



Drylands Learning and
Capacity Building Initiative
for Improved Policy and
Practice in the Horn of Africa

RECONCILE

SUMMARY OF THE KENYA COMMUNITY LAND ACT, 2016

INTRODUCTION:

The Community Land Act, 2016¹ was assented to by the President on 31st August 2016. The Act enables the implementation of Article 63 (1) of the Constitution: *Community land shall vest in and be held by communities identified on the basis of ethnicity, culture or similar cultural interest.* The Act provides for: the **recognition, protection and registration** of community land rights; **management and administration** of community land; and provides a **clear role for county governments on all unregistered community land**. This law went through protracted process of consultation and negotiation over six years and the final version was consolidated from over five different drafts.

The implementation of the Act **urgently requires the Cabinet Secretary for land to prepare regulations with public participation to guide the process of registration, as well as assigning roles and responsibilities and prescribing performance standards.** The Act implies considerable land use planning by communities, in terms of human settlement, livelihood and socio economic activities. However the procedures and responsibilities for supporting this land use planning are yet to be defined.

KEY DEFINITIONS OF THE ACT

"Community" is defined as consciously distinct and organized group of users of community land who are citizens of Kenya and share any of the following attributes:

- common ancestry,
- similar culture or unique mode of livelihood,
- socio-economic or other similar common interest,
- geographical space, ecological space; or ethnicity.

"Community Assembly" means a gathering of registered adult members of a community that is convened in accordance with article 15 (1) of the Community Land Act.

"community of interests" means the possession or enjoyment of common rights, privileges or interests in land, or living in the same geographical area or having such apparent association.

"community land" includes either land declared as such under Article 63(2) of the Constitution or land converted into community land under any law.

"community reserve land" means any land set aside for communal use or land allocated by the registered community for individual occupation and use.

"communal use of land" means holding or using land in undivided shares by a community.

"registered community" means a community that has completed the registration processes recognized under this law.

¹ The full Act is available on http://kenyalaw.org/kl/fileadmin/pdfdownloads/Acts/CommunityLandAct_27of2016.pdf

RECOGNITION AND PROTECTION OF THE COMMUNITY LAND RIGHTS:

1. Community land may be held under any of the following tenure systems: customary, freehold, leasehold or other tenure system recognized by law and shall ***have equal force and effect in law with freehold or leasehold rights*** acquired through allocation, registration or transfer.
2. Subject to Article 40 (3) of the Constitution and the Land Act, ***no interest in, or right over community land may be compulsorily acquired by the State except in accordance with the law, for a public purpose, and upon prompt payment of just compensation*** to the person or persons, in full or by negotiated settlement.
3. ***A customary right of occupancy of community land shall in every respect be equal in status and effect to a right of occupancy granted in any other category of land*** and shall, subject to this Act, be capable of being allocated by the community to an individual person, family, group of persons, clan, an association, partnership or body corporate wholly owned by citizens of Kenya; capable of being of indefinite duration; and governed by customary law in respect of any dealings.
4. ***Every member of the community has the right to equal benefit from community land.*** Equality includes full and equal enjoyment of rights of use and access including women, men, youth, minorities, persons with disabilities and marginalized groups.
5. ***A registered community shall not directly or indirectly discriminate against any member of the community on any grounds including race, gender, marital status, ethnic or social origin, color, age, disability, religion or culture.*** For the avoidance of doubt, ***every man or woman married to a member of the community shall gain automatic membership of the community*** and such membership shall subsist until the spouses legally divorce and the woman remarries or the woman remarries after the death of a spouse.

LAND ADMINISTRATION AND MANAGEMENT:

To register and manage community land the communities shall be registered. ***A registered community shall have a community assembly which shall consist of all adult members of the community.***

The ***community assembly shall elect community land management committee that will comprise of between seven and fifteen members of the community assembly.*** The community land management committee will:

1. manage and administer registered community land on behalf of the respective community,
2. co-ordinate the ***development of community land use plans*** in collaboration with the relevant authorities,
3. promote the ***co-operation and participation among community members*** in dealing with matters pertaining to the respective registered community land;
4. ***prescribe the rules and regulations, to be ratified by the community assembly.***

Any decision of a registered community ***to dispose of or otherwise alienate community land shall be binding if it is supported by at least two thirds of the registered adult members of the community, while all other decisions of the registered community shall be by a simple majority of the members present in a meeting.***

RESPONSIBILITY OF COUNTY GOVERNMENT REGARDING UNREGISTERED COMMUNITY LAND:

The ***county governments shall hold in trust all unregistered community land*** on behalf of the communities for which it is held. The county government shall hold in trust for the community, ***any monies payable as compensation for compulsory acquisition of any unregistered community land, which shall be deposited in a special interest earning account.*** Upon registration of such community land, the county government shall ***promptly release all such monies payable for all compulsory acquisition, including*** the amount and the interest earned to the registered communities as may be prescribed. Any transaction in relation to unregistered community land within the county shall be in accordance with the provisions of this Act and any other applicable law.

Upon the registration of any unregistered community land in accordance with this Act, the registered community shall, assume the management and administrative functions and the trusteeship role of the county government in relation to such land shall cease. ***A county government shall not sell, dispose, transfer, and convert for private purposes or in any other way dispose of any unregistered community land that it is holding in trust on behalf of the communities for which it is held.***

KEY PROCEDURES IN THE REGISTRATION OF COMMUNITY LAND:

The procedures for registering community land happen at two levels: (1) at the community level where communities themselves under-take specific actions; and (2) at the ministry level where the Cabinet Secretary in charge of lands works with the county governments and other stakeholders to facilitate registration.

1. PREPARATION FOR THE REGISTRATION OF COMMUNITY LAND:

The Community Land Act commits the Cabinet Secretary responsible for land to develop community land regulations with public participation which will guide the process of registration. The ***Cabinet Secretary in*** consultation with County governments shall:

- i. Initiate the ***process of documenting, mapping and developing inventory of community land.***
- ii. Develop and ***publish in the gazette a comprehensive adjudication programme*** for purposes of registration of community land.
- iii. Have the ***Chief Land Registrar designate Community Land Registrars in the Counties.***

2. REGISTRATION OF A COMMUNITY:

- a) **First community assembly meeting:** The ***Community Land Registrar*** shall by notice in at least one newspaper of nationwide circulation and a radio station of nationwide coverage, or by any other available means, ***invite all members of respective community with common interest in an area of land to a public meeting for the purpose of establishing a community assembly and electing the members of the community land management committee.*** The notice shall also be given to the national county administrators and county government administrators in the area where the respective community land is located. This will constitute the first community assembly meeting.
- b) **Election of the community land management committee:** The assembly shall elect between seven and fifteen members to form a land management committee, which will: facilitate the registration process; compile a register of all community members; work with the community to develop their rules and regulations (constitution) for the management and administration of their land and present the same to the assembly for adoption and compile the assembly's minutes authorizing the land registration.

3. COMMUNITY LAND ADJUDICATION PROCESS:

Land adjudication is the process of ascertaining rights and interests in land (individual or collective). The process of adjudication involves the: declaration of the areas for adjudication, demarcation and survey of land parcels; preparation, publishing and finalizing the adjudication register; registration and titling. The following steps shall be undertaken:

- i. **Survey, demarcation and registration of the land:** The ***Cabinet Secretary shall, issue a public notice of intention to survey, demarcate and register the community land.*** The public notice shall be for a period of sixty days and: (a) contain the name of the community; (b) state which land is to be adjudicated; (c) invite all interested persons with interests or any other claim on the land; (d) specify an area or areas of land to be a community land registration unit.
- ii. **Public land and already adjudicated lands:** The Cabinet Secretary shall ensure the land is adequately surveyed and that the survey shall exclude: all parcels already in use for public purposes and land already adjudicated as a private land.
- iii. **A Cadastral map of the land shall be produced** and presented to Community Land Registrar for registration of the community land.
- iv. **Appointment of adjudication officer:** The Cabinet Secretary shall by a notice in the gazette, appoint an adjudication officer in respect of every community land registration unit who shall facilitate, in consultation with the county governments, the adjudication of the community land including the recording of community land

claims, demarcation of community land and delineation of the community land boundaries; and perform any other function conferred by this Act.

4. **ISSUING OF TITLES:**

Upon adjudication, the title relating to community land shall be issued by the Registrar in the prescribed form and entered on the community land register along with the following information:

- (a) a cadastral map showing the extent of the community land and identified areas of common interest;
- (b) the name of the registered community;
- (c) a register of members of the registered community which shall be updated annually;
- (d) the user of the land;
- (e) such particulars of members of the registered community as the Registrar may determine; and
- (f) any other requirement under this Act.

RESERVING COMMUNITY LAND FOR COMMUNAL PURPOSES:

- A registered community may by two third majority resolution of Community Assembly meeting, reserve any portion of its community land for special purposes.
- Any land which has been used communally, for a public purpose, before the commencement of this Act shall upon commencement of this Act be deemed to be public land vested in the national or county government, according to the use it was preserved for.
 - A registered community may also reserve for a special purpose areas including for: farming; settlement; community conservation; cultural and heritage sites; urban development; or
 - any other purposes as may be determined by the community assembly to the county government or national government for the promotion or upgrading of public interest.
- An area reserved for special purposes under subsection 13 (3) shall be used exclusively for such intended purpose.

COMMUNITY LAND IN PASTORALIST COMMUNITIES

1. The ***customs and practices of pastoralist communities relating to land shall be taken into consideration by a registered community*** as long as they are in consistent with the Provisions of this Act or other applicable law.
2. Community land in a pastoralist community shall be available for ***use by members of the community for the grazing of livestock***, subject to such conditions as the respective community may impose, including conditions relating to:
 - i. The kind and number of livestock that may be grazed;
 - ii. The section or sections of the land where livestock may be grazed and the grazing in rotation on different sections; and
 - iii. A grazing plan;
 - iv. The right of the community to utilise the portion of land in accordance with this Act.
3. The registered community may ***upon application by any person who is not a member of the registered community, grant grazing rights*** and conditions under which such rights shall be exercised, unless the members of the registered community in a meeting convened for that purpose, withdraw the grazing right due to drought or any other reasonable cause, the registered community considers such cancellation to be in the interest of the residents of the community concerned.
4. A person shall not, except with the written authority of the registered community:
 - i. ***Erect or occupy any building or others structure on the designated land;***
 - ii. ***Plough or cultivate any portion of the land;***
 - iii. ***Take up abode on or occupy any portion of the grazing land; and***
 - iv. ***Obstruct the access to any watering place on the land***, prevent or attempt to prevent any person from drawing water from or watering stock at a watering place, pollute the water or interfere with the operation of a windmill, water-pump, water-pipe, dam or storage tank or other appurtenance installed or constructed at such a watering place.
- v. A person who contravenes subsection 4 commits an offence and is liable, ***on conviction, to a fine not exceeding one hundred thousand shillings or imprisonment for a period not exceeding six months.***