DRAFT BRIEF: Summary of the Community Land Regulations

Jarso Guyo Mokku, April 2019

INTRODUCTION

The Community Land Act was gazetted on 7th September 2016. The Regulations that guide to the registration of Community Land were gazetted by CS Lands and Physical Planning on 27th November 2017, but the amendment to the Community Land Act on 31st August 2018, took out articles 23 and 24. The implementation of the Community Land Act will start on the 17th September 2019. The regulations now require the following action by government:

1. By 27th October 2018: The Cabinet Secretary, in consultation with the County Governments, National Land Commission and other stakeholders will develop and roll out a national programme for public education and awareness on Provisions of the Act and the rights of communities over the community land within twelve months of the commencement of these Regulations. 27(1)
2. By 27th April 2019: Within eighteen months of the commencement of these Regulations, every county government, shall in consultation with communities, prepare and submit to the CS an inventory of all unregistered community land. 12(1). If a county government does not submit the inventory,...the CS shall, in consultation with communities, prepare an adjudication programme based on the existing data on the adjudication programmes. 12(4)
3. The CS Lands is expected to appoint or assign specific community land registrars and land adjudication teams to facilitate and oversee the registration of the community lands in Kenya.
4. The CS will declare community land registration units in accordance with the Land Registration Act, 2012 [10]

In the meantime, it is recommended that communities prepare for community land registration by considering and discussing the following:

WORK WITH OTHERS TO PROTECT COMMUNITY LAND AND PREVENT CONFLICT

1. Ensure registration of community land does not restrict productive mobility of pastoralists or access to strategic grazing areas and resources.
2. Ensure that inter community reciprocal rangeland resource agreements are preserved to enhance livestock and rangeland productivity.
3. Plan with neighbouring communities, measures to improve rangeland health e.g. bush clearing, seasonal access etc.

ELECT ONLY PEOPLE WHO WILL PROTECT COMMUNITY INTERESTS FOR THE GOOD OF ALL AND FUTURE GENERATIONS

1 http://kenyalaw.org/kl/fileadmin/pdfdownloads/LegalNotices/2017/LN279_2017.pdf to be read in conjunction with
1. Ensure community land management committees promote the interests of all community members.
2. Ensure all current residents and users of land are members of the Community Assembly including vulnerable and marginalized groups.
3. Ensure that all critical decisions are properly discussed, understood and agreed to by at least 65% of the Community Assembly.

OTHER CONSIDERATIONS
1. Ensure agreement/consensus on clear definition of their community in line with the Community Land Act 2016, ‘Consciously distinct organized group of users of the community land, citizens of Kenya sharing attributes of either common ancestry, similar culture or unique mode of livelihood, socio-economic or other similar common interest, geographical space, ecological space; or ethnicity’.
2. Ensure the Community Land Management Committee (CLMC) has no one gender that has more than two third representation.

COUNTY INVENTORIES OF COMMUNITY LAND AND ADJUDICATION

12(1) Every county government shall, in consultation with communities, prepare and submit to the Cabinet Secretary an inventory Community Land of all unregistered community land within the county in Form CLA 6

(2&3) Upon receipt of the inventory.....above, the Cabinet Secretary shall develop and publish in the Gazette a comprehensive adjudication programme... contain the following details:
   a) The name of the community occupying the land or laying a claim on that land;
   b) locality of the land;
   c) the description of the perimeter boundary;
   d) the current use of the land; and
   e) any other relevant information.

(4) If a county government does not submit the inventory within the period specified in paragraph (1), the Cabinet Secretary shall, in consultation with the communities, prepare an adjudication programme based on the existing data on adjudication programmes.

(5) Upon the publication of the comprehensive adjudication programme, the Cabinet Secretary shall issue notice of intention to commence demarcation, survey and registration of community land in Form CLA 7 set out in the Fifth Schedule.

(6) Any person with a claim on the land in the programme shall be required to appear in person to present their claim in Form CLA 8 .... to the adjudication team for consideration.

(7) The decision of the adjudication team shall be communicated to the claimant in writing within thirty days from the date of determination.

(8) The adjudication team shall demarcate and survey the community land excluding public purpose plots and any other registered private land.

(9) Any dispute arising from the process of recognition and adjudication of community land shall be resolved in the first instance through the dispute resolution mechanism provided by the Act and these regulations.

STEPS IN REGISTERING THE COMMUNITY AND THE COMMUNITY LAND

STEP 1: PREPARING THE COMMUNITIES FOR LAND REGISTRATION

1. Define the community and draw a sketch map of community land.
2. Consult the community and prepare the communities for land registration by creating awareness and establishing understanding key considerations in the registration process (using this brief and the poster3).

3. Establish any gaps in the community’s understanding on community land and address them alongside other stakeholders including the government officials as may be needed.

4. Bring out any fears the community has on the process of land registration and develop coherent strategy to address them.

5. Resolve any outstanding issues with the acceptance of the community.

**STEP 2: REGISTRATION OF COMMUNITY**

1. Write to the County Community Land Registrar of intention to register a community (Form CLA 1 signed by at least 15 representatives of the community with their details). [3(1)]

2. The Community Land Registrar will then ‘invite all members of the community with communal interest to a public meeting for the purpose of electing the members of the community land management’ committee [3(3)].

3. The notice [of the meeting] shall be published in at least one newspaper of nationwide circulation and announced in a radio station of nationwide coverage in both official and local language indicating the date, time, place and purpose of the meeting. [3(4)]

4. The registrar may, in addition... use other available means of communication including affixing notices at the headquarters of the respective county, sub-county, wards, location, and in strategic places where the community land is situated’ [3(5)].

5. Upon issuing a notice... the Land Registrar, in consultation with the national and county government representatives for the area where land is located, shall convene and oversee the process of election of community land management committee members. [4(1)].

6. The Cabinet Secretary, in consultation with the relevant County Government, shall undertake training and induction for the newly elected community land management committee. [4(3)].

7. The community land management committee shall, on behalf of the community assembly, draft rules and regulations to govern the operations of the community assembly which shall be adopted by the community assembly.... The content of rules and regulations may follow the model provided for in the Third Schedule [8(8)].

8. An application for registration of a community shall be made to the registrar in Form CLA 3 [8(2)], accompanied by:
   a) Name of the community;
   b) register of members of the community;
   c) a certified true copy of the minutes of the meeting at which it was resolved to seek application for registration;
   d) rules and regulations of the community;
   e) description of the interest in land being claimed by the community including a sketch map. [8(3)]

9. The registrar shall consider an application for registration and may issue a certificate of registration in the name of the community in Form CLA 4 [8(4)]

**CUSTOMARY RIGHTS OF OCCUPANCY**

13 (1) The land adjudication officer shall advise the community land management committee on the determination of any customary right of occupancy.

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3 http://www.dlci-hoa.org/?p=4795
(2) An application for a customary right of use and occupancy shall be made to the community land management committee in Form CLA 9.
(3) Upon receipt of the application under paragraph (2), the committee shall seek the approval of the community assembly.
(4) Upon approval, the land adjudication team will survey and demarcate the extent of the rights as guided and determined by the community land management committee.
(5) The team shall prepare and submit to the community land management committee a map showing the extent of rights, who shall seek the approval of the community assembly, for issuance of Certificate of customary use and occupancy.
(6) The certificate of customary use and occupancy in Form CLA 10 set out in the Fifth Schedule shall be forwarded to the registrar for noting in the register.

SETTLEMENT OF DISPUTES RELATING TO COMMUNITY LAND

25 (1) Any disputes arising from community land may be resolved through alternative dispute resolution mechanisms at first instance as provided for in the Act.
(2) Where the community is unable to resolve the dispute arising from community land recognition, adjudication and registration process within a registration unit, the complainant shall refer the dispute to the land adjudication officer in Form CLA ii who shall record the dispute in a register in Form CLA 12.
(4) The Cabinet Secretary may appoint an ad hoc committee to hear and determine the disputes filed under paragraph (2) consisting of deputy county commissioner who shall be the chairperson of the committee; two nominees from the county government where the community land is situated; the Government Surveyor; and land adjudication officer, who shall be the secretary.
(5) The ad hoc committee shall co-opt not more than four representatives from the communities where the community land is situated.
(6) The co-opted representatives shall not be members of the community land management committee and the appointment will comply with the two thirds gender rule.
(7) Where the community land under dispute traverses different registration units or Counties, the Cabinet Secretary may constitute a special ad hoc committee consisting of not more than nine persons.

CONVERSION OF COMMUNITY LAND

1. Community land may be converted into public land through compulsory acquisition in the manner prescribed under the Land Act, 2012. No.6 of 2012 [15(1)]
2. Community land may be converted into public or private land…with the approval at least two thirds of the community assembly.15(3) & 16(1)

ALLOCATION OF COMMUNITY LAND

22(2) In determining whether to allocate land to individuals or partners for investment purposes, the community land management committee shall ensure that-
(a) the land is geo-referenced and planned in line with national and county spatial plans;
(b) public consultations are made by placing a notice in, at least two daily newspapers of nation-wide circulation, one local newspaper and local radio station, where applicable, and affix notices at the County, Sub County and ward offices inviting comments on or objections to the intended reservation of community land containing the following a description of the property in issue; details of the envisaged investment; specify the date, venue and time of the public consultations; and a specified period of at least thirty days period for making the representations.
(c) the investor demonstrates and provides evidence of the accruing benefits of the investment to the community.

(3) Upon receipt of the representations from the public on the intended allocation, the community land management committee shall consult other relevant authorities and technical experts; analyze the representations and ascertain the view of the community; take into consideration all other matters required under the Act or any other law; and determine whether based on the considerations referred to under paragraph (a) and (b), the land ought to be allocated.

(4) The community land management committee shall negotiate the terms of the agreement taking into consideration the best interests of the community.

(5) The allocation shall be approved by two thirds of the adult members of the community assembly in accordance with section 36(3) of the Act.

(6) The community land management committee shall cause valuation to be carried out for purposes of assessment of market value of the land and land rent to be paid prior to allocation of land to investors.

APPLICATION OF REGISTRATION BY GROUP RANCHES PREVIOUSLY REGISTERED UNDER THE REPEALED GROUP REPRESENTATIVES ACT

26 (1) The Cabinet Secretary shall cause to be prepared an inventory of all land held under the repealed Land Group representatives) Act, (Cap. 287) (now repealed) indicating their status Representatives to and forward it to the registrar.

(2) Upon the commencement of these Regulations, the registrar shall notify the group representatives and their members, including those group representatives which had applied for dissolution before the commencement of this Act but had not dissolved, of the requirement to convert into a community.

(3) Within twelve months of the commencement of these Regulations, the groups shall make an application to register as a community.

For feedback and suggestions on this brief, please contact: jmokku@dlci-hoa.org
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