

## **The first session of "The Tana Dialogues: Land, Water and People, a vision for peace"**

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### **Background**

The Tana Delta, a large coastal wetland located between Malindi and Lamu has been the scene of a violent conflict between Pokomo farmers and Orma livestock keepers in August and September 2012. In the meantime, on September 7<sup>th</sup> the Tana delta was listed as a wetland of international importance under the Ramsar Convention in recognition its rich and diverse natural and cultural heritage. As a signatory of the Ramsar convention, the Kenyan Government has committed therefore to fostering the wise use of the natural resources of this delta.

High in the immediate priorities is to resettle the internally displaced persons from the recent clashes and to rebuild their villages. There is nevertheless a need to deal with key underlying issues regarding resource conflicts. This is because a pre-requisite to reaching an inter-community agreement on the wise use of the natural resources is sustainable peace in this part of the coast. This requires finding solutions to the diminished flooding of the wetlands, the transformation of the rich wetlands into biofuel culture; and the ever-increasing land and water grabbing, in general.

It is on these premises that the French Institute for Research and Development (IRD) team on "Local Heritage" partnered with the Kenya Wetlands Biodiversity Research Team (KENWEB) to bring together Tana Delta residents, representatives of government agencies and NGOs and scientists to the National Museums of Kenya on Tuesday, November 27 2012, to hold a workshop, the first of a series of dialogues, to discuss various options for equitable sharing of the water and land as well as good governance of the wetland. This article summarizes the issues discussed at the dialogue and highlights some of the key recommendations made on the three themes.

### **Opening session**

The Workshop opened with a minute of silence in memory of the victims. Dr. Geoffrey Mwachala, the Director Research and Collections, National Museums of Kenya, opened the debate highlighting that Tana Delta biodiversity research is priority to the National Museums of Kenya adding that results from research should be applied in policy and governance of the Tana Delta.





Dialogue participants

**Water:** Dorothy Wanja Nyingi, KENWEB coordinator, presented the first session on water. She highlighted the need for a better understanding of the Tana delta hydrology in order to ensure wise-use and equitable sharing of the (limited) water resource by all stakeholders. She emphasized the need for managed flood releases from existing and planned dams in order to maintain the wetland downstream. The subsequent debate set some benchmarks for the required hydrological planning.

In panelist and ensuing discussions, Henry Njuguna, WARMA, highlighted that the National water master plan (2030) which would be finalized by June 2013 is a blue print for ensuring balance between water availability and demand; Tana delta representatives lamented that there has been a total disregard of the local communities and the ecosystem in all ongoing and planned projects on the Tana River; Nathan Gichuki remarked that in view of the scarce water of the Tana River, there is the need to explore other water sources for attaining vision 2030 and suggested a means of Payment for Ecosystem Services in order to benefit local communities; Ali Adan, NMK, regretted that Tana River is bleeding because of our past actions, policies, and negligence as result communities have retreated to ethnicity and have not been given audience for their grievances; Dalmas Oyugi, KWS called for coordination of technical support and funding for the Tana Delta towards a management plan; Boniface Mwaniki, WRMA, highlighted the WRMA-UNEP-TNC Tana Partners initiative to bring together all partners working in the Delta; Elizabeth Kaka (UNEP) highlighted the UNEP-WRMA report “Securing Water and Land in the Tana Basin: A Resource Book for Water Managers and Practitioners” and emphasized UNEP’s commitment to supporting the Tana Basin partners and further dialogue workshops.



Panelists: Dr. Nathan Gichuki (UoNbi); Henry Njuguna (WRMA); Eng. Boniface Mwaniki (WRMA); Dr. Elizabeth Kaka (UNEP); Omar Bocha (Elder Didawaride village); and Dr. Stephanie Duvail (IRD)

## **Water in the Tana River, is there enough for all?**

The Tana Delta is primarily a wetland and thus water is a key issue and that this is often a

forgotten fact. Some common characteristics of all wetlands globally include: its multi-user function (used by farmers, livestock keepers, hunter-gatherers, fishers); the overlap of customary rights of local communities and official land categories; that deltas are flood-dependant and dynamic; the value of **land** in Deltas depends on the value of the **natural resources** which in turn depends on the **flooding pattern**.

Even though the Tana River is the longest and most important river in Kenya (approx. 1000km long), based on its highest average flow (164 cubic metres/second at Garissa) it is a "small" river compared to others in the region (Table 1) carrying 28 times less water than the Nile, 8.5 times less than the Rufiji and 7 times less than the Senegal rivers. In addition, the flow reduces greatly (to 100 cubic metres/second at Garsen) by the time it reaches the delta due to abstraction, infiltration and evaporation as it flows through semi-arid areas of the Tana River County.

In spite of this, the river itself is under increasing pressure for developments and abstraction. Five dams have been constructed for hydro-power generation: Kindaruma (1968), Kamburu (1975), Gitaru (1978), Masinga (1981) and Kiambere (1998) and one more, the High Grand Falls planned for construction in the near future.

IRD and KENWEB scientists have studied the link between floods and ecosystem services that maintain livelihoods and biodiversity. Some findings have shown that in a good year in terms of rainfall and flood, there is no competition between the various uses of the wetland (livestock grazing, fishing, agriculture).

**Table 1: Average flows of major rivers of Africa**

Rank	River	Average flow (m <sup>3</sup> /s)	Rank	River	Average flow (m <sup>3</sup> /s)
1	Congo	40,000	8	Juba	545
2	Zambezi	7000	9	Orange	360
3	Niger	4800	10	Gambia	155
4	Nile	2800	11	Tana	100
5	Rufiji	850	12	Ruvuma	72
6	Limpopo	825	13	Wami	63
7	Senegal	775	14	Pangani	31

Key research questions that need consideration in the light of these and other developments are: How much water actually available in the delta? What is the flooded surface area under different scenarios (dams, climate change)?

In order to address these questions and ensure that water to maintain the Tana River Delta wetland is adequate it is crucial to ensure:

- “managed flood releases” from existing and future dams (also referred to as “environmental flows” but they are “social and environmental flows”).
- Control of water abstraction upstream in tandem with water availability in the river
- Long-term hydrological monitoring of the delta
- Long-term monitoring of livelihoods and biodiversity



**Land:** The focus of the second session was on the thorny land issue. Stéphanie Duvail (IRD, UMR “Local Heritage”) reminded participants that solidarity mechanisms exist between farmers and livestock keepers and that the real land issue concerns the recent grabbing of land for biofuels. Her presentation explored a few scenarios for the future and in particular the possibility, under the new constitution, of the delta becoming community land.

In panellist discussions, Patrick Waweru, Ministry of Lands, reported that 70% of the land in the Tana Delta is government land; 20% begin trustland for the communities and 10% under private ownership; Said Rogo, Tana Delta, said that population explosion in the region made this 20% was inadequate for the communities; Bernard Opaa, NEMA, reported that an EIA for Jathorpha in the Tana Delta was accepted on the 8th October 2012, he urged participants to participate in commenting EIAs before NEMA validates them, adding that there was a need for a NEMA technical advisory committee to advice on EIA. Participants called on KENGEN for compensate farmers and pastoralists that are affected by floods; noted the need to educate the communities and protect them from the expected impacts from the construction and operationalization Grand Falls Dam; and called for strengthening of WRUAs in the Tana Delta by WRMA.

Participants emphasized that Jathorpha project was forced upon the communities and urged NEMA to stop the Bedford project; called for transparency and accountability in the National Land Commission; said the community needs to be allowed audience regarding land grabbing without fear of retribution; called for resettling of IDPs from the recent clashes and for a resolution of land tenure issues; and urged the government to consider projects by the local communities within the delta.



Panelists: Dr. Mordecai Ogada (LWF); Bernard Opaa (NEMA); Mohamed Rhova (Elder, Nduru Village); Quentin Luke (KENWEB/NMK); Nasra Warsame (Cocoon project) Dr. Stephanie Duvail (KENWEB/IRD); and Patrick Waweru (Ministry of Lands)

### **Land issues in the Tana Delta**

Land tenure in general is a very complex and sensitive issue. The Tana delta has fallen into the global “land grabbing” trap, which involves large-scale acquisition and conversion of the multi-user landscapes into monoculture such as biofuels, sugar plantations among others. The land and resource rights and livelihoods of rural communities are highly compromised by this “Land Rush.” The main mechanisms for this land conversions in the Tana delta has been through lease of land to ranches run by private companies for up to 45 years and government acquisition of land currently used by the Tana And Athi Development Authority (TARDA)

In order to resolve land tenure in the Tana Delta it is important to address the evolution of land rights. For centuries, customary rights of Wataa, Pokomo and Orma ensured solidarity and equity in land-use and sustainability of the socio-ecological landscapes for continued ecosystem service delivery. The Pokomo and the Orma had a pre-colonial informal agreement

for the sharing of the floodplain with the Oda branch of the river being predominantly used by the Pokomo and the Matomba by the Orma.

In the colonial times, the land in the Tana Delta as with many parts of the country became crown land. After independence the central floodplain became 'Government Land', unlike land in Northern Kenya where 'Crown land' became 'Trust land'. In the 1970s, the creation of collective ranches on the terraces was prevalent, a system promoted widely by the World Bank. However, most of the ranches failed for various reasons although livestock production continued informally, with customary custodians still having access to the land.

Currently, pre-electoral conflicts among the Tana Delta communities have been rampant for example in 2001 and in 2012. Such conflicts have emanated from marginalisation of communities in decision-making regarding land-use and the prevalent land acquisition by private developers that has left several villages excluded from land access and compromised their livelihoods.

Some examples of wetland conversion include the Mumias sugar company lease of 38,000ha for sugar production. The management model of the activities is the use of non-local casual workers and exclusion of communities who are now considered as squatters in this land. This management model compromises local development for national sugar production.

Another example is the conversion of the wetland terraces for biofuel production by Bedford Biofuels (lease of 165,000ha). This is a private company that employs local casual workers on a low salary of 150-300 KES/day and no means of benefit sharing with communities. The location of this venture partially blocks the Orma pastoralist paths to the delta pastures. In addition, the economic viability of Jatropha is questionable. Box 1 highlights ten of many reasons why Jatropha is neither profitable nor sustainable.

**Box 1: Ten reasons why jatropha is neither a profitable nor sustainable investment economically or otherwise viable crop:**

- Reason 1: jatropha doesn't guarantee high returns
- Reason 2: it doesn't thrive on marginal land
- Reason 3: it needs significant amounts of water
- Reason 4: it is not pest resistant
- Reason 5: many jatropha investment projects have failed
- Reason 6: jatropha competes with food production
- Reason 7: it causes displacement of local communities
- Reason 8: jatropha plantations are not pro-poor
- Reason 9: plantations negatively impact biodiversity
- Reason 10: jatropha is likely to increase carbon emissions

Adopted from January 2011 article by Friends of the Earth International "Jatropha: money doesn't grow on trees"

The future land-use of the delta is currently a major consideration for the government. The Delta has been declared a wetland of international importance under the Ramsar convention since October 2012. A pre-requisite for it to maintain its status and protection includes a model for land use that is compatible with the principles of wise use. The Prime Minister's office is spearheading the Tana Delta Land Use Planning and Strategic Ecosystem Assessment (LUP/SEA) through the delta's secretariat. It is important that this process considers the various possible scenarios for land tenure and considers their advantages and disadvantages:

Scenario 1 : individual land ownership / private property: This option is seen by local communities as a means of securing their access to land. However it is not adapted to the dynamic nature of wetlands and the elite with more money to secure more land will benefit and exclude the majority of the locals. In addition, it will involve fencing and enclosures which will bar the normal functioning of biodiversity and create pockets of disconnected biodiversity areas. In addition, there is less control of activities in each private holding.

Scenario 2 : Leases of land or sales to external (private) investors. This is typically an investment model that has potential to create employment opportunities. However such investments do not consider the interests of the local users, biodiversity and the wetlands at large.

Scenario 3: Explore the possibilities of the Tana delta becoming 'community land' under the new laws (2010 constitution, National Land Commission Act 2012, the Community Land Bill). This model will undoubtedly safeguard the rights of all users but also secure the wetlands functions and services. In order for this scenario to succeed: a consensus on the land sharing rights has to be found and negotiations have to be embedded in an all inclusive management planning process. The challenge will be on how to steer from politically-instigated territorial claims to land and resources that may lead to violent conflicts.

**Tana Delta Management:** The afternoon session's focus was on wetland management. The topic was introduced by Olivier Hamerlynck (KENWEB) who insisted on the key conditions for appropriate management of the wetland, including: technical expertise, quality research and in particular good quality shared governance agreements (i.e. transparency, equity, inclusion of all actors, efficiency, consensus-oriented negotiation, etc.).

The debates, tense but constructive, were instrumental to the planning of the next steps for the development of a common vision and potential solutions for the wise use of this natural and cultural heritage. In panelist discussions, Serah Munguti, Nature Kenya, highlighted the Land Use Planning and Strategic Environmental Assessment process spearheaded by the Office of the Prime Minister and noted that they would give all stakeholders an opportunity to comment on the first draft; Judith Nyunja, KWS thanked KENWEB, Nature Kenya and others for their contributions to the Ramsar listing of the Tana Delta and urged for similar support for the Management Plan; Bernard Opaa, NEMA highlighted that his institution has begun laying the ground for the management plan of the Tana Delta and said they would be including experts into the Technical Committee; Oliver Nasirwa, Wetlands International reported on the Ecosystem Alliance and their projects in the Tana Delta.

Participants called for clarification on the extent to which communities will be consulted on the management plan; requested that strategies to protect important sites in the delta be made to ensure restricted use of endangered ecosystems; and remarked on the need to strengthen communication between upstream, midstream and downstream users of the Tana River.



Panelists: Bernard Opa (NEMA); Dr. Olivier Hamerlynck (KENWEB/NMK); Moses Jaoko (Beach Management Unit Chair, Moa village); Serah Munguti (Nature Kenya); Dr. Judith Nyunja (KWS); and Dr. Oliver Nasirwa (Wetlands International).

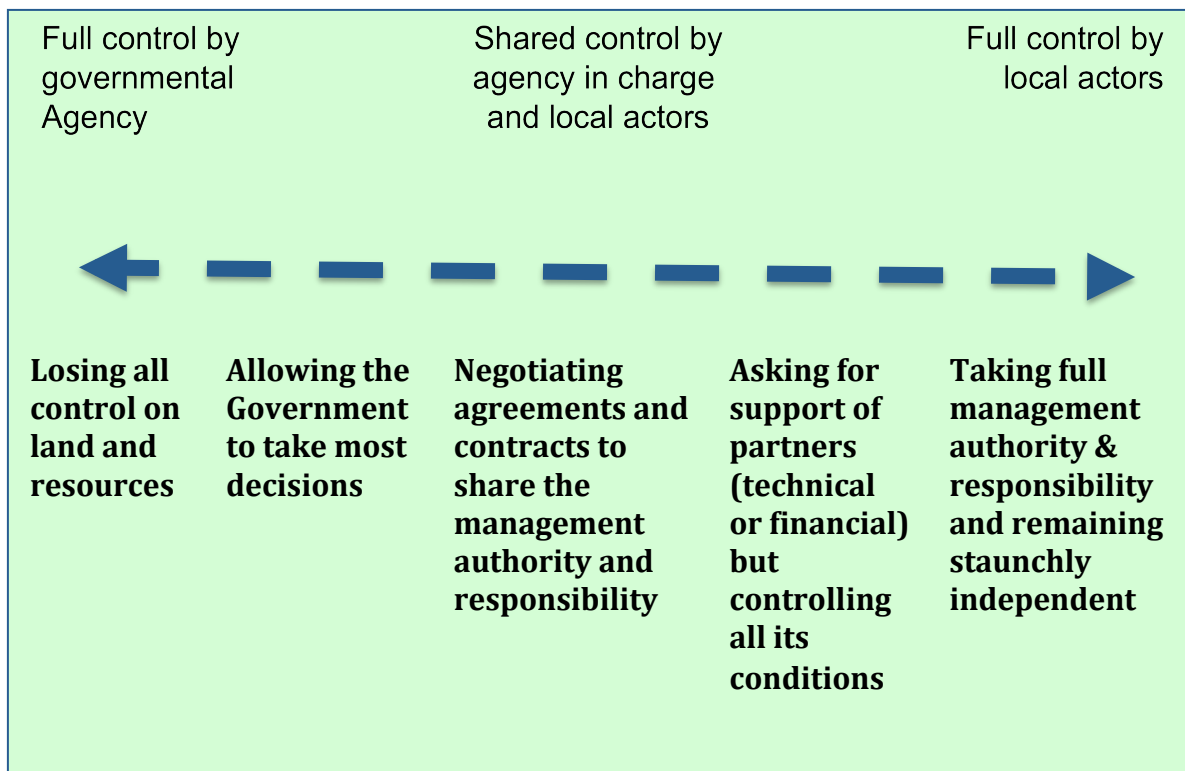
### **What constitutes sound management of Tana Delta?**

The present Tana Delta as we know it is a result of co-evolution of Biodiversity, Ecosystem functioning and Human Cultures within their different contexts to create a dynamic wetland with an array of ecosystem values and resource users. The key question that wetlands management needs to address is that of determining what user practices foster sustainability.

Wetland user practices are governed by access rules and limitations, sacred or reserved spaces and species specific taboos based on local knowledge, understanding of relationships between natural resources and community livelihoods, historical experience of scarcity and cultural values (world views, spiritual and religious beliefs, maintenance of social privileges...). Ecosystem users have been regulated by customary institutions, capacity for sanctions within and between communities and voluntary mutual obligations within and between communities.

A management plan for the delta requires a common vision of a desired future which fosters the value of heritage; maintains the wetland through managed flood releases and enhances biodiversity and ecosystem services. Management of the wetland cannot succeed through a top-down approach with prescribed decisions from management experts for application from the national to local levels. Success requires the application of co-management of the resources which constitutes “sharing power” in decision-making about natural resources.

Sharing power in decision-making for natural resources follows a continuum with regard to authority, responsibility and accountability as follows:



There is a need in addition to identify coherent socio-ecological management units, SEMU and linkages between them and with the exterior. Each SEMU has its own values & key issues that should be discussed in a forum of legitimate stakeholders, consisting of over 50% local community, ensuring a gender balance with government and external actors taking an advisory role.

The necessary steps towards a management plan should include:

A lead institution for the management plan that should be seen as a legitimate, experienced, unbiased institution, capable of mobilising sufficient resources to finalise the management plan.

This institution needs to establish a competent and dynamic start-up team or technical group perceived as an honest broker (no personal agendas), well-linked to the scientific community.

This technical team, should create a diverse forum for the delta to create a vision for its management and decide if SEMUs are required, identify the priority interventions and main strategies proposed on the basis of consensus and create a level playing field by enhancing capacity in the most vulnerable stakeholders

The Kenya Wetlands Biodiversity Group (KENWEB) has since the dialogue continued to engage stakeholders in ensuring that these issues are a priority in LUP/SEA processes and that NEMA, who have taken the lead in the Tana Delta Management plan, takes advantage of the technical expertise of its members. The Tana Delta dialogue has also shown that the National Museum, beyond its role in establishing collections and organising exhibitions, is also a place for citizen dialogues. A video produced by the Kenyan film maker Khamis Ramadhan can be viewed on [http://youtu.be/MRxZk05\\_bmo](http://youtu.be/MRxZk05_bmo)