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TAITA TAVETA COUNTY BILLS, 2019

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COUNTY ASSEMBLIES FORUM (CAF)
P. O. Box 73552 - 00200,
NAIROBI, KENYA

**THE TAITA TAVETA COUNTY MOVEMENT OF LIVESTOCK
AND LIVESTOCK PRODUCE BILL, 2019**

A Bill for

AN ACT of County Assembly of Taita Taveta to protect the livestock owners from the theft of Livestock and Livestock produce; to combat and investigate crimes concerning Livestock and Livestock produce; to monitor the movement of Livestock and Livestock produce within and through the borders of the County;

ENACTED by the County Assembly of Taita Taveta County, as follows—

PART I — PRELIMINARY

Short title

1. This Act may be cited as the Taita Taveta County Movement of Livestock and Livestock Produce Act, 2019.

Interpretation

2. In this Act, unless the context otherwise requires—

“acquire” means receive, obtain, temporary receives for purpose of sale and also any way in which ownership is not transferred;

“Livestock” means any horse, mule, ass, cattle, sheep, camel, goat, pig or ostrich or the carcass or a portion of the carcass of any such Livestock;

“Livestock produce” means whole or any part of skins, hides, Milk, horns, intestines, heads, parts of bones, claws, semen or embryos and any wool, mohair or ostrich feathers and ostrich eggs;

“auction” also means video auctions;

“agent” means a person who Bills for others in negotiating or arranging contracts in respect of or purchases, sales, or the transfer of Livestock or Livestock produce in return for a fee, commission or other consideration and “broker” has a corresponding meaning;

“CECM” means County Executive Committee Member Committee Member in charge of agriculture, livestock, irrigation and forest;

“person” means natural and legal persons;

“possess” does not necessarily mean the physical ownership of Livestock and Livestock produce, but also the intent to deal with it on behalf of the owner, agent or principal, or to control it as such and also have stray Livestock on your property;

“prescribed” means prescribed by regulation;

“public sale” means public auction on premises to which all members of the public normally have access, which is subject to the following provisions:

- (a) that the sales transaction takes place on other days than Sundays or public holidays between 07:00 and 18:00; or
- (b) in pursuance of an order issued by a competent court.

“regulation” means any regulation made or regarded as having been made under this Act;

“fence” means any wire fence, or any other fence, wall or gate through which no Livestock could pass without breaking it, or any excavation through or across which no Livestock can pass or any natural boundary through or across which no Livestock would ordinarily pass;

“this Bill” includes the regulations.

“Subpoena” means a writ ordering a person to attend court.

Application of the Act

3. (1) In the event of any inconsistency between this act and any other law in force at the commencement of this Act, other than the Constitution, this act prevails.

(2) No person may possess, transport, handle, transfer, sell, purchase, acquire or supply Livestock and Livestock produce unless he or she is in possession of the prescribed documents and registers where applicable.

(3) (a) The County Executive Committee Member may exempt in the *Gazette* a person from any or all provisions of this Act.

(b) Any such exemption may be—

- (i) general or specific;
- (ii) for any time;
- (iii) subject to any condition necessary to reach the objective of this Act
- (iv) changed or revoked at any time.

PART II— DEALING WITH LIVESTOCK AND LIVESTOCK PRODUCE

Import, export and transport of Livestock and Livestock produce

4. (1) No person may import Livestock or Livestock produce into or export Livestock or Livestock produce from the County, or cause any Livestock or Livestock produce to be exported from the County, unless he or she is in possession of the prescribed documents and registers.

(2) No person may, between sunset and sunrise, drive, carry or convey any Livestock or Livestock produce in any other way than in or on a vehicle unless the person is the owner, lessee or occupant of land where the Livestock or Livestock produce are driven, carried or conveyed over, unless otherwise prescribed.

(3) No person may, between sunset and sunrise, receive any Livestock or Livestock produce that have been driven, carried or conveyed in any other way than on or in a vehicle, unless otherwise prescribed.

(4) Notwithstanding the provisions of any other Act, Livestock or Livestock produce crossing the border out of or into Taita Taveta County must be identified with a permanent identification mark as is prescribed.

Public sale of Livestock and Livestock produce

5. (1) A person shall only deliver or sell Livestock, uncured raw meat, a carcass or portion of a carcass or unprocessed Livestock produce to members of the public from a vehicle, container, road stall, structure or residence that are not registered business premises, if such a seller is in possession of his or her identity document or passport and other prescribed documents which shall be displayed on request.

(2) The sale of Livestock, uncured raw meat, a carcass or portion of a carcass or unprocessed meat and Livestock produce shall be restricted to a specific area and time as prescribed.

(3) Information of the transactions shall be reflected in a register as is prescribed.

Control over the movement of Livestock or Livestock produce

6. (1) A person who delivers Livestock or Livestock produce to a person to sell, process, barter, provide, give or dispose of in any other manner, shall, for the purposes of this section, be deemed to have disposed of those Livestock or Livestock produce, to such person.

(2) A person who is not the owner of Livestock or Livestock produce may not drive or transport Livestock or Livestock produce -

(a) by rail;

(b) on or along a public road; or

(c) over land of which he or she is not the owner, lessee or occupier;

unless he or she is in possession of his or her identity document or passport.

(3) A person mentioned in subsection (1) shall also have a document not older than four days, in his or her possession, as is prescribed.

(4) If the Livestock or Livestock produce are being transported in a vehicle, it is presumed that the driver of the vehicle is in possession of the Livestock or Livestock produce.

(5) No person shall, if the Livestock or Livestock produce are to be driven or transported by rail, on or along a public road or land -

- (a) receive Livestock or Livestock produce after it has been bought, bartered, provided, given or sold, if the original owner or agent of the Livestock or Livestock produce, did not provide a document in terms of this Act;
- (b) drive or transport Livestock or Livestock produce by rail or on a public road or land, unless the original owner or agent provide a document as is prescribed.

(6) A person in possession of Livestock or Livestock produce shall at all times be in possession of his or her identity document and the prescribed documents which must accompany the Livestock or Livestock produce.

(7) The movement of Livestock or Livestock produce may be restricted to a certain area, time and method with specific instructions to-

- (a) transport contractors;
- (b) owner of Livestock or Livestock produce; or
- (c) appointed agents.

Documentation for authorization of removal

7.(1) No person who is or was employed by an owner or occupier of any land shall remove any Livestock or Livestock produce owned by him or her or under his or her control from any land owned or occupied by such owner or occupier unless he or she is in possession of a document, furnished by such owner or occupier or the agent of such owner or occupier containing the following-

- (a) date not more than seven days before the removal;
- (b) a description of the Livestock or Livestock produce; and
- (c) a certificate that to the best knowledge and belief of the person furnishing the document, the person identified, is entitled to remove the Livestock or Livestock produce on the specific date.

(2) An owner or occupier of land, or an agent of such owner or occupier, shall, when requested to do so by a person as is referred to in subsection

(1), shall forthwith furnish him or her with any document which he or she may require in terms of subsection (3).

(3) An owner, occupier or person who possess land who provide grazing, standing place or storage space shall-

- (a) provide the prescribed document to the owner of Livestock or Livestock produce who request him or her for permission to remove the Livestock or Livestock produce from the land, without delay; and
- (b) furnish the document in the prescribed manner.

Acquiring Livestock or Livestock produce

8. (1) No person may acquire or take into possession Livestock or Livestock produce in any manner or receive Livestock or Livestock produce for sale, processing, safekeeping or feeding them, from a person who does not have an identification document in his or her possession and a known address.

(2) A person who is the owner of Livestock, or has Livestock or Livestock produce under his or her control or supervision and who trades with, receives or processes Livestock or Livestock produce must keep a document of the Livestock or Livestock produce as is prescribed.

(3) A person who issues the prescribed document must certify that he or she knows the owner of the Livestock or Livestock produce and that the person who receives the document has the right to remove the Livestock or Livestock produce.

(4) An owner, occupier or person who possess land who provide grazing, standing place or storage space shall -

- (a) provide the prescribed document to the owner of Livestock or Livestock produce who request him or her for permission to remove the Livestock or Livestock produce from the land, without delay; and
- (b) furnish the documents in the prescribed manner.

Authorization from the owner of Livestock and Livestock produce to a person who controls or supervises it on behalf of the owner

9. (1) No person may take control of or supervision over Livestock for grazing, safe keeping or treatment, or Livestock produce for safekeeping or treatment on land or premises of which he or she is the owner, lessee, occupier or supervisor, unless he or she is the owner of such Livestock or Livestock produce and in possession of the prescribed document

(2) The owner of the Livestock or Livestock produce must provide prescribed documents to the person who has supervision or control over the Livestock or Livestock produce when the person take possession of such Livestock or Livestock produce.

(3) A person who, for the purpose of grazing, feeding, safekeeping or treatment, transfers Livestock or Livestock produce, must furnish the owner, lessee, occupier or supervisor of Livestock or Livestock produce, with the prescribed documents.

PART III — DOCUMENTATION, REGISTERS AND RECORD KEEPING

Documents

10. (1) The owner or possessor of the Livestock must keep a Livestock register as is prescribed.

(2) A person selling, buying, transporting, handling, transferring or supplying Livestock or Livestock produce within the County must ensure that—

- (a) the identity of a person acquiring any Livestock or Livestock produce is verified;
- (b) documents and registers are compiled with the information as is prescribed;
- (c) the said documents and registers are kept by the transferee;
- (d) copies of the said documents and registers are handed over to the recipient;
- (e) the said documents, and the copies thereof are kept for at least three years; and
- (f) the registers are kept for at least 3 (three) years after the date of the last entry.

(3) It is an offence for a person in possession of Livestock or Livestock produce to be in possession of insufficient or no documents and registers.

(4) The provisions of subsections (2) and (3) are not applicable in the case of Livestock or Livestock produce driven or transported by the owner, or his or her employee of such Livestock or Livestock produce on or along a part of a public road that crosses land belonging to the owner, occupier, or lessee, or his or her agent.

Appointment of agent acting on behalf of owner

11. (1) A person Billing as an agent on behalf of an owner of Livestock or Livestock produce, must have a document issued by the owner of Livestock or Livestock produce or verify by the county department in charge of Livestock in the format as is prescribed.

(b) The document must not be older than six months.

(2) The person issuing the document must certify that he or she gives the agent a mandate to take part in trade on his or her behalf.

Search, seizure, disposal, forfeiture, damages and evidence

12. (1) A police or authorized county official may without a warrant -

(a) search the person in control of the Livestock, Livestock produce or any object refer to in section 10;

(b) investigate and determine the identification of the Livestock or Livestock produce;

(c) search and investigate the means of transport and container used at any time to obtain greater clarity about the origin and destination of the Livestock and Livestock produce;

(d) demand that the owner or person who is taking the Livestock or Livestock produce across the county border, present documentation as is prescribed;

(e) take photographs of Livestock or Livestock produce, obtain nose prints or other prints, obtain hair and skin samples, scrapings or blood samples of Livestock or Livestock produce;

(f) mark Livestock or Livestock produce for purposes of identification by means of brand marks, tattoos, paint marks or any electronic means of identification;

(g) seal any vehicle, vessel, aircraft of or container with an official seal which can be broken by a police official; and

(h) seize any Livestock, Livestock produce, vehicle, vessel, aircraft or arrest a person taking Livestock or Livestock produce across the County if there is a reasonable suspicion that the Livestock or Livestock produce are not lawfully in the person's possession.

(2) A police official may without a warrant, and without a person being arrested, take fingerprints, palm prints, footprints, clothes and bodily samples of a person or group of persons or may cause any such prints or samples to be taken if there are reasonable grounds to-

- (a) suspect that a person or more of the persons in the group have committed an offence in terms of this Act; and
 - (b) believe that the prints or samples or the results of an examination thereof, will be of value in the investigation by excluding or including one or more of the persons as possible perpetrators of the offence.
- (3) The veterinary officer who has control over prints or samples taken in terms of this section-
- (a) may examine them for the purposes of the investigation of the relevant offence or cause them to be so examined; and
 - (b) must immediately destroy them when it is clear that they will not be of value as evidence.
- (4) Bodily samples to be taken from the body of a person may only be taken by a registered veterinary officer, medical practitioner or registered nurse.
- (5) A police or county official may do such test, or cause such tests to be done, as may be necessary to determine whether a person suspected of having committed an offence in terms of this Act, has committed such an offence.
- (6) A police or county official may take photographs of Livestock or Livestock produce, obtain nose prints or other prints, and obtain hair and skin samples, scrapings or blood samples of Livestock or livestock produce.
- (7) Whenever any authorized county official or police officer, or owner, lessee or occupier of land reasonably suspects that a person has in or under any container or covering or in or upon any vehicle any Livestock or Livestock produce in regard to which an offence has been committed, such authorized county official or police officer, owner, lessee or occupier may without warrant, search such container or vehicle and remove such covering, and if he or she thereupon find any Livestock or Livestock produce in regard to which he or she reasonably suspects an offence to have been committed, he or she may without a warrant arrest such person and seize such vehicle or container and shall as soon as possible convey such person and the Livestock or Livestock produce so found, and the vehicle or container so seized, to the nearest police station with the necessary facilities.
- (9) An authorized county official or police officer or someone who is appointed as is prescribed, may within the three years, demand an inspection of the Livestock register, and upon such demand, the person

having possession of such register shall produce it for inspection to the person making the demand.

PART IV — PRESUMPTIONS

Presumptions

13. (1) Possession of an object or means that could be used to injure, kill or steal Livestock under certain circumstances.

(2) A person found in possession of any objects or means with regard to which a reasonable suspicion exists that the objects or means can be used to injure, kill or steal Livestock, and is unable to provide a satisfactory explanation of such possession, shall be guilty of an offence.

(3) When a person is charged of an offence in subsection (1), the onus is on the County to prove that the object or articles are usually used to injure, kill or steal Livestock where the accused has been arrested.

Failures to give a satisfactory account of the possession of Livestock or Livestock produce

14. (1) A person found with Livestock or Livestock produce in his or her possession or control which do not have registered identification marks, and who is unable to give a satisfactory account of such possession shall be guilty of an offence, on condition that the burden of proof rests on the County to prove that the account given is unsatisfactory.

(2) A person found amongst or having control over Livestock who is unable to give a satisfactory account of his or her presence there, is guilty of an offence on condition that the burden of proof rests on the County to prove that the account given is unsatisfactory.

Acquiring of Livestock and livestock produce

Absence of reasonable grounds to presume that Livestock or Livestock produce have been acquired legally

15. (1) A person who in any manner, otherwise than at a public sale, acquires or receives into his or her possession from any other person stolen Livestock or stolen Livestock produce without having reasonable cause, proof of which shall be on such first mentioned person, for believing, at the time of such acquisition or receipt, that such Livestock or Livestock produce is the property of the person from whom he or she acquires or receives it or that such person has been duly authorized by the owner thereof to deal with it or dispose of it, shall be guilty of an offence.

(2) In the absence of evidence to the contrary which raises reasonable doubt, proof of possession as contemplated in subsection (1) shall be sufficient evidence of the absence of reasonable cause.

Keeping of Livestock and livestock produce

Entering enclosed land, boma, shed, stable or other walled place where Livestock or Livestock produce are kept or stored

16. (1) A person authorized to supervise and be in charge of Livestock or Livestock produce which are on land which has sufficient fences on all sides, a boma, shed, stable or other walled places where Livestock or Livestock produce are kept or stored, may ask a person who enters or leaves the land, boma, shed, stable or other walled place to-

- (a) provide his or her name, surname, address and proof of identity by means of his or her identity document or passport;
- (b) declare what he or she has in his or her possession;
- (c) declare and exhibit the contents of any vehicle or container of any kind which he or she has in his or her possession;
- (d) allow his or her vehicle or container under his or her control to be searched;
- (e) must submit himself or herself to a search; and
- (f) comply with a lawful condition or command from the owner, lessee, occupier or authorized person.

(2) If a person has to move or open a gate or fence, climb, crawl or walk over, under or through a fence to gain access to land, boma, shed, stable or other walled place, such person is considered as trespassing on that land, boma, shed, stable or other walled place.

(3) An authorized county official or police officer, owner of land or his designee and persons under his or her direct command or a person as prescribed, can enter the land, boma, shed, stable or other walled place without the permission of the owner, lessee, and occupier or authorized person—

- (a) as part of his or her duties; and
- (b) must display his or her appointment certificate or authorization if asked to do so.

(4) No person may without the permission of the owner, lessee, occupier or authorized person enter or trespass land with sufficient fences, boma, shed, stable or other walled place.

(5) If a person has to move or open a gate or fence, climb or walk over, under or through a fence to gain access to land, boma, shed, stable or other walled place such a person is considered as trespassing on that land, boma, shed, stable or other walled place.

Offences, Penalties and Jurisdiction

17. (1) It is an offence to contravene or fail to comply with any-

- (a) provision of this Act;
- (b) condition of a document or registers or authorization issued or granted by or under this Act;
- (c) provision, direction or requirement under this Act.

(2) It is an offence to—

- (a) willfully obstruct or hinder a police officer and county official in the exercise of the powers conferred upon him or her or in the duties assigned to him or her in terms of this Act.
- (b) disobey any lawful order of a police and county official whether verbal or in writing; or
- (c) willfully give false information to a police and county official.

Act applicable in all cases where the charge is one of the theft of Livestock and Livestock produce.

18. The provisions of this Act is applicable in all cases where an accused is charged or subpoenaed with regard to theft of Livestock or Livestock produce, notwithstanding the fact this Act is not mentioned in the charge or subpoena.

Conviction on a charge of theft of Livestock and Livestock produce

19. (1) A person charged with the theft of Livestock or Livestock produce can be found guilty of—

- (a) theft or attempted theft of such Livestock or Livestock produce;
- (b) maiming Livestock during the theft or attempt of theft of Livestock;
- (c) receipt, transfer or possession of such Livestock or Livestock produce;
- (d) provoking, inciting, persuasion to-
 - (i) steal such Livestock or Livestock produce;
 - (ii) receive such Livestock or Livestock produce;
 - (iii) maim Livestock; or
- (e) that he or she received the stolen Livestock or Livestock produce, knowing that it was stolen, disposed thereof or that he or she assisted in the disposing thereof;

(f) a contravention of section 12 or 13.

(2) A person charged with the theft of Livestock or Livestock produce that belong to a specific person, can be found guilty of any of the offences in subsection (1), notwithstanding the fact that the prosecution could not prove that such Livestock or Livestock produce indeed belonged to that specific person.

Penalties

20. (1) Notwithstanding any other law, a magistrate's court shall in respect of a person who has been convicted of an offence referred to in-

(a) section 11(1), 12(1) and 13(1), 17 (1) (a), (b), (c), (d), and (e) and (f), sentence the person, in the case of-

(i) a first offender, to imprisonment for a period not less than 10 years;

(ii) a second offender of any such an offence, to imprisonment for a period not less than 15 years;

(iii) a third or subsequent offender of any such offence, to imprisonment for a period not less than 20 years.

(b) Section 1(1), 2(1), (2) and (3), 3(1) and (3), 4(1), (2), (3), (4), (5) and (6), 5(1), (2), (3), (4), and (5), 6(1) and (2), 7(1), (2), (3), and 8(1), (2), (3), (4), and (6), 9(1) and (2), 10(4) and (5), 14(1) and

(2) a fine not exceeding KSh. 100,000 or both such fine and imprisonment for a period not exceeding 10 (ten years).

Regulations

21. The County Executive Committee Member may make regulations regarding—

(a) anything which may or must be prescribed in terms of this Act;

(b) any matter pertaining to record keeping;

(c) any other matter which must be regulated for the legal movement of Livestock or Livestock produce for the achievement of the objects of this Act.

MEMORANDUM OF OBJECTS AND REASONS

The main purpose of this bill is to put in place a legal frame work for the protection of the livestock owners from theft of Livestock and Livestock produce; to combat and investigate crimes concerning Livestock and Livestock produce; to monitor the movement of Livestock and Livestock produce within and through the borders of Taita Taveta County;

Part I—deals with preliminary provisions such as the short title commencement, interpretation and application of the Act

Part II—deals with matters import, export and transport of Livestock and Livestock produce, it also deals with the manner in which Public sale of Livestock and Livestock produce shall be conducted.

Part III—Provides for documentation, registers and record keeping, it also prescribes the procedures to be followed when appointing an agent to act on behalf of the owner of the livestock or livestock produce. It further provides for instances when Search, seizure, disposal, forfeiture, damages and evidence shall be declared

Part IV—out lines presumptions and defines Offences, Penalties and Jurisdiction

Dated the 12th August, 2019

JUSTINE MWAMBA,
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