

# COUNTY GOVERNMENT OF TAITA TAVETA

## OFFICE OF THE C.E.C. – LANDS, ENVIRONMENT AND NATURAL RESOURCES



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### DEPARTMENT STATUS REPORT

#### NATIONAL, REGIONAL AND LOCAL BRIEF ON ‘THE LAND QUESTION’:

##### 1. National Context:

The Land question can be defined as the concerns by the people towards land ownership, access to interest in land and sustainability of the land resource. The concerns include; shelter; exploitation of the land resource for livelihood (farming, quarrying, mining, pasture for livestock, tourism and wildlife, fishing, recreation and leisure etc); cultural heritage (shrines for worship, cultural activities like sacrifices, carrying out traditional dispute resolutions). The land question has bedeviled Kenyans for over a century, dating to the period of colonialism. Even the successive independent governments of Kenya have toiled with the land question for nearly fifty years. Land is the single most important natural resource in Kenya, and a major factor of production. It is considered as the principle source of livelihoods and material wealth through playing host to all natural resources and also the platform on which all forms of land development occurs. About 80% of Kenya’s Land mass is arid and semi-arid (Asals), leaving about 20% as the high and medium potential areas. Most of the population has been settled in the medium and high potential areas. “This situation has led to severe land pressure and fragmentation of land holdings into uneconomic units, and deterioration in land quality due to poor land use practices leading to low productivity and poverty.”

At National level and cutting across the regional and local level there is also the issue of **Outdated laws and limited implementation of land policies**

What has existed are various sectoral policies and pieces of legislation which touch on land issues and are in a scattered manner. Land administration and management systems broke down with the deterioration of records, mismanagement of records, information became outdated and in the end service

delivery became cumbersome and non-responsive to client's needs. In addition, most of the land and land related laws are outdated and require reviews and revision to make them consistent with other laws. There is no clear mechanism for coordination among the various institutions involved in physical planning. Realization of sustainable urban and rural development has been hampered by a fragmented approach to planning with MoLG, Physical Planning Department, Local Governments, NEMA among others applying their own laws resulting into duplication of roles and mandates. The existing legislation need to be reviewed, re-engineered and harmonized to facilitate attainment of efficient and effective physical planning

## **2. Regional Context:**

Here we analyze some of the historical and contemporary land issues in Coast Province. It is variously argued that there were deep historical bases for the current land related malpractices and injustices in Coast province. It is argued that the origins of the current squatting crisis stem from the implementation of the Land Titles Ordinance of 1908. The LTO itself was designed to remedy an increasingly complex situation with respect to land ownership structure at the turn of the century in the 'Ten-Mile Strip'. However the ruling ideology of the British colonial state led to a number of important and fateful decisions, including the prioritization of the needs of European capital and the extension of the provisions of the Land Titles Ordinance outside the 'Ten-Mile Strip' to zones seen as propitious to large scale plantations e.g. interior of Malindi, Kwale, Kilifi and Taita Taveta Districts. These decisions continue to affect land property relations and land politics today. With respect to the contemporary squatting issue and the so-called 'absentee' landlords question, the decision to recognize some rights (e.g. 'Arab/Swahili' ownership rights under *Shari'ah*) while completely ignoring the rights of others (e.g. 'African' use rights) or subverting others e.g. claims by 'Africans' under *Shari'ah* have obviously influenced the nature of the squatting problem and the ways in which it is perceived and politicized. Moreover it was argued that not only had the LTO bequeathed an adverse institutional heritage with respect to land in the Province it had helped create the conditions for further marginalization upon independence by dividing the economic interests of Coast population along ethnic lines. Hence History has a lot to do with the current land problem in Coast province.

## **3. The Local Taita Taveta County Situation:**

There is bound to be conflict over land use because demands for arable land, grazing, mining, forestry, wildlife, tourism and urban development are greater than the land resources available. In Taita Taveta County these demands become more pressing every year. The population dependent on the land for

food, fuel, employment and livelihood will double within the next 25 to 50 years. Even where land is still plentiful, many people may have inadequate access to land or to the benefits from its use. In the face of scarcity, the degradation of farmland, forest or water resources may be clear for all to see but individual land users lack the incentive or resources to stop it. The bulk (98%) of the farm holdings in the ASAL area of Taita Taveta are small (<1 ha) and lie mainly in the high potential areas. The number of holdings is increasing fast due to the continued sub-division of both small- and large-scale holdings. There is high human population density and land scarcity is a major problem. Consequently there is continued migration of people from the HP areas into the medium and low potential areas. In the medium potential (MP) areas also mixed crop livestock system is practised, but the crops involved are low rainfall crops. Livestock production, mainly beef and small ruminants are the major enterprises in the low potential arid, semi-arid areas. The livestock is reared mainly under nomadic pastoralism and limited ranching. In the pastoral areas, there is no individual land ownership, and grazing land is communally owned.

<b>Land-use Classification</b>	<b>Sq.Km</b>
Agricultural Land	6478
National Parks	10634
Waters	16
Total	17128

As shown by that above information and according to the latest census results, the county has a population of 284,657. These therefore have to squeeze within 4,000 square kilometers for settlement and farming as the rest of the land is occupied as follows:

- Thus 62% is covered by the two National Parks namely; Tsavo East and Tsavo West.
- A further 16 km<sup>2</sup> is covered by water bodies. There are two lakes, Jipe and Challa, both found in Taveta. Lake Challa is a crater lake with little economic exploitation, while Lake Jipe is slightly exploited through small-scale irrigation and fishing. Both lakes are served by springs emanating from Mt. Kilimanjaro. Other water bodies include the mzima springs and the major rivers in the district are Tsavo, Voi and Lumi. Small springs and streams in the county include Njukini, Sainte, Njoro kubwa, Kitobo, Maji Wadeni, Humas Springs and Lemonya Springs.

- Only 38% of the land for the settlement and agricultural activities. Approximately 5,876 km<sup>2</sup> is occupied by ranches which are about 25 in number and sisal estates. The three operating sisal estates of the district are the Teita Sisal Estate, Voi Sisal Estate and Taveta Sisal Estate.
- There are 48 forests which have survived on hill tops in the district of which 28 are gazetted and are under government protection and management. They range in size from small 500 square metres with a few remnant trees to modestly vast 2 square kilometres indigenous and exotic forest mountains.

**Multiple land interests on the same piece of land:** The biggest problem with some of the registered land is the multiple and conflicting land interests between the registered owners and the tenants on the land.

**Inadequate funds for land administration system:** The land administration system has been inadequately resourced and performed below expected standards which hamper the delivery of services. Decentralized land services are equally inadequately funded. Due to inadequate funds and release of the funds by the parent Ministry, County Departments have not been able to execute their mandate.

**Inadequate mapping capacity:** Mapping capability to support national development has not been upgraded since the 1990s. The updating of other mapping related documents is either not done or done in piece meal due to lack of adequate funds. Counties also lack up to date survey equipment, technical capacity, and records which makes them dependent on the central government for most of the decentralized land services.

**Deteriorating and missing land administration records:** With the passage of time and increase in the volume of land transactions due to the increase in population and pressure on land the Ministry, continued to rely on manual records, which at times would lead to a system dysfunction. This led to misplacement and at times loss of vital information which eventually resulted into the making of duplicate land titles over the same pieces of land. This appalling state of affairs in the land registry tended to undermine the objectives of registration which are, to provide for a reliable, simple, cheap, speedy method for the registration and transfer of land, lease and mortgages that are responsive to the needs of the business community.

**Inadequate decentralization of land registration services:** Land registration services, especially for leaseholds for the entire country are still carried out at the Ministry of Lands Headquarters in Nairobi and Mombasa which increases land transactions costs in terms of transport and time. Part of the problem is that some of the professionals are not readily available in the job market; the other problem is

that even where such professional are available, the recruitment of some of them has not been a priority to the Central and County Governments.

**Inadequate security of land ownership and insecure land-related investments:** The people of Taita Taveta County mostly depend on land and land resources to sustain their livelihoods. Approximately 85% of Taita Taveta Community live in rural areas where land resources are central to their livelihoods. However, the majority of landowners do not have land titles to guarantee their security of tenure as only about 18% of Taita Taveta land is titled. There are low levels of awareness on land issues, including land rights, duties and obligations with respect to land, making some sections of the rural population vulnerable to loss of land or land rights. According to the UNHS (2005) study, a high incidence of land tenure insecurity is experienced by specific categories of land users, including women and households living in densely settled areas where land disputes are common. Landlessness is on increase as a result of poverty, illegal land evictions, internal displacement of persons, natural disasters and sometimes as a result of Government action to acquire land for public use such as, roads, open spaces, among others.

**Inadequate Dispute Resolution Mechanisms:** Conflicts and disputes over land and land based resources are on the increase due to population pressure on land. This has sometimes led to violent land evictions, loss of property and lives. The land tribunals were abolished by the judiciary due to lack of financial resources. Land cases have continued to pile in the courts as the manpower in the courts can not handle all the cases brought before them. Other land dispute resolution for example institutions have also not been effective, leading to duplication of mandates and sometimes the complainants find themselves with no option but to move to all institutions hoping that their complaints will be handles, only to be referred to the courts of law, which at times take long to dispose off the land cases. Land related cases constitute about 75% of the court case backlog, while 30% of criminal cases are related to land disputes. Where the matter is already in the courts of law, the parties to the conflict are often subjected to a stressful protracted adversarial process with endless adjournments at the expense of the litigants, which tends to drain away their energy, productive time, hard-earned money, more often than not, resulting into evictions and poverty, as the litigants are uncertain on the usage of the land. The prevalence of land conflicts at household level is high at 34.9% and is slightly higher amongst rural households at 36% compared to urban households at 33%. Only 20% of land conflicts are not reported to any land dispute resolution option. It was noted that since the majority of the cases are handled in semi-formal fora, there was need to strengthen oversight and to set standards while clarifying mandates of the different dispute resolution fora. The report also noted that land related wrangles and conflicts continuously flow into the criminal justice system. Land related conflicts tend to lock up natural

resources potentialities to the extent that disputed land is usually insecure to live or work on, is not accessible and therefore not salable, cannot be mortgaged or leased, and is sometimes left in the unproductive state as the owner or purchaser fears to lose investment-capital due to uncertainty.

**Increasing land evictions on registered land and customary land:** Evictions on registered land particularly under absentee landlord land tenure are on the increase. Under this tenure, there is a land use and mobility impasse between occupants on registered land and the registered owners due to overlapping claims over the same piece of land, which has not only rendered the land under occupation unmarketable, and not usable by the owners. Under such situations of insecure land tenure, land occupants are guided by short term objectives, where occupants in most cases are not allowed to undertake major development projects on such land, and have little incentives for sustainable management of the land. The absent landlords sell their land to new land owners without giving an option to buy to the sitting tenants which sparks off land wrangles especially when the new owners attempt to occupy the land and force the occupants to vacate the land usually resulting in violent evictions, destruction of property and sometimes leading to death.

**Unregistered land rights in the mineral rich region:** The recent discovery of iron ore and precious minerals has generated excitement in Taita Taveta regarding the promise the resource may yield and the probable economic windfall, its contribution to County economy and social well-being. It has equally raised concerns with regard to tenure, compensation, displacement and resettlement. There has been a rush to secure land in mineral- rich areas in anticipation of big compensation by investing companies. These practices are; threatening communal lands which are neither demarcated nor surveyed nor titled. Cases of grabbing of land from indigenous communities are on increase, as holders are insecure and do not, possess formalized rights in land to benefit from sharing of royalties as provided for in the Constitution. The transformation of communal landownership under customary tenure which covers about 40% of the land cover of Taita Taveta is by disengaging it from the conflict situation which has led to locking up of natural resources within each community, the very hallmark of a subsistence economy.

**Challenges of Land Management in the Counties:** Shortage of qualified professionals: These include the Land Surveyors, Quantity Surveyors, Land Valuation Surveyors, Physical Planners and Registrars of Titles. The category of these professionals is very few in the Country making it very difficult to attract or retain them in the Devolved Public Service because poor public service remunerations make it less lucrative and professionally rewarding. Currently there are inadequate numbers of required cadre of qualified land management professionals available in the County. The County Government being young

has teething problems cascading into the Lands sector ranging from limited office space, lack of vehicles to traverse the vast county, limited finances both recurrent and development funds, inadequate technical capacity in the various Lands sector offices and other offices prescribed in new legislation, limited tools and equipment for the technical services like survey etc This has caused delays in addressing some issues but are all being addressed.

The separation of mandates between the National and County Governments as regards the Lands sector is a grey area because the very important functions of issuance and managing land ownership records (Registry) and the one charged with registering customary/ancestral rights to land (Adjudication) have not been devolved yet they are not being funded the whole financial year. This means the departments are paralyzed as important to the Taita Taveta development agenda as they are.

Numerous complaints have been sent to the National Land Commission directly by various complainants from Taita Taveta, through the County Government, in sessions with the N.L.C. The N.L.C. has an institutional mandate to indulge into Historical injustices but so far they have not solved them because there are issues around responsibilities between them and the Ministry of Lands, Housing and Urban Development.

‘Lands’ is an emotive issue that needs extended community involvement and consultation across the board and at all levels. Thus patience is required when some issues are being pursued like the county boundary agenda. Land issues must also involve political leaders to build consensus. Therefore consensus building must be factored in at all times which increases the degree of complexity of land issues.

On matters of compensation for development of infrastructural services like roads, power-lines and other public purposes for land occupied and/or developed by locals, the National Government and related institutions insist that regulations require one to have formal land documents. This leaves out many of our local people and is a great challenge.

Land use change threatens the existence abundant wildlife, through loss of wildlife grazing and dispersal areas to agriculture, and increased disturbance of wildlife around human settlements. The people of Taita Taveta suffer the consequences of human wildlife conflict in the vast areas where they border the National Parks and have been agitating for benefit sharing with the National Government for the resources from the parks. The people actually feel this is a historical injustice that needs urgent redress.

Complaints have been received about the officers in the different Lands offices some of whom by omission or commission have acted contrary to regulations and expectations. Relevant authorities have been notified and all is being done to improve on service provision and positive initiative.

#### **4. Trends In The Land Sector:**

- Changes in land use and the increase in human population over the last 36 years since Independence have increased the demand for land especially in and around the major urban centers. Comprehensive changes in land use and land planning, coupled with the increase in human population during the past three and a half decades, have resulted in an increase in the demand for usable land and escalation in competitive bids for residential land in and around the main urban areas.
- Increase in rural population has equally increased the demand for agricultural use, resulting in encroachment into forested areas, and riparian reserves. The growth in the pastoral and livestock population has increased the demand for grazing pastures, resulting in urban immigration by pastoralists and has also created serious soil erosion problems in certain areas. While the population has been growing at about 3% per annum since independence, the industrial sector has not been expanding as fast. Land, has thus, remained the only source of income for most ruralites. Over 80% of the population draws their subsistence from land.
- The increased rural-urban migration has resulted in high demand for land for settlements while the decline in the agricultural sector has failed to halt such migratory habits owing to poverty in the rural areas. Such migrations have resulted in the increased demand and creation of squalid settlements devoid of planning and infrastructure in or about urban areas.
- The increase in rural population and the increase in demand for arable land, accelerated and resulted in intensive demarcation of land that has denied this country preservation of precious agricultural land that may sustain food production to feed the nation without relying on food hand-outs.
- Increased urbanization requiring more land for settlements, industries and commerce, etc., on the one hand, and the need to preserve valuable agricultural land on the other, has increased the pressure on the limited stock of land.
- Increasing awareness amongst the population of the value of land and property has led to an upsurge in the number of people wishing to acquire land, especially in the major urban centers.

This has led to more competition for the limited number of plots available for allocation by the various authorities.

- For many people in the County, land remains the core of their existence since the majority are still dependent on the produce from the soil for food and other needs of life.
- The previous categories of land, i.e., Government Land, Trust land and Private Land came about as a direct result of the colonial history when land was categorized on racial grounds and that these categories of land have contributed partly to the problems in the management and administration of land seen today.
- The Kenyan culture that dictates that everyone should own some land, regardless of meaningful size, has resulted in an increased demand for land for developing a home or burial grounds. This has notably encouraged more and more people to bid for the limited number of demarcated plots, by itself, intensifying subdivision of available land or for parents to demarcate land for purposes of bequeathing some piece to each child depending on the local culture.

#### **WEAKNESSES IN POINT FORMAT:**

- Inadequate qualified and skilled staff.
- Inadequate equipment and tools.
- Inadequate technical skills to manage land registry, district land boards, land valuation, etc.
- Manual and dilapidated land records.
- Limited use of statistics in management and decision making.
- High incidence of land fraud and fraudulent land transactions in the land registration process.
- Inadequate budget and financial resources..
- Conflicting mandates and lack of coordination in the sector.
- Insufficient monitoring and supervision.
- No clear Vision, mission and shared values.
- Unfilled staff structure.
- Inadequate capacity building.
- Inadequate coordination mechanisms.
- Limited knowledge of Government work systems.
- Poor time management and utilization.
- Low staff motivation.
- The public is not adequately informed about our roles and services.
- Piece meal planning and implementation of activities.
- Changing priorities and operation of existing plans e.g. abrupt changes to planned activities.
- Lack of adequate office space (work stations, offices etc) and inadequate resources like computers.
- Negative attitude towards work.

## **OPPORTUNITIES:**

- Vision 2040.
- National Land Policy, other Policy and legal frameworks in place e.g. the three new land laws (The National Land Commission Act, The Land Act and the Land Registration Act).
- Competitive Investment Climate Strategy.
- Creation of a Land Fund and National and County Government willingness to fund the sector.
- Political good will.
- Growing interest by the development partners in supporting the Land Sector Strategic Plan
- There is also strong cooperation between Government, Private Sector, Civil Society Organizations and other stakeholders in Land Sector planning process (PPP).
- The decentralization process presents many opportunities, through allowing an approach targeted to the real needs of local communities.
- Regional integration that will expand pool of skilled human resources.
- General demand for housing for the population.
- Availability of Private developers interested in partnering with Government in housing construction through Public Private Partnership framework or using Build Own Operate and Transfer (BOOT) concept.
- Land owners willing to partner with Government and the private sector to re-develop slums through PPP.
- Availability of both international and local housing financiers interested in partnering with Government in housing construction.
- Availability of local and international forums through which advocacy campaigns and lobbying on housing issues can be done.
- Liberalization of NSSF funds which the housing sector can tap into.
- Establishments of Housing Cooperatives.
- Good will from development partners.
- International treaties and conventions like Habitat Agenda, World Urban force and MDGs.
- Increased Urban growth (Mushrooming unplanned urban areas).
- Existence of good will from the public on sector initiatives.
- Higher institutions in Taita Taveta e.g TTUC now offer relevant courses.

## **THREATS**

- Over reliance on Government funding.
- High prevalence of land disputes / conflicts that lead to land evictions, destruction of property and loss of life.
- Destruction of the Geodetic network which results into overlapping surveys.
- Weak enforcement of Land related laws.
- Increasing County/Ethnic border disputes.
- High annual population growth rate at 3.2%.
- Development of unplanned settlements making it difficult to implement spatial plans to guide expansion of all major towns.

- Uncontrolled growth of slums.
- Inadequate housing finance/mortgage institutions in most of the urban areas to provide the finances for housing services plus high and unaffordable interest rates on mortgages.
- Ever increasing cost of building materials hence high housing cost.
- Substandard and adulterated building material.
- Scattered settlement pattern in the rural sector.
- High levels of urban poverty.
- Overlapping mandates amongst government agencies.
- Political intervention.
- Lack of linkages with local government e.g. enforcing implementation becomes practically impossible.
- Inadequate legal framework.
- Lack of prioritization of urban development on the part of the Government
- Inadequate allocation of financial resources

## **1.0 BACKGROUND INFORMATION**

### **1.1 THE DEVOLVED FUNCTIONS**

Part 2 (2), (3) and (10) of the Fourth Schedule of the Constitution of Kenya 2010, recognizes the functions and powers of the county as follows:

Part 2 (2), County health services, including, in particular—

(g) refuse removal, refuse dumps and solid waste disposal.

Part 2 (3), Control of air pollution, noise pollution, other public nuisances and out door advertising.

Part 2 (10) Implementation of specific national government policies on natural resources and environmental conservation, including -

(a) Soil and water conservation; and

(b) Forestry.

## **2.0 ACHIEVEMENTS (ACCOMPLISHED AND ONGOING)**

- I. The first and the only county in the country to develop and sign the Transition implementation Plan (TIPS)
- II. Ongoing partnership with Kenya Water Towers Agency to rehabilitate Funju water catchment
- III. Ongoing capacity building by KFS on county forest management funded by JICA
- IV. Conducted successful natural resources stakeholders forum funded by Nature Kenya
- V. Ongoing recruitment of 40 rangers in collaboration with Tsavo Conservation Group funded by USAID
- VI. Ongoing deliberations to construct a security hub (to be funded by UNDP) in one of the ranches to be designated by ranchers association

### **3.0 GENERAL CHALLENGES**

- I. Inadequate funds allocation to cater for the different sections' needs within the department i.e forestry, waste management and environment
- II. Delay of county funds disbursement
- III. Continuous accrual of of debts and expenses due to delay in funds disbursement
- IV. Difficulty in implementation of the e-procurement system
- V. Inadequate capacity to perform assigned responsibilities due to shortage of staff- e.g., no single forester despite having 44 county forests to manage, no single environmental inspector to enforce the noise regulation
- VI. Delay in reviewing and re-alignment of policy and legislative framework
- VII. Hyped public expectations – e.g. recruitment of 10 casuals from each ward leading to difficulty in managing the services

### **3.1 SPECIFIC IMPLICATION OF NON BUDGETARY ALLOCATION AND CONSIDERATION**

Because of lack of considerations for budget allocation, the department has been unable to manage the

natural resources and waste effectively and efficiently since devolution. As a result, the following is evident:

- I. Forest encroachment owing to non-gazettement and unclear boundaries
- II. Tree poaching upon dwindling of on farm forest cover
- III. Forest fires
- IV. Inadequate management and enforcement strength
- V. Inadequate infrastructure – offices, equipment and other installations
- VI. Old three (3) dysfunctional or ineffective garbage collection trucks serving the whole county- Currently hired two other garbage tracks which when prolonged, the budget may not be able to accommodate
- VII. Old one (1) nonfunctional or ineffective exhauster serving the whole county (currently withheld in Wundanyi police station since 23rd December 2017)
- VIII. Lack of waste management strategy leading to disorganization of the the dump site and occasional burning hence release of GHGs posing discomfort and health threat to humans
- IX. Poor handling of waste due to lack of adequate equipment and tools
- X. Inability to organize the garbage dump site at Landi (along Voi–Mwatate road) to since MTF owes the county about 6M shillings.

#### **4.0 WAY FORWARD**

There in need to EXCLUSIVELY BUDGET at least 6m shillings for the FORESTRY sector and the waste management sector in order to undertake the following:

- I. Implementation of national policies that is applicable to County forests.
- II. Formulation of County level specific laws and legislation - forestry and climate change.

- III. Development and implementation of County forest management plans.
- IV. Identification and setting a part of land for forest reservation, development and creation of County forests.
- V. Forestation and rehabilitation of fragile and degraded ecosystem/forest in community lands.
- VI. Community awareness creation.
- VII. Increasing tree cover in private, community and County lands.
- VIII. Provision of forestry extension services in the County.
- IX. Development and maintenance of County forest infrastructure.
- X. Development of charcoal industry (promotion/use) within County forests and private farms.
- XI. Enforcement of Forest Legislations within the County forests and private farms.
- XII. Management of County forests.
- XIII. Conduct surveys to reserve forest lands
- XIV. Delineation of forest areas- Beaconing of County forest area
- XV. Employment of forestry specialists officers
- XVI. Procurement of at least four (4) modern garbage collection trucks costing about 40m
- XVII. Procurement of at least two (2) exhausters costing about 20m
- XVIII. Development of County waste management strategy

## **5.0 CONCLUSIVE REMARKS**

The County Government need to invest in forestry in order to expand the revenue streams through:

- I. Identification and Mapping out revenue sources
- II. Gazettement of all relevant revenue streams

III. Development of a system for licensing and inter- County cooperation

IV. Developing a benefit sharing mechanism

V. Establishing an effective system to collect revenue from County forests and Farm forestry

Additionally, the County Government needs to take cognizance of proper waste management techniques hence invest on various forms of waste handling options including waste treatment plant. This can be achieved by allocating a specific budget (which has never been done since devolution) to facilitate all the processes required.



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