Community Land Draft Regulations

KEY HIGHLIGHTS
Background

Kenya adopted a law to manage community land in 2016. The Act provides for the recognition, protection and registration of community land rights; including its management and administration and guidance on the role of County governments in unregistered community land. The act defines community as “a consciously distinct and organized group of users of community land who are citizens of Kenya and share common ancestry, similar culture or unique mode of livelihood, ethnicity and geographical space”.

Implication of the Community land law has been delayed by the slow pace of development of the mandatory regulations meant to provide clear guidance on how the principles of the law should be realized.

A taskforce was established under the Ministry of Lands to help develop the said regulations. Following a series of consultation and inputs drawn from a wide range of stakeholders, a final draft was produced and gazetted to be discussed and hopefully adopted by parliament. It’s critical that holders of community land clearly understand the guidance provided in regulations.

How are Community Land Rights to be Recognized, Protected and Registered?

• Notification is given to the Community Land Registrar by at least 15 members of the Community with the requisite fee
• The Registrar formerly invites Community members communicating through multiple means including in local language and notices in strategic places in County indicating date, time and place for the meeting
• Copies of Notices are also delivered to national and County administrator
• The Registrar presides over the meeting

How are Community Land Management Committees (CLMCs) Established?

• The rules on selection of CLMC is yet to be developed
• Elections of the CLMC is presided over by County Commissioner & and Sub-County Administrator and Count Executive Committee (CEC) lands
• Community members nominate eligible Persons
• A minimum of 7 and maximum of 15 members respecting one-third gender rule are elected through secret Ballot
• The nominated CLMC Members appoint the Executive committee (Chair, Vice, Treasurer & Secretary)
• The CLMC is granted a 3-year term of office with retention of 1/3 of committee upon expiry of first term
**How are Communities Registered?**

- The Community Land Management Committee (CLMC) apply for registration, after preparing rules and regulations to govern community
- The Application to the Registrar, includes: Name, Register, Decision minutes to seek registration, rules & regulations & description of interest sort
- The Registrar confirms exclusive use of name, adherence to provisions of Community Land Act 2016 and acceptability of rules and issues Certificate of Registration upon satisfaction
- The CLMC then becomes a legal entity representing the community
- The Registrar may attach binding conditions and limitations to the registration
- The registration Certificate grants community (name) power to sue, be sued and to borrow
- A CLMC holds and exercises power on behalf of and for the collective benefit, of the Community and must fully & effectively consult the community
- Replacement of a CLMC member is done through resolution notice to the Registrar guided by the community’s rules of regulation

**Register of Communities held by Community Land Registrar**

<table>
<thead>
<tr>
<th>Includes application for registration, name of Community, register of members and Copy of certificate of Registration</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Adjudication team</strong></td>
</tr>
<tr>
<td>Land Adjudication Officer, Surveyors, CMLC adjudicate documentation of customary</td>
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</tbody>
</table>

**How is Unregistered Community Land Identified?**

- The Cabinet Secretary, County government and respective communities shall prepare an Inventory of all unregistered land within a year upon adoption of regulations
- The Cabinet Secretary and respective the community may proceed to do so, should the County government fail to comply with provision of 30 days register and receive any claims on the land.
- Dispute resolution mechanism is the avenue for first resort.

**How are Customary Rights of Occupancy Verified?**

- The Land Adjudication officer advises on process while the Community Land Management Committee guides and determines customary rights of Occupancy
- Upon receiving a request and guidance, they shall survey, demarcate and submit a map for issuance of Certificate of Customary Use and Occupancy,
- The submitted documents are then entered into The Registrar’s register.
- Each registered community land is issued a Certificate of Title or Lease

**Other provisions Critical importance**

- The Community has power to cancel leasehold of interest upon issuance of a 60-day notice.
- The Cabinet Secretary in collaboration with County governments, National Land Commission (NLC) and communities shall undertake public awareness on the Community Land law within a year after enactment
- Land can be converted from one category (Community, public and/private) to another through a decision of the Community Assembly with a transfer instrument signed by CLMC officials
- Setting aside Community land for public purposes is done through physical development plans approved by County government and gazetted by NLC.
- Community member may apply for allocation of land for exclusive use, which must be approved by the County Assembly through a rigorous process that takes at least 45 days
- One of the primary responsibilities of the CLMC is to promote principles of sustainable management of Environment and Natural resources, public participation and ensure equity in benefit Sharing associated to community land.
How to deal with Investor partnership under Community Land

- The County assembly shall enter into partnership, where such lands must be georeferenced, undertake public consultation, meaningful participation and full disclosure for not less 30 days
- Decision to allocate approved by 2/3 adult of the CA
- Compensation and royalties should base on market value of the land informed by competent valuation ... mining and royalties guided by mining act 2016

Settlement of Dispute related to registration process

- CS will establish Ad hoc committee with pool of relevant land expertise with community and county representation
- May employ Alternate Dispute Resolution mechanism
- Next level is Court of appeal
- The process is Open to all would be complainants

Conversion of GR to community land – notice from Registrar to do so

- Convene a meeting to discuss
- Application for registration under community land act undertaken
- Surrender all current GRs documents
- Issuance of certificate of title or lease
- Nb: GRs that are in the process of dissolution must complete within 3 years

POINTS TO NOTE

- The ultimate decision-making organ in the management of Community land is the respective Community Assemblies
- The Community Land Management Committee has delegated authority from the Community Assembly to manage, administer and coordinate activities within Registered Community land
- The Cabinet Secretary lands and Community Land Registrar, are critical in the Community Registration and Electioneering Processes, and in Settling of disputes
- The County government is a critical stakeholder in Community Lands, both as former Trustee of Trust lands, and as regulator of development planning and investment initiative within the County
- For the first time in the history of management of community land, Women must be part of the Community Land Management Committees
- Registration of Community Land is a time bound process, to which potential Community Lands applicants must monitor and operate within. Counties and Communities must therefore monitor and lobby for the adoption of the Community Land Regulations by Parliament.