



IMPACT

Indigenous Movement For Peace Advancement &
Conflict Transformation

COMMUNITY LAND ACT

MADE SIMPLE



VISION

We envisage an inclusive society where diversity and rights of indigenous people are recognized respected and protected

MISSION

To address deep underlying causes of social exclusion, discrimination marginalization and poverty that is undermining the indigenous peoples rights to livelihood, healthy environment and social cultural rights.

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UNDERSTANDING COMMUNITY LAND LAWS

A QUESTION ANSWER APPROACH

Part A-Nature of community land; a question -answer approach

1.0. What does community land Act do?

- a) Community land Act comes in to replace;
 - i. Group ranches
 - ii. All Trust lands and;
 - iii. All unregistered land under any regime of laws (being held by county governments)
- b) It recognizes , protects and registers community land rights.
- c) It also provides for the management and administration of community land in accordance with national land policy and principles of land use.

2.0. What is a community according to the Act?

A community is a group of people or land users who are citizens of Kenya who may have or share

- a) A Common ancestry
- b) A Unique culture
- c) Similar in or socio-economic factors

- d) Occupy a geographical/ ecological space location
- e) Ethnicity

3.0. What principles Guide the management and administration of Community land?

- a) Land in Kenya will be held, used and managed in manner that is equitable, efficient, productive and sustainable;
 - i. Equitable access
 - ii. Sustainable production
 - iii. Transparent and cost effective
- b) Elimination of gender discrimination - women
- c) In accordance with National Values and principles of good governance equity, social justice, inclusiveness, transparency etc. Minority groups' youth and people with disabilities must be included.



4.0. How is community land rights recognized and Protected under the Law?

- a) The Constitution of Kenya 2010, categorizes land as private, public and communal.
- b) The law puts in place the community land registry and appoints certain officers to help the community manage and administer community land.
- c) Rights of ownership of property of any description in any part of Kenya individually or in association with others are guaranteed.
- d) Customary land rights shall have an equal effect in law with thresh hold and legal holders.
- e) No interest in or right over community land may be compulsory acquired by the state except with accordance with the law; and for public purpose, coupled with Prompt payment of just compensation in full and By negotiated settlements.

5.0 How is community land owned and under what tenure?

- a) Community land is owned by any registered community who shall have equal and indivisible rights and it can be held, owned or used as leasehold, freehold or customary whichever is convenient, productive or equitable as desired by the community.
- b) The State shall regulate the use of interest in or right over community land in the interest of under Article 66 of the constitution; Public defense, Public safety, Public order, Public morality, Public lease or Land use planning.

6.0. Under the three types of tenure, community land may be classified further into the following classes:

- a) Communal land
- b) Family or clan land



7.0. How are elections conducted under the new arrangements?

- a) Elections are to be held every three (3) years under the new law
- b) The registered community is to nominate persons to be elected to community land management committee (CLMC).
- c) Elections are to be held by secret ballot.
- d) The community can retain a third (1/3) of the committee serving in the previous term to serve in the new committee. (i.e. a third of members previously serving shall be eligible for re-election to the committee)

8.0. Who conducts the elections of officials of CLMC?

The following individuals must be present during the election of committee members?

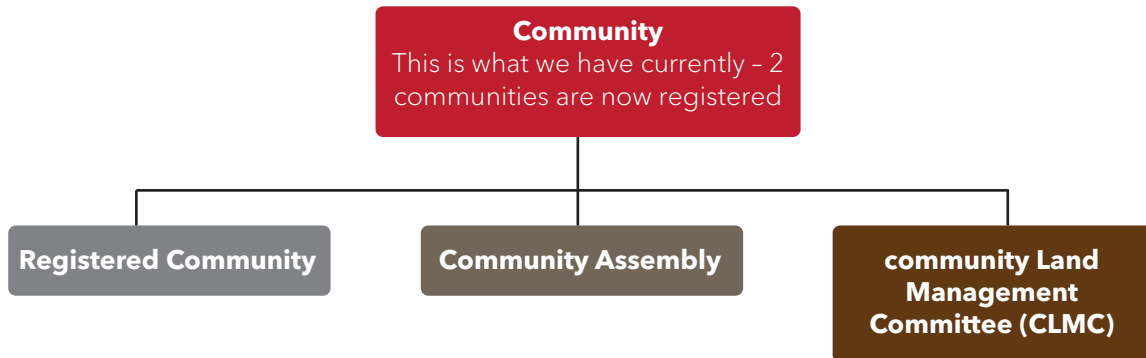
- a) The community land registrar or someone else from his/her office.
- b) NLC
- c) County government, Sub-county administrator for the constituency where the land is situated

STRUCTURES AND ROLES OF DIFFERENT STAKEHOLDERS ON COMMUNITY LAND

The law provides for managers, administrators, custodians and stakeholders of community land, they include;

- a) Communities[unregistered]
- b) Registered community
- c) Community assembly (CA)
- d) Community land management committees (CLMC)

Management Structure of Community Land at the Community Level



SPECIAL FEATURES

The Act gives community assembly power to grant;

1. Individual rights on community land for exclusive use and occupation.
2. Grazing rights which take into account;
 - a. The kind and number of livestock you keep.
 - b. The Section set for grazing
 - c. Grazing plans

Give such rights to members who are not of that community.

3. Reservation of land for special uses e.g. farming, cultural and religious sites, urban development and settlement
4. Unlawful Occupation or use of community land which attracts a fine of 500,000 or imprisonment for 3 years or both.

Roles of the various actors under the community land act of 2016

ROLE OF THE NATIONAL GOVERNMENT

| ACTOR | ROLE |
|-------------------|--|
| Cabinet secretary | <ul style="list-style-type: none">• Initiate civic education on CLA• Designate community land registrar• Establish community land registration units• Issue notice of demarcation• Prepare comprehensive adjudication programme in consultation with counties and communities• Appoint adjudication officers for every registration unit• Designate adjudication teams• Appoint ad hoc committee• Prepare an inventory of on-going land adjudication programme and gazette any extension to facilitate their finalization• Regulate use of community land as per article 66 of the constitution |

| ACTOR | ROLE |
|---|---|
| Community Land Registrar | <ul style="list-style-type: none"> • Register community • Register interest in community land • Maintain register of community land • Convene community meeting to elect CLMC |
| Adjudication Team Adjudication Officers Surveyors Planners | <ul style="list-style-type: none"> • Delineate boundaries of community land • Oversee dispute resolution during adjudication |

ROLE OF THE COUNTY GOVERNMENT

| ACTOR | ROLE |
|-------------------|--|
| County Government | <ul style="list-style-type: none">• Hold in trust all unregistered community lands• Submit inventories of unregistered community lands to CS for registration of community lands.• Ensure all transactions on unregistered community land are undertaken in accordance with the act.• Hold in trust monies payable for compulsory acquisition of unregistered CL• Release to communities all monies upon registration• Undertake continuous awareness creation• Approves physical developments for CL• Prepare comprehensive adjudication programme in consultation with CS and communities |

ROLE OF THE COMMUNITY

| ACTOR | ROLE |
|--------------------|---|
| Community Assembly | <ul style="list-style-type: none">• Elect 7-15 members of CLMC• Establish investment partnerships• Approves any allocation or conversion of community land• Validate claims of existing customary rights of occupancy |
| CLMC | <ul style="list-style-type: none">• Apply for registration of community• Draft by-laws of the community• Manage day to day activities on community land on behalf of the community• Maintain register of members• Maintain asset register• Record customary rights and allocation of community land• Protect environment and natural resources• Establish investment partnerships• Dispute resolution |

ROLE OF THE NATIONAL LAND COMMISSION

| ACTOR | ROLE |
|-------------------|---|
| Cabinet secretary | <ul style="list-style-type: none">• Gazette land set aside for public purpose• Cause the conversion of any public land to community land through allocation• Participate in civic education in consultation with CS and county governments• Act as repository of development plans lodged by county governments or by registered communities• Establishment of land registration units in consultation with CS and county governments |

THE REGISTRATION PROCESS OF COMMUNITIES

STEP 1:

Complete and submit CLA Form 1 (Application for Recognition of Interest/Claim on Community Land). The form can be completed by any 10 members of the community and notifies the government that the community intends to go through the process of legally claiming its land.

STEP 2:

Create participatory bylaws for community land governance, membership and rights, and natural resources management. The bylaws must be formally adopted by at least 2/3 of all adult community members.

STEP 3:

Elect a 7-15 member Community Land Management Committee (CLMC). The committee must include at least 1/3 women. An official from the County Government must oversee the election.

STEP 4:

Create a Community Register that includes the names, dates of birth, and ID numbers of all community members 18 years and older.

STEP 5:

Complete and submit CLA Form 3 (Application for Registration of a Community). This form should be completed by the Community Land Management Committee. This form begins the process of registering the community as a legal entity that can sign contracts, sue and be sued, and nearly all the same rights as a legally registered company. The content of application shall include;[Name of the community, Register of members of community, Certified copy of minutes seeking application for registration, Rules and regulations of the community, Description of land claimed by the community].

After the government approved the application, the community will receive CLA Form 4[certificate of registration] from the community land registrar.

STEP 6:

After the community agrees on its boundaries with its neighbors and recognizes historic shared access rights, the CLMC should complete and submit CLA Form 8 (Application for Recognition and Adjudication of Claim on Community Land). The CLMC must include evidence of the community's land claim. This can be a description of the boundaries, a sketch map, or a GPS map.

STEP 7:

The government will then put an official notice of the community's land claim in local media and will give anyone with a competing land claim time to notify the government.

STEP 8:

The government and community will then work together to resolve any land conflicts or completing land claims.

STEP 9:

After all land conflicts have been resolved, the community will work with a government surveyor to create an official map of the community's land.

STEP 10:

After the map has been processed by the government, the community will receive a title to its land

