. Chair, Dominion Farms Ltd (DFL) is currently in occupation of Yala Swamp. LBDA has no role in the activities of DFL and we may therefore not be able to comment on the current status of the land in use.

Bando
Siaya

(Bando) ✓
"Alego - usoga" ✓
"Bundabwiji" ✓

Question (d)

The total acreage of land that has been reclaimed.

Answer

Hon. Chair, the Government reclaimed 2,300 hectares in 1970. In their project proposal, it was the intention of DFL to rehabilitate the 2,300 hectares and reclaim another 4,600 hectares. To what extent this has been realized, we do not know.

Question (e)

Details of the transfer of the land from Lake Basin Development Authority to Dominion Farms.

Answer

Hon. Chair, on 20th September 2002, Mr. Calvin Burgess the C.E.O of the Dominion Group of Companies (DCG) visited LBDA where discussions on development opportunities in the region were held. Following this meeting, LBDA wrote to Mr. Calvin Burgess requesting Dominion Group to invest in a large scale Rice Irrigation Project in Yala Swamp. The understanding was to have both parties undertake the project as a joint venture.??

However, on 26th February 2003, Siaya District held a full Council meeting where LBDA and Dominion representatives were invited to brief the meeting on the project. In this meeting, one of the resolutions of the Council was that:

- i) It is only the County Council of Siaya that can allocate the Swamp to any investor as is the case applicable to all Trust Land under its jurisdiction as per the Trust Land Act 288 Laws of Kenya

Subsequently, in May 2004, the Commissioner of Lands acting as an agent for and on behalf of the County Councils of Siaya and Bondo granted Dominion Farms Ltd, a 25-year lease of 3,700 hectares of Yala Swamp, effective 1st June 2003 (copy attached). The conditions of this lease did not give any role to LBDA in the management and use of the Yala Swamp.

Question (f)

Any formal agreement between the Lake Basin Development Authority and the Yala Swamp residents for the transfer of 500 acres of reclaimed land to the residents.

Answer

Hon. Chair, when LBDA was in occupation of Yala Swamp, there was no formal agreement for transfer of 500 acres or any acreage of the reclaimed land to residents. However, the local community was allowed to utilize any land which LBDA for that time was not using. This was on the understanding that they would agree amongst themselves on how to use the land and not interfere with the activities of LBDA. This arrangement worked very well.

However, there exists a Memorandum of Understanding (MOU) signed between DFL and the County Councils of Siaya and Bondo (copy attached). In this MOU, at least 150 acres on either side of Siaya and Bondo (total 300 acres) were set aside for use by local community.

Question (g)

Any other information relevant to the matter.

Answer

Hon. Chair, before DFL was granted lease of Yala Swamp, it is LBDA that was developing the irrigation infrastructure and undertaking agricultural activities in the farm. LBDA was also in occupation of Plot No. 899 in Kadenge adjudication section where both the Ministry of Agriculture and LBDA had constructed offices, staff houses, stores and workshops. This plot was registered under the County Council of Siaya but reserved for LBDA. As at the time LBDA vacated Yala Swamp, no title deed had been issued for Plot No. 899 as the adjudication process had not been concluded.

As can be observed, the government of Kenya had invested a lot of money in reclamation and development of Yala Swamp and Plot 899. However, all these were taken by DFL without any compensation. Contrary to the MOU signed between LBDA and DFL (copy attached), the latter refused to pay rent on the buildings developed on Plot 899 claiming that LBDA did not have any ownership documents. DFL also defaulted in payments to LBDA for provision of technical assistance and expertise as stipulated in the MOU.

Hon. Chair, it is clear that DFL has absconded on its obligations. It is our humble request that DFL be compelled to honor the MOUs in place. It should also compensate the Government on the infrastructural development in Yala Swamp estimated at KShs 1,087,298,550 in the year 2004. ✓

[Memorandum] ①

DATED 20th May 2003

THE COUNTY COUNCIL OF SIAYA
THE COUNTY COUNCIL OF BONDO
AND
DOMINION FARMS LIMITED

MEMORANDUM OF UNDERSTANDING

KAPLAN & STRATTON
Advocates
P.O. Box 40111
Nairobi

MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding is made this *Twentieth May* 2003 between: *616*

- (1) **THE COUNTY COUNCIL OF SIAYA** a local authority established under the Local Government Act (Cap.265 of the Laws of the Republic of Kenya) ("**the Siaya County Council**"); and
- (2) **THE COUNTY COUNCIL OF BONDO** a local authority established under the Local Government Act (Cap.265 of the Laws of the Republic of Kenya) ("**the Bondo County Council**"); and
- (3) **DOMINION FARMS LIMITED** a company incorporated in the Republic of Kenya and having an address of P.O. Box 4659, Kisumu ("**Dominion**")

Whereas

- (A) The ~~Yala~~ **Swamp** ("**the Swamp**") is situated in the Nyanza Province. A portion of the Swamp falls in part of the Siaya County Council and a portion of which falls in part of the Bondo County Council.
- (B) By virtue of Gazette Notice No.2570 of 25th August 1970 ("**the Gazette Notice**"), the land ("**the Gazetted Area**") comprising approximately 3,700 hectares situated in part of the Swamp was duly set apart in accordance with the provisions of Part IV of the Trust Lands Act.
- (C) The dimensions and boundaries of the Gazetted Area are more particularly defined in the Gazette Notice.
- (D) Dominion wishes to develop and manage a large scale irrigated farm (the "**Farm**") (comprising approximately 6,900 hectares and edged in red on the attached sketch plan) at the Swamp with the initial emphasis on rice farming with other varieties of crops grown from time to time and take a lease of the Farm jointly from the Siaya County Council and the Bondo County Council (together "**the Councils**").
- (E) The Councils are aware that Dominion wishes to lease and develop the Farm, which is larger than the Gazetted Area and in order to achieve this the Councils will have to set apart an additional area of the Swamp ("**the Additional Area**") (comprising approximately 3,200 hectares) which has not yet been set apart.
- (F) By virtue of a Special Full Council Meeting of the Siaya County Council held on 26th February 2003 it was agreed that Dominion be permitted to develop a large scale farm at the Swamp subject to various terms and conditions.
- (G) By virtue of a letter dated 3rd February 2003 from the Office of the President and duly signed by the District Commissioner, Siaya District, the Siaya District Development Committee approved the project proposal, subject to various terms and conditions.

- (H) By virtue of a Council Meeting of the Bondo County Council held on 25th March 2003 it was agreed that Dominion be permitted to develop the Farm at the Swamp subject to various terms and conditions.
- (I) By virtue of a letter dated 7th April 2003 from the Office of the President and duly signed by the District Commissioner, Bondo District, the Bondo District Development Committee approved the project proposal, subject to various terms and conditions.
- (J) The current user of the Gazetted Area is for organised settlement/agricultural demonstration and Dominion wishes to have a change of user to agriculture.
- (K) The Councils wish to form part of the technical committee of the advisory board for the project.
- (L) Dominion wishes to immediately enter into a formal lease with the Councils of the Gazetted Area and a formal lease of the Additional Area as soon as it has been set apart.

NOW IT IS AGREED

- (i) The Councils confirm that they have authority and are willing and able to deal with and lease the Gazetted Area immediately and the Additional Area once it has been set apart, and that the whole area of the Farm falls under the jurisdiction of the Councils specifically being that the Siaya County Council can lease the area falling within the boundaries of the County Council of Siaya and Bondo County Council can lease the area falling within the boundaries of the County Council of Bondo.
- (ii) The Siaya County Council shall lease all that area of the Farm that falls within the boundaries of the County Council of Siaya and the Bondo County Council shall lease all that area of the Farm falling within the boundaries of the County Council of Bondo to Dominion for a period commencing 1st June 2003 for 25 (twenty five) years with an option to renew for a further 20 (twenty) years on such terms and conditions as may be negotiated. The lease of the Farm shall be contained in two documents (one relating to the Gazetted Area and one to the Additional Area) being in the form of the lease scheduled hereto and at the following rents which shall be paid in advance each year save that the rent for the first three years shall be paid as a lump sum on the execution of the lease and shall be apportioned on a pro-rata basis between the Councils being the percentage of the area of the Farm that is situate in the Siaya County Council and the percentage area that is situate in the Bondo County Council and which the Councils agree is eighty six per cent (86%) in Siaya County Council and fourteen percent (14%) in Bondo County Council.

Years	Amount for Gazetted Area	Amount for Additional Area	Total Amount
Years 1 – 3	Shs.1,254,782/- per annum	Shs.1,085,218/- per annum	Shs.2,340,000/- per annum

Years 4 – 6	Shs.1,463,913/- per annum	Shs.1,266,087/- per annum	Shs2,730,000/- per annum
Years 7 –25	Shs.1,673,043/- per annum	Shs.1,446,957/- per annum	Shs.3,120,000/- per annum

- (iii) The Councils and Dominion shall immediately execute the lease of the Gazetted Area in essentially the same form as the lease scheduled hereto subject to approval by the Commissioner of Lands.
- (iv) The Councils shall immediately apply as a matter of priority to have an additional area of land set apart for agricultural and environmental purposes in accordance with the Trust Lands Act and the Constitution of Kenya as may be necessary.
- (v) As soon as the Additional Area has been set apart, the Councils shall jointly issue a lease of it to Dominion in essentially the same form as the lease scheduled hereto subject to approval by the Commissioner of Lands.
- (vi) The forms of the leases shall be approved by the Commissioner of Lands and the Councils shall jointly request that the Commissioner of Lands sign the leases in accordance with the Trust Lands Act.
- (vii) The Councils shall change the user of the Farm to "Agricultural" if the current user is different.
- (viii) The Councils acknowledge that there is no legal requirement for the leases to be signed by a judge of the High Court of Kenya.
- (ix) In addition to the annual rent and any other statutory levies, licence fees or amounts, Dominion shall pay to the Councils or such authorised agent an annual cess in accordance with the Agriculture Act (Cap.318 of the Laws of the Republic of Kenya)..
- (x) The Councils shall each nominate the Chairman, Clerk and one councillor and Dominion shall appoint such members of the Councils to the technical committee of the advisory board for the project.
- (xi) Dominion has had an Environmental Impact Assessment Report carried out in accordance with the Environmental Management and Co-ordination Act No.8 of 1999 and shall apply for an Environmental Impact licence and shall let the Councils have copies of the report and licence as soon as they have them at hand.
- (xii) Dominion shall obtain approval for the Farm project from the Director-General of the National Environment Management Authority.
- (xiii) The Councils shall support Dominion to ensure that it complies with the provisions of the Physical Planning Act.
- (xiv) The Councils shall support Dominion to ensure that it obtains all necessary water extraction permits from the relevant authorities for the project.

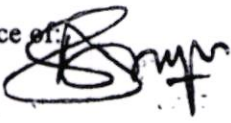
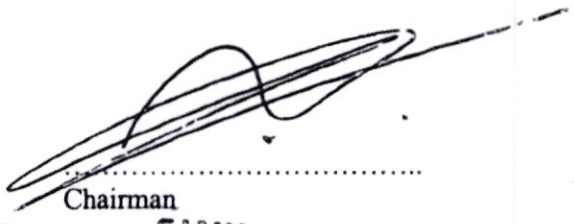
- (xv) The Councils shall not have a shareholding in Dominion and shall not interfere with the project save as may be required by Dominion from time to time.
- (xvi) The Councils shall support any application from Dominion to up-grade the road from Kisumu to the Farm.
- (xvii) The Councils shall support any application from Dominion to Kenya Power & Lighting Company Ltd to install electricity to the Farm as soon as possible.
- (xviii) Dominion shall undertake the development of the Farm in three phases:
- (a) Phase I (to be completed in three years)
1. Rehabilitation of the existing dyke upstream of the weir
 2. Rehabilitation of the existing dyke downstream of the weir
 3. Installation of one or more weirs on the Yala River
 4. Rehabilitation of the canal to supply water to Lake Kanyanboli
 5. Establish irrigation infrastructure in Area I (shown on the attached plan)
 6. Crop production on Area I
 7. Initial clearing and ploughing of at least 150 acres of the Swamp situated within the boundaries of each of the Councils for local community use.
 8. Rehabilitation of at least one public primary school and at least one public health facility for each of the Councils to Government standards.
- (b) Phase II (to be completed in the first ten years)
1. Extension of the diversion canal into Area II as required to reclaim the necessary area for the Farm.
 2. Establish protection dyke into Area II as required to protect the necessary area for the Farm.
 3. Rehabilitation of Lake Kanyanboli retention dyke
 4. Establish irrigation infrastructure in reclaimed portion of Area II
 5. Crop production on Area II
 6. Rehabilitation of at least one public primary school and at least one public health facility for each of the Councils to Government standards.

(c) Phase III

The final phase will be the completion of the diversion of River Hwiwo as necessary and its attendant civil works including dyke construction.


- (xix) The Councils shall permit Dominion immediate access to the Farm for the purpose of implementing Phase I of the project as outlined above, whether or not the Lease of the Gazetted Area has been executed as of the date hereof, and subject to Dominion having obtained all other necessary authorities, approvals, licences and consents as may be necessary.
- (xx) In the event that Dominion has access to the Farm before execution of the leases, then Dominion shall be deemed to have leased the Farm on the terms and conditions contained in the form of the lease attached hereto subject to any subsequent agreed changes until such time that a formal lease is executed and provided that quiet possession shall not be granted to Dominion until such time that the formal lease is executed.
- (xxi) The Councils shall assist and support any application for such authority, approval, licence or consent as may be required by Dominion from time to time.
- (xxii) This document and all related documents shall be confidential as between the parties hereto so far as is permitted by the laws of the Republic of Kenya and shall not be released to any other person without the first express written consent of the others.
- (xxiii) The parties to this agreement shall use their best endeavours to ensure that the project is a success.

SIGNED by the CHAIRMAN and)
 the CLERK of the SIAYA COUNTY)
 Council pursuant to Minute)
 No.: of a meeting of the full)
 council held on)
 2003 in the presence of:)





SIAYA COUNTY COUNCIL
 P.O. BOX 7, SIAYA
 DATE: 20/5/2003
 Clerk

SIGNED by the CHAIRMAN and)
 the CLERK of the BONDO COUNTY)
 Council pursuant to Minute)
 No.: 14/2003 of a meeting of the full)
 council held on 9TH MAY)
 2003 in the presence of:)


 P.O. BOX 280
 BONDO




 CLERK TO COUNCIL
 BONDO COUNTY COUNCIL
 20/5/003
 Clerk

SEALED with the common seal
of Dominion Farms Limited
in the presence of:

Calvin B. ...
Director

Barbara J. Waterston
Director







LEASE

DATED 25th May 2004

**THE COUNTY COUNCIL OF SIAYA
AND
THE COUNTY COUNCIL OF BONDO**

- TO -

DOMINION FARMS LIMITED

**PART OF
YALA SWAMP, NYANZA PROVINCE**

KAPLAN & STRATTON
Advocates
P.O. Box 40111
Nairobi



REPUBLIC OF KENYA
THE TRUST LANDS ACT
CHAPTER 288 OF THE LAWS OF KENYA
LEASE

This Lease is made on

25th May 2004

between:

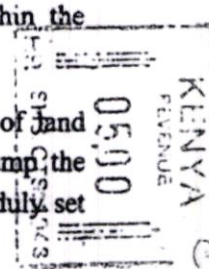
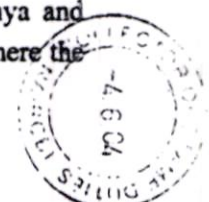
- (1) **THE COUNTY COUNCIL OF SIAYA** a local authority established under the Local Government Act (Cap.265 of the Laws of the Republic of Kenya) ("the Siaya County Council" which expression shall where the context so admits includes its successors and assigns); and
- (2) **THE COUNTY COUNCIL OF BONDO** a local authority established under the Local Government Act (Cap.265 of the Laws of the Republic of Kenya) ("the Bondo County Council" which expression shall where the context so admits includes its successors and assigns); and
- (3) **DOMINION FARMS LIMITED** a company incorporated in the Republic of Kenya and having an address of P.O. Box 4659, Kisumu ("**Dominion**" which expression shall where the context so admits includes its successors and assigns).

WHEREAS

- (A) The Yala Swamp is situated in the Nyanza Province. A portion of the Land is situated in the District of Siaya and a portion of which is situated in the District of Bondo within the jurisdiction of the County Council of Siaya and the County Council of Bondo.
- (B) By virtue of Gazette Notice No.2570 of 25th August 1970, all that piece or parcel of land comprising approximately 3,700 hectares ("**the Land**") situated in part of the Swamp, the dimensions and boundaries as more particularly detailed in the schedule hereto was duly set apart in accordance with the provisions of Part IV of the Trust Lands Act.
- (C) Dominion wishes to develop and manage a large scale irrigated farm at the Swamp with the initial emphasis on rice farming and with other varieties of crops grown from time to time as may be necessary and to lease the Gazetted Area from the Siaya County Council and the Bondo County Council (together "**the Councils**") on the following terms and conditions.

NOW THESE PRESENTS WITNESS

THE COUNCILS being vested with all the rights and interests in and to and having set apart, in accordance with the Trust Lands Act and the Constitution of Kenya, **ALL THAT** piece or parcel of land comprising three thousand seven hundred (3,700) hectares approximately the dimensions and boundaries of which are more particularly detailed in the schedule hereto respectively and with the consent and approval of the Commissioner of Lands in accordance with the Trust Lands Act the Siaya County Council **HEREBY LEASES** all that piece or parcel of land situated within the boundaries of the County Council of Siaya and the Bondo County Council **HEREBY LEASES** all that piece or



parcel of land situated within the boundaries of the County Council of Bondo to **Dominion TOGETHER WITH** the buildings and improvements erected and being thereon (together "**the Land**") **TO BE HELD** by Dominion as tenant for a period of Twenty Five (25) years (the "**Term**") from 1st June 2003 subject nevertheless to determination as hereinafter provided at the annual rent for the first three years of the Term the sum of one million two hundred and fifty four thousand seven hundred and eighty two shillings (Shs.1,254,782/-), the second three years of the Term to sum of one million four hundred and sixty three thousand nine hundred and thirteen shillings (Shs.1,463,913/-) and for the remainder of the Term the sum of one million six hundred and seventy three thousand and forty three shillings (Shs1,673,043/-) such rent to be paid throughout the Term clear of all deductions annually in advance on 1st June in each year of the Term save that the rent for the first three years has been paid in advance as a lump sum (receipt whereof is acknowledged by the Councils) and subject to the following modifications.

Dominion hereby covenants with the Councils, to the intent that the covenants shall be observed and performed by the Lessee throughout the subsistence of this Lease, as follows:

1. To pay the rent hereby reserved on the days and in the manner aforesaid, such rent to be shared between the Councils on a pro rata basis calculated on the percentage area of the Land that is located in each Council which for the purposes of this lease it is agreed between the Councils and deemed to be eighty six per cent (86%) in Siaya County Council and fourteen percent (14%) in Bondo County Council.
2. No buildings shall be erected on the land nor shall material additions or external alterations be made to any buildings otherwise than in conformity with plans and specifications previously approved in writing by the Commissioner of Lands and the Local Authority, such approval shall not be unreasonably withheld conditioned or delayed. The Commissioner shall not give his approval unless he is satisfied that the proposals are such as to develop the land in accordance with the terms of this Lease and with sound business practices.
3. To submit from time to time in triplicate to the Commissioner of Lands and the Councils plans (including block plans showing the positions of the buildings and a system of drainage for the disposal of sewage surface and sullage water) drawings elevations and specifications of the buildings Dominion proposes to erect on the land and such plans will be deemed to have been approved if no formal response is received from the Commissioner of Lands or the Councils within a period of three months after they are submitted and shall within sixty months of the actual submission of such plans complete the erection of such buildings and the construction of the drainage system in conformity with such plans drawings elevations and specifications as reasonably amended (if such be the case) by the Commissioner of Lands or the Councils **PROVIDED** that such period of sixty months shall be extended if completion is delayed by any circumstance beyond the control of Dominion which Dominion would not have avoided or prevented ("*force majeure*") **AND PROVIDED** that notwithstanding anything to the contrary contained in or implied by the *Government Lands Act (Cap.280)* if a material default shall be made in the performance or observance of any of the requirements of this condition and the Commissioner of Lands and the Councils have given Dominion notice of such material default and Dominion has not rectified such default within a period of one year, it shall be lawful for the Commissioner of Lands, Councils or any person authorised by him or them on behalf of the President to re-enter into and upon the land or any part thereof in the name of the whole and thereupon the term hereby created shall cease but without prejudice to any right of action or remedy of the President or the Commissioner of Lands or the Councils in respect of any antecedent breach of any condition herein contained.
4. To maintain in good and substantial repair and condition all buildings at any time erected on the Land.
5. To use the land and buildings, subject to all applicable laws and regulations, for all or any of the following purposes:

- (a) to carry on the business of agriculture;
 - (b) to carry on the business of milling, storing, processing and marketing of agricultural produce and all activities related thereto;
 - (c) to construct or erect and use, operate and maintain together with ingress and egress there upon all wells, pumps, pipes, pipelines, buildings, plants, sumps, reservoirs, tanks, waterworks, pumping stations, roads, electric power generating plants, transmission lines, industrial facilities, electric, telegraph or telephone lines or cables and such other works and structures and to use so much of the surface of the land as may be necessary or convenient for the production, utilisation and processing of agricultural produce or for the full enjoyment of the rights granted by this lease, subject to compliance with all applicable laws and regulations.
 - (d) in so far as it may be necessary for and in connection with the activities of Dominion, the right to:
 - (i) erect, construct, rehabilitate weirs, canals, drains, dykes, ditches, irrigation systems or any other water barrier, channel or irrigation system as may be necessary;
 - (ii) erect, construct and maintain storage sheds, drying sheds, factories, offices, grain silos, garages, houses, plant, machinery, buildings and other improvements as may be necessary;
 - (iii) subject to the Water Act, drill and construct all necessary boreholes, reclaim, extract and utilise any water from any water source whatsoever;
 - (iv) subject to the Environmental Management and Co-ordination Act No.8 of 1999, redirect, dredge, reopen and divert streams, watercourses, canals and rivers; and
 - (v) construct and maintain roads, airstrips and other means of communication and conveniences.
6. Not to use the Land for the purposes of any trade or business which the Commissioner of Lands or the Councils consider to be dangerous or offensive.
 7. Not to subdivide the Land without the prior consent in writing of the Commissioner of Lands or the Councils.
 8. Not to transfer, sublet or otherwise part with the possession of the Land or any part thereof or any building thereon. provided that (i) a transfer, subletting or parting with possession to a subsidiary or affiliate of Dominion or (ii) a charge, mortgage or any other security over the Land or (iii) any sale or transfer effected in connection with the exercise by Dominion's chargee of its rights and remedies under its mortgage or other loan documents or any sale or transfer in lieu of such exercise or for any transfer or sale which occurs subsequent to such a transaction described in sub-clause (iii) shall be permitted provided that written consent from the Councils and the Commissioner of Lands is first obtained which shall not be unreasonably withheld conditioned or delayed.
 9. To pay such rates taxes charges duties assessments or outgoings of whatever description as may be imposed charged or assessed by the Councils upon the Land or the buildings erected thereon in accordance with the Laws of Kenya.
 10. To identify and set aside at least 150 acres for each of the Councils for the use of the local community, such land to be used by the local community for agricultural purposes only and not for residential purposes and Dominion shall not be liable in any way whatsoever and the Councils hereby agree to fully indemnify Dominion from any damage, injury, negligence, cause, loss, action, suit or other thing that may arise from such use of the 150 acres.

11. At the expiration of the Term to yield up the Land and all permanent erections, structures, buildings offices, stores and improvements thereon to the Councils respectively.

The Councils hereby covenant with Dominion, to the intent that the covenants shall be observed by the Councils throughout the subsistence of this Lease, as follows:

1. That Dominion paying the rent hereby reserved and observing and performing the several covenants and stipulations on the part of Dominion herein contained or implied shall peaceably hold and enjoy the Land during the Term without any interruption by the Councils or any person rightfully claiming under or in trust for the Councils.
2. Not to interfere with the business of Dominion or the project undertaken by Dominion on the Land in any way whatsoever, unless specifically requested to do so by Dominion provided that in the event that Dominion is carrying on an illegal or immoral activity on the Land, the Councils shall immediately give Dominion notice to cease such activity and Dominion shall cease such activity forthwith.
3. To permit Dominion to use and apply such seeds, fertilisers, pesticides and herbicides as it shall think fit provided that such seeds, fertilisers, pesticides and herbicides are not harmful to the environment.
4. To assist and support Dominion in any way possible and within the Councils mandate in respect of any application for such authority, approval, licence or consent as may be required by Dominion from time to time

PROVIDED ALWAYS AND IT IS HEREBY AGREED AND DECLARED as follows:

1. The President or such person or authority as may be appointed for the purpose shall have the right to enter upon the land and lay and have access to sewers, water mains, service pipes and drains, telegraph or telephone wires and electric mains of all description whether overhead or underground **PROVIDED** that laying or access shall not interfere with the user of the land by Dominion and indemnify Dominion for damage resulting from such installation and Dominion shall not erect any building in such a way as to cover or interfere with any existing alignments of sewers, water, mains, service pipes and drains, telegraph or telephone wires and electric mains.
2. In the event of any licence relating to the land or to the business or operations carried on by Dominion and which is held by Dominion being terminated or the land and buildings not being used for the purposes set out in clause 5 above for a consecutive period of two years except for the reasons of *force majeure* and on the Councils and/or the Government giving Dominion six months notice in writing, then the term of this lease hereby created shall *ipso facto* be determined and the land shall be deemed automatically to have reverted to the Councils and/or the Government as from the date of the expiry of the notice period without the necessity of any formal surrender thereof.
3. In the event that Dominion wishes to renew this lease, from the date of expiry, for a further term, Dominion shall give the Councils written notice of its intention at least one year before the expiry of the Term and on receipt of such notice, the Councils may renew it for a further term of Twenty (20) years at a rent to be agreed between the parties but otherwise on the same terms and conditions of this lease save for this covenant of renewal.
4. If and whenever during the Term the rents or any part of them are outstanding for ninety (90) days after becoming due or there is a breach by the Tenant of any covenant or other term of this lease, the Councils may re-enter the Land or any part of it in the name of the whole provided that Dominion does not rectify such breach within a period of ninety (90) days after receipt of such notice from the Councils and provided that such notice is signed by the appropriate Council and then the Term will absolutely cease. Dominion shall pay interest on any amount

due and outstanding from the day it falls due to the day it is paid at the prevailing rates of interest as may be published by the Central Bank of Kenya from time to time.

5. Any notice required to be served hereunder shall be in writing and shall be sufficiently served upon the Councils if forwarded to both Councils by registered post or left at both Council's or the address of the advocates of the respective Council's last known address in Kenya. A notice to Dominion shall be sufficiently served upon Dominion if hand delivered and left at its headquarters office and duly acknowledged by Dominion and also served on its advocates for the time being. A notice sent by post shall be deemed to be given four days after the date of posting thereof. The parties shall inform each other of any change of advocates with the address of such advocates.

6. In this Lease, where the context so admits, words importing the singular number only include the plural number and vice versa.

AND Dominion hereby accepts this Lease subject to the above covenants conditions provisions stipulations and agreements.

IN WITNESS WHEREOF this lease has been duly executed.

THE SCHEDULE
The Gazetted Area

All that piece or parcel of land comprising approximately 3,700 hectares situated within part of the area known as the Yala Swamp, the boundaries are demarcated on the ground and are described as follows: Starting from the dyke on Lake Kanyaboli, proceeding along the feeder canal and including the existing way leave, up to the Yala River, then proceeding approximately west along the Yala River Bund on the right bank of the river until the Yala River Diversion Canal when the left bank is included: continuing down to YS 14 camp including the airstrip: then from YS 14 Bench Marsh a line in a northerly direction to YS 34 Bench Marsh and from there in an easterly direction through YS 33 Bench Marsh to Lake Kanyaboli Dyke.

A Plan of the area is available for inspection at the Office of the District Commissioner, Siaya.

Signed by THE COMMISSIONER OF LANDS)
as agent for and on behalf of THE COUNTY)
COUNCIL OF SIAYA pursuant to section 53(b))
of the Trust Lands Act (Cap 288 of the Laws)
of Kenya) in the presence of:)



R. N. Mule 0151

REGISTRAR OF TITLES







MEMORANDUM OF UNDERSTANDING (MOU)

LAKE BASIN DEVELOPMENT AUTHORITY

AND

DOMINION FARMS LIMITED

FOR

DEVELOPMENT OF YALA SWAMP

KAPLAN & STRATTON

Advocates
P.O. Box 40111
Nairobi

EXEMPT FROM STAMP DUTY

Section 15 Chapter 442

LAW OF KENYA

Official Stamp
Collector of Stamp Duty
E. N. [Signature]

MEMORANDUM OF UNDERSTANDING (MOU) BETWEEN LAKE BASIN
DEVELOPMENT AUTHORITY AND DOMINION FARMS LIMITED FOR INVESTMENT
AT THE YALA SWAMP

A: PREAMBLE.

WHEREAS:-

The Lake Basin Development Authority is a Regional Development Authority established under the Act of Parliament Cap 442 of 1979, to spearhead development in the Lake Victoria catchment area. The area covers approximately 39,000Km², with a population of over 10 million people, according to the 1999 census, and comprises Nyanza, Western and part of Rift Valley Provinces.

WHEREAS:-

The mission of LBDA is to sustainably exploit and develop the immense natural resources in the region in collaboration with other development agencies and investors to create wealth and employment and alleviate poverty.

CONSIDERING THAT:-

The vast Yala Swamp measuring a total of 17,500 ha is one such natural resource under jurisdiction of LBDA. Over the years, LBDA has been involved in adaptive research and agricultural activities at the Swamp in an area measuring 2,300 ha, which was reclaimed by the Government of the Republic of Kenya ("the Government") in 1970.

NOTING THAT:-

As part of these activities, LBDA has completed the construction of 17 No. 1-2-3 bed roomed houses, commenced the construction of an irrigation weir, improved the access roads, maintained the protection dykes and diversion and feeder (Lake Kanyaboli) canals, and established an orchard for demonstration and a source of fruit tree seedlings as well as office facilities. Due to limited capitalisation, LBDA has been unable to utilise the farm to full capacity for agricultural production.

ACKNOWLEDGING THAT:-

The Dominion group of companies is an international group of companies based in Edmond, Oklahoma, USA, whose employees have experience in the establishment and management of state of the art of irrigated agricultural projects and now has a subsidiary registered in Kenya under the Companies Act (Cap 486) under the name of **DOMINION FARMS LIMITED**.

MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding is made this

Nineteenth May

2003

between:

1. **THE LAKE BASIN DEVELOPMENT AUTHORITY** an authority established under the Lake Basin Development Authority Act (Cap. 442 of the Laws of the Republic of Kenya) ("LBDA"); and
2. **DOMINION FARMS LIMITED** a company incorporated in the Republic of Kenya and having an address of P.O. Box 4659, Kisumu ("**Dominion**").

WHEREAS:

- A. Dominion wishes to develop and manage a large scale farm at Yala Swamp ("the **Swamp**") situated in the Nyanza Province with the initial emphasis on rice farming with other varieties of crops grown from time to time as may be necessary and to take a lease of the Swamp jointly from the County Council of Siaya and the County Council of Bondo (together "the **Councils**").
- B. LBDA wishes to provide technical assistance and expertise to Dominion and have one of its members on the technical committee of the advisory board for the project and one of its members on the board of directors of Dominion.
- C. LBDA holds a Letter of Allotment dated 27th November 1989 relating to Uns. Industrial Plot for Rice Mill (the "**Mill**") in Kisumu Municipality.
- D. Dominion wishes to have exclusive use of the Mill in order to process its produce.

NOW IT IS AGREED

- AA. 1. LBDA being the Government institution with the mandate to initiate, plan, co-ordinate and implement development activities in the region in which the Swamp lies, will collaborate with Dominion in the development of the Swamp. Under this umbrella, LBDA shall therefore, act as the official advising agent on behalf of the Government.
2. LBDA undertakes to assist, co-ordinate and facilitate the activities of Dominion with relevant organisations to ensure the smooth and efficient implementation and management of the project.
3. Both parties agree that, as far as possible, professional staff will be seconded by LBDA to the project in areas of specialisation available in LBDA to avoid importation of expertise and allow for technology transfer to Dominion.
4. Both parties agree LBDA will undertake, in collaboration with KARI, adaptive research, extension activities and demonstration to the local communities at the Swamp dependent upon the project activities. An area of land to be agreed upon by LBDA and Dominion shall be set aside for this purpose. The area to be set aside will be commensurate with the level of research activities envisaged and in any event will

LBDA

not be more than 20 hectares. Adaptive research shall form part of the project development.

5. Both parties agree that Dominion shall use of LBDA's existing infrastructure and facilities as detailed hereunder.
 6. LBDA agrees to enter into an agreement with Dominion for the processing of farm produce (cereals) and use of facilities at LBDA's Mill at Kisumu. The agreement for the use of the Mill and facilities shall be the subject of a separate milling contract and shall be on such terms and conditions as the parties may agree and on commercially viable rates and shall also contain a termination clause of six months notice to be in writing which may be given by either party to the other.
 7. LBDA agrees to enter into a lease agreement with Dominion to use LBDA's heavy machinery (bulldozer, excavator, tractors, water pump etc) for activities of the project.
 8. LBDA agrees to assign and transfer, in accordance with the Water Act (as amended), to Dominion all its water permits that it currently holds that relate to or affect the Swamp.
- BB.
1. LBDA, as the institution with the mandate and technical expertise, will assist Dominion with all engineering and construction designs for irrigation and drainage and facilitate their approval by the relevant authorities. The responsibility for the correct implementation of the designs and construction will, however, remain with the design engineer and contractor of Dominion.
 2. LBDA will provide guidance and advice to Dominion from time to time on the best construction and land use activities at all times ensuring that such construction and land use activities comply with the laws of the Republic of Kenya and Government regulations.
 3. For the sake of prosperity, Dominion will lodge approved copies and design reports and drawings with LBDA, including any other reports deemed of use and benefit to the Government unless Dominion considers such reports and drawings are of a confidential nature or the release of them to LBDA may damage its reputation or hinder its operations in any way whatsoever.
 4. LBDA has undertaken developments at the Swamp which include canals, roads, the weir and houses of which Dominion will take cognisance provided that LBDA shall at no time demand compensation, rent or any other form of re-imburement for such developments from either Dominion or the Councils except as is specifically provided for in this memorandum of understanding.
 5. LBDA shall nominate, by name and not by position, one of its members and Dominion shall appoint such member to the technical committee of the advisory board of the project. LBDA shall nominate, by name and not by position, one of its members and Dominion shall appoint such member to its main board of directors in

order to safeguard the interests of LBDA and of the Government.

6. LBDA will regularly monitor the environmental impact of the project by carrying out short term 'with Project' assessments in accordance with the Environmental Management and Co-ordination Act. Dominion will avail such records and data as may be necessary for such assessments. Dominion will also put in place remedial measures recommended by the assessments with a view to protecting the environment as may be required from time to time.
- CC.
1. LBDA will have the responsibility to ensure the protection and conservation of areas of special interest in the Swamp including any areas considered of historical significance by the community. Dominion will co-operate with LBDA in this task.
 2. Any logos and other identification marks on the finished agricultural produce shall advertise the rich diversity of Lake Victoria Basin.
 3. Rice production shall be the main agricultural activity unless determined otherwise by Dominion. Periodic crop rotation with other suitable varieties of crops to maintain soil fertility and pest control shall be undertaken in accordance with good land management and farming practices.
 4. In consideration of providing technical assistance and expertise and any other assistance that Dominion may require from time to time Dominion shall pay LBDA the following amounts commencing in 2003:
 - (i) 0-5 years Three million shillings (Kshs.3,000,000) per year.
 - (ii) 5-10 years Three million shillings (Kshs.3,000,000) per year.
 - (iii) 10-15 years Five million shillings (Kshs.5,000,000) per year.
 - (iv) 15-20 years Six million shillings (Kshs.6,000,000) per year.
 - (v) 20-25 years Seven million shillings (Kshs.7,000,000) per year.
- DD. In consideration for the use of the leased equipment detailed in clause AA 7 above Dominion shall pay LBDA a single lump sum and/or advance amount being the sum of eleven million shillings (Kshs. 11,000,000). Such sum shall only become due and payable within thirty days of the signing of this agreement, the memorandum of understanding with the Councils and the grant of a licence by the National Environmental Management Agency under the Environmental Management and Co-ordination Act. LBDA shall lease the heavy machinery to Dominion at the approved Government hourly rates and the sum of KShs11,000,000 shall be used as a credit against the rental amount. Dominion shall be responsible for maintenance and repair of the equipment but shall be under no obligation at the end of the lease period to return the equipment to LBDA in working order. Equally if the equipment shall have broken down beyond repair or exhausted its useful life before the end of the lease period, LBDA shall be under no obligation to re-imburse Dominion. LBDA undertakes to use the sum of eleven million shillings (Kshs.11,000,000) for payment of rates and extraction of title deed to the Mill and which amount:

- (i) Dominion shall, for and on behalf of LBDA make direct payment to the Municipality of Kisumu for all outstanding rates dues and owing to date being approximately seven million eight hundred and ninety seven thousand eight hundred and forty one shillings and twenty cents (Kshs. 7,897,841/20).
 - (ii) Dominion shall, for and on behalf of LBDA, use the balance of the lump sum being approximately three million one hundred and two thousand one hundred and fifty eight shillings and eight cents (Kshs. 3,102,158/80) for the purpose of paying all outstanding dues and owing to the Government or other authorities for the purpose of extracting a title for the Mill from the Commissioner of Lands.
 - (iii) LBDA shall use its best endeavours to comply with the terms of the Letter of Allotment and extract a registered title in the next twelve months from the date of this agreement.
- EE.
- 1. LBDA acknowledges that it has built various houses and offices at the Swamp which are located outside the area which Dominion proposes to lease from the Councils and LBDA warrants that it has the capacity and authority to lease them to Dominion.
 - 2. LBDA and Dominion agree to enter into tenancy agreements for the houses and offices referred to in clause EE 1 above for such period, at such rent and on such terms and conditions as the parties may agree provided that LBDA shall at all times when calculating the rental income take into consideration the improvements and renovations that may have been carried out by Dominion. The parties will value the houses and offices in order to determine the monthly rents.
 - 3. This memorandum of understanding will be reviewed (except for clause CC 4 above) based on a time period and/or area of land under use, to be agreed upon by both parties. It is proposed that the time period should be every five (5) years.
 - 4. In case of any dispute, the parties shall resort to a system of mediation that is acceptable to both parties.
 - 5. In the event that one party wishes to terminate this memorandum of understanding, it shall give the other party a notice of six months. Those projects that emanate from this memorandum of understanding and that are in force at the time of termination of this memorandum shall proceed to their determination if at all reasonably possible given the prevailing conditions at the time of termination.
 - 6. The parties to this agreement shall use their best endeavours to ensure that the project is a success.

Signed by the **MANAGING DIRECTOR**
OF THE LAKE BASIN DEVELOPMENT
AUTHORITY in the presence of:

[Handwritten signature]

[Handwritten signature]

Signed by **CALVIN BURGESS** the duly
authorised representative of **DOMINION**
FARMS LIMITED in the presence of:

[Handwritten signature]

[Handwritten signature]

