

**SUBMITTING ORGANISATION: EASTERN PARALEGAL
NETWORKS**

STATE UNDER REVIEW: REPUBLIC OF KENYA

SUBMISSION TO THE UNIVERSAL PERIODIC REVIEW

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EXECUTIVE SUMMARY

The *lower part of Eastern Province in Kenya* occupies about 45,000 km². It mainly consists of four constituencies that is Masinga, Yatta, Kangundo and Mwala. It is mostly a semi arid and receives rainfall ranging from 500-600mm per year. The majority ethnic group is the Akamba speaking people. In terms of development it is one of the areas that have been neglected by successive governments since independence in 1963. The area has very poor infrastructure in terms of roads and social amenities like electricity. This is despite the fact that the area is blessed with two of Kenya's major rivers; Tana and Athi Rivers which flow through the area. It is also home to most of the Hydro-electric dams in Kenya; Masinga, Kiambere and Kamburu dams which are found along the Tana River. The area also has a number of natural resources; sand and coal which are being exploited now by the Ministry of Energy. The area has fertile soils but is challenged by lack of water for cultivation to grow groundnuts and fruits. Despite this long list of resources lower eastern is faced by many challenges including;

1. Accessibility of water;
2. Quality education;
3. Environmental degradation; and
4. Inaccessible justice

1. ACCESSIBILITY OF WATER

Rainfall in Ukambani is not reliable for farming and farmers are forced to depend on rivers for irrigation. The Rivers Tana, Athi and Thika which holds the Yatta Canal (dug during the colonial times and flows for a distance of about 60km) are important for farming. The Yatta Canal flows through Kithimani, Sofia, Kithendu, Matuu to Mwitasyano locations and residents use the water for domestic and irrigation purposes. The upper part of the canal there is a lot of large scale irrigation particularly in large flower farms owned by powerful people in government which means that the water capacity downstream is very low for a majority of the people for their domestic use. This is particularly extreme during the dry season. The canal is an importance resource for the people in respect to food production for both subsistence and commercial purposes. The proper use of these and other rivers would enable the residents to achieve food security and counter drought which is the hallmark if this area! It is recommended that;

- a. The government should develop a *national water management policy*.
- b. There is also need to develop a *food security policy* to ensure continued food production and food management all through the year.
- c. The National Irrigation Board should intervene to control irrigation upstream in *public interest* to those people living downstream to enable access water.

2. QUALITY EDUCATION

Education is power every one needs education to better their life and livelihood. The universal right to education is a fundamental right. The notion of free and compulsory primary education was entrenched in 2003 by the new political NARC government. In 2008 the coalition government (PNU and ODM) introduced free secondary education. This saw the number of children joining government schools increase especially in the rural areas and thereby increased the level of literacy in Kenya. However, these also brought new challenges which affected lower eastern; classroom attendance rose from 40 to 400 pupils, the number of teachers ratio to students went to 1:80 and schools infrastructure was compromised as they did

not expand. As a result the quality of public education in the area has been greatly compromised since only the rich parents can take their children to private schools which have better educational facilities. Though tuition fees was waived by the government there are a number of hidden costs that parents in public schools still have to pay which they cannot afford. This has meant that some children from poor families are not enrolled in school. Drought has forced some children to drop out of school since there is no school feeding programme which has affected their performance in National examinations. It is therefore recommended that;

- a. There is need to develop an *educational policy* that ensures that the quality of education is guaranteed. This would include the teacher to student ration and the basic educational infrastructure. This policy should also include adult education for those who lost out during their youth,.
- b. The utilization of the *Constituency Development Fund and Local Authority Transfer Fund bursaries* should be monitored by none state actors for accountability to the general public. Public awareness creation through the national broadcasting radio and TV should be undertake to ensure that support is given to the needy, poor and orphaned children.

3. SAND HARVESTING

The lowland during the rainy season has a lot of sand is deposited at the river banks. This sand helps in preserving underground water from evaporating during the hot season. The residents then sink boreholes to provide water for their domestic use. However this has over the years depreciated due to the bad sand harvesting activities. The water levels have reduced adversely and some boreholes have since dried up. This means that each time the area is faced with drought the effects are more severe than the previous year. The sand harvesting leaves deep gullies on the land and it compromises the bridges which are later washed away during the rainy season.

Once the sand is harvested it is then transported to other parts of the country for construction which is lucrative business. Unfortunately the residents do not benefit from the sand harvesting because sand at the point of harvesting is sold at very low prices to the brokers who are the primary beneficiaries and control the business. The harvesters continue to languish in poverty.

Further, many children and youths drop out of school to work in this sand harvesting industry. They opt for money to supplement the family income which has increased the level of illiteracy in the area. The young people are exploited and abused for very little pay. It is therefore recommended that;

- a. The *sand harvesting rules of 2007* should be fully implemented to curb environmental degradation by the National Environmental Management Authority (NEMA). This should also be complemented by public education by NEMA within the community.
- b. The government should license more *children welfare officers* to protect the children from abuse and exploitation using the *Children Act*.
- c. The government should *categorize sand as a mineral under the Mineral Act* so that it can enjoy legislative protection like other minerals

4. ACCESS TO JUSTICE

Access to justice is a fundamental human right for any given community in the world. Without access to justice communities will to be excluded from participating in matters of national development and governance. It is therefore important that access to justice is made:-

- a) Affordable,
- b) Accessible in terms of physical distance and language used in court, and

c) Available,

Access to justice in Kenya is a mirage for many since it is inaccessible due to high costs in representation and court fees, courts and police stations in the rural areas are very far away, the road network is poor and many have to walk irrespective of their health, social or economic conditions for days to seek legal remedies. Further the court environment is hostile, strange and intimidating due to the complex language and procedures which the common citizen does not understand due to their legal illiteracy and lack of formal education. Therefore many avoid engaging the justice system to the detriment of their rights even when violated by the state. This further erodes their confidence in the administration of justice institutions like the judiciary and police especially.

Unfortunately, ignorance of the law is no defense in court and therefore many fall victims of the justice system when they are in conflict with the law. Further, the law is neither available nor available in a form that they can understand except if you can read English. These statutes are only mainly found in the urban towns and cities rarely in rural areas especially if the law has changed. For those who dare engage with the justice system, case management and backlog is poor in the judiciary and many are discouraged due to the high cost of managing these cases thereby leading to a lot of cases of miscarriage of justice. It is therefore recommended that;

- a. The Ministry of Justice, National Cohesion and Constitution needs to spearhead the development of an *administration of justice policy* in Kenya. This would address principles of access to justice and public interest education.
- b. The role and *recognition of paralegals* within the administration of justice needs be realized through a *legal aid and awareness policy*.
- c. The *decentralization of the judiciary is essential through the creation of the Small Claims Court and Courts of Petty Session* to deal with small claims and petty crimes respectively. These should be located at the location which is the lowest administrative unit and presided over by paralegals.
- d. There is need to *recognize the community justice systems* which provide alternative dispute resolution mechanism.

In conclusion, these challenges in lower eastern province can be overcome if the state saw the potential of this area as food basket due to its potential for agricultural development. The implementation of the National Environment Management Act should be felt at the grassroots level where degradation takes place. The National Irrigation Board together with the Ministry of Environment should be able to control the use of water from the major rivers upstream and thereby food security for the people of Kenya in general especially during drought. When sand is recognized as a mineral price control and human activity will be better managed and thereby reduce the poverty levels in Eastern Province. This coupled with quality education and an appropriate administration of justice system will restore the people's confidence in the state institutions and provide an opportunity for sustainable development for the people and the future generations through the children and the youth.