

**TAITA TAVETA COUNTY**  
**COMMUNITY LAND ADMINISTRATION BILL, 2020**

**ARRANGEMENT OF SECTIONS**

**PART I – PRELIMINARY**

*Section*

1. Short Title
2. Interpretation
3. Objectives of the Act
4. Guiding Principles

**PART II – COMMUNITY LAND MANAGEMENT AND  
ADMINISTRATION**

5. Community Land Management and Administration Board
6. Functions of the Board
7. Board of Board
8. Quorum
9. Qualifications for Appointment
10. Vacation of Office of Chairman and Members
11. Powers of the Board
12. Committee of the Board
13. Delegation by the Board
14. Common Seal of the organization
15. Protection from Personal Liability
16. Membership of the Community Assembly
17. Criteria for Membership
18. Guidelines for Community Assembly Membership
19. Election

**PART III – REGULATION OF LIVESTOCK FARMING**

20. Regulation of Livestock Grazing

21. Community Land Grazing Leases
22. Livestock Grazing Leases for Foreign herders
23. Consent of the Board in Grazing Leases
24. Documentation of Foreign Herders
25. Application to local herders
26. Camel Grazing
27. Grazing Practices

**PART III – ENVIRONMENTAL AND NATURAL  
RESOURCES MANAGEMENT**

28. Exploitation of Natural Resources on Community
29. Carbon Credit Project
30. Investments of Community Lands
31. Benefits Sharing
32. Environmental Conservation

**PART IV – DISPUTE RESOLUTION**

33. Settlement of Disputes
34. Involvement of Court

**PART V – GENERAL PROVISIONS**

35. General Penalty

**TAITA TAVETA COUNTY COMMUNITY LAND  
ADMINISTRATION ACT, 2020**

**An Act of the County Assembly of Taita Taveta County to provide for the management and administration of community land in the county pursuant to article 60 (1) a, b, c, e, and g, and 63 of the Constitution of Kenya 2010 and sections 7, 13, 14, 15, 19 and 37 of the Community Land Act 2016, regulate livestock farming activities pursuant to Sections 1, 3, 6, 8, 10 and 14 of Part 2 of the Fourth Schedule of the Constitution of Kenya 2010 and sections 27, 28, 29, 32, and 33 of the Community Land Act 2016, and conservation of natural resources and environment including ranching activities pursuant to article 42 of the Constitution of Kenya 2010 and sections 35, 36 and 38 of the Community Land Act, 2016.**

**ENACTED BY** the County Assembly of Taita-Taveta as follows-

**PART I – PRELIMINARY**

**Short Title**

1. This Act may be cited as the Community Land Management Administration Act, 2020.

**Interpretation**

2. In this Act unless the context otherwise requires –  
“**Board**” means the Community Land Management Administration Board established under section 5;  
“**board**” means the Board of Directors of the Board constituted under section 7;

**“Carbon credit project”** means any project undertaken by the communities to promote environmental conservation in return for payment of money including planting of trees;

**“chairperson”** means the chairperson of the board appointed under section 7;

**“community”** has the meaning assigned to it under the Community Land Act, Act No. of 2012;

**“community assembly”** has the meaning assigned to it under the Community Land Act, Act No. of 2012;

**“community land”** includes land under all ranches within the county and all land not held under private or public tenure systems;

**“county”** means Taita Taveta County;

**“county Government”** means the Taita Taveta County Government;

**“court”** means the Environment and Land Court established under the Environment and Land Court Act, 2011 ([No. 19 of 2011](#)) or any other court having jurisdiction over land matters as may be prescribed by any written law;

**“foreigner”** means any person who is not a resident of the county;

**“herder”** means any person undertaking any kind of livestock grazing within the county;

**“lease”** has the meaning assigned to it under the Land Act (Act No.6 of 2012);

**“licensing Board”** means the Board or the county government as the case may be;

**“livestock”** includes cows, camels, donkeys and horses;

**“person”** includes a company, association or other body of persons whether incorporated or unincorporated.

### **3. Objects and Purposes of the Act**

(1) The Object and Purpose of this Act is to protect, secure and promote community land rights and in particular to

–

- a) facilitate efficient management and administration of community lands in the county
- b) to promote the better and efficient ranching activities;
- c) To protect, secure and promote community land rights of Taita Taveta people as well as community land tenure for all generations;
- d) To promote good governance in the sustainable exploitation of the natural resources within the community lands including the ranching activities;
- e) To regulate illegal livestock farming in the county and resolve the perennial conflicts between communities and herders;
- f) To promote wealth generation and equitably distribute it to community assembly members and the community in general to elevate the socio-economic life of the people; and
- g) To promote and protect the environment and put up measures to mitigate climate change effects within the county.

### **4. Guiding Principles**

In exercise of the powers granted under this Act, every person dealing with community land shall be guided by the following principles –

- (a) the principles of land policy set out in Article 60 of the Constitution; and
- (b) the national values and principles of governance set out in Article 10 of the Constitution

**PART II – COMMUNITY LAND MANAGEMENT  
AND ADMINISTRATION**

**5. Establishment of the Community Land Management  
and Administration Board**

(1) There is hereby established a Board to be known as the Taita Taveta community Land Management and Administration Board which shall be a body corporate with perpetual succession and a common seal.

(2) The Board shall be capable in its corporate name of-

- (a) suing and being sued;
- (b) taking, purchasing or otherwise acquiring, holding, charging or disposing of movable and immovable property;
- (c) entering into contracts;
- (d) borrowing money; and
- (e) doing or performing all such other things or acts necessary for the proper performance of its functions under this Act and which may lawfully be done or performed by a body corporate.

**6. Objects and Functions of the Board**

(1). The object and purposes for which the Board is established are to exercise general supervision and co-ordination over all matters relating to the management of community land.

(2) In undertaking the roles in subsection (1) above the Board shall have the following functions –

- a) to formulate land use and environmental policy that shall govern the grazing of livestock and environmental conservation within the county;
- b) to issue guidelines for the management of community land in consultation with the relevant community assemblies;

- c) Approve grazing license for foreign herders and provide consent to grazing activities of local herders as provided for in this Act;
- d) Undertake Programmes intended to enhance environmental education, public awareness and public participation in collaboration with relevant community land management committee, formulate regulations to control the watering points for livestock in the county;
- e) implement the guidelines in (b) with the help of the county and national governments;
- f) hear and determine appeals from members of the community aggrieved by membership application decisions made by community assemblies
- g) Any other function to give effect to this Act.

## **7. Composition of the Board**

(1) The Board shall consist of;

- (a) A chairperson appointed by the by the Governor with the approval of the county assembly;
- (b) A vice chairperson elected by the members;
- (c) One expert in Environmental matters;
- (d) One expert in Agriculture and Livestock Farming matters;
- (e) Two representatives of the communities;
- (f) One representative of the ranches;
- (g) One representative from the Kenya Wildlife Service;
- (h) One legal advisor appointed by Governor with the approval of the county assembly;
- (i) One person representing the youth;
- (j) One person representing women; and
- (k) One person representing individuals with disabilities.

(2) The member of the board referred in subsection 1 (c) shall be appointed by County Executive Committee Member in charge of Land, Mining and Housing with the approval of the county assembly

(3) The member of the board referred in subsection 1 (d) shall be appointed by County Executive Committee Member in charge of Agriculture, Livestock and Fisheries with the approval of the county assembly.

(4) The members of the Board shall hold office for a period of 3 years and may be eligible for re-appointment for one more term of 3 years.

(5) The members referred to under subsection (1) (a) to (k) shall be appointed at different times so that the respective expiry dates of their terms of office shall fall at different times

(6) The Board shall meet at least four times in every financial year.

(7) The Chairperson shall preside at every meeting of the Board at which he is present, but in his absence the Vice-Chairperson shall preside, and in his absence, the members present shall elect one of their number who shall, with respect to that meeting and the business transacted thereat have all the powers of the Chairperson.

## **8. Qualifications for appointment**

(1). A person shall be qualified for appointment as the chairperson or a member of the Board under section 7(a) if that person—

- (a) holds a degree from a university recognized in Kenya; and
- (b) has knowledge and experience in any of the following fields
  - i. Agriculture;
  - ii. Land Economics;
  - iii. Land Survey/Administration
  - iv. Natural Resource Management; and



v. Law

**9. Quorum.**

- (1) Unless a unanimous decision is reached, a decision on any matter before the Board shall be by a simple majority of votes of the members present and in the case of an equality of votes, the Chairperson or person presiding shall have a casting vote.
- (2) The quorum for the transaction of the business of the Board shall be six members including the person presiding; and all acts, matters or things authorized or required to be done by the Board, shall be effected by a resolution passed by a majority of the members present and voting.

**10. Vacation of office of chairperson and members**

- (1) The office of the chairperson or a member of the Board appointed under Section 7 shall become vacant if the chairperson or member—
  - a) is unable to perform the functions of his office by reason of mental or physical infirmity;
  - b) is otherwise unable or unfit to continue serving as the chairperson or member of the Board
  - c) is adjudged bankrupt;
  - d) is convicted of a criminal offence and sentenced to a term of imprisonment of not less than six months;
  - e) is absent, without reasonable cause, from three consecutive meetings of the Board;
  - f) resigns in writing addressed, in the case of the chairperson, to the Governor and in the case of a member appointed under section 7 to the chairperson;
  - g) fails to declare his interest in any matter being considered or to be considered by the Board; or
  - h) dies.

## **11. Powers of the Board**

The Board shall have all the powers necessary for the proper performance of its functions under this Act and in particular, but without prejudice to the generality of the foregoing, the Board shall have power to –

- a) enter into contracts;
- b) determine, impose and levy rates, charges, dues or fees for any services performed by the Board, or for the grant, renewal or validation of a lease, subject to the approval of the community land registrar;
- c) manage, control and administer the assets of the Board in such manner and for such purposes as best promotes the purpose for which the Board is established;
- d) receive gifts, grants, donations or endowments made to the Board and make disbursement therefrom in accordance with the provisions of this Act;
- e) open a bank account for the funds of the Board.

## **12. Committees of the Board**

(1) The Board may establish such committees as it may consider necessary for the performance of its functions and the exercise of its powers under this Act.

(2) The Board may co-opt any person to sit on any committee established under subsection (1), whose knowledge and skills are found necessary for the performance of the functions of the Board.

## **13. Delegation by the Board**

Subject to this Act, the Board may, by resolution either generally or in any particular case, delegate to any committee of the Board or to

any member, agent of the Board, the exercise of any of the powers or the performance of any of the functions or duties of the Board under this Act.

#### **14. Common Seal of the Board**

(1) The common seal of the Board shall be kept in the custody of the vice chair person or such other person as the Board may direct, and shall not be used except upon the order of the Board.

(2) The common seal of the Board shall, when affixed to a document and authenticated, be judicially and officially noticed and unless the contrary is proved any order or authorization by the Board under this section shall be presumed to have been duly given.

(3) The affixing of the common seal of the Board shall be authenticated by the signatures of the chairperson or the vice chairperson:

Provided that the Board shall, in the absence of the chairperson or vice chairperson, in any particular matter, nominate one member of the Board to authenticate the common seal of the Board on behalf of either the chairperson of the Board or the vice chairperson.

#### **15. Protection from personal liability**

No matter or thing done by a member of the Board or any officer, employee or agent of the Board shall, if the matter or thing is done *bona fide* for executing the functions, powers or duties of the Board, render the member, officer, employee or agent or any person acting on his directions personally liable to any action, claim or demand whatsoever.

#### **16. Membership of the Community Assembly**

(1) Any person who has an interest in community land may apply to the registered community for registration as a member.

(2) Registration shall be open to all members of the community including –

- a) wife of a member of a community;
- b) adult children of a member a community; and
- c) any other adult member of the community who has communal interest in the community.

(3) Membership in community shall cease or deemed to have ceased in regard to any member from the date of;

- a) Death
- b) remarriage of a woman after divorce with a member of the community.
- c) remarriage of a woman whose spouse and member of the community dies
- d) Voluntary.

### **17. Criteria for Membership**

(1) Any person shall become a member of the community Assembly through;

- (a) Any member whose name is in the register upon registration; or
- (b) New members born and married in the community; or
- (c) Any person who has inherited an interest from a person whose name is in the register of members; or
- (d) A court order.

(2) Membership to any community assembly shall be through an application in the prescribed form determined through by-

laws of every community assembly informed by the criteria in section (18) of this Act.

- (3) The application in subsection (2) shall be effective after payment of a prescribed fee by the committee

#### **18. Guideline's for Community Assembly Membership**

- (1) No community Assembly shall block membership to its community based on race, sex, ethnicity, gender or culture

- (2) Application for membership into the community assembly shall be based on affiliation within the community and unity of purpose

- (3) Every adult person in the family of any member of a community assembly shall qualify to become a member of the community assembly upon application

- (4) The application in subsection (3) shall not be denied arbitrarily

- (5) Any person aggrieved by the decision of any community assembly in the application for membership shall appeal to the Board within 30 days.

- (6) If any community assembly is not satisfied with the decision of the Board, it shall appeal the decision of the Board to court within 30 days

- (7) All community assemblies must be controlled in a democratic manner that affords the principles of the constitution of Kenya while at the same time attaining their primary objectives including cultural goals.

#### **19. Election of members**

- 1) A person shall be eligible for election as a board member for the community land management committee if that person –
  - a) is an adult member of the community;

b) meets the requirements of Chapter VI of the Constitution of Kenya; has not been adjudged bankrupt; and

(c) has not been convicted of a crime involving fraud or dishonesty.

(2) The election of members of the community land management committee shall be democratic based on the by-laws of the community assembly and in accordance with the principles of the constitution.

### **PART III – REGULATION OF LIVESTOCK FARMING**

#### **20. Regulation of Livestock Grazing**

This part shall apply to all community land in the county registered under the Community Land Act and doesn't apply to any other type of land registered under any other land tenure system recognized in Kenya.

(1) As part of its primary objective, the Board shall formulate a land use and environmental policy that shall govern the grazing of livestock within the county.

(2) The policy in subsection (1) above shall elaborate the ways through which livestock grazing shall be conducted

(3) The policy in subsection (1) shall be based on scientific and environmental empirical evidence from analysis undertaken by a committee of experts commissioned by the Board

(4) The policy shall be reviewed after every 3 years from the time of first the report by the committee of experts is tabled and approved by the Board

- (5) Any person, other than foreigner, grazing their livestock within the community land to which he or she is a member shall not require the consent of the Board if they have less than 100 livestock.
- (6) Any foreigner who wishes to undertake livestock grazing shall only do so through a formal agreement with the owners of the community lands.

## **21. Community Land Grazing Leases**

- (1) A registered community may upon application and with approval of the members of the registered community, allocate part of its registered community land to a foreign herder or group of foreign herders for exclusive use and occupation for such period as the registered community shall determine
- (2) Despite subsection (1) a separate title shall not be issued to the foreign herder and the exclusive occupation shall be on a lease basis
- (3) Any foreign herder granted exclusive use of a parcel of land under this section-
  - (a) shall pay to the registered community such premium or fees commensurate to the use as may be determined by the community from time to time;
  - (b) shall use the land subject to the land use and environmental policy formulated by the Board in section (20);
  - (c) may not assign or lease the land to a third party who is not a member of the community;
  - (d) shall surrender the land back to the community if the foreign herder no longer shall be entitled to quiet enjoyment of the land; and
  - (e) Shall put the land into lawful use.

- (4) Any foreign herder who contravenes subsection (3) (b) and (c) shall have their leases revoked and banned from occupations and use of any community land within the county for at least 10 years

## **22. Livestock Grazing Leases**

- (1) Any foreign herder wishing to graze livestock within the county shall only do so through formal lease agreements entered into with the owners of the individual community lands
- (2) The formal leases in subsection (1) shall be in written form and no oral lease shall act as a formal proof of the right to graze in any community land.
- (3) Every grazing lease shall be filed by the Community Land Registrar of Taita Taveta County.
- (4) The community land management committee shall have the right to approve the grazing leases which must follow the guidelines laid down by the rules and regulations of the specific community and the land use and environmental policy of the county.
- (5) This section shall not apply to any local herders

## **23. Consent of the Board in Grazing Leases**

All grazing leases within the county shall be approved by the Board based on the guidelines formulated in section 20 (1) above.

- (1) The Board shall be guided by the following criteria in approving grazing leases: -
  - (a) The approval of the lease must be based on the principles enumerated in section 4 of this Act:
  - (b) Any herder or livestock owner must pay the prescribed fee before the Board can approve the grazing lease;



- (c) Upon payment of the prescribed fee, the lease together with the details of the herders and the livestock owner shall be tabled before the Board for consideration;
- (d) The Board shall consider whether the lease in question adheres to the land use and environmental policy created by the expert committee
- (e) The Board shall have the right to revoke lease if it appears to offend the land use and environmental policy, and the guiding principles in exploitation of community land resources.

#### **24. Documentation of Foreign Herders**

- (1) All foreign herders must at all times have their national identification card issued by the government of Kenya.
- (2) Any foreign herder who is not Kenyan must provide all documentation indicating that they are legally present in the country.
- (3) The county livestock officials shall undertake regular documentation check on all herders within the county after every one month to ensure compliance with this section.
- (4) Any person that contravenes the provisions of this section commits an offence and shall be liable to a fine not exceeding two hundred thousand shillings or for an imprisonment for a term not exceeding one year, or both.

#### **25. Application to local herders**

- (1) No local herder shall be mandated to enter into any lease with any community land
- (2) All local herders with more than 100 livestock shall apply to the Board to approve the grazing practices

- (3) The approval in subsection (2) above implies the consideration by Board to confirm whether the applicant's grazing practices are in conformity with the land use and environmental policy in section (20) of this Act
- (4) The approval in subsection (2) not attract any fee payment by the local herders
- (5) Any person who contravenes subsection (2) above commits an offence and is liable, on conviction to a fine not exceeding ten thousand shillings or imprisonment for a period not exceeding thirty days

## **26. Camel Grazing**

- (1) The Board shall have the exclusive right to determine the number of camels that a specific piece of community land can accommodate for a specific period of time.
- (2) The Board with the assistance of community land owners shall formulate regulations to control the watering points for camels in the county
- (3) Camel grazing within the county shall strictly follow the land use and environment policy in section (20) of this Act
- (4) Any camel herder who contravenes this section or the regulations made hereunder commits an offence and is liable to a fine not exceeding five hundred thousand shillings or imprisonment for a period not exceeding twelve months

## **27. Grazing Practices**

- (1). The Board shall ensure that community land is exploited in sustainable manner through enforcing modern grazing practices and farming systems and methods that help conserve the environment.

(2) The Board shall in consultation with the community members designate one calendar month as a grazing-free month for foreign herders.

(3) The month designated in subsection (2) above shall be a time when the county observes environmental conservation by avoiding activities that degrade the land including intensive agricultural grazing.

(4) The Board together with the communities may conduct a countywide tree planting exercise during the grazing-free month

(5) The Board shall ensure that all communities including ranches undertake best grazing practices as recommended by the committee of experts in section (20) of this Act.

### **PART III – ENVIRONMENTAL AND NATURAL RESOURCES MANAGEMENT**

#### **28. Exploitation of Natural Resources on Community Land**

The natural resources found in community land within the county shall be exploited and managed –

- (a) sustainably and productively;
- (b) for the benefit of the whole community including future generations;
- (c) with transparency and accountability; and
- (d) on the basis of equitable sharing of accruing benefits.

#### **29. Carbon Credit Project**

(1) The Board shall undertake extensive civic education of the benefits of carbon credit to all the members of all community lands within the county

- (2) The Board shall sensitize the communities on the importance of planting trees and the effects of climate change
- (3) The community land management committee for every community assembly shall be responsible for the implementation of any carbon credit project with the help of the Board
- (4) All members of the individual communities, including children and women may plant trees towards the realization of carbon credit project initiated by a community
- (5) The community land management community shall formulate rules and regulations that promote this section and such rules and regulations shall be based on the guidelines enumerated by the Board
- (6) The community assemblies through the community land management committee shall have the right to ban activities that promote environmental degradation within the community including charcoal burning

### **30. Investments on Community Lands**

- (1) The community assembly may enter into any investment and development partnership with any third party
- (2) Any such partnership in subsection (1) which has effect on land use and shall be approved by the Board
- (3) Any investment partnership shall be voted for by a simple majority of the members of the community assembly

- (4) The community land management committee shall negotiate the terms of the partnerships taking into consideration the best interests of the community
- (5) Any partnership that is considered beneficial to the county and not just the specific community shall not be arbitrarily rejected
- (6) In case any community land management committee arbitrarily rejects a partnership agreement, the Board shall educate the members of the importance of the project and after the education call members of the community assembly to approve the same.
- (7) No partnership agreement between an investor and the community shall be valid unless it is approved by two thirds of adult members at a community assembly meeting called to consider the offer and at which a quorum of two thirds of the adult members of that community is represented

### **31. Benefit Sharing**

Any benefit accruing to the community land through partnership investments or through carbon credit projects or through any activity undertaken by the community shall be shared equitably based on the principles in section (28) of this Act

- (1) Any benefit accruing to any community shall be managed by a community trust elected by the community assembly
- (2) The community trust shall be responsible for the distribution of any money realized by the community based on guidelines enumerated by the Board

- (3) At least sixty percent of any money that the community receives from carbon credit projects may be invested in community projects meant to create jobs and generate wealth
- (4) At least forty percent of the any money received by a community from carbon credit projects may be invested in bursaries for the education of the children in the community

### **32. Environmental Conservation**

- (1) The community assemblies may formulate rules and regulations that for –
  - (a) Land use and physical planning;
  - (b) Conservation and rehabilitation of the land; and
  - (c) Any other relevant matter.
- (2) The rules and regulations in subsection (1) above shall adhere to the land use and environmental policy under section (5) of this Act.

## **PART IV DISPUTE RESOLUTION**

### **33. Settlement of Disputes**

- (1) Any dispute arising from management of community land may be resolved through alternative dispute resolution mechanisms at first instance which are set out in the respective community by-laws.
- (2) Any dispute relating to a decision by the community land management committee shall be resolved through alternative dispute resolution mechanism.

### **34. Involvement of the Court**

(1) Where the community is unable to resolve the dispute arising from community land management or the Board, the dispute may be referred to Court.

(2) The Court may-

- (a) confirm, set aside, amend or review the decision which is the subject of the appeal; or
- (b) make any order in connection therewith as it may deem fit

(3) Subject to the provisions of the Constitution and of this Act, the Board, a court or any other dispute resolution body shall apply the customary law prevailing in the area of jurisdiction of the parties to a dispute or binding on the parties to a dispute in settlement of community land disputes so far as it is not repugnant to justice and morality and inconsistent with the Constitution.

#### **PART IV – GENERAL PROVISIONS**

##### **35. General Penalty**

- (1). No person shall occupy or use for any purpose any registered community land other than under a right acquired in accordance with the provisions of this Act.
- 2) A person who contravenes this section commits an offence.
- 3) A person convicted of an offence under this Act for which no other penalty is provided shall be liable to a fine not exceeding five hundred thousand shillings or to imprisonment for a term not exceeding three years, or to both.

#### **MEMORANDUM OF OBJECTS AND REASONS**

This Bill is proposed pursuant to provisions of Article 63(3) of the Constitution of Kenya 2010 to the effect that the County Government shall be responsible for the Administration of all unregistered Community Land. To this Effect the Bill proposed the establishment of a County Board to formulate mechanisms of administering such land including the regulation of activities on such land. The Bill, if passed into law shall have financial implications as the proposed board will have to meet its financial obligations in the course of its operations.

**HON. MWAMBINGU CHRISTOPHER  
NOMINATED MEMBER,  
COUNTY ASSEMBLY OF TAITA TAVETA**