

Approved for tabling.

REPUBLIC OF KENYA



[Signature]
SNA
27/7/16



THE PARLIAMENT

ELEVENTH PARLIAMENT-FOURTH SESSION

MEDIATION COMMITTEE ON THE COMMUNITY LAND BILL, 2015
(NATIONAL ASSEMBLY BILL NO. 45 OF 2015)

REPORT ON THE COMMUNITY LAND BILL, 2015 (NATIONAL
ASSEMBLY BILL NO. 45 OF 2015)

JOINT CLERKS' CHAMBERS JULY, 2016
PARLIAMENT OF KENYA
NAIROBI

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1.0 INTRODUCTION

1.1 Establishment of the Committee

The Mediation Committee on the Community Land Bill (National Assembly Bill No. 45 of 2015) was constituted by the Speaker of the National Assembly pursuant to Standing Order 149 (2) of National Assembly and the Speaker of the Senate pursuant to Standing Order 154 (2) of the Senate on 21st June, 2016, and 28th June, 2016, respectively.

The members of the Committee were:-

- | | |
|--------------------------------------|---------------------------|
| 1. Sen. Lenny Kivuti, M.P | - Chairperson |
| 2. Hon. Alex Mwiru, M.P | - Vice-chairperson |
| 3. Sen. George Khaniri, M.P. | - Member |
| 4. Hon. Chachu Ganya, M.P | - Member |
| 5. Sen. Hargura Godana, M.P. | - Member |
| 6. Sen. Naisula Lesuuda, M.P., CBS - | - Member |
| 7. Sen. (Prof.) John Lonyangapuo M.P | - Member |
| 8. Hon. Daniel Maanzo, M.P | - Member |
| 9. Hon. Moses Ole Sakuda, M.P. | - Member |
| 10. Hon. Francis Waweru, M.P | - Member |

1.2 Mandate of the Committee

The Mediation Committee derives its mandate from Article 113 of the Constitution of Kenya and the National Assembly Standing Order No. 149 and Senate Standing Orders No. 154.

The Committee was established to develop a version of the Community Land Bill (National Assembly Bill No. 45 of 2015) that would be presented to both Houses for approval as provided for under National Assembly Standing Order No. 149 (6) and Senate Standing Order No. 154 (6).

1.3 Committee Sitzings

The mediation Committee held a total of six sittings. The first sitting of the Committee was held on 5th July, 2016 where Sen. Lenny Kivuti, M.P and Hon. Alex Mwiru, M.P were elected as Chairperson and Vice-Chairperson respectively. The Committee carried out public participation on the Community Land Bill (National Assembly Bill No. 45 of 2015) on Wednesday 13th July, 2016. The Committee considered the submissions from the stakeholders on the contentious clauses on Monday 18th July, 2016.

1.4 Committee Resolutions

The Committee deliberated on the submissions from stakeholders on the contentious clauses and unanimously agreed on a version of the Bill to be presented to both Houses for approval. The agreed version of the Bill is hereby appended to this report.

1.5 Adoption of the Report

We the Members of the Mediation Committee on the Community Land Bill (National Assembly Bill No. 45 of 2015) have adopted this report pursuant to Standing Order 150(1), and affix our signatures to affirm our approval and confirm its accuracy, validity and authenticity as appended to this report.


1.6 Acknowledgment

The Committee thanks the Offices of the Speakers and the Clerks of the National Assembly and the Senate for the necessary support extended to it in the execution of its mandate.

The Chairperson thanks all the Members of the Committee for their sacrifice, commitment and selflessness to the cause of the mediation process until common ground was arrived at.

Mr. Speaker Sir,

It is my pleasant duty, pursuant to Standing Order 150 (1), to present a report of the Mediation Committee on the Community Land Bill (National Assembly Bill No. 45 of 2015) for consideration by the House.

SIGNED..........DATE.....27/7/2016.....

SEN. LENNY KIVUTI, M.P. - CHAIRPERSON

SIGNED..........DATE.....27th July 2016.....

HON. ALEX MWIRU, M.P - VICE - CHAIRPERSON

2.0 BACKGROUND

The Community Land Bill (National Assembly Bill No. 45 of 2015) was published in the Kenya Gazette Supplement No. 129 of 5th August, 2015 as a Bill originating in the National Assembly. The Bill underwent the First and Second readings and subjected to public participation as required by the Kenya Constitution, 2010 and National Assembly Standing Orders and was passed on 21st April, 2016.

The Bill was referred to the Senate for consideration pursuant to National Assembly Standing Order No. 142 where it was read for the first time on 2nd June, 2016. The Senate rejected the Bill in its entirety during the second reading that took place on 15th June, 2016.

Pursuant to Article 110 (4) of the Constitution and the provisions of Standing Orders 40 (1) and 149 of the Senate Standing Orders, the Senate conveyed a message to the National Assembly rejecting the Community Land Bill, 2015.

The National Assembly, at its Sitting of 21st June, 2016 considered the message from the Senate on the Bill. Consequently, and pursuant to National Assembly Standing Order No. 149 and Senate Standing Order No. 154 the Bill was referred to a Mediation Committee with the sole objective of developing a version of the Bill that would be presented to both Houses for approval.

3.0 PUBLIC PARTICIPATION/STAKEHOLDER CONSULTATION ON THE COMMUNITY LAND BILL (NATIONAL ASSEMBLY BILL NO. 45 OF 2015)

Guided by Article 118 of the Constitution of Kenya (2010) and in compliance with Standing Order No. 130 (4), the Committee held a one day public hearing in the Mini Chamber, County Hall, Parliament Buildings on 13th July, 2016 and received public representations on the Community Land Bill (National Assembly Bill No. 45 of 2015) as captured in the attached matrix (**see Annex I**).

The Committee received submissions from the following institutions, which it considered comprehensively –

1. Ministry of Land and Physical Planning (**see Annex II**);
2. Council of Governors (**see Annex III**);
3. National Land Commission (**see Annex IV**);
4. Reconcile And CSO's Working Group On Community Land Law (HakiJamii, Kenya Human Rights Commission, FIDA, Pamoja Trust, Action Aid, Oxfam GB, Kenya Land Alliance and WWF)(**see Annex V**);
5. Kenya Wildlife Conservancy Association (**see Annex VI**);
6. Institute of Surveyors Kenya(**see Annex VII**); and
7. HakiJamii(**see Annex VIII**).

4.0 DELIBERATIONS OF THE MEDIATION COMMITTEE ON THE COMMUNITY LAND BILL (NATIONAL ASSEMBLY BILL NO. 45 OF 2015)

The Mediation Committee on Community Land Bill (National Assembly Bill No. 45 of 2015), considered the submissions from stakeholders on the Bill (National Assembly Bill No. and resolved as follows –

LONG TITLE

The Committee noted that the stakeholders wanted the long title amended, however following further deliberation the committee resolved that this amendment was aesthetic and would add no value to the bill.

CLAUSE 2

The Committee noted that there was no reference to the term County Executive Committee Member in the Bill and as such it could not be defined. The Committee also noted that the term community had been defined in Article 63(1) of the Constitution and as such there was no need to define it again. The Committee resolved not to define terms already defined in the Constitution.

THAT, clause 2 of the Bill be amended by inserting the following new definition in its proper alphabetical sequence–

“community assembly” means a gathering of members of a community;

The Committee noted that it was necessary for the words to be defined for clarity purposes.

CLAUSE 4

THAT, clause 4 of the Bill be amended in sub-clause (1) and (3) by deleting the words “be owned by” and substituting therefor the words “vest in”. Pastoralist groups had advocated the term “owned by” during earlier consultations on the Bill. The Committee resolved to use the term “vest in” as used in the Constitution.

The Committee noted that this amendment would align the Bill to the wording in the Constitution.

Proposed amendments by the Kenya Wildlife Conservancies group to clause 4 were rejected as their proposal was deemed to be in direction violation of Article 63(1) of the Constitution.

CLAUSE 6

THAT, clause 6 of the Bill be amended by inserting the following new sub-clause immediately after sub-clause (4) –

“(4a) The respective county government shall transfer the amount and the interests earned to the communities as may be prescribed in regulations.”

The Committee noted that this amendment seeks to ensure that the respective county governments, upon registration of community land release to the community monies payable including the interest earned as compensation if the unregistered community land is acquired by compulsory acquisition.

The Committee noted that these monies would be paid as prescribed in regulations to be developed by the Cabinet Secretary.

The Committee noted that the procedure for compulsory acquisition was very well detailed in the Land Act and accordingly there was no need to once again state the process of compulsory land acquisition. Some members of the Committee felt that as community land was not registered and was held in trust there may be need to re-state the fact that consultation must take place prior to any compulsory acquisition. The Committee was however informed that prior to conversion of any community land, as provided for in clause 5 of the Bill, the owners of the community land would need to be consulted as the county government would only serve as trustees and would not be permitted to transact on community land without consultation with the community.

The Committee noted that NLC had no role in the management of community land as advised by the Supreme Court. The Committee also noted that NLC had advocated for the re-introduction of Community Land Management Boards, however the Committee noted that NLC was required to devolve its functions to the counties and not set up other independent bodies outside of itself which were bringing greater confusion in the management of community land.

CLAUSE 7

THAT, clause 7 of the Bill be amended–

(a) in sub-clause (2) by inserting the words “and a radio station of nationwide coverage” immediately after the words “nationwide circulation”

The Committee noted that this amendment seeks to ensure that as many community members as possible receive the notification. The Committee further noted that it was important to add the use of the community radios for wider reach rather than just newspapers as provided for in the Bill. The Committee resolved that the clause be re-drafted with the aim of broadening by the use of more generic language to guarantee broader communication reaching all interested person. The committee instructed the secretariat to draft an amendment to the clause making use of more generic language to ensure that all types of communication are used so as to ensure that all concerned persons are able to receive the notification.

(b) in sub-clause (3) by deleting the words “ section 16” and substituting therefor the words “section 15”

The Committee noted that this amendment was to reflect the correct cross-referencing.

The Committee acknowledged significant concerns by committee members on clause 7 and resolved that the entire clause 7 be redrafted. The Committee in providing direction on how the clause should be redrafted noted that the clause should ensure equal involvement by the county and national government in the process of convening the community to elect their Community Land Management Committees.

CLAUSE 8

The committee noted the cabinet secretary in his submissions had wanted to remove consultation with county governments in clause 8 so as to expedite the process of developing the inventory of community land. This, the Committee noted would be contrary to the provisions of the Constitution which makes consultation with the county government mandatory. The Committee also noted that it would be important to access the inventory be made available to the county governments for ease of access by community members.

The committee therefore resolved that –

THAT, clause 8 of the Bill be amended by inserting the following new sub-clause immediately after sub-clause (2) –

“(2a) The inventory of community land referred to in subsection (2) shall be shared with the counties for ease of access by members of the community”

The Committee noted the recommendation to amend Clause 8 (1) as proposed by the Kenya Wildlife Conservancy on the timelines within which an adjudication must be gazetted. The

Committee noted that Kenya had a history of unnecessarily long drawn out adjudications and that this amendment would resolve that problem. The Committee resolved that this issue would be addressed by the provisions of clause 46 of the Bill, which provides timelines for adjudication. In amending clause 46 the committee resolved that the timelines for adjudication would also apply to any new adjudications commencing after the enactment of the act. The committee resolved to amend the timeline for adjudication in clause 46 to three years.

The Committee further resolved to include an amendment to clause 8(1) providing that the records developed by the adjudication department or by the Ministry a copy shall be accessible to both NLC and the county government. This, the Committee noted would address the issue of access to information. The committee rejected the proposal by the Council of Governors to give the function of developing the program of adjudication to NLC on the basis that the function of issuing titles was the mandate of national government.

CLAUSE 9

The committee rejected the proposal to have the community land registrar appointed by the public service commission rather the chief registrar as all other registrars are appointed by the chief land registrar.

The Committee noted that the Institution of Surveyors of Kenya had proposed that registrars should also include beyond advocates, land surveyors and land economists. The committee noted that land administration is usually undertaken by land professionals and registrars may not always be able to understand key technical implications in the same manner they understand the beyond the legal instruments. This proposal the committee noted would allow land professionals from the land fraternity to also serve as registrars as they, similar to advocates, have the necessary technical capacity to undertake this work. The Committee resolved to make this amendment where applicable.

CLAUSE 16

The committee noted that issues of alternative dispute resolution were adequately addressed in clause 39 of the Bill and accordingly restating in clause 16 the encouragement of alternative dispute resolution would be redundant.

CLAUSE 17

THAT, clause 17 of the Bill be amended in sub-clause (1) by deleting the words “not to require noting on the register” appearing in paragraph (b).

The committee noted that the words were not necessary since under section 28 of the Land Registration Act all overriding interests are not noted on the register.

CLAUSE 22

THAT, clause 22(4) of the Bill be amended to replace the words “members of the registered community in a community meeting” appearing immediately after the word “the” in the second line with the words “two-thirds of the members of the community.

The Committee noted that this amendment would ensure a higher threshold is maintained in decisions relating to the transfer of community land.

CLAUSE 23

THAT, clause 23 of the Bill be amended in paragraph (b) by deleting the phrase “section 22(2)” and substituting therefor the phrase “section 21(2)”.

The Committee noted that this amendment was to reflect the correct cross-referencing.

CLAUSE 30

THAT, clause 30 of the Bill be amended in sub-clause (3) by inserting the word “youth” immediately after the word “women”.

The Committee noted that this amendment reinforced the principle of non-discrimination and equality with regards to the use of community land.

CLAUSE 46

THAT, clause 46 be amended in by deleting sub-clause (6) and substituting therefor the following new sub-clause—

“(6) For the avoidance of doubt, any adjudication programme at the commencement of this Act shall, subject to this Act, be governed by the law applicable to it immediately before to the commencement of this Act and shall be concluded within three years of the enactment of this Act.”

The committee noted that this amendment would give a timeline within which adjudication of land commenced before and after the enactment of the Act should be completed.

CLAUSE 47

THAT, clause 47 of the Bill be amended by deleting the words “land buying companies etc.” appearing in the marginal note.

The committee noted that this amendment was necessary to ensure consistency between the marginal note and the provision itself.

THAT, clause 47(6) of the Bill be amended by deleting the word “may” and replacing therefore with the word “shall”.

The committee noted that this amendment would ensure the cabinet secretary develops regulations to give effect to section 47 of the Act.

CLAUSE 48

THAT, clause 48 be amended in sub-clause (2) by inserting the following new paragraphs immediately after paragraph (j) –

“(k) the timelines within which the adjudication programme must be gazetted, including guidelines on how to ascertain community or individual claims of interest in or right over community land;

(l) a study to document the dominant communal and customary land ownerships prevalent in the regions of the country before registration of community land is started; and

(m) the election of a community land management committee.”

The committee noted that this amendment would ensure that the Cabinet Secretary prescribes by regulations the timelines within which the adjudication programme must be gazetted, the dominant communal and customary land ownerships prevalent in the country and the election of the community land management committees. This is would be purposes of clarity.

5.0 RECOMMENDATIONS OF THE COMMITTEE

The Committee made the following recommendations on the Community Land Bill (National Assembly Bill No. 45 of 2015) –

CLAUSE	AMENDMENT
1	Adopted as in the Bill
2	<p>THAT, clause 2 of the Bill be amended by inserting the following new definition in it's proper alphabetical sequence–</p> <p>“community assembly” means a gathering of registered adult members of a community convened in accordance with this Act;</p>
3	Adopted as in the Bill
4	<p>THAT, clause 4 of the Bill be amended in–</p> <p>(a) sub-clause (1) by deleting the words “be owned by” and substituting therefor the words “vest in”; and</p> <p>(b) sub-clause (3) by deleting the words “be owned by” and substituting therefor the words “vest in”.</p>
5	Adopted as in the Bill
6	<p>THAT, clause 6 of the Bill be amended by inserting the following new sub-clause immediately after sub-clause (4)–</p> <p>“(4a) The respective county government shall transfer the amount and the interests earned to the communities as may be prescribed.”</p>
7	<p>THAT, clause 7 of the Bill be amended–</p> <p>(c) deleting sub-clause (2) and substituting therefor the following new sub-clause</p> <p>“(2) the community land registrar shall by notice in at least one newspaper of nationwide circulation and a radio station of nationwide coverage, invite all members of the community with some communal interest to a public meeting for the purpose of electing the members of the community land management committee.”</p> <p>(d) by inserting the following new sub-clauses immediately after sub-clause (2)–</p> <p>“(2a) The notice shall also be given to the national county administrators and county government administrators in the area where the community land is located.</p> <p>(2b) The community may use all available means of communication</p>

including electronic media to reach the community members.”

(e) in sub-clause (3) by deleting the words “ section 16” and substituting therefor the words “section 15”

8

THAT, clause 8 of the Bill be amended –

(a) in sub-clause (2) by inserting the words “in consultation with the county governments” immediately after the words “Cabinet Secretary shall”;
and

(b) by inserting the following new sub-clause immediately after sub-clause (2)–

“(2a) The inventory of community land referred to in subsection (2) may be accessed by the county governments for ease of access by members of the community”

9

Adopted as in the Bill

10

Adopted as in the Bill

11

Adopted as in the Bill

12

Adopted as in the Bill

13

Adopted as in the Bill

14

Adopted as in the Bill

15

THAT, clause 15 of the Bill be amended by–

(a) deleting sub-clause (1) and substituting therefor the following new sub-clause–

“(15) A registered community shall have a community assembly which shall consist of all adult members of the community.”

(b) by inserting the following new sub-clause immediately after sub-clause (1)–

“(1a) The quorum for decision making by the community shall not be less than two thirds of the community assembly.”

(c) in sub-clause (4)

(i) Inserting the word “adult” immediately before the words “registered members”; and

(ii) By deleting the words “ any other minor” and substituting therefor the words “ all other”.

16

Adopted as in the Bill

17

THAT, clause 17 of the Bill be amended in sub-clause (1) by deleting the words “not to require noting on the register” appearing in paragraph (b).

18

Adopted as in the Bill

19 Adopted as in the Bill

20 Adopted as in the Bill

21 Adopted as in the Bill

22 Adopted as in the Bill

23 **THAT**, clause 23 of the Bill be amended in paragraph (b) by deleting the phrase “section 22(2)” and substituting therefor the phrase “section 21(2)”.

24 Adopted as in the Bill

25 Adopted as in the Bill

25 Adopted as in the Bill

27 Adopted as in the Bill

28 Adopted as in the Bill

29 Adopted as in the Bill

30 **THAT**, clause 30 of the Bill be amended in sub-clause (3) by inserting the word “youth” immediately after the word “men”.

31 Adopted as in the Bill

32 Adopted as in the Bill

33 Adopted as in the Bill

34 Adopted as in the Bill

35 Adopted as in the Bill

36 **THAT**, clause 36 of the Bill be amended in sub-clause (3)

- a) by inserting the words “ adult” immediately before the word “ members” wherever it appears in the sub-clause
- b) by deleting the word “obligatory” appearing at the end of the sub-clause and substituting therefor the word “ represented”

37 Adopted as in the Bill

38 Adopted as in the Bill

39 Adopted as in the Bill

40 Adopted as in the Bill

41 Adopted as in the Bill

42 Adopted as in the Bill

43 Adopted as in the Bill

44 Adopted as in the Bill

45 Adopted as in the Bill

46 **THAT**, clause 46 be amended by deleting sub-clause (6) and substituting therefor the following new sub-clause—

“(6) For the avoidance of doubt, the Cabinet Secretary shall develop the adjudication programme and ensure that the new and existing adjudication programme shall, subject to this Act, be governed by the law applicable to it immediately before to the commencement of this Act and shall be concluded within three years of the enactment of this Act.”

47 **THAT**, clause 47 of the Bill be amended by deleting the words “land buying companies etc.” appearing in the marginal note.

48 **THAT**, clause 48 be amended in sub-clause (2) by inserting the following new paragraphs immediately after paragraph (j)—

“(k) the timelines within which the adjudication programme must be gazetted, including guidelines on how to ascertain community or individual claims of interest in or right over community land;

(n) the rules and procedure for election of a community land management committee; and

(o) the procedures of registration of interest in Community land as enshrined in article 63 of the Constitution”

NATIONAL ASSEMBLY



MEDIATION COMMITTEE ON THE COMMUNITY LAND BILL, 2015

DATE: 27/7/2016 TIME: 10:00 AM VENUE: BOARD ROOM OF 4TH FLOOR PROTECTION HOUSE

AGENDA:- ADOPTION OF THE REPORT ON THE COMMUNITY LAND BILL, 2015

1.	Hon Moses ole Sabid	no
2.	Sen. N. Wanjau	Wanjau
3.	Daniel Mwangi	Wanjau
4.	Hon FRANCIS C. GIAMBA	Wanjau
5.	Sen. Godana Harguta	Wanjau
6.	Hon Francis Wambui	Wanjau
7.	Hon Alex Nwira	Wanjau
8.	Sen. Lenny Kivuti	Chairman
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**MEDIATED VERSION OF THE COMMUNITY
LAND BILL, 2015.**

THE COMMUNITY LAND BILL, 2015

ARRANGEMENT OF SECTIONS

PART I—PRELIMINARY

- 1—Short title.
- 2—Interpretation.
- 3—Guiding principles.

**PART II—RECOGNITION, PROTECTION AND REGISTRATION OF
COMMUNITY LAND RIGHTS**

- 4—Ownership and tenure system.
- 5— Protection of community land rights.
- 6—Role of county governments.
- 7—Application for registration.
- 8—Procedure for recognition and adjudication of community land.
- 9—Community land Registrar.
- 10—Register of community land.
- 11—Registration of community land.
- 12—Classes of holding community land.
- 13—Communal and reserve land.
- 14—Confirmation of validity of existing customary rights of occupancy.

**PART III—ADMINISTRATION AND MANAGEMENT OF
COMMUNITY LAND**

- 15—Functions and powers.

PART IV—NATURE OF COMMUNITY LAND TITLE

- 16— Interest conferred by registration.

- 17— Rights of a community as proprietors.
- 18— Certificate of title to be evidence of proprietorship.
- 19— Land use and development planning of community land.
- 20— Conservation and management of resources in community land.

PART V—CONVERSION OF LAND

- 21— Conversion of community land generally.
- 22— Conversion of community land to public land.
- 23— Conversion of community land to private land.
- 24— Conversion of public land to community land.
- 25— Conversion of private land to community land.
- 26— Setting aside community land for public purposes.

**PART VI—SPECIAL RIGHTS AND ENTITLEMENTS IN THE
COMMUNITY LAND**

- 27— Individual rights on community land.
- 28— Grazing rights.
- 29— Designation of other land use rights in community land.
- 30— Non-discrimination.
- 31— Transactions in community land.
- 32— Leases over community land.
- 33— Cancellation of rights of leasehold.
- 34— Existing rights to use and occupy community land.

**PART VII— ENVIRONMENT AND NATURAL RESOURCES
MANAGEMENT**

- 35— Natural resources on community land.
- 36— Benefit sharing.
- 37— Rules Bye-laws
- 38— Regulation of community land use planning..

**PART VIII— SETTLEMENT OF DISPUTES RELATING TO
COMMUNITY LAND**

- 39— Dispute resolution mechanisms.
- 40— Mediation.
- 41— Arbitration.
- 42— Judicial Proceedings.

PART IX—GENERAL PROVISIONS

- 43— Unlawful occupation of community land.
- 44— General penalty.
- 45— Repeals.
- 46— Saving and transitional provisions.
- 47— Group representatives, land-buying companies etc.
- 48— Regulations.

SCHEDULE

SCHEDULE: Transitional Provisions

THE COMMUNITY LAND ACT, 2015

AN ACT of Parliament to give effect to Article 63 (5) of the Constitution; to provide for the recognition, protection and registration of community land rights; management and administration of community land; to provide for the role of county governments in relation to unregistered community land and for connected purposes

ENACTED by the Parliament of Kenya, as follows—

PART I—PRELIMINARY

- Short title. 1. This Act may be cited as the Community Land Act, 2015.
- Interpretation. 2. In this Act, unless the context otherwise requires—
- “adjudication officer” means an officer appointed by the Cabinet Secretary under section 10(2);
- “Cabinet Secretary” means the Cabinet Secretary for the time being responsible for matters relating to land;
- No. 3 of 2012 “cadastral map” has the meaning assigned to it under the Land Registration Act, 2012;
- “certificate of reservation” means a certificate issued in the interim by the Registrar pending the registration of community land and acquisition of the certificate of title;
- “community” means a consciously distinct and organized group of users of community land who are citizens of Kenya and share any of the following attributes—
- (a) common ancestry;

- (b) similar culture or unique mode of livelihood;
- (c) socio-economic or other similar common interest;
- (d) geographical space;
- (e) ecological space; or
- (f) ethnicity.

“community assembly” means a gathering of registered adult members of a community convened in accordance with this Act;

“communal use of land” means holding or using land in undivided shares by a community;

“community land” means includes—

- (a) land declared as such under Article 63(2) of the Constitution;
- (b) land converted into community land under any law;

“community land register” means the community land register established under section 8 of the Land Registration Act, 2012;

No. 3 of 2012

“community land registration unit” means an area declared as such under section 10 of the Land Registration Act;

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

“community reserve land” means any land set aside for communal or land allocated by the registered community for individual occupation and use;

“community tenure system” means unwritten land ownership practices in certain communities in which land is owned or controlled by a family, clan or a designated community leader;

“Commission” means the National Land Commission established by Article 67 of the Constitution;

“county government” means the county government provided for under Article 176 of the Constitution;

No 19 of 2011.

“Court” means the Environment and Land Court established under the Environment and Land Court Act, 2011 or any other court having jurisdiction over land matters as may be prescribed by any written law;

“customary land rights” refer to rights conferred by or derived from African customary law, customs or practices provided that such rights are not inconsistent with the Constitution or any written law;

“fragile ecosystem” means an ecosystem hosting threatened biodiversity;

“natural resources” has the meaning assigned to it in Article 260 of the Constitution;

“organised group” includes any or both formal and informal kinds of organization in the community setup;

“Principal Secretary” means the Principal Secretary for the time being responsible for matters relating to land;

“Registrar” means the Registrar of community land designated in accordance with section 9 of this Act ;

“registered community” means a community that has

completed the registration processes and is recognized under this law;

No. 4 of 2014

“spouse” has the meaning assigned to it under the Marriage Act, 2014;

“vested interest” means absolute and indefeasible ownership.

Guiding principles.

3. In the performance of the functions and exercise of powers under this Act, every person dealing with community land shall be guided by the following principles—

- (a) the principles of land policy set out in Article 60 of the Constitution; and
- (b) the national values and principles of governance set out in Article 10 of the Constitution.

PART II—RECOGNITION, PROTECTION AND REGISTRATION OF COMMUNITY LAND RIGHTS

Ownership and tenure system.

4.(1) Community land in Kenya shall vest in the Community.

(2) Subject to the provisions of this Act or any other written law, the State may regulate the use of community land in accordance with Article 66 of the Constitution.

(3) Community land shall vest in the community and may be held under any of the following tenure systems—

- (a) customary;
- (b) freehold;
- (c) leasehold; and

(d) such other tenure system recognized under this Act or other written law.

Protection of
community land
rights.

5.(1) Every person shall have the right, either individually or in association with others, to acquire and own property, in accordance with Article 40 of the Constitution,—

(a) of any description; and

(b) in any part of Kenya.

(2) Customary land rights shall be recognized, adjudicated for and documented for purposes of registration in accordance with this Act and any other written law.

(3) Customary land rights, including those held in common shall have equal force and effect in law with freehold or leasehold rights acquired through allocation, registration or transfer.

(4) 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.

(5) Subject to the provisions of section 46 of this Act, any person who immediately before the commencement of this Act had a subsisting customary right to hold or occupy land shall upon commencement of this Act continue to hold such right.

Role of county governments.

6.(1) County governments shall hold in trust all unregistered community land on behalf of the communities for which it is held.

(2) The respective county government shall hold in trust for a community any monies payable as compensation for compulsory acquisition of any unregistered community land.

(3) Upon registration of community land, the respective county government shall promptly release to the community all such monies payable for compulsory acquisition.

(4) Any such monies shall be deposited in a special interest earning account by the county government.

(5) The respective county government shall transfer the amount and the interests earned to the communities as may be prescribed.

(6) 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.

(7) Upon the registration of any unregistered community land in accordance with this Act, the respective registered community shall, assume the management and administrative functions provided in this Act and the trustee role of the respective county government in relation to the land shall cease.

(8) A county government shall not sell, dispose, transfer, 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.

Procedure for registration of communities.

7.(1) A community claiming an interest in or right over community land shall be registered in accordance with the provisions of this section.

(2) The community land registrar shall by notice in at least one newspaper of nationwide circulation and a radio station of nationwide coverage, invite all members of the community with some communal interest to a public meeting for the purpose of electing the members of the community land management committee.

(3) The notice shall also be given to the national county administrators and county government administrators in the area where the community land is located.

(4) The community land registrar may use all available means of communication including electronic media to reach the community members.

(5) The community shall elect between seven and fifteen members from among themselves to be the members of the community land management committee as provided in section 15, who shall come up with a comprehensive register of communal interest holders.

(6) The community land management committee shall come up with the name of the community and shall submit the name, register of members, minutes of the meeting and the rules and regulations of the committee to the Registrar for registration.

Procedure for recognition and adjudication of community land.

8.(1) Subject to this Act and any law relating to adjudication of titles to land, the Cabinet Secretary shall, in consultation with the respective county governments, develop and publish in the Gazette a comprehensive adjudication programme for purposes of

registration of community land.

(2) The Cabinet Secretary shall, in consultation with the county governments ensure that the process of documenting, mapping and developing of the inventory of community land shall be transparent, cost effective and participatory.

(3) The inventory of community land referred to in subsection (2) may be accessed by the county governments for ease of access by members of the community.

(4) The Cabinet Secretary shall issue a public notice of intention to survey, demarcate and register community land.

(5) The notice shall—

- (a) contain the name of the community;
- (b) state which land is to be adjudicated;
- (c) invite all interested persons with overriding interests or any other claim on the land, to lodge their claims;
- (d) specify an area or areas of land to be a community land registration unit; and
- (e) be for a period of sixty days.

(6) The Cabinet Secretary shall cause the land to be adequately surveyed but such survey shall exclude—

- (a) all parcels already in use for public purposes; and
- (b) adjudicated private land.

(7) A cadastral map of the land shall then be produced and presented to the Registrar for registration.

Community land
Registrar.

9. The Chief Land Registrar shall designate a qualified registrar to be the community land Registrar responsible for registration of community land.

Register of
community land.
No. 3 of 2012

10.(1) There shall be maintained for each registration unit, a community land register in accordance with section 8 of the Land Registration Act, 2012 in which shall contain—

- (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.

(2) The Registrar shall not register any instrument purporting to dispose of rights or interest in community land except in accordance with this Act or any other written law.

(3) For the avoidance of doubt, until any parcel of community land has been registered in accordance with this Act, such land shall remain unregistered community land and shall, subject to this Act, be held in trust by the county governments on behalf of

the communities for which it is held pursuant to Article 63(3) of the Constitution.

Registration of
community land.
No. 3 of 2012

11.(1) Community land shall be registered in accordance with the provisions of this Act and the Land Registration Act, 2012.

(2) The Cabinet Secretary shall by a notice in the gazette, appoint an adjudication officer in respect of every community registration unit who shall—

(a) facilitate in consultation with the respective county governments the adjudication of the community land including the recording of community land claims, demarcation of community land and delineation of boundaries; and

(b) perform any other function conferred by this Act.

(3) Upon adjudication, the title relating to community land shall be issued by the Registrar in the prescribed form.

Classes of
holding
community land.

12. Community land may be held—

(a) as communal land;

(b) as family or clan land;

(c) as reserve land; or

(d) in any other category of land recognized under this Act or other written law.

Communal and
reserve land.

13.(1) A registered community may by a resolution of the majority members of that community in a general meeting, reserve a portion of the community land for communal purposes.

(2) Any land which has been used communally, for 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 put for.

(3) A registered community may reserve special purpose areas including areas for—

- (a) farming;
- (b) settlement;
- (c) community conservation;
- (d) cultural and heritage sites;
- (e) urban development; or
- (f) any other purposes as may be determined by the community, respective county government or national government for the promotion or upgrading of public interest.

(4) An area reserved for special purposes under subsection (3) shall be used exclusively for the intended purpose.

Confirmation of
validity of
existing
customary rights
of occupancy.

14.(1) A customary right of occupancy in 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—

- (a) 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;

(b) capable of being of indefinite duration; and

(c) governed by customary law in respect of any dealings.

(2) A customary right of occupancy on any community land subsisting before the commencement of this Act shall upon the commencement of this Act be a recognisable right of occupancy in the respective community land subject to Article 40(6) of the Constitution.

(3) A person, a family unit, a group of persons recognized as such under any customary law or who have formed or organized themselves as an association, a co-operative society or any other body recognized by any written law, who are members of a community may apply to the registered community for customary right of occupancy.

(4) The registered community shall, when considering the application have regard to—

(a) proposals made by the adjudication team or any sub-committee of the registered community set up for that purpose; and

(b) equality of all persons including—

(i) equal treatment of applications for women and men; and

(ii) non-discrimination of any person on the basis of

gender, disability, minority, culture or marital status.

(5) Upon approval by the registered community, the registered community shall issue a certificate of customary right of use and occupancy in the prescribed form.

**PART III—ADMINISTRATION AND MANAGEMENT OF
COMMUNITY LAND**

Functions and
powers of the
community land
management
committee.

15. (1) A registered community shall have a community assembly which shall consist of all adult members of the community.

(2) The quorum for decision making by the community shall not be less than two thirds of the community assembly.

(3) The community assembly shall elect between seven and fifteen members of the community assembly to constitute the community land management committee.

(4) The functions of the community land management committee shall be to—

- (a) have responsibility over the running of the day to day functions of the community;
- (b) manage and administer registered community land on behalf of the respective community;
- (c) coordinate the development of community land use plans in collaboration with the relevant authorities;

- (d) promote the co-operation and participation among community members in dealing with matters pertaining to the respective registered community land; and
- (e) prescribe rules and regulations, to be ratified by the community assembly, to govern the operations of the community.

(5) 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.

PART IV—NATURE OF COMMUNITY LAND TITLE

Interest
conferred by
registration.

16. Subject to this Act—

- (a) the registration of a community as the proprietor of land shall vest in that community the absolute ownership of that land together with all rights and privileges belonging or appurtenant thereto; and
- (b) the registration of a community or a person as the proprietor of a lease shall vest in that community or person the leasehold interest described in the lease, together with all implied and express rights and privileges belonging or appurtenant thereto and subject to all implied or express agreements, liabilities or

incidents of the lease.

Rights of a
community as
proprietor.

17.(1) The rights of a registered community as proprietor, whether acquired on first registration or subsequently for valuable consideration or by an order of court, shall not be liable to be defeated except as provided in this Act or any other written law, and shall be held on behalf of the community, together with all privileges and appurtenances belonging thereto, free from all other interests and claims whatsoever, but subject to—

(a) the leases, charges and other encumbrances and to the conditions and restrictions, if any, shown in the register; and

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(b) such overriding interests as may affect the land and are declared by section 28 of the Land Registration Act, 2012 .

(2) Nothing in this section shall be taken to relieve a registered community from any duty or obligation to which the registered community is subject to as a proprietor.

Certificate of
title to be
evidence of
proprietorship.

18.(1) The certificate of title issued by the Registrar upon registration, or to a purchaser of community land upon a transfer or transmission by the proprietor community shall be considered by courts as prima facie evidence that the person named as proprietor of the land is the absolute and indefeasible owner, subject to the encumbrances, easements, restrictions and conditions contained or endorsed in the certificate, and it shall not be subject to challenge, except—

(a) on grounds of fraud or misrepresentation to which the

person is proved to be a party; or

- (b) where the certificate of title has been acquired illegally, unprocedurally or through a corrupt scheme.

(2) A certified copy of any registered instrument, signed by the Registrar and sealed with the Seal of the Registrar, shall be received in evidence in the same manner as the original.

Land use and
development
planning of
community land.

19.(1) A registered community may, on its own motion or at the request of the county government, submit to the county government a plan for the development, management and use of the community land administered by the registered community for approval.

(2) Before submitting a plan to the county government under subsection (1) a registered community shall—

- (a) consider any conservation, environmental or heritage issues relevant to the development, management or use of the land;
- (b) incorporate in the plan a statement that it has considered those issues in paragraph (a) when drawing up the plan;
- (c) consider any environmental impact plan pursuant to existing laws on environment;
- (d) comply with the values and principles of the Constitution;
- (e) seek ratification from the members of the registered

community; and

(f) be bound by any approved relevant physical development plan.

(3) If a registered community submits a plan to the county government under subsection (1) and the government approves and notifies the registered community of that fact, the registered community shall develop, manage and use the land concerned in accordance with the plan as approved or subsequently varied as the case may be.

(4) The county government shall, in considering a plan submitted to it under this section comply with the relevant law relating to development planning.

(5) The county government shall on the request of the Commission submit records of development plans lodged with the county government in accordance with this section.

Conservation
and management
of resources in
community land.

20.(1) For purposes of the sustainable conservation of land based natural resources within community land across counties, every respective registered community shall abide by the relevant applicable laws, policies and standards on natural resources.

(2) With respect to subsection (1), the communities shall establish—

(a) measures to protect critical ecosystems and habitats;

(b) incentives for communities and individuals to invest in income generating natural resource conservation programmes;

- (c) measures to facilitate the access, use and co-management of forests, water and other resources by communities who have customary rights to these resources;
 - (d) procedures for the registration of natural resources in an appropriate register; and
 - (e) procedures for the involvement of communities and other stakeholders in the management and utilization of land-based natural resources.
- (3) A registered community shall put in place measures necessary to conserve resources in community land.

PART V—CONVERSION OF LAND

Conversion of
community land.
No. 3 of 2012.

21.(1) The Community land register shall, in addition to the particulars set out under section 8(1) of the Land Registration Act, 2012, contain the particulars of all conversions involving community land.

(2) A registered community shall, before the conversion of registered community land into any other category of land seek and obtain approval from two thirds of the assembly in a special meeting convened for that purpose.

Conversion of
community land
to public land.

22.(1) Community land may be converted to public land by—

- (a) compulsory acquisition;

(b) transfer; or

(c) surrender.

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(2) Nothing in this Act limits the application of the Land Act, 2012 and any other law in relation to compulsory acquisition of land.

(3) Reversionary interest of such land shall lie with the community in the first instance upon expiry of such public use interest.

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(4) Transfer of community land shall, subject to the approval of the members of the registered community in a community meeting, be done in accordance with the Land Act, 2012 and any other applicable law.

Conversion of
community land
to private land.

23. Registered community land may, subject to the approval of the registered community, be converted to private land through—

(a) transfer; or

(b) allocation by the registered community, subject to ratification of the assembly as provided in section 21(2).

Conversion of
public land to
community land.
No. 6 of 2012

24.(1) Public land may be converted to community land by allocation by the Commission in accordance with the Land Act, 2012.

(2) Conversion of public land to community land under

subsection (1) may be effected on a case by case basis.

(3) The Commission may, by an order published in the gazette identify other specific parcels to which subsection (2) shall not apply.

Conversion of private land to community land.

25. Private land may be converted to community land by—

- (a) transfer;
- (b) surrender;
- (c) operation of the law in relation to illegally acquired community land; or
- (d) operation of any other written law.

Setting aside community land for public purposes.

26.(1) A community may set aside part of the registered community land for public purposes.

(2) Where land is set aside for public purposes under subsection (1), the Commission shall gazette such parcel of land as public land.

PART VI—SPECIAL RIGHTS AND ENTITLEMENTS IN THE COMMUNITY LAND

Individual rights on community land.

27.(1) A registered community may upon application and with approval of the members of the registered community, allocate part of its registered community land to a member or a group of members of the community for exclusive use and occupation for

such period as the registered community shall determine.

(2) Despite subsection (1), a separate title shall not be issued for such parcel.

(3) An individual entitlement under subsection (1) shall not be superior to community title in any way.

(4) A member granted exclusive use of a parcel of land under this section—

(a) shall pay to the registered community such premium or fees commensurate to the use as may be determined by the community from time to time;

(b) may develop the land subject to the provisions of any laws and regulations relating to land use;

(c) may not assign or lease the land to a third party who is not a member of the community;

(d) shall put the land into lawful use;

(e) shall surrender the land back to the community if the member no longer requires the land; and

(f) shall be entitled to quiet enjoyment of the land.

(5) A parcel of land granted to a member for exclusive use shall revert to the community if—

(a) the member dies without an heir;

- (b) the member fails to put it into any use for such period as may be prescribed by the registered community;
- (c) the period of use determined by the registered community expires.
- (d) the member practices activities that threaten or abuse the rights or title of the community on the land; or
- (e) the member practices activities that are contrary to the approved land use plan in respect of the community land.

Grazing rights.

28.(1) The customs and practices of pastoral communities relating to land shall be taken into consideration by a registered community as long as they are consistent with the provisions of this Act or other applicable law.

(2) Community land in a pastoral community shall be available for use by members of the community for the grazing of their livestock, subject to—

- (a) such conditions as the respective registered 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;

(b) the right of the community to utilize 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 upon such grant, that person shall exercise the rights subject to the conditions referred to in subsection (1):

Provided that the registered community shall subject to the approval of the members of the registered community in a meeting convened for that purpose withdraw a grazing right granted under this subsection if, 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) Notwithstanding subsection (1), a registered community may withdraw the grazing right of any member who—

(a) fails to observe in a material respect any condition referred to in this Act; or

(b) contravenes any provision of subsection (2).

(5) A person shall not, except with the written authority of the registered community,—

(a) erect or occupy any building or other structure on the designated grazing land;

- (b) plough or cultivate any portion of the land;
- (c) take up abode on or occupy any portion of the grazing land; and
- (d) 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 at a watering place or interfere with the operation of any windmill, water-pump, water-pipe, dam or storage tank or other appurtenance installed or constructed at such a watering place.

(6) A person who contravenes subsection (5) 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.

Designation of other land use rights in community land.

29.(1) A registered community may reserve special purpose areas including—

- (a) farming areas;
- (b) settlement areas;
- (c) community conservation areas;
- (d) access and rights of way;
- (e) cultural and religious sites;

(f) urban development; or

(g) any other purpose as may be determined by the community, county government or national government for the promotion of public interest.

(2) An area designated for special purposes under subsection (1) shall be used exclusively for the designated purposes.

Non-discrimination.

30.(1) Every member of the community has the right to equal benefit from community land.

(2) Equality includes full and equal enjoyment of rights of use and access.

(3) Women, men, youth, minority, persons with disabilities and marginalized groups have the right to equal treatment in all dealings in community land.

(4) A registered community shall not directly or indirectly discriminate against any member of the community on any ground including race, gender, marital status, ethnic or social origin, colour, age, disability, religion or culture.

(5) 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.

(6) Subject to Article 159 of the Constitution, the culture of each community shall be recognized in accordance with Article

11(1) of the Constitution in the exercise of community land rights.

Transactions in
community land.

31.(1) Subject to such exemptions as may be prescribed, or unless any condition attaching to a community land right or a right of leasehold under this Act provides otherwise, a customary land right may be dealt with only with the approval of the registered community in a meeting convened for such purpose.

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(2) For the purposes of this Act, contracts and transfers over community land shall be carried out in a manner similar to transactions over private land as provided in the Land Act, 2012 and registered as provided in the Land Registration Act, 2012.

Leases over
community land.

32.(1) A lease over community land shall be on the basis of an agreement between the community and the lessee and subject to such implied conditions, restrictions and covenants as may be contained in any other written law.

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(2) Despite section 55 (1) of the Land Act, 2012, unless the agreement contemplated under subsection (1) otherwise provides, the general provisions on leases contained in Part IV of that Act shall apply to leases over community land.

Cancellation of
rights of
leasehold.

33. In addition to such grounds of cancellation as may be set out in a deed of leasehold, a right of leasehold may be cancelled by a registered community, with approval of the members of the registered community, if the leaseholder fails to comply with the requirements or to adhere to any restrictions imposed by or under any law pertaining to the utilization of the land to which the right relates.

Existing rights to use and occupy community land.

34.(1) Any person who immediately before the commencement of this Act, held a right to use and occupy any part of community land, whether by virtue of any authority granted under any law or otherwise than under a lease, may continue to use and occupy such land under that right, subject to the same terms and conditions until the lease expires, after which the provisions of sections 28 and 29 shall apply.

(2) Any conversion which commenced before the promulgation of the Constitution shall be deemed to have commenced under this Act, while any conversion commenced after the promulgation of the Constitution shall be null and void.

PART VII— ENVIRONMENT AND NATURAL RESOURCES MANAGEMENT

Natural resources on community land.

35. Subject to any other law, natural resources found in community land shall be used and managed—

- (a) sustainably and productively;
- (b) for the benefit of the whole community including future generations;
- (c) with transparency and accountability; and
- (d) on the basis of equitable sharing of accruing benefits.

Benefit sharing.

36. (1) Subject to any other relevant written law, an agreement relating to investment in community land shall be made after a free, open consultative process and shall contain provisions on

the following aspects—

- (a) an environmental, social, cultural and economic impact assessment;
- (b) stakeholder consultations and involvement of the community;
- (c) continuous monitoring and evaluation of the impact of the investment to the community;
- (d) payment of compensation and royalties;
- (e) requirement to re-habilitate the land upon completion or abandonment of the project;
- (f) measures to be put in place to mitigate any negative effects of the investment;
- (g) capacity building of the community and transfer technology to the community; and
- (h) any other matters necessary for determining how local communities will benefit from investments in their land.

(2) An agreement relating to investment in community land shall only be made between the investor and the community.

(3) No agreement between an investor and the community shall be valid unless it is approved by two thirds of adult members at a community assembly meeting called to consider the offer and at which a quorum of two thirds of the adult members

of that community is represented.

(4) The community may request the guidance and assistance of the county government or any other relevant stakeholders in considering the offer of investment.

Rules and by-laws.

37. Subject to this Act and any other written law, a registered community may make rules or by-laws for regulating the management and administration of their land and such rules or by-laws may provide for—

- (a) the regulation of investments on the land;
- (b) the determination of terms of any leases granted for purposes of investment;
- (c) the conservation and rehabilitation of the land;
- (d) land use and physical planning; and
- (e) any other relevant matter.

Regulation of community land use planning.

38.(1) Pursuant to Article 66 of the Constitution, the State shall have the power to regulate the use of any land, or interest in or right over land, in the interest of defence, public safety, public order, public morality, public health or land use planning.

(2) Despite the provisions of Part 1 and pursuant to section 22 of the Fourth Schedule to the Constitution, the management of community land shall be subject to national and county government laws and policies relating to—

- (a) fishing, hunting and gathering;
- (b) protection of animals and wildlife;
- (c) water protection, securing sufficient residual water, hydraulic engineering and safety of dams;
- (d) forestry;
- (e) environmental laws;
- (f) energy policy; and
- (g) exploitation of minerals and natural resources.

PART VIII— SETTLEMENT OF DISPUTES RELATING TO COMMUNITY LAND

Dispute
resolution
mechanisms.

39.(1) A registered community may use alternative methods of dispute resolution mechanisms including traditional dispute and conflict resolution mechanisms where it is appropriate to do so, for purposes of settling disputes and conflicts involving community land.

(2) Any dispute arising between members of a registered community, a registered community and another registered community shall, at first instance, be resolved using any of the internal dispute resolution mechanisms set out in the respective community by-laws.

(3) Where a dispute or conflict relating to community land arises, the registered community shall give priority to alternative methods of dispute resolution.

(4) Subject to the provisions of the Constitution and of this Act, a court or any other dispute resolution body shall apply the customary law prevailing in the area of jurisdiction of the parties to a dispute or binding on the parties to a dispute in settlement of community land disputes so far as it is not repugnant to justice and morality and inconsistent with the Constitution.

Mediation.

40.(1) Where a dispute relating to community land arises, the parties to the dispute may agree to refer the dispute to mediation.

(2) The mediation shall take place in private or in informal setting where the parties participate in the negotiation and design the format of the settlement agreement.

(3) The mediator shall have the power to bring together persons to a dispute and settle the dispute by—

- (a) convening meetings for the hearing of disputes from parties and keep record of the proceedings;
- (b) establishing ground rules for the conduct of parties;
- (c) structuring and managing the negotiation process and helping to clarify the facts and issues; and
- (d) helping the parties to resolve their dispute.

(4) If an agreement is reached during the mediation process, the agreement shall be reduced into writing and signed by the parties at the conclusion of the mediation.

Arbitration. **41.**(1) Where a dispute relating to community land arises, the parties to the dispute may agree to refer the dispute to arbitration.

No. 4 of 1995 (2) Where the parties to an arbitration agreement fail to agree on the appointment of an arbitrator or arbitrators, the provisions of the Arbitration Act relating to the appointment of arbitrators shall apply.

Judicial proceedings. **42.** (1) Where all efforts of resolving a dispute under this Act fail, a party to the dispute may refer the matter to court.

(2) The Court may—

- (a) confirm, set aside, amend or review the decision which is the subject of the appeal; or
- (b) make any order in connection therewith as it may deem fit.

PART IX—GENERAL PROVISIONS

Unlawful occupation of community land. **43.**(1) No person shall occupy or use for any purpose any registered community land other than under a right acquired in accordance with the provisions of this Act.

(2) A person who contravenes this section commits an offence.

General penalty. 44. A person convicted of an offence under this Act for which no other penalty is provided shall be liable to a fine not exceeding five hundred thousand shillings, or to imprisonment for a term not exceeding three years, or to both.

Repeals. 45. The following laws are repealed—

(a) the Land (Group Representatives) Act, (Cap 287); and

(b) the Trust Lands Act, (Cap 288).

Saving and
transitional
provisions.

46.(1) Unless the contrary is specifically provided in this Act, any right, interest, title, power, or obligation acquired, accrued, established, coming into force or exercisable before the commencement of this Act shall be deemed to have been acquired under this Act.

(2) Unless the contrary is specifically provided in this Act or the circumstances are such that the contrary must be presumed, if any step has been taken to create, acquire, assign, transfer, or otherwise execute a disposition in community land, any such transaction shall be continued in accordance with the provisions of this Act.

(3) Any instrument executed before the commencement of this Act whereby any disposition permitted under this Act is completed may be presented for registration in the prescribed register and—

(a) the question whether any instrument so presented is to be registered shall be determined by the Registrar by

reference to the law in force at the time of its execution; and

(b) subject to the provisions of paragraph (a), the provisions of this Act shall apply to that instrument as if it had been executed after the commencement of this Act.

(4) If a lessor or chargor had initiated any steps to forfeit a lease or to foreclose a charge, as the case may be, before the commencement of this Act, a court may on the application of the lessee or the chargee issue an injunction to the lessor or, to the chargor to stop the continuation of any such step.

(5) If a court had issued an injunction under subsection (4), the lessor or chargor to whom the injunction has been issued may commence any action under this Act to terminate that lease or bring that charge to an end.

(6) For the avoidance of doubt, the Cabinet Secretary shall develop the adjudication programme and ensure that the new and existing adjudication programme shall, subject to this Act, be governed by the law applicable to it immediately before to the commencement of this Act and shall be concluded within three years of the enactment of this Act.

(7) If at the lapse of the time specified by the Cabinet Secretary under subsection (6) there is any adjudication programme not finalized, the Cabinet Secretary shall gazette new completion dates and finalize the registration under the provisions of this Act.

(8) The Director of Land Adjudication, an adjudication officer, demarcation officer, survey officer or a recording officer

involved in an adjudication programme referred to under subsection (6) shall, for purposes of this section be deemed to be an officer of the national government.

(9) The provisions of this section shall be subject to the provisions of Article 63(4) of the Constitution and the legislation providing for the review of grants and dispositions.

Group
representatives.
Cap. 287

47.(1) In relation to land held under the Land (Group Representatives) Act, the respective group representatives together with the communities they represent shall be registered as a community in accordance with the provisions of this Act.

(2) Upon registration, the respective group representatives shall cease to hold office.

(3) Land held by group representatives referred to under subsection (1) shall not be sold, leased or converted to private land before it has been registered under this Act.

Cap. 287

(4) Title documents issued to group representatives under the Land (Group Representatives) Act shall continue to be in force until new titles are issued in the names of the respective communities or other institutions in accordance with this Act.

(5) The transitional provisions set out in the Schedule shall apply upon commencement of this Act.

(6) The Cabinet Secretary may prescribe regulations for giving effect to this section.

Regulations.

48.(1) The Cabinet Secretary, ensuring public participation may

make regulations generally for the better carrying into effect of this Act.

(2) Without prejudice to the generality of subsection (1), the Cabinet secretary, ensuring public participation may make Regulations prescribing—

- (a) the procedures of recognition and registration of all parcels of community land rights;
- (b) procedure for settlement of disputes arising from the community land registration process;
- (c) the requirements for investor partnerships;
- (d) the procedures of registering any other entity holding community land;
- (e) conversion of other categories of land into community land;
- (f) the fees payable for any application or the issue of any certificate or other document in terms of this Act;
- (g) the conditions, in addition to conditions imposed by or under any other law, under which prospecting or mining operations may be carried out on community land;
- (h) public education and awareness on the rights of

- communities over community land;
- (i) the combating and prevention of soil erosion and degradation, the protection of the pastoral resources and the limitation and control of the grazing of stock;
 - (j) payment of royalties to communities from income generated from resources within community lands.
 - (k) the timelines within which the adjudication programme must be gazetted, including guidelines on how to ascertain community or individual claims of interest in or right over community land;
 - (l) the rules and procedure for election of a community land management committee; and
 - (m) the procedures for registration of interest in community land as enshrined in Article 63 of the Constitution.

SCHEDULE (s. 47(5))

TRANSITIONAL PROVISIONS

Interpretation.

1.(1) In this Schedule—

“appointed day” means the day this Act comes into operation;

“former institution” means the institution by whatever name called registered under any of the repealed laws.

Rights and obligations.

2.(1) All rights, obligations and contracts which, immediately before the coming into operation of this Act, were vested in or imposed on a former institution shall be deemed to be the rights, obligations and contracts of the registered community.

(2) Notwithstanding any provision in this Act to the contrary, all agreements entered into between a community for the use of community land in the interest of defence, public safety, public order, public morality, public health, land use planning or shall continue in force.

Assets and liabilities.

3. On the appointed day—

(a) all funds, assets, and other property, moveable and immovable which, immediately before the appointed day were vested in a former institution, shall, on the appointed day, vest in the registered community;

(b) every public officer having the power or duty to effect or amend any entry in a register relating to property, or

to issue or amend any certificate or other document effecting or evidencing title to property, shall, without payment of a fee or other charge and upon request made by or on behalf of the registered community, do all such things as are by law necessary to give effect to the transfer of property referred to under paragraph (a); and

(c) all rights, powers, liabilities and duties whether arising under any written law or otherwise howsoever, which immediately before the appointed day were vested in, imposed on or enforceable by or against a former institution shall, by virtue of this paragraph, be transferred to, vested in, imposed on or enforceable by or against the registered community.

Legal proceedings.

4. On or after the appointed day, all actions, suits or legal proceedings whatsoever pending by or against the former institution shall be carried on or prosecuted by or against the registered community, and no such action, suit or legal proceedings shall in any manner abate or be prejudicially affected by the enactment of this Act.

Pending appeals to the Minister over community land.

5. The Cabinet Secretary shall prescribe procedures for the determination of all pending appeals to the Minister brought under any of the repealed laws.

Reference to written laws.

6. Any reference to a former institution in any written law or in any contract, document or instrument of whatever nature shall, on the commencement of this Act, be read and construed as a reference to the registered community.

Directions,

7. All directions, orders and authorizations given, or licenses or

The Community Land Bill, 2015

orders, etc of permits issued, or registrations made by a former institution and
former subsisting or valid immediately before the appointed day, shall be
institution. deemed to have been given, issued or made by the registered
community under this Act.

8. Nothing in this Schedule shall be construed as giving exemption to the application of the provisions of Article 63(4) of the Constitution.”

MEMORANDUM OF OBJECTS AND REASONS

The principal object of this Bill is to provide for a legislative framework to give effect to Article 63 of the Constitution and to provide for the recognition, protection, management and administration of community land. The Bill proposes an institutional framework through which community land shall be owned, registered, managed and administered.

Part I contains the preliminary provisions.

Part II (Clauses 5-14) provides for to the recognition of community land rights, ownership and tenure systems under which community land may be held, protection and registration of community land rights.

Part III (Clause 15) provides for administration and management of community land.

Part IV (Clause 16-20) contains provisions that set out the interests conferred on a community upon the registration of community land, the rights of the community as proprietors of the registered community land and other matters relating to land use and the development of planning of community land and the conversion and management of resources in community land.

Part V (Clause 21-26) contains general provisions relating the conversion of community land and also provides for the conversion of community land to public land or to private land and the conversion of public land or private land to community land and the setting aside of community land for public purposes.

Clause 25 provides conversion of public land to community land through allocation by the Commission or through legislation of the national government. The clause also provides for the conversion

of public land set out in the First Schedule to community land.

Part VI (Clauses 27-34) provides for the rights of individual community members to the registered community land including the full and equal enjoyment of rights of use and access and prohibits discrimination on any ground including race, gender, marital status, ethnic or social origin, colour, age, disability, religion or culture, grazing rights in pastoral communities, other land use rights in community land. The part also contains provisions that relate to transactions in community land, leases over community land and the cancellation of rights to the leasehold and also saves existing rights to use and occupy community land.

Part VII (Clause 35-38) contains provisions relating to the management of natural resources within community land, benefit sharing, rules and bye-laws of the community and the regulation of community land use planning.

Part VIII (Clauses 39-42) provide for dispute resolution mechanisms through alternative and traditional dispute resolution mechanisms, mediation and arbitration.

Part IX (Clauses 43-48) contains general provisions including the offence of unlawful occupation of public land and the general penalty, the repeals and the saving and transitional provisions and Regulations.

The enactment of this Bill shall occasion additional expenditure of public funds which shall be provided for in the annual estimates.

Dated the....., 2015

ADEN DUALE,
*Leader of the Majority Party,
National Assembly of Kenya.*

**MINUTES OF THE 1ST SITTING OF THE MEDIATION COMMITTEE ON THE
COMMUNITY LAND BILL, 2015 AND LAND LAWS (AMENDMENT) BILL, 2015
HELD ON TUESDAY 5TH JULY, 2016 IN COMMITTEE ROOM 5, MAIN
PARLIAMENT BUILDINGS AT 12 NOON**

PRESENT

1. **Sen. Lenny Kivuti, MP (Chairperson)**
2. **The Hon. Alex Mwiru, MP (Vice Chairperson.)**
3. The Hon. Francis GanyaChachu, MP
4. Sen. NaisulaLesuuda, MP
5. The Hon. Francis WaweruNderitu, MP
6. Sen. (Prof) John Lonyangapuo, MP
7. The Hon. Moses Ole Sakuda, MP
8. The Hon. Daniel Maazo, MP
9. Sen. AbubakarHarugura, MP

ABSENT WITH APOLOGY

1. Sen. George Khaniri, MP

NATIONAL ASSEMBLY/ SENATE SECRETARIAT

- | | |
|-----------------------|--|
| 1. James Ginono | First Clerk Assistant(National Assembly) |
| 2. Brenda Ogembo | First Clerk Assistant (Senate) |
| 3. Joshua Ondari | Third Clerk Assistant(National Assembly) |
| 4. MuyodiEmmanuel | Third Clerk Assistant(National Assembly) |
| 5. Dr. Johnson Okello | Deputy Director Legal Services(Senate) |
| 6. Leonard Koech | Legal Counsel(Senate) |
| 7. Christine Odhiambo | Legal Counsel I (National Assembly) |
| 8. Mercy Wanyonyi | Legal Counsel II (National Assembly) |

MIN.NO. MC/2016/01

PRELIMINARIES

The Clerk called the meeting to order at 12.25 pm, with a word of prayer from the Hon. Moses Ole Sakuda, MP. Thereafter he welcomed the Members and requested them to introduce themselves.

MIN.NO. MC/2016/02

ADOPTION OF THE AGENDA

The agenda of the meeting was adopted as hereunder after being proposed by the Hon. Francis GanyaChachu, MP and Seconded by the Hon. Francis WaweruNderitu, MP.

AGENDA

1. Prayer
2. Adoption of the Agenda
3. Preliminaries/Introduction
4. **Election of Chairperson and Vice-Chairperson**
5. **Communication from the Chair**

6. **Setting Terms of Reference**
7. Any Other Business
8. Date of Next Sitting
9. Adjournment

MIN.NO. MC/2016/03

ELECTION OF CHAIRPERSON AND VICE-CHAIRPERSON

The Committee through consensus unanimously agreed that Sen. Lenny Kivuti, MP and the Hon. Alex Mwiru, MP be elected Chairman and the Vice Chairman respectively.

MIN.NO. MC/2016/04

COMMUNICATION FROM THE CHAIRMAN AND VICE-CHAIRPERSON

The Chairman and the Vice Chairman thanked Members for the opportunity and the Confidence they have shown them. Further optimism was expressed in the committee's need in finalizing the matters before it within two weeks so as to give both Houses enough time to adopt the agreed versions of the Bill before the Constitutional deadline of 27th August 2016.

It was noted that this is the first time in the history of both Houses that all clauses in a Bill have been rejected in totality during Second Reading, that the Liaison Committee of the Senate held a meeting and deliberated whether to hold a public hearing or not after which all Senators were invited for a seminar at Crown Plaza Hotel on Wednesday 29th June, 2016 in order to be informed on why the Bills were rejected in totality. In the meeting the Senate Legal department provided a bill digest on all the three Bills i.e Physical Planning Bill, 2015, Community Land Bill, 2015 and the Land Laws (Amendments) Bill, 2015. The key issue singled out by the Legal Department as being contentious was the presence of the Cabinet Secretary, Ministry of Lands and Physical Planning in all the clauses and also gender issues on marital land ownership.

The Committee was informed that the Senate had put an advertisement in the newspapers calling for public participation but they later withdrew the advert after they were advised that it was not the mandate of the Senate Committee on Lands and Natural Resources to hold a public hearing and since that opportunity was not availed it was now the responsibility of the Mediation Committee to conduct the public participation even though the national Assembly had conducted the same when considering the Bills and invitations should be done directly to major Land stakeholders mainly the Ministry of Land and Physical Planning, National Land Commission, Institution of Surveyors of Kenya and the Council of Governors.

MIN.NO. MC/2016/05

TERMS OF REFERENCE

The Committee deliberated on the terms of reference as attached and resolved that the following are agreeable Terms of Reference;

- a) Conduct a review of the rejected Community Land Bill (National Assembly Bill No. 45 of 2015) with a view to develop an agreed version
- b) Conduct a review of the rejected Land Laws (Amendment) Bill (National Assembly Bill No. 55 of 2015) with a view to develop an agreed version

- c) Conduct stakeholder consultations on the two bills as may be necessary
- d) Prepare the requisite reports and report to both Houses within two weeks.

Upon further deliberations it was resolved as hereunder, That:-

1. The Chairman and the Vice Chairman issue communication to their respective Houses on the decision taken by the Mediation Committee to call for public participation on the two Bills, so that member of both Houses can participate during the said process.
2. Direct invitations be done to the major land stakeholder's i.e the Ministry of Land and Physical Planning, National Land Commission, Institution of Surveyors of Kenya and the Council of Governors requesting them to present specific amendments during the public participation based on the bills as adopted by the National Assembly.
3. An advertisement be done to major newspaper requesting for submission of memoranda on the Bills from members of the public on or before Wednesday 13th July, 2016 and participation in the Public Participation on the same date.
4. A matrix on the two Bills under consideration be prepared by Friday 15th July, 2016.

MIN.NO. MC/2016/06

ANY OTHER BUSINESS

The Committee resolved to hold a one-day conference on 15th July 2016 in order to consider the stakeholders proposals on the said Bills and provide reports to both Houses within 2 weeks.

MIN.NO. MC/2016/07

ADJOURNMENT

There being no other business the meeting was adjourned at 1.30 pm.

SIGNED.....



SEN. LENNY KIVUTI, MP (CHAIRPERSON)

DATE.....

21/7/2016

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MINUTES OF THE 2ND SITTING OF THE MEDIATION COMMITTEE ON THE
COMMUNITY LAND BILL, 2015 HELD ON WEDNESDAY 13TH JULY, 2016 IN MINI
CHAMBERS, COUNTY HALL, AT 9:00 AM.

PRESENT

1. Sen. Lenny Kivuti, MP (Chairperson)
2. The Hon. Alex Mwiru, MP (Vice Chairperson.)
3. The Hon. Moses Ole Sakuda, MP
4. Sen. Naisula Lesuada, MP
5. The Hon. Francis Waweru Nderitu, MP
6. The Hon. Daniel Maazo, MP
7. Sen. George Khaniri, MP
8. Sen. Godana Hargura, MP

ABSENT WITH APOLOGY

1. The Hon. Francis Ganya Chachu, MP
2. Sen. (Prof) John Lonyangapuo, MP

IN ATTENDANCE

1. The Hon. Julius Ndegwa, MP
2. Sen. Peter Mositet, MP

NATIONAL ASSEMBLY/ SENATE SECRETARIAT

1. Mr. James Ginono First Clerk Assistant (National Assembly)
2. Ms. Brenda Ogembo First Clerk Assistant (Senate)
3. Mr. Joshua Ondari Third Clerk Assistant (National Assembly)
4. Mr. Muyodi Emmanuel Third Clerk Assistant (National Assembly)
5. Dr. Johnson Okello Deputy Director Legal Services (Senate)
6. Mr. Leonard Koech Legal Counsel (Senate)
7. Ms. Christine Odhiambo Legal Counsel I (National Assembly)
8. Ms. Mercy Wanyonyi Legal Counsel II (National Assembly)

MINISTRY OF LANDS AND PHYSICAL PLANNING

1. Prof. Jacob Kaimenyi Cabinet Secretary
2. Ms. Mariamu El Maawy Principal Secretary
3. Mr. Peter Kahuho Secretary Lands
4. Mr. Augustine Masinde Director Physical Planning
5. Mr. Francis Orioki Director Land Registration Officer
6. Mr. Terry Gathagu C.S.L
7. Ms. Lucy Wanja Legal Advisor
8. Mr. Stephen Kibungei Legal Advisor
9. Mr. Paul Ndungu Ag. Director Survey

COUNCIL OF GOVERNORS

1. Hon. Peter Munya Chairman (Governor Meru County)
2. Hon. Dr Julius Makau Malombe Governor Kitui County
3. Hon. Kivutha Kibwana Governor Makueni
4. Hon. John M. Mruttu Governor Taita Taveta County
5. Ms. Medline Mirumba Legal Officer

- | | |
|--------------------------|---------------|
| 6. Ms. Eva Sawe | Legal Officer |
| 7. Ms. Rosemary Nyaramba | Legal Officer |
| 8. Ms. Meboh Abuor | Legal Officer |

NATIONAL LAND COMMISSION

- | | |
|---------------------------|------------------------------|
| 1. Prof. Mohammed Swazuri | Chairman |
| 2. Mr. Silas Kinoti | Commissioner |
| 3. Ms. Mercy Njamweya | Director |
| 4. Mr. Samuel Odari | Deputy Director Adjudication |

INSTITUTION SURVEY OF KENYA

- | | |
|------------------------|-----------------------------|
| 1. Ms. Emily Njeru | Chair Land Surveyor Chapter |
| 2. Mr. Dennis Deus | |
| 3. Mr. Stephen Ambani | |
| 4. Mr. Moses Kiambuthi | |
| 5. Mr. Robert Koech | |

RECONCILE

- | | |
|-------------------------|-------------------------|
| 1. Mr. Shadrack Omondi | Chief Executive Officer |
| 2. Mr. Peter Ken Otieno | |
| 3. Ms. Angela Nyamongo | Legal Advisor |

HAKI JAMII

1. Ms. Pauline Vata
2. Ms. Linda Ikenye

KENYA WILDLIFE CONSERVANCIES ASSOCIATION

- | | |
|--------------------------|-------------------------|
| 1. Mr. Dickson Ole Kaelo | Chief Executive Officer |
| 2. Mr. Geoffrey Ayuka | Legal Advisor |
| 3. Ms. Gladys Wangia | Legal Advisor |

MIN.NO. MC/2016/08

PRELIMINARIES

The chairperson called the meeting to order at 9.25 pm, with a word of prayer from the Hon. Alex Mwiru, MP. Thereafter he welcomed the Members and visitors.

MIN.NO. MC/2016/09

ADOPTION OF THE AGENDA

The agenda of the meeting was adopted as hereunder after being proposed by the Hon. Moses Ole Sakuda, MP and Seconded by the Hon. Francis Waweru Nderitu, MP.

AGENDA

1. Prayer
2. Adoption of the Agenda
3. Preliminaries/Introduction
4. Communication from the Chair
5. Public Hearing on the Community Land Bill, 2015
6. Any Other Business
7. Date of Next Sitting
8. Adjournment

The Chairman welcomed the stakeholders and informed them that although the Bill had undergone public hearing when it was still under consideration by the National Assembly, it was also important for the Bills to be subjected to the public participation again after they were rejected in totality by the Senate.

He informed the stakeholders that whatever they are proposing to be amended should be based on what was passed by the National Assembly.

1. Ministry of Lands and Physical Planning

The Cabinet Secretary, Prof. Jacob Kaimenyi presented and tabled proposed amendments to the Bill as attached in the Minutes. The Committee thereafter thanked the Cabinet Secretary for being brief and urged other stakeholders to do the same.

2. Council of Governors

The Chairman of the Council of Governors H.E Hon. Peter Munya informed the Committee as hereunder that;

- a) The current published Community Land Bill, 2015 is patently unconstitutional and there is need for the Bill to be dropped and a new Bill which is line with Article 62, 63 and 74 of the Constitution of Kenya be developed;
- b) The mandate on adjudication process on Community land has been given to the Cabinet Secretary whereas Community land is vested on the County Government as enshrined in Article 63 of the Constitution.
- c) The County Government should initiate the process of registering community land and the National government should be involved at the end of the exercise leading to the issuance of title deed;
- d) The law should be made in away that the Constitutional role of the County Government is recognized in the administration of the community land;
- e) According to the Constitution of Kenya Surveying, Planning, land management and administration is a function vested in the County Government. However, the same functions have been given to the National Government in the current Community Land Bill, 2015 and that there is need to expunge all sections making the Cabinet Secretary responsible for all the above processes and replace with County Executive Committee Member on Lands.
- f) There is need to audit and register all the Community lands in the country and identify key stakeholders in that land and this process should be initiated by the County Government.

Upon deliberations it was noted that the Council of Governors (CoG) did not propose specific amendments which could help enrich the Bill and most of their concerns were based on the Community Land Bill, 2015 as published in the Kenya Gazette it was resolved as hereunder, That: -

1. The C.o.G should propose specific amendments to the Bill to cure the unconstitutional aspects in the bill if any;
2. The proposed amendments from the CoG should be based on the Bill as adopted by the National Assembly and not the Bill as published in the Kenyan Gazette.
3. The proposed amendments should reach the Committee's Secretariat before end of business on 14th July 2016;

2. National Land Commission

Mr. Silas Kinoti, Commissioner National Land Commission informed the Committee that:-

- Clause 8(1) and Clause 11(2) (a) should be retained as it is because unregistered Community land is held in trust by the county government and if it is amended in such a way that the Cabinet Secretary will not be consulting the respective county government it will be conflicting with article 63(3) of the constitution.

It was noted that the Commission did not have a written submission for tabling before the Committee and the Commissioner was directed to submit the Commission's proposed amendments to the Community land Bill, 2015 by end of Business on Thursday 14th, July 2016.

4. Institute of Surveyors Kenya (ISK)

Mr. Stephen Ambani Chairman of ISK sought the indulgence of the Committee for more time because the proposed amendments on the Community Land Bill, 2015 were not ready and gave an undertaking to send the said amendments to the Committee the following day.

The Committee directed the Chair ISK to forward their proposal on Community land Bill, 2015 to the Committee's secretariat by end of Business on Thursday 14th July 2016.

5. Kenya Wildlife Conservancy Association

Mr. Dickson Ole Kaelo, Chief Executive Officer presented and tabled their proposed amendments to the Community land Bill, 2015 before the Committee as annexed in the minutes.

The Committee assured him that while making its decision all their proposed amendments will be taken into account.

6. Reconcile and CSOS Working Group on Community Land Law (Haki Jamii, Kenya Human Rights Commission, Fida, Pamoja Trust, Action Aid, Oxfam Gb and Kenya Land Alliance)

Mr. Shadrack Omondi, Chief Executive Officer Reconcile presented and tabled their submission as annexed in the minutes.

The Committee assured him that while making its decision all their proposed amendments will be taken into account.

MIN.NO. MC/2016/12

ADJOURNMENT

There being no any other business and the time being 10.55 am the sitting was adjourned

SIGNED.....

SEN. LENNY KIVUTI, MP (CHAIRPERSON)

DATE.....

26/07/2016

MINUTES OF THE 4TH SITTING OF THE MEDIATION COMMITTEE ON THE
COMMUNITY LAND BILL, 2015 HELD ON WEDNESDAY 13TH JULY, 2016 IN MINI
CHAMBERS, COUNTY HALL, AT 3:00 PM.

PRESENT

1. Sen. Lenny Kivuti, MP (Chairperson)
2. The Hon. Alex Mwiru, MP (Vice Chairperson.)
3. The Hon. Moses Ole Sakuda, MP
4. Sen. Naisula Lesuada, MP
5. The Hon. Francis Waweru Nderitu, MP
6. The Hon. Daniel Maazo, MP
7. Sen. George Khaniri, MP
8. Sen. Godana Hargura, MP

ABSENT WITH APOLOGY

1. The Hon. Francis Ganya Chachu, MP
2. Sen. (Prof) John Lonyangapuo, MP

IN ATTENDANCE

1. The Hon. Julius Ndegwa, MP
2. Sen. Peter Mositet, MP

NATIONAL ASSEMBLY/ SENATE SECRETARIAT

- | | |
|---------------------------|---|
| 1. Mr. James Ginono | First Clerk Assistant (National Assembly) |
| 2. Ms. Brenda Ogembo | First Clerk Assistant (Senate) |
| 3. Mr. Joshua Ondari | Third Clerk Assistant (National Assembly) |
| 4. Mr. Muyodi Emmanuel | Third Clerk Assistant (National Assembly) |
| 5. Dr. Johnson Okello | Deputy Director Legal Services (Senate) |
| 6. Mr. Leonard Koech | Legal Counsel (Senate) |
| 7. Ms. Christine Odhiambo | Legal Counsel I (National Assembly) |
| 8. Ms. Mercy Wanyonyi | Legal Counsel II (National Assembly) |

MIN.NO. MC/2016/17

PRELIMINARIES

The chairperson called the meeting to order at 3.10 pm, with a word of prayer from the Hon. Alex Mwiru, MP.

MIN.NO. MC/2016/18

ADOPTION OF THE AGENDA

The agenda of the meeting was adopted as hereunder after being proposed by the Hon. Moses Ole Sakuda, MP and Seconded by the Hon. Francis Waweru Nderitu, MP.

AGENDA

1. Prayer
2. Adoption of the Agenda
3. Preliminaries/Introduction
4. House Keeping

- 5. Any Other Business
- 6. Date of Next Sitting and Adjournment

MIN.NO. MC/2016/19 HOUSE KEEPING

The following house keeping matters were deliberated:

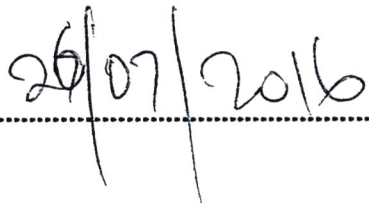
- i. It was agreed that a matrix on both the Community Land Bill, 2015 and Land Laws (Amendments) Bill, 2015 based on the submissions from the stakeholders be prepared for consideration by the Committee.
- ii. It was resolved that the one day conference which was to be held on Friday 15th July 2016 be postponed to Monday 18th July, 2016 with a view to ensure that the Committee considers the two Bills clause by clause.

MIN.NO. MC/2016/20 ADJOURNMENT

There being no any other business and the time being 4.00 pm the meeting was adjourned

SIGNED.....

SEN. LENNY KIVUTI, MP (CHAIRPERSON)

DATE.....

MINUTES OF THE 5TH SITTING OF THE MEDIATION LAND LAWS (AMENDMENT) BILL, 2015 HELD ON MONDAY 18TH JULY, 2016 BOGOL INYA HALL, WESTON HOTEL NAIROBI AT 11:00 AM.

PRESENT

1. Sen. Lenny Kivuti, MP (Chairperson)
2. Sen. Naisula Lesuuda, MP
3. The Hon. Francis Waweru Nderitu, MP
4. The Hon. Moses Ole Sakuda, MP
5. Sen. Godana Hargura, MP

ABSENT WITH APOLOGY

1. The Hon. Alex Mwiru, MP (Vice Chairperson.)
2. The Hon. Francis Ganya Chachu, MP
3. Sen. (Prof) John Lonyangapuo, MP
4. The Hon. Daniel Maazo, MP

IN ATTENDANCE

National Assembly/ Senate Secretariat

- | | |
|---------------------------|--|
| 1. Mr. James Ginono | First Clerk Assistant(National Assembly) |
| 2. Ms. Brenda Ogembo | First Clerk Assistant (Senate) |
| 3. Mr. Joshua Ondari | Third Clerk Assistant(National Assembly) |
| 4. Mr. Muyodi Emmanuel | Third Clerk Assistant(National Assembly) |
| 5. Dr. Johnson Okello | Deputy Director Legal Services(Senate) |
| 6. Mr. Leonard Koech | Legal Counsel(Senate) |
| 7. Ms. Christine Odhiambo | Legal Counsel I (National Assembly) |
| 8. Ms. Mercy Wanyonyi | Legal Counsel II (National Assembly) |
| 9. Ms. Sarah Rukwaro | Serjeant at Arms |

MIN.NO. MC/2016/21

PRELIMINARIES

The chairperson called the meeting to order at 11.30 a.m., with a word of prayer from the Chairperson.

MIN.NO. MC/2016/22

**CONSIDERATION OF THE COMMUNITY
LAND BILL, 2015**

The Chairperson proposed that the first agenda of the meeting should be to consider Community Land Bill, 2015 clause by clause as passed by the National Assembly and requested the Senators to point out contentious clauses in the Bill with a view of proposing further amendments. The

Chairman emphasized that members would be reviewing the constitutionality of the two bills to ensure that nothing unconstitutional was adopted.

The agenda of the meeting was adopted after being proposed by the Hon. Francis Nderitu, MP and Seconded by Sen. Naisula Lesuuda, MP.

The Committee resolved to consider the Bill clause by clause. Following this clause-by-clause consideration of the Bill, the Committee pointed out the following clauses, which needed further amendments –

Clause 1

Adopted as it is in the Bill.

Clause 2

The Committee noted that the term Community Assembly needed to be defined because it was used in the Bill without definition.

Clause 3

It was noted by some members of the committee that perhaps there was need to determine the word “court”. Following deliberations it was resolved that land matters can be adjudicated in various ways and accordingly there was no need to define the term and clause was adopted as it is in the Bill.

Clause 4

Some members of the Committee proposed that Clause 4(3) be amended by replacing the word “owned by” as used in the Bill with the term with “vested in”.

Clause 5

Adopted as it is in the Bill.

Clause 6

Adopted as it is in the Bill.

Clause 7

The process of registration of community land and community is protracted and needs revision. The committee agreed that the Secretariat would propose ways of re-drafting this clause to address the issues raised on challenges of registering community land.

Clause 8

There is need to involve county governments since the trust land was under the management of the county council. The Committee also noted concerns that majority of administration of land had been assigned to the Cabinet Secretary which was an issue of concern and needed to be reviewed within the broader context of the Bill. There is also need to put a timeline on land adjudication.

Clause 9

Adopted as it is in the Bill

Clause 10

Adopted as it is in the Bill

Clause 11

Adopted as it is in the Bill

Clause 12

Adopted as it is in the Bill

Clause 13

Adopted as it is in the Bill

Clause 14

Adopted as it is in the Bill

Clause 15

On disposal of Community land under 15(4) there were concerns raised about ensuring that the entire community endorses the disposal of community land rather than a two-thirds majority.

Clause 16

Adopted as it is in the Bill

Clause 17

Adopted as it is in the Bill

Clause 18

Adopted as it is in the Bill

Clause 19

Adopted as it is in the Bill

Clause 20

Adopted as it is in the Bill

Clause 21

Adopted as it is in the Bill

Clause 22

Adopted as it is in the Bill

Clause 23

Adopted as it is in the Bill



Clause 24

Adopted as it is in the Bill

Clause 25

Adopted as it is in the Bill

Clause 26

Adopted as it is in the Bill

Clause 27

~~Adopted as it is in the Bill~~

Clause 28

Some members noted that there were concerns about grazing rights being compromised through the process of registration of community land. The members noted that the whole clause needed to be revised with due consideration of amendments to clause 7. Registration should be structured be in such a way that the whole community will be registered and not a few select individuals who may manipulate the process to register the land and deny the wider community access.

Clause 29

Adopted as it is in the Bill

Clause 30

Adopted as it is in the Bill

Clause 31

Adopted as it is in the Bill

Clause 32

Adopted as it is in the Bill

Clause 33

Some members expressed concern that the clause should clearly indicate the conditions for the cancellation of leasehold and not subjected broadly to other laws. The Committee however recognized that there are several laws relating to land and accordingly it was not possible to list specific provisions of the various laws.

Clause 34

The Committee noted that the application of clause 28 and clause 29 to this particular clause was to safeguard existing rights of current landowners.

Clause 35

Adopted as it is in the Bill

Clause 36

Adopted as it is in the Bill

Clause 37

Adopted as it is in the Bill

Clause 38

Adopted as it is in the Bill

Clause 39

Adopted as it is in the Bill

Clause 40

Adopted as it is in the Bill

Clause 41

The community noted that there may be instances of inter-community conflict and as such this provision would not address ways of dealing with this type of conflict as it only addresses intra-community conflict.

Clause 42

Adopted as it is in the Bill

Clause 43

Adopted as it is in the Bill

Clause 44

Adopted as it is in the Bill

Clause 45

Adopted as it is in the Bill

Clause 46

Adopted as it is in the Bill

Clause 47

Adopted as it is in the Bill

Clause 48

Adopted as it is in the Bill

Some members of the Committee were concerned about the status of land under adjudication before the promulgation of the Constitution. They were assured that the Bill had adequately addressed these matters and provided for mechanisms of proceeding with these matters.

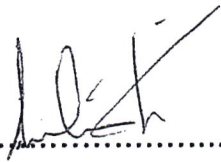
The Committee noted that the Senate had also expressed concerns about ensuring that amendments to the Bill should bring greater clarity on the role of county government particularly with regard to the management of unregistered community land.

MIN.NO. MC/2016/23

ADJOURNMENT

There being no other business the meeting was adjourned at 12.00 pm.

SIGNED.....



SEN. LENNY KIVUTI, MP (CHAIRPERSON)

DATE.....

26/7/2016

11

MINUTES OF THE 6TH SITTING OF THE MEDIATION LAND LAWS (AMENDMENT) BILL, 2015 HELD ON MONDAY 18TH JULY, 2016 BOGOL INYA HALL, WESTON HOTEL NAIROBI AT 12:15 PM.

PRESENT

1. Sen. Lenny Kivuti, MP (Chairperson)
2. Sen. Naisula Lesuuda, MP
3. The Hon. Francis Waweru Nderitu, MP
4. The Hon. Moses Ole Sakuda, MP
5. Sen. Godana Hargura, MP

ABSENT WITH APOLOGY

1. The Hon. Alex Mwiru, MP (Vice Chairperson.)
2. The Hon. Francis Ganya Chachu, MP
3. Sen. (Prof) John Lonyangapuo, MP
4. The Hon. Daniel Maazo, MP

IN ATTENDANCE

National Assembly/ Senate Secretariat

- | | |
|---------------------------|--|
| 1. Mr. James Ginono | First Clerk Assistant(National Assembly) |
| 2. Ms. Brenda Ogembo | First Clerk Assistant (Senate) |
| 3. Mr. Joshua Ondari | Third Clerk Assistant(National Assembly) |
| 4. Mr. Muyodi Emmanuel | Third Clerk Assistant(National Assembly) |
| 5. Dr. Johnson Okello | Deputy Director Legal Services(Senate) |
| 6. Mr. Leonard Koech | Legal Counsel(Senate) |
| 7. Ms. Christine Odhiambo | Legal Counsel I (National Assembly) |
| 8. Ms. Mercy Wanyonyi | Legal Counsel II (National Assembly) |
| 9. Ms. Sarah Rukwaro | Serjeant at Arms |

MIN.NO. MC/2016/24

PRELIMINARIES

The chairperson called the meeting to order at 12.15 pm, with a word of prayer from the Chairperson.

MIN.NO. MC/2016/25

CONSIDERATION OF THE PROPOSED AMENDMENTS TO THE COMMUNITY LAND BILL, 2015 BY THE STAKEHOLDERS

The Committee considered the proposed amendments to the Community Land Bill, 2015 and resolved as follows: -

LONG TITLE

The Committee noted that the Council of Governors wanted the long title amended, however following further deliberation the committee resolved that this amendment was aesthetic and would add no value to the bill.

CLAUSE 2

The Committee noted that there was no reference to the term County Executive Committee Member in the Bill and as such it could not be defined. The Committee also noted that the term community had been defined in Article 63(1) of the Constitution and as such there was no need to define it again. The Committee resolved not to define terms already defined in the Constitution.

THAT, clause 2 of the Bill be amended by inserting the following new definition in its proper alphabetical sequence—

“community assembly” means a gathering of members of a community;

The Committee noted that it was necessary for the words to be defined for clarity purposes.

CLAUSE 4

THAT, clause 4 of the Bill be amended in sub-clause (1) by deleting the words “be owned by” and substituting therefor the words “vest in”. Pastoralist groups had advocated the term “owned by” during earlier consultations on the Bill. The Committee resolved to use the term “vest in” as used in the Constitution.

The Committee noted that this amendment would align the Bill to the wording in the Constitution.

Proposed amendments by the Kenya Wildlife Conservancies group to clause 4 were rejected as their proposal was deemed to be in direction violation of Article 63(1) of the Constitution.

CLAUSE 6

THAT, clause 6 of the Bill be amended by inserting the following new sub-clause immediately after sub-clause (4) –

“(4a) The respective county government shall transfer the amount and the interests earned to the communities as may be prescribed in regulations.”

The Committee noted that this amendment seeks to ensure that the respective county governments, upon registration of community land release to the community monies payable including the interest earned as compensation if the unregistered community land is acquired by compulsory acquisition.

The Committee noted that these monies would be paid as prescribed ^{the} in regulations to be developed by the Cabinet Secretary.

The Committee noted that the procedure for compulsory acquisition was very well detailed in the Land Act and accordingly there was no need to once again state the process of compulsory land acquisition. Some members of the Committee felt that as community land was not registered and was held in trust there may be need to re-state the fact that consultation must take place prior to any compulsory acquisition. The Committee was however informed that prior to conversion of any community land, as provided for in clause 5 of the Bill, the owners of the community land would need to be consulted as the county government would only serve as trustees and would not be permitted to transact on community land without consultation with the community.

The Committee noted that NLC had no role in the management of community land as advised by the Supreme Court. The Committee also noted that NLC had advocated for the re-introduction of Community Land Management Boards, however the Committee noted that NLC was required to devolve its functions to the counties and not set up other independent bodies outside of itself which were bringing greater confusion in the management of community land.

CLAUSE 7

THAT, clause 7 of the Bill be amended—

- (a) in sub-clause (2) by inserting the words “and a radio station of nationwide coverage” immediately after the words “nationwide circulation”

The Committee noted that this amendment seeks to ensure that as many community members as possible receive the notification. The Committee further noted that it was important to add the use of the community radios for wider reach rather than just newspapers as provided for in the Bill. The Committee resolved that the clause be re-drafted with the aim of broadening by the use of more generic language to guarantee broader communication reaching all interested person. The committee instructed the secretariat to draft an amendment to the clause making use of more generic language to ensure that all types of communication are used so as to ensure that all concerned persons are able to receive the notification.

- (b) in sub-clause (3) by deleting the words “ section 16” and substituting therefor the words “section 15”

The Committee noted that this amendment is to reflect the correct cross-referencing.

The Committee acknowledged significant concerns by committee members on clause 7 and resolved that the entire clause 7 be redrafted. The Committee in providing direction on how the clause should be redrafted noted that the clause should ensure equal involvement by the county and national government in the process of convening the community to elect their leaders.

CLAUSE 8

The committee noted the cabinet secretary in his submissions had wanted to remove consultation with county governments in clause 8 so as to expedite the process of developing the inventory of community land. This, the Committee noted would be contrary to the provisions of the Constitution which makes consultation with the county government mandatory. The Committee also noted that it would be important that a copy of the inventory be made available to the county governments for ease of access by community members.

The committee therefore resolved that –

THAT, clause 8 of the Bill be amended by inserting the following new sub-clause immediately after sub-clause (2) –

“(2a) The inventory of community land referred to in subsection (2) shall be shared with the counties for ease of access by members of the community”

The Committee noted the recommendation to amend Clause 8 (1) as proposed by the Kenya Wildlife Conservancy on the timelines within which adjudication must be gazetted. The Committee noted that Kenya had a history of unnecessarily long drawn out adjudications and that this amendment would resolve that problem. The Committee resolved that this issue would be addressed by the provisions of clause 46 of the Bill, which provides timelines for adjudication. In amending clause 46 the committee resolved that the timelines for adjudication would also apply to any new adjudications commencing after the enactment of the act. The committee resolved to amend the timeline for adjudication in clause 46 to three years.

The Committee further resolved to include an amendment to clause 8(1) providing that the records developed by the adjudication department or by the Ministry a copy shall be made to both NLC and the county government. This, the Committee noted would address the issue of access to information. The committee rejected the proposal by the Council of Governors to give the function of developing the program of adjudication to NLC on the basis that the function of issuing titles was the mandate of national government.

CLAUSE 9

The committee rejected the proposal to have the community land registrar appointed by the public service commission rather the chief registrar as all other registrars are appointed by the chief land registrar.

The Committee noted that the Institution of Surveyors of Kenya had proposed that registrars should also include beyond advocates, land surveyors and land economists. The committee noted that land administration is usually undertaken by land professionals and registrars may not always be able to understand key technical implications in the same manner they understand the beyond the legal instruments. This proposal the committee noted would allow land professionals from the land fraternity to also serve as registrars as they, similar to advocates, have the necessary technical capacity to undertake this work. The Committee resolved to make this amendment where applicable.

CLAUSE 16

The committee noted that issues of alternative dispute resolution were adequately addressed in clause 39 of the Bill and accordingly restating in clause 16 the encouragement of alternative dispute resolution would be redundant.

CLAUSE 17

THAT, clause 17 of the Bill be amended in sub-clause (1) by deleting the words “not to require noting on the register” appearing in paragraph (b).

The committee noted that the words were not necessary since under section 28 of the Land Registration Act all overriding interests are not noted on the register.

CLAUSE 22

THAT, clause 22(4) of the Bill be amended to replace the words “members of the registered community in a community meeting” appearing immediately after the word “the” in the second line with the words “two-thirds of the members of the community.

The Committee noted that this amendment would ensure a higher threshold is maintained in decisions relating to the transfer of community land.

CLAUSE 23

THAT, clause 23 of the Bill be amended in paragraph (b) by deleting the phrase “section 22(2)” and substituting therefor the phrase “section 21(2)”.

The Committee noted that this amendment would ensure correct cross-referencing.

CLAUSE 30

THAT, clause 30 of the Bill be amended in sub-clause (3) by inserting the word “youth” immediately after the word “women”.

The Committee noted that this amendment reinforced the principle of non-discrimination and equality with regards to the use of community land.

CLAUSE 46

THAT, clause 46 be amended in by deleting sub-clause (6) and substituting therefor the following new sub-clause—

“(6) For the avoidance of doubt, any adjudication programme at the commencement of this Act shall, subject to this Act, be governed by the law applicable to it immediately before to the commencement of this Act and shall be concluded within three years of the enactment of this Act.”

The committee noted that this amendment would give a timeline within which adjudication of land commenced before and after the enactment of the Act should be completed.

CLAUSE 47

THAT, clause 47 of the Bill be amended by deleting the words “land buying companies etc.” appearing in the marginal note.

The committee noted that this amendment was necessary to ensure consistency between the marginal note and the provision itself.

THAT, clause 47(6) of the Bill be amended by deleting the word “may” and replacing therefore with the word “shall”.

The committee noted that this amendment would ensure the cabinet secretary develops regulations to give effect to section 47 of the Act.

CLAUSE 48

THAT, clause 48 be amended in sub-clause (2) by inserting the following new paragraphs immediately after paragraph (j) –

“(k) the timelines within which the adjudication programme must be gazetted, including guidelines on how to ascertain community or individual claims of interest in or right over community land;

(l) a study to document the dominant communal and customary land ownerships prevalent in the regions of the country before registration of community land is started; and

(m) the election of a community land management committee.”

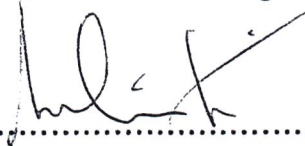
The committee noted that this amendment would ensure that the Cabinet Secretary prescribes by regulations the timelines within which the adjudication programme must be gazetted, the dominant communal and customary land ownerships prevalent in the country and the election of the community land management committees. This is would be purposes of clarity.

MIN.NO. MC/2016/26

ADJOURNMENT

There being no other business the meeting was adjourned at 4.00 pm.

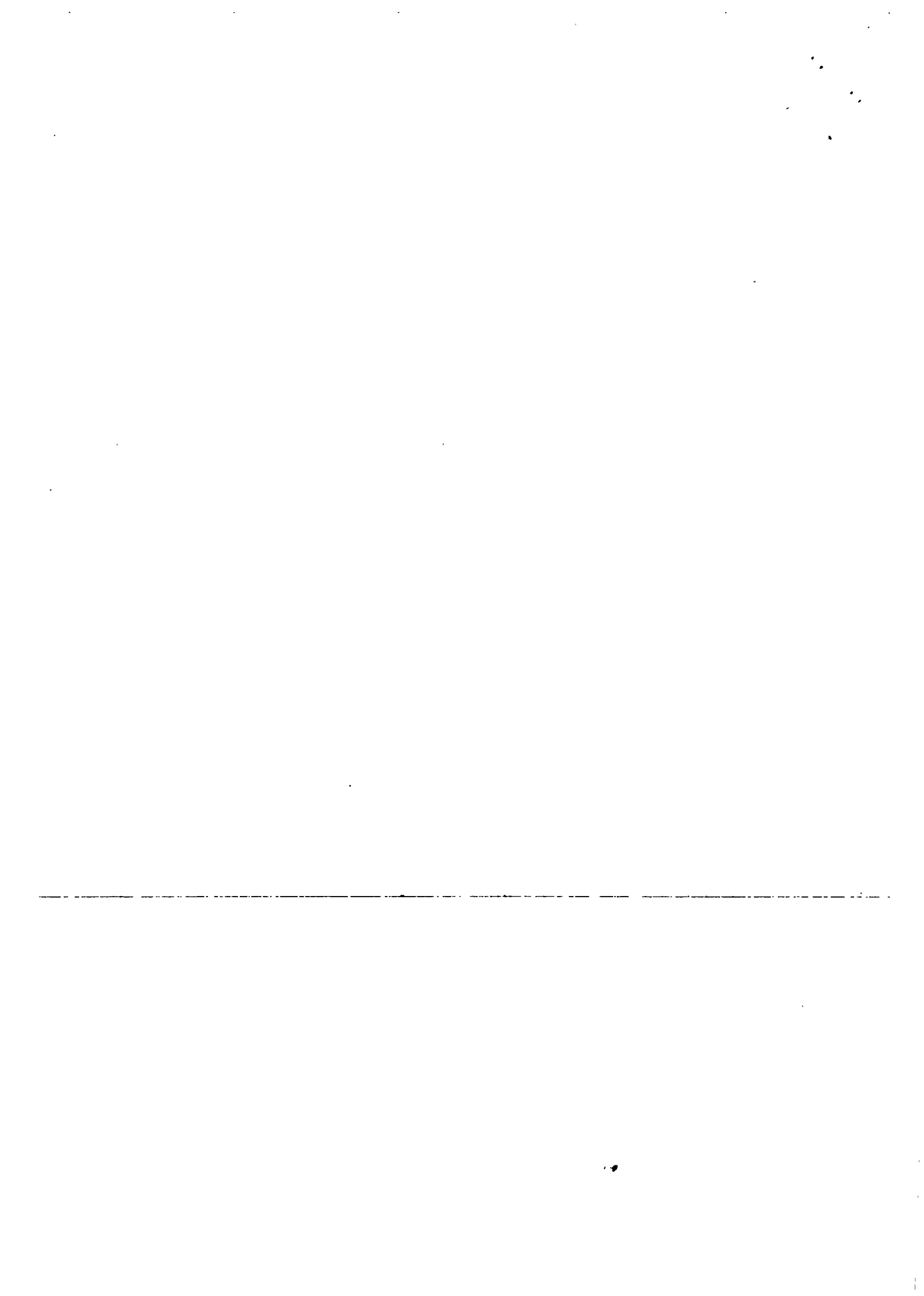
SIGNED.....



SEN. LENNY KIVUTI, MP (CHAIRPERSON)

DATE.....

26/7/2016



MINUTES OF THE 9TH SITTING OF THE MEDIATION COMMITTEE ON THE COMMUNITY LAND BILL, 2015 HELD ON THURSDAY 22ND JULY, 2016 IN THE NEW SENATE BOARDROOM, FIRST FLOOR- MAIN PARLIAMENT BUILDINGS AT 10.00 AM

PRESENT

1. Sen. Lenny Kivuti, MP (Chairperson)
2. The Hon. Alex Mwiru, MP (Vice Chairperson.)
3. The Hon. Moses Ole Sakuda, MP
4. Sen. Naisula Lesuuda, MP
5. The Hon. Francis Ganya Chachu, MP
6. The Hon. Francis Waweru Nderitu, MP
7. Sen. Godana Hargura, MP

ABSENT WITH APOLOGY

1. The Hon. Dan Maazo, MP
2. Sen. (Prof) John Lonyangapuo, MP
3. Sen. George Khaniri, MP

IN ATTENDANCE

NATIONAL ASSEMBLY/ SENATE SECRETARIAT

- | | |
|-----------------------|---|
| 1. Mr. James Ginono | First Clerk Assistant (National Assembly) |
| 2. Ms. Brenda Ogembo | First Clerk Assistant (Senate) |
| 3. Ms. Mwanate Shaban | Second Clerk Assistant (Senate) |
| 4. Mr. Joshua Ondari | Third Clerk Assistant (National Assembly) |
| 5. Mr. Leonard Koech | Legal Counsel (Senate) |
| 6. Ms. Mercy Wanyonyi | Legal Counsel II (National Assembly) |

MIN.NO. MC/2016/33 PRELIMINARIES

The chairperson called the meeting to order at 11.30am with a word of prayer.

MIN.NO. MC/201 ADOPTION OF THE AGENDA

The agenda of the meeting was adopted as hereunder after being proposed by the Hon. Moses Ole Sakuda, MP and Seconded by the Hon. Francis Waweru Nderitu, MP.

AGENDA

1. Preliminaries/Introduction
2. Adoption of the Agenda
3. Communication from the Chair
4. Confirmation of Minutes
5. Matters arising
6. **Community Land Bill, 2015**
7. Date of Next Sitting and Adjournment

MIN.NO. MC/2016/35

COMMUNICATION FROM THE CHAIR

The Chairperson called for an invitation of any new issues that the members felt need introduced so that they may be discussed by the Committee. He requested the Committee to give any new information that they felt should be considered by the Committee. There was no new information from the Committee.

Further it was confirmed that the Council of Governors and the Institute of Surveyors Kenya (ISK) had sent to the Secretariat the documents containing the amendments they wanted included in the Bills.

MIN.NO. MC/2016/36

CONFIRMATION OF PREVIOUS MINUTES

The following Minutes were confirmed

- The minutes of the 1st sitting of the mediation Committee on the Community Land Bill, 2015 and the Land Laws (amendment) Bill, 2015 held on Tuesday 5th July, 2016 were adopted as a true recording of the deliberations of the Committee after being proposed by Hon. Francis Ganya Chachu and seconded by Sen. Naisula Lesuuda and signed by the Chairman.

MIN.NO. MC/2016/37

CONSIDERATION OF THE PROPOSED AMENDMENTS TO THE COMMUNITY LAND BILL, 2015

The Committee considered the Community Land Bill, 2016 clause by clause as attached in the Minutes and resolved as hereunder:-

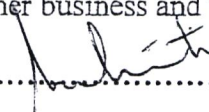
1. The Short and the Long title was agreed to as per the Matrix;
2. Clauses 2 and 3 agreed to as per the matrix;
3. Clauses 4 was agreed to subject to replacing the word “owned” with “vest” wherever it appears in the clause;
4. Clauses 5 and 6 Agreed to as per the matrix;
5. Clauses 7 that Members of the Committee (Hon Chachu and Sen. Godana) to liaise with the Committee’s Legal team to come up with a comprehensive clause that protects the interest of pastoralists;
6. Clause 8 that Members of the Committee (Sen. Lesuuda) to liaise with the Committee’s Legal team to come up with a comprehensive clause that protects the interest of the County Government and the Community and ensure that there is consultation with the County;
7. Clauses 9-16 agreed to as per the matrix
8. Clauses 17-48 agreed to as per the Matrix

MIN.NO. MC/2016/38

ADJOURNMENT

There being no other business and the time being 11.30 the Sitting was adjourned.

SIGNED.....



SEN. LENNY KIVUTI, MP (CHAIRPERSON)

DATE 26/9/2016

11

MINUTES OF THE 10TH SITTING OF THE MEDIATION COMMITTEE ON THE LAND LAWS (AMENDMENT) BILL, 2015 HELD ON THURSDAY 22ND JULY, 2016 IN THE NEW SENATE BOARDROOM, FIRST FLOOR- MAIN PARLIAMENT BUILDINGS AT 12.15 PM

PRESENT

1. Sen. Lenny Kivuti, MP (Chairperson)
2. The Hon. Alex Mwiru, MP (Vice Chairperson.)
3. The Hon. Moses Ole Sakuda, MP
4. Sen. Naisula Lesuuda, MP
5. The Hon. Francis Ganya Chachu, MP
6. The Hon. Francis Waweru Nderitu, MP
7. Sen. Godana Hargura, MP

ABSENT WITH APOLOGY

1. The Hon. Dan Maazo, MP
2. Sen. (Prof) John Lonyangapuo, MP
3. Sen. George Khaniri, MP

IN ATTENDANCE

NATIONAL ASSEMBLY/ SENATE SECRETARIAT

- | | |
|-----------------------|---|
| 1. Mr. James Ginono | First Clerk Assistant (National Assembly) |
| 2. Ms. Brenda Ogembo | First Clerk Assistant (Senate) |
| 3. Ms. Mwanate Shaban | Second Clerk Assistant (Senate) |
| 4. Mr. Joshua Ondari | Third Clerk Assistant (National Assembly) |
| 5. Mr. Leonard Koech | Legal Counsel (Senate) |
| 6. Ms. Mercy Wanyonyi | Legal Counsel II (National Assembly) |

MIN.NO. MC/2016/39

PRELIMINARIES

The chairperson called the meeting to order at 12.20PM with a word of prayer.

MIN.NO. MC/2016/40

ADOPTION OF THE AGENDA

The agenda of the meeting was adopted as hereunder after being proposed by the Hon. Moses Ole Sakuda, MP and Seconded by the Hon. Francis Waweru Nderitu, MP.

AGENDA

1. Preliminaries/Introduction
2. Adoption of the Agenda
3. Communication from the Chair
4. Land Laws (Amendment) Bill, 2015
5. Date of Next Sitting and Adjournment

MIN.NO. MC/2016/41 COMMUNICATION FROM THE CHAIR

The Chairperson called for an invitation of any new issues that the members felt need introduced so that they may be discussed by the Committee. He requested the Committee to give any new information that they felt should be considered by the Committee. There was no new information from the Committee.

MIN.NO. MC/2016/42 CONSIDERATION OF THE PROPOSED AMENDMENTS TO THE LAND LAWS (AMENDMENT) BILL, 2015

The Committee considered the Community Land Bill, 2016 clause by clause as attached in the Minutes and resolved as hereunder: -

1. The Short and the Long title was agreed to as per the Matrix;
2. The proposed definition of “**Eviction**” was rejected and it was resolved that the said definition be recast to mean that (forcefully removing a person from land he/she is illegally occupying);
3. Clauses 2-15 agreed to as per the Matrix;
4. New Clause 15 agreed to as per the Matrix;
5. Clauses 16-46 agreed to as per the Matrix;
6. Clauses 47 agreed to subject to making a decision on either to delete, improve or retain 47(1);
7. Clauses 48-100 agreed to as per the Matrix;

Upon Deliberation the following issues arose:

a) Conflict of Interest

- It was agreed that there in need to scrutinize the clauses in the Bill and check for clauses giving the Counties mandate with a view to ensure that there is a check and balance to ensure that National Government programmes meant for public good/use supersedes County programmes if they were to be proposed at the same time;
- The interests of the People of Kenya are better articulated through the National Government.

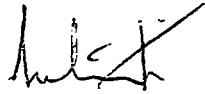
b) Compulsory Acquisition

- It was agreed that the role of compulsory acquisition has been given to the National Lands Commission although the Commission has very weak enforcing mechanisms so there was need to check the clauses on how to empower the Commission;
- The need to address the issue of fair allocation when conducting the excise of Compulsory acquisition.

MIN.NO. MC/2016/43 ADJOURNMENT

There being no other business and the time being 1.30pm the Sitting was adjourned.

SIGNED.....



SEN. LENNY KIVUTI, MP (CHAIRPERSON)

DATE.....

26/7/2016.

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MINUTES OF THE 13TH SITTING OF THE MEDIATION COMMITTEE ON THE COMMUNITY LAND BILL, 2015 HELD ON WEDNESDAY 27TH JULY, 2016 IN THE BOARDROOM OF 4TH FLOOR PROTECTION HOUSE PARLIAMENT BUILDINGS AT 10.00 AM

PRESENT

1. **Sen. Lenny Kivuti, MP** (Chairperson)
2. **The Hon. Alex Mwiru, MP** (Vice Chairperson.)
3. The Hon. Moses Ole Sakuda, MP
4. The Hon. Francis Waweru Nderitu, MP
5. The Hon. Dan Maanzo, MP
6. Sen. Naisula Lesuuda, MP
7. The Hon. Francis Ganya Chachu, MP
8. Sen. Godana Hargura, MP

ABSENT WITH APOLOGY

1. Sen. (Prof) John Lonyangapuo, MP
2. Sen. George Khaniri, MP

IN ATTENDANCE

NATIONAL ASSEMBLY/ SENATE SECRETARIAT

- | | |
|------------------------|---|
| 1. Mr. James Ginono | First Clerk Assistant (National Assembly) |
| 2. Ms. Brenda Ogembo | First Clerk Assistant (Senate) |
| 3. Ms. Mwanate Shaban | Second Clerk Assistant (Senate) |
| 4. Mr. Joshua Ondari | Third Clerk Assistant (National Assembly) |
| 5. Mr. Emmanuel Muyodi | Third Clerk Assistant (National Assembly) |
| 6. Mr. Leonard Koech | Legal Counsel (Senate) |
| 7. Ms. Mercy Wanyonyi | Legal Counsel II (National Assembly) |
| 8. Mr. Rodgers Muinde | Audio Officer |

MIN.NO. MC/2016/54

PRELIMINARIES

The chairperson called the meeting to order at 10.15 am with a word of prayer.

MIN.NO. MC/2016/55

ADOPTION OF THE AGENDA

The agenda of the meeting was adopted as hereunder after being proposed by Sen. Hargura Godana, MP and Seconded by the Hon. Francis Ganya Chachu, MP.

AGENDA

1. Preliminaries/Introduction
2. Adoption of the Agenda
3. Communication from the Chair

4. Confirmation of Minutes
5. Matters a rising
6. **Review and Adoption of the Report on the Community Land Bill, 2015**
7. Any other Business
8. Date of Next Sitting and Adjournment

MIN.NO. MC/2016/56 COMMUNICATION FROM THE CHAIRPERSON

The Chairperson informed the Committee that the Community Land Bill, 2015 and the Land Laws (Amendment) Bill, 2015 have been scheduled in the Order Paper of Wednesday 27th July, 2016 in the afternoon. He requested the Secretariat to work on the amendments raised by the Committee and ensure that the reports are ready for tabling.

MIN.NO. MC/2016/57 REVIEW AND ADOPTION OF THE REPORT ON THE COMMUNITY LAND BILL, 2015

The Committee considered the report on the Community Land Bill, 2015 and resolved as hereunder:-

- a) That Clause 2 of the amendments be amended by defining "Community Assembly" as, a gathering of registered adults members of a community convened in accordance with this Act.
- b) That Clause 4 (3) of the amendments be amended by deleting the word "owned by" and substituting it by "vest in" wherever it appears.
- c) Clause 7, the Committee resolved to amend the last paragraph of clause 7 in the report by deleting the word "Leaders" and substituting it with the words " Land Management Committees"
- d) Clause 8 2(a) of the amendments be amended by deleting the word "shall" and replacing with the word "may"
- e) Clause 15(4) of the amendments be amended by deleting the words "three quarters" and substituting it with the words "two third" and deleting the word "while" and substituting it with word "or" and deleting the word "minor"
- f) Clause 36 of the Bill be amended by deleting "three quarters" and replacing with "two thirds"

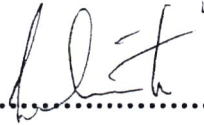
After the above amendments the report on the Community Land Bill, 2015 was unanimously adopted by the Committee after being proposed by the Hon.Francis Ganya Chachu, MP and seconded by the Sen. Naisula Lesuuda, MP

MIN.NO. MC/2016/58

ADJOURNMENT

There being no other business and the time being 11.15 am the Sitting was adjourned.

SIGNED.....





SEN. LENNY KIVUTI, MP (CHAIRPERSON)

DATE.....

27/7/2016

ANNEX I

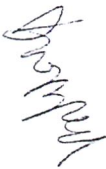
**MATRIX OF THE VIEWS SUBMITTED BY THE STAKEHOLDERS IN THE PUBLIC HEARING ON THE
COMMUNITY LAND BILL (NATIONAL ASSEMBLY BILLS NO. 45 OF 2015) HELD BY THE MEDIATION
COMMITTEE ON 13TH JULY, 2016**

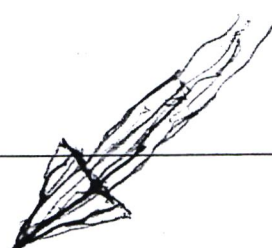

CLAUSE	STAKEHOLDER	PROPOSAL	JUSTIFICATION	OBSERVATIONS BY THE LEGAL OFFICE	COMMENTS BY THE COMMITTEE
Long title	Council of Governors	Insert the following between the words 'constitution' and ... 'for connected purposes' "The objects and purposes of this Act are to establish a legal framework and procedures for— (a) recognition, protection and registration of community land rights; (b) documentation and mapping of the existing forms of communal land tenure; (c) vesting of community land in the communities identified on the basis of ethnicity, culture or similar community of interests; (d) management and administration of registered community land; (e) conversion of	The objectives help in providing the scope of the law thus aiding interpretation.	-This will add no value to the Bill. -we recommend it be rejected.	<div style="text-align: center;">   </div>

		<p>community land to other categories of land; (f) resolving the problem of illegally acquired community land and resolving community land disputes; (g) setting apart community land for public purposes; and (h) holding of unregistered community land in trust by county governments.”</p>			
<p>Clause 2</p>	<p>Institute of Surveyors in Kenya</p>	<p>Insert a new definition as follows- “County Executive Committee Member” means the County Executive Member for the time being responsible for matters relating to land in the County.</p>	<p>Since County Governments have a responsibility under the Bill, it is important to define the officer in charge of lands in the county</p>	<p>-There has been no reference of a county executive committee member in the Bill. -This proposal should be rejected.</p>	<p><i>Proposed</i></p>
	<p>Kenya Wildlife Conservancies Association</p>	<p>Insert the following in the definition of ‘Community’- (g) long term occupation of geographical or physical landscape.</p>	<p>It is important to protect the ownership rights of this group of people.</p>	<p>-The definition of a community is provided for in Article 63(1) of the Constitution. Further, the definition in the Bill caters for this group of people. -This proposal will create ambiguity and</p>	<p><i>Proposed No need</i></p>

		<p>Define "community member" as follows- <i>"includes all individuals, families and groups that historically live within the defined boundaries of the community land; and persons marrying a member of the community."</i></p> <p>Full membership in a community must be extended to all persons above the age of 18.</p> <p>Define 'community land management committee' as-</p> <p><i>"Community land management committee established under section 15"</i></p> <p>Define 'Community Assembly' to mean- <i>'a gathering of members of the community convened pursuant to section 15(1)'</i></p>	<p>This will help determine who has rights to community land.</p>	<p>serves to cure no mischief and should therefore be rejected.</p> <p>-The Bill does not give any new meaning to community member. The phrase is also not used in the Bill. Further, the second part of the proposal is unconstitutional as it discriminates on the basis of age.</p> <p>-This proposal should therefore be rejected.</p>	
		<p>-These proposed definitions are unnecessary since the clause 15 already defines both words. Further, the Bill does not give any new meaning to the words.</p>			


Clause 3	Council of Governors	Add the following to the section a) Vesting of community land in communities b) Affording equal status of titles of community land with any other title c) Elimination of all forms of discrimination d) Community empowerment to manage and administer their land. e) Promotion of alternative dispute resolution	Specifying the objects will eradicate any doubts.	-The provisions in the Bill have catered for all this. Further, the Bill refers to specific constitutional principles. -this proposal should therefore be rejected as it adds no value to the Bill.	<i>Drafted</i>
Clause 4	Ministry of land and Physical Planning	Amend clause 4(1) by deleting the words "be owned" and substituting therefor the words "vest in and be held". Amend clause 4(3) by deleting the words "be owned by" and substituting therefor the words "vest in"	To align with the wording in article 63(1) of the constitution.	-Both words have the same legal meaning and are used interchangeably. However, the proposal will align the Bill to the wording in the constitution. -This proposal should therefore be approved.	<i>Approved</i>
	Kenya Wildlife Conservancies	Amend clause 4 by adding the following-	The provision that community land vests	This proposal is a violation of article	

	Association	<p><i>'Subject to the provisions of this Act, all community land areas vest in the state in trust for the benefit of the traditional communities residing in those areas and for the purpose of promoting the economic and social development of the people of Kenya, in particular the landless and those with insufficient access to land who are` not in formal employment or engaged in non-agricultural business activities`</i></p> <p><i>'No right conferring freehold ownership is capable of being granted or acquired by any person in respect of any portion of community land.'</i></p>	<p>in the state in line with the constitution should be added</p>	<p>63(1) of the Constitution and should therefore be rejected.</p>	
Clause 6	Reconcile And CSOS Working Group On Community Land Law	<p>Amend to include the following provisions-</p> <p>(1) The county government shall transfer the amount and the interests earned to the communities.</p> <p>(2) The procedures for</p>		<p>-The first proposal is not unconstitutional and does not adversely affect the communities. It should therefore be retained.</p> <p>-The second proposal</p>	

		<p>the compulsory acquisition of land shall be followed in the Land Act 2012. For the avoidance of doubt, the community that is known to identify with the land in question shall be consulted and fully be engaged in the entire process.</p> <p>(3) The NLC should on behalf of County Governments develop a data base on the unregistered community land available in the country one year after this law is put in place and update the same annually.</p>		<p>is superfluous and unnecessary. It should therefor be rejected.</p> <p>-The NLC has no role regarding community land. This is drawn from the Supreme Court advisory on the roles of institutions relating registration of community Land.</p>	
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<p>Clause 7</p>	<p>Kenya Wildlife Conservancies Association</p>	<p>Amend clause 7(2) to include announcement in vernacular radio stations with local audience as one of the ways of making the announcement inviting community members to a public meeting.</p>	<p>-Since members of a community do not necessarily share the same vernacular language, this is not a good proposal.</p>	<p><i>to be Rejected</i></p>
<p>National Land Commission</p>	<p>Amend clause 7(3) by deleting the words 'section 16' and substituting therefor the words 'section 15'</p>	<p>The cross referencing is not correct</p>	<p>This proposal should be adopted</p>	<p><i>Approved</i></p>
<p>Further add the words "and the county government" at the end of the sentence immediately after the words "sub-county administrator"</p>	<p>Amend Clause 7(2) by adding the words "and local FM radio" immediately after the word "circulation".</p>	<p>Adding the local FM radio ensures that as many community members as possible receive the notification.</p> <p>This would be informing the county government that the community intends to be registered as owners of the land that was held in trust as provided for in Article 63(3).</p>	<p>This should be rejected for the reasons above</p> <p>The sub-county administrator is an appointee of the county executive. Therefore, the provision in the Bill caters for this and the proposal should be rejected.</p>	<p><i>Dropped</i></p>
<p>Council of Governors</p>	<p>Amend clause 7(2) to read as follows;</p>	<p>Members of the community may not</p>	<p>The proposal assigns a new role to the</p>	

Conclusions
Final

		<p>"The Land Adjudication officer responsible for community registration unit shall, by notice in at least one newspaper of nationwide circulation and radio station of nationwide coverage invite all members of the community with some communal interest to a public meeting for the purpose of electing members of the community land management committee, which notice shall also be given to the sub-county administrator in charge of the area</p>	<p>have already identified themselves and there might be no form of leadership to mobilize them for a meeting.</p> <p>The amendment assigns responsibility to an office to mobilize the community for the purpose of registration.</p> <p>The Deputy county commissioner has no role in community land</p>	<p>county government office. This is interfering with the internal management of community affairs. Further, there is need to inform the deputy county commissioner for security purposes.</p> <p>-This amendment should therefore be rejected.</p>	
<p>Clause 8</p>	<p>Ministry of land and Physical Planning</p>	<p>Amend clause 8(1) by deleting the words "in consultation with respective county governments" appearing after the words "the cabinet secretary shall"</p>	<p>Requiring the Cabinet Secretary to consult may act to fetter the national government in its role in regard to registration of community land.</p>	<p>Pursuant to Part 2 of the fourth schedule to the constitution, survey and mapping are devolved functions. Therefore, consultation is important and this amendment should be</p>	

		<p>Delete clause 8(2) and substitute therefor the following-</p> <p>(2) The Cabinet Secretary shall ensure that-</p> <p>(a) an inventory of all community land in Kenya is developed, maintained and updated regularly;</p> <p>(b) the process of documenting, mapping and developing of the inventory of community land shall be transparent, cost effective and participatory.</p>	<p>The addition of sub clause 2(a) gives the Cabinet Secretary power to develop an inventory of community land.</p>	<p>rejected.</p> <p>Countries have no role in developing, maintaining and updating the inventory. This should therefore be rejected. However, there should be a requirement to have the inventory shared with the counties for ease of access by members of the community.</p>	
<p>Kenya Wildlife Conservancies Association</p>	<p>Amend clause 8(1) to provide the timelines within which the Adjudication Programme must be Gazetted.</p>	<p>Delete clause 8(6) and substitute therefor the following-</p> <p>(6) The adjudication records and cadastral maps shall be produced and presented to the Registrar for registration.</p>	<p>Other than cadastral maps, adjudication records should form part of registration documents.</p>	<p>This proposal creates a higher obligation of the community land registrar. It requires due diligence to be done during registration. There is no adverse legal effect in adopting it.</p>	<p><i>Adopted</i></p>

		<p>The Adjudication Programme should include guidelines on how to ascertain community or individual claims of interest in or right over community land. It should align legal proof of land claims with customary practice by formalizing landscape-based evidence and allowing oral testimony as proof of land rights. It must also include as one of the criteria, whether the group of persons share any of the attributes in the definition of community in Section 2.</p>		
<p>National Land Commission</p>	<p>Amend clause 8(1) by adding the words “the Commission and” immediately after the words “in consultation with”</p>	<p>-The Commission has a constitutional mandate of “<i>advising national government on a comprehensive registration of title throughout the country [(Article 67(2)(c))]</i>”. - Section 6(1) of the Land Registration Act, the Commission has a statutory role of</p>	<p>The content of an adjudication program should be provided for in the Regulations.</p>	
			<p>-The NLC has no role regarding Community land under the constitution, and according to the Supreme Court Advisory Opinion. Therefore, this should be rejected.</p>	

		<p>Amend clause 8(2) by adding the words “in consultation with the respective county government” immediately after the word “shall”</p>	<p>“constituting registration units”. Section 5(2)(b) of the NLC Act, requires the Commission is required to “monitor the registration of all rights and interests in land”. Section 33 of the NLC Act requires the Commission to prepare an Annual Report and submit to the President and Parliament, containing among others, “<i>information relating to the progress made in the registration of title in Land [section 33(1)(c)]</i>”.</p>	<p>The proposal for 8(2) should be rejected since counties have no role in the process of developing the inventory. Further, involvement of all stakeholders is required by the Bill.</p>
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		<p>Amend clause 8(3) by adding the words “in consultation with the respective county government” immediately after the word “shall”</p>	<p>Amend clause 8(5) by adding the words “in consultation with the respective county government” immediately after the word “shall”</p>	<p>“Any unregistered community land shall be held in trust by the county governments on behalf of the communities for which it is held”.</p> <p>In essence, any developments (like schools, health facilities, community social centres, market centres etc) as well as management of common pool resources (CPRs) within unregistered community land must be controlled by county governments. How then, would it be that; when the community land, which the county governments have been nurturing, taking care of and managing in trust of the community, transits to private ownership by the communities (through facilitation of the national</p>	<p>Proposal for 8(3) should also be rejected since its implementation would be impractical</p> <p>This proposal should be adopted since counties ought to be involved in the survey.</p>	
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	Council of Governors	Amend clause 8(1) to read as follows; “Subject to this Act, the	government) without the county governments being involved? Surely, even in the corporate world, good corporate governance demands that when management changes, there is need for smooth hand-over. For county governments, the hand-over should not only be smooth, but it should be through the constitutional requirement of consultation, cooperation and collaboration, in order to ensure harmony. Therefore, involvement of the county governments in the adjudication and registration of community land should be a statutory requirement.	Article 67(1) (c) of the Constitution provides that the national land	The National Land Commission has no role with regard to	
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		<p>National Land Commission in consultation with the County Governments and the Cabinet Secretary shall, develop and Publish in the Gazette a comprehensive adjudication programme for purposes of Registration of community land.”</p> <p>Amend clause 8(3) by inserting the words “in consultation with the respective County Government” between Cabinet Secretary and shall.</p> <p>Amend clause 8(5) by deleting the word “the cabinet secretary” and replacing it with the words” the respective County Government”</p>	<p>commission shall advise the national government on a comprehensive programme for the registration of title in land throughout Kenya.</p> <p>Survey of land is a devolved function and the county government is mandated by law to offer assistance to the communities in survey</p> <p>Survey of land is a devolved function and of the county government therefore the cabinet secretary does not have the mandate to cause land to be surveyed</p>	<p>community land. This should therefore be rejected.</p> <p>Proposal for 8(3) should also be rejected since its implementation would be impractical</p> <p>The National Government has mandate under part 1 of the fourth schedule with regard to provision of</p>	
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				<p>guidelines for mapping of land. Therefore, this proposal should be rejected.</p>	
<p>Clause 9</p>	<p>Institute of Surveyors in Kenya</p>	<p>Delete Clause 9 and replace with: "9 (1) There shall be appointed by the Public Service Commission a Community Land Registrar who shall report to the Chief Land Registrar. (2) A person shall not qualify for appointment as a Community Land Registrar unless such a person is an Advocate of the High Court of Kenya of not less than five years standing or an Advocate of the High Court; a land surveyor, land economist, physical planner with at least five years' experience in land administration."</p>	<p>Giving the Chief Land Registrar powers to designate a community land registrar, is likely to cause misuse of powers hence the need to establish a new office of Community Land Registrar. Our proposal is therefore to ensure that a requirement for community land registrars is done to be able to register community land.</p>	<p>The proposal does not cause any adverse legal effects on the Bill. The Committee should decide on whether or not to adopt.</p>	<p><i>Agreed</i></p>
<p>Clause 11</p>	<p>Ministry of land and Physical Planning</p>	<p>Amend clause 11(2) by deleting the words "in consultation with respective county governments" appearing</p>	<p>Same as in the proposal for clause 8(1)</p>	<p>Same observation as on proposal for clause 8(1)</p>	

	<p>Reconcile And CSOS Working Group On Community Land Law</p>	<p>after the word “facilitate”</p> <p>Amend clause 11 (2) (a) to provide for consultations between county governments, Ministry of Lands and National Land Commission in the registration of community land, and their roles should be clear. In the event that the mistrust and perception of communities towards the role of these institutions in the registration of community land persists. The Committee should take a bold step and propose a board or Task Force to oversee the registration of community land within the period of 5 -10 years.</p>		<p>The first part is already provided for in the Bill</p> <p>The proposal for a task force is not justifiable as it contemplates a situation which may not arise. There also exists mechanisms to resolve any conflicts that may arise between the entities. Therefore, this should be rejected.</p>	
<p>National Land Commission</p>	<p>Amend clause 11(2) by adding the words “in consultation with the respective county government” immediately after the word “shall”</p>	<p>Same rationale as for the amendments in clause 8 above.</p>	<p>Same observation as in 8 above.</p>		
<p>Council of Governors</p>	<p>Amend clause 11(1) to read as follows- <i>The cabinet secretary and</i></p>	<p>Several communities can be identified in one geographical area</p>	<p>-The question of joint appointment raises questions as to</p>		

		<p><i>respective County Government shall by a notice in the gazette, appoint an adjudication officer in respect of every registration unit who shall-</i></p>	<p>based on the definition of a community and each one of them then forms a community registration unit hence within one geographical area there could be several land adjudication officers gazetted which might make registration of community land not cost effective and may render the officers redundant after registration.</p>	<p>remuneration and supervision of the appointed officer. -Further, the rationale given seems to contradict the proposal. -Therefore, this proposal should be rejected.</p>	
<p>Clause 12</p>	<p>Reconcile And CSOS Working Group On Community Land Law</p>	<p>Amend clause 12 to provide- (1) that before the registration is started, a study shall be done to document the dominant communal and customary land ownerships prevalent in the regions of the country. (2) That there shall be</p>	<p>The levels of registration for all groups identified as communities should be defined. For instance, what would happen where a family or a group of individuals submits an application to register a portion of it as their own community land, if the land land is owned by a clan It should be clarified for</p>	<p>All the process proposed are done at adjudication. Further, the finer details of the process can be provided for in the regulations. Clause 27 of the Bill prohibits issuance of a new title document regarding any part of registered community land. Therefore, this proposal should be</p>	

<p>Clause 13</p>	<p>Reconcile And CSOS Working Group On Community Land Law</p>	<p>Amend Clause 13 by making further provisions as to the powers of the County and National Governments in reserving areas for special purposes.</p>	<p>published the regional main ownership to guide the application for community land. (3) that in the event that the family, clan apply for the registration of community land directly, there shall be verification meetings at the clan and at geographical space levels to seek the concurrence with the larger communities in the area.</p>	<p>instance that areas where clan ownership is the norm, then family and other group ownership of community land should be derived under or below the clan title.</p>	<p>rejected.</p>	
			<p>It should be clearly provided that they shall propose to the communities concerned who will deliberate and make a determination.</p>	<p>Ideally, the community has the mandate for reserving land. However, the principle of compulsory acquisition allows the</p>		

			<p>Otherwise, as it is, it can easily generate conflict.</p> <p>The provision as it is, is confusing because there are resources and spaces communities are using for their own (community) public good eg community school, hospital, etc. This should be separated for instance from the markets or the general public health centers.</p>	<p>government to compulsorily acquire land through NLC. These provisions are therefore in different parts of Physical planning Act and the Land Acquisition Act. It should therefore be rejected.</p> <p>The proposal for clause 13(2) is superfluous and should be rejected.</p>	
	Kenya Wildlife Conservancies Association	Amend to specify what constitutes a majority of members, as has been specified in clause 21(2)		<p>The majority in clause 21(2) can be applied. Therefore, this proposal is unnecessary</p>	
Clause 15	Kenya Wildlife Conservancies Association	Amend to provide for the procedure of constituting community land management committees		<p>-This is provided for in clause 15(2) of the Bill. Further, nothing stops the CS from making further provisions in the regulations. -This should therefore be rejected.</p>	
	Institute of Surveyors in	Amend clause 15(3) by adding a new sub-clause	This is to enhance and expound the functions	<p>-There is nothing illegal with the</p>	

	Kenya	as follows- <i>(f) "encourage alternative dispute resolution mechanisms to assist in resolving disputes related to the community land".</i>	of the Community Land Management Committee that are in the spirit of the Constitution of Kenya, 2010.	provision. -The Committee should however give directions on this.	
Clause 16	Kenya Wildlife Conservancies Association	Amend to provide for what should be done in the event of the interest of the community being extinguished.		-This proposal is unclear. -Therefore, it should be rejected.	
Clause 17	Institute of Surveyors in Kenya	Amend Clause 17 (1)(b) by deleting "not to require noting on the register"	To bring clarity on the role and relevance of the overriding interests.	-Overriding interests on land exist with or without registration. The LRA recognizes these interests without registration. -Therefore, this proposal should be rejected.	
Clause 19	Kenya Wildlife Conservancies Association	Replace the word 'may' in clause 19(1) with the word 'shall'.	May implies that it is not mandatory.	-From practice, there are aspects of development that require approval. -This proposal should be rejected.	
		Insert a subclause specifying the timeline within which the plan must be upon request by the county government.		The timeline is already provided for in the Physical Planning Bill.	

		<p>Delete the word 'and' appearing at the end of clause 19(2)(d) and put it at the end of clause 19(2)(e)</p> <p>Delete clause 19(2)(f) and replace therefor the following- <i>'the county government shall support community land use zoning and development plans'</i></p>		<p>This should be reflected in the Vellum since it is mainly grammatical.</p>	
Clause 21	Institute of Surveyors in Kenya	<p>Amend Section 21 (2) by deleting "special meeting convened for that purpose" and replacing with " annual or special general meeting convened by Community Land Management Committee"</p>	<p>Conversion of community land is a major decision that ought not to be carried out in a general meeting.</p>	<p>The provision in the Bill affords conversion enough importance to have it done in a special meeting that is not the AGM. This proposal should therefore be rejected.</p>	
	Council of Governors	<p>Amend clause 21(1)(a) by inserting the following words immediately after "acquisition" <i>compulsory acquisition for community land shall</i></p>	<p>The rationale for compulsory acquisition is meant to protect the communities from arbitrary dispossession.</p>	<p>Compulsory acquisition is done, mainly for development purposes. This proposal should</p>	

		<i>only be in the interest of defence, public safety, public order, public morality and shall be upon prompt compensation</i>	of their lands	therefore be rejected.	
Clause 22	Institute of Surveyors in Kenya	Amend section 22 (4) by deleting "the approval of the members of the registered community in a community meeting" and replacing with "section 21 (2) of the Act"	This is to provide for the threshold and ratification by the members of the registered community land in converting community land to public land.	The threshold in the Bill is higher than the proposed threshold. This proposal should therefore be rejected.	
	Council of Governors	Amend Clause 22(2) to read as follows Compulsory acquisition shall be only in accordance with this Act. Amend clause 22(4) to read as follows- <i>'Transfer of Community land shall be subject to the approval of at least two thirds of registered community members/ assembly present in a special meeting convened for that purpose, and be done in accordance with the Land</i>	Approval should be by the majority to avoid any conflicts that may arise as a result	The proposed threshold of 2/3 of the members of a community is impractical to achieve since not everyone might attend the special meeting. This should therefore be rejected.	

		<i>Act, 2012 and any other applicable law.</i>			
Clause 23	Kenya Wildlife Conservancies Association	Amend Clause 23(b) to refer to section 21(2) instead of section 22(2).		This is a cross referencing correction. It should be adopted.	
	Council of Governors	Amend by deleting “22(2)” immediately after section and inserting “22(4)” in its place	This should be linked with clause 22 (4) above to give the threshold for ratification as two thirds of the registered community members	Since the proposal for clause 22(4) is impractical, this should also be rejected.	
Clause 24	Kenya Wildlife Conservancies Association	Replace the word ‘by’ appearing immediately after the words ‘community land’ with the word ‘through’	To avoid repetition	Use of ‘by’ is correct grammatically. Therefore, this proposal should be rejected.	
Clause 27	Kenya Wildlife Conservancies Association	Amend clause 27(5)(c) by deleting the full stop and substituting therefor a semi colon.		This is a grammatical amendment. It should be adopted.	
Clause 28	Kenya Wildlife Conservancies Association	Insert a new sub clause (5)(e) as follows- <i>‘carry out any activity on the land, other than lawful grazing of stock, which may prevent or restrict the residents of the traditional community concerned from a reasonable exercise of their grazing rights.’</i>	Clause 28 as it is may cause conflict between pastoralists and other competing land uses other than farming that may interfere with grazing.	Clause 28(5) is sufficient in preventing potential conflicts. This proposal is therefore superfluous and should be rejected.	

Clause 29	Kenya Wildlife Conservancies Association	Amend clause 29(g) to provide for compensatory measures analogous to those of compulsory acquisition.	Clause 29(g) leaves loopholes that may be misused by the government. This will establish appropriate checks and balances between local leadership and the different levels of government.	This proposal does not cure any mischief in law. It should therefore be rejected.	
Clause 30	Institute of Surveyors in Kenya	Amend Section 30(3) by inserting after the word “women” the word “youth”	Youth form an integral part of the Community and it is important that they are included as their rights are also provided for in Article 55 of the Constitution of Kenya, 2010.	There is no harm caused by the amendment. It reinforces the principle of non-discrimination. This may therefore be adopted.	
Clause 32	Council of Governors	Amend clause 31(1) by deleting the words “... as may be contained in any other written law” and replace by the words “...as contained in the said agreement”	The implied conditions, restrictions and covenants be as may be contained in the lessee agreement should be standard as in the conveyance practice and not subject to any undisclosed terms at the execution of the agreement	Without a standard agreement, it is prudent to refer to statutory implied terms and conditions, which may not be in each agreement. Therefore this proposal should be rejected.	
Clause 34	Kenya Wildlife Conservancies Association	Amend the cross referencing to be in tandem with the		The cross referencing in the Bill is done properly. This	

		provisions of sections 28 and 29 themselves.		proposal should therefore be rejected.	
Clause 36	Kenya Wildlife Conservancies Association	Amend the provisions on quorum and voting in this clause.	The quorum and voting majority under this clause would entitle a small number of members to commit the whole community.	-Without a clear proposal on the new threshold, it would be safer to retain the threshold set in the Bill. This should therefore be rejected.	
Clause 38	Institute of Surveyors in Kenya	Amend Section 38 (1) by replacing the word "shall" with "may".	This is in line with Article 66 (1) of the Constitution of Kenya, 2010.	The provision makes reference to Article 66(1) of the Constitution. Therefore this proposal should be rejected.	
Clause 45	Council of Governors	Amend to read as follows The following laws are repealed- (a)the Land(Group Representatives) Act,(Cap 287) (b)the Trust Land Act,(Cap 288) (C)the Land Adjudication Act, Cap 284 (d)the Land Consolidation Act cap 283;and (e)The Land Control Board Act of 1967	These laws have no place in community land because once community land is registered it becomes private to that community and cannot undergo further adjudication by again creating other committees to ascertain the rights which have already been ascertained	Proposals (c), (d) and (e) should be rejected since the laws they propose to repeal are applicable in other registration regimes in Kenya.	
Clause 46	Institute of Surveyors in	Amend Clause 46(1) by adding the following-	This avoids legitimizing fraudulent	Fraud is a crime. The Penal Code	

	Kenya	<i>“provided that the rights had not been acquired fraudulently”</i>	transactions carried out before the commencement of this Act.	prescribes a penalty for it, once a person has been convicted. Therefore, this proposal should be rejected.	
Clause 47	Kenya Wildlife Conservancies Association	Amend clause 47(2) of the Bill by adding- <i>‘...and the registered community shall elect a new committee’</i>	This will provide for the transition from the group representative to the community.	This proposal is superfluous and should be rejected.	
		Delete the words ‘land-buying companies’ from the marginal note.	There are no provisions as to the land-buying companies in the clause.	This proposal should be adopted, for consistency between the marginal note and the provision itself.	
	Council of Governors	Amend clause 47(6) to read as follows “the <i>Cabinet Secretary in consultation with the respective County Government may make regulations giving effect to this section.</i> ”	To ensure checks and balances thereby remove unfettered discretion from the cabinet secretary over group representatives, land buying companies etc land regulations	There is nothing unique about the regulations contemplated in this clause. Therefore, there is no need for consultation. The proposal is superfluous and should be rejected.	
Clause 48	Council of Governors	Amend clause 48(1) to read as follows “the Cabinet Secretary may form a committee comprised of -representative of the	To ensure checks and balances thereby remove unfettered discretion from the cabinet secretary over community land	This proposal is cumbersome and impractical. It should therefore be rejected.	

		<p>County Governments</p> <ul style="list-style-type: none"> -representatives of the professional bodies -representative of the civil society -representatives of the national land commission -representative from the ministry of land both at the county and national level, to make regulations generally for the better carrying into effect of this Act. 	regulations		
	Kenya Wildlife Conservancies Association	<p>Amend clause 48(2) by inserting-</p> <ul style="list-style-type: none"> • <i>Setting aside community land for public purpose.</i> • <i>Election of a community land management committee.</i> 		<p>The first proposal interferes with the mandate of the community to deal with community land. It should therefore be rejected.</p> <p>The second proposal should however be adopted.</p>	
New Clauses	National Land Commission	<p>Introduce a new clause 45A immediately before clause 45 as a recommendation to review/amend the Land Adjudication Act, CAP 284 to provide for recognition and definition</p>	<p>There are many parts in the Republic of Kenya where land adjudication has not yet been declared but people own land as "private" awaiting adjudication and</p>	<p>This proposal is not practical and should therefore be rejected.</p>	

		of "Unregistered Private land".	subsequent registration of individual titles. This land needs to be recognized in an Act of Parliament to give effect to Article 64(c). Since this category of land would eventually become private land through adjudication process, it recommended that the land Adjudication Act be amended to recognize such land as "Unregistered Private Land"		
Kenya Wildlife Conservancies Association	Insert a clause on objects and purposes of the Act.	Insert a clause on involvement of women and minority groups in governance		The objects are provided for in the long title of the Bill.	
	Insert a new clause on multiple registrations for recognition of communal			A community might not have all these classes of people. The proposal would be hard to implement and should therefore be rejected.	
				Multiple registrations are catered for in the	

	<p>land rights.</p>	<p>Insert a new clause on the inter-communal access to shared resources.</p>	<p>LRA. If due diligence is done, there is no chance of multiple registration</p>
	<p>Insert a new clause on prohibition against the fencing of community land as follows-</p>	<p><i>Subject to such exemptions as may be prescribed, no fence of any nature-</i></p>	<p>This is provided for in the Natural Resources (Benefit Sharing) Act, The Petroleum Bill and other legislation touching on resources.</p>
	<p><i>(1) Shall, after the commencement of this Act, be erected or caused to be erected by any person on any portion of land situated within a community land area; or</i></p>		<p>This provision is superfluous.</p>

		<p>(2) Which, upon commencement of this Act, exists on any part of such land, by whomsoever erected, shall after such date as may be notified by the Cabinet Secretary by notice in the Gazette, be retained on such land.</p>			
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ANNEX II

STAKEHOLDERS' VIEWS ON THE COMMUNITY LAND BILL, 2015 (NATIONAL ASSEMBLY BILLS NO. 45 OF 2015)

STAKEHOLDER - MINISTRY OF LANDS AND PHYSICAL PLANNING

CLAUSE	PROPOSED AMENDMENT	RATIONALE
1. Clause 4(1) – Ownership and Tenure System	Amend Clause 4(1) by deleting the words “be owned” and substituting therefor the words “vest in and be held”.	To align with Article 63(1) of the Constitution.
2. Clause 4(3) – Ownership and Tenure System	Amend Clause 4(3) by deleting the words “be owned by” and substituting therefor the words “vest in”.	To align with Article 63(1) of the Constitution.
3. Clause 8(1) – Procedure for recognition and adjudication of community land	Amend Clause 8 (1) by deleting the words “in consultation with respective county governments” appearing after the words “the Cabinet Secretary shall,”.	Requiring the Cabinet Secretary to consult may act to fetter the national government in its role in regard to registration of community land.

<p>4. Clause 8(2) – Procedure for recognition and adjudication of community land</p>	<p>Amend Clause 8 by deleting subsection 2 and substituting therefor the following new subsection:- (2) The Cabinet Secretary shall ensure that:- (a) an inventory of all community land in Kenya is developed, maintained and updated regularly; (b) the process of documenting, mapping and developing of the inventory of community land shall be transparent, cost effective and participatory.</p>	<p>The addition of subsection 2(a) gives the Cabinet Secretary power to develop an inventory of community land.</p>
<p>5. Clause 8(6) – Procedure for recognition and adjudication of community land</p>	<p>Amend Clause 8 by deleting subsection 6 and substituting therefor the following new subsection:- (6) The adjudication records and cadastral maps shall be produced and presented to the Registrar for registration.</p>	<p>Other than cadastral maps, adjudication records should form part of registration documents.</p>
<p>6. Clause 11(2)(a) – Procedure for recognition and adjudication of community land</p>	<p>Amend Clause 11 (2) (a) by deleting the words “in consultation with respective county governments” appearing after the words “facilitate in”.</p>	<p>Requiring the Cabinet Secretary to consult may act to fetter the national government in its role in regard to registration of community land.</p>

ANNEX III



COUNCIL OF GOVERNORS

LEGISLATIVE MEMORANDUM ON THE COMMUNITY LAND BILL 2015

To

THE PARLIAMENT MEDIATION COMMITTEE

From

THE COUNCIL OF GOVERNORS

THE COUNCIL OF GOVERNORS,

In recognition of the fact that sovereign power of the state is exercised at two levels of government, that is, the National Government and the County Governments, whose distinctness is recognized by Article 6 (2);

In further recognition of the need to ensure that all legislation is cognizant of devolved governments; and

Aware of the need for coordinated action between the National and County Governments to ensure that these legislations properly respond to the key issues, and further reflects the spirit and purpose of the devolution process.

The Council recommends as follows on the Community Land Bill 2015:

A. General comments

The Council of Governors state that the Community Land Bill, 2015 is unconstitutional for the following reasons:

- It does not Comply with the constitution 2010 particularly Articles 10, 63, 66(2), 67, 174, 175, 185,186, and 187 thereby undermining devolution and the objectives of land reforms in the country.
- Does not properly recognise and assign appropriately role(s) to the County Governments as trustees of unregistered community land sections
- Has over looked the bill of rights with regards to communities right to self determination
- Gives cabinet secretary- the power to adjudicate community land, this is not only centralist, but is not workable given previous experience in Kenya section 46(8)
- Centralises land administration to the National Government, sections 8,10(2),11,46(8),47(6), gives the CS powers to develop an adjudication programme for purposes of registering community land

That the bill does not respond to the system of devolved government particularly:

- Fails to fully recognise that the constitution vests with the County Governments trusteeship of unregistered community land,
- It is not comprehensive on special rights and entitlements in community land such as transaction on community land, Transfer of land to foreigners among others
- Does not give the meaning of an adjudication officer section 10(2);

Whereas the National Assembly in the present version of the bill considered some of the issues that the Council of Governors had contested in the previous bill and attempted to make amendments that are generally good such as:

- Recognition, Protection and Registration of Community Land,

- Management and Governance Structure of Community Land,
- Nature of Community Title,
- Conversion of Community land and the
- the role of County government among others.

B. Specific sections

The council contends that the bill is still fundamentally flawed and proposes the following amendments as contained in the below matrix to align it to the constitution:

STAKEHOLDER	SECTION OF BILL	PROPOSED AMENDMENT	JUSTIFICATION
COUNCIL OF GOVERNORS	Citation (long title)	Insert the following between the words 'constitution' and ... 'for connected purposes' "The objects and purposes of this Act are to establish a legal framework and procedures for— (a) recognition, protection and registration of community land rights; (b) documentation and mapping of the existing forms of communal land tenure; (c) vesting of community land in the communities identified on the basis of ethnicity, culture or similar community of interests; (d) management and administration of registered community land; (e) conversion of community land to other categories of land; (f) resolving the problem of illegally acquired community land and resolving community land disputes;	Lack of objective and purpose in the formulation of a bill The objectives help in providing the scope of the law thus aiding interpretation.

		(g) setting apart community land for public purposes; and (h) holding of unregistered community land in trust by county governments”	
	Guiding principles Section Section 3	Add the following to the section a) Vesting of community land in communities b) Affording equal status of titles of community land with any other title c) Elimination of all forms of discrimination d) Community empowerment to manage and administer their land. e) Promotion of alternative dispute resolution	There is need to make provisions for the specific elements for the avoidance of doubt.
	Section 7(2)	Amend to read as follows; “The Land Adjudication officer responsible for community registration unit shall ,by notice in at least one newspaper of nationwide circulation and radio station of nationwide coverage invite all members of the community with some communal interest to a public meeting for the purpose of electing members of the	The clause assumes that members of the community have already identified themselves and already there exists some form of leadership to mobilize the community for a meeting. The proposed amendment assigns responsibility to an office to mobilize the community for the purpose of registration. The Deputy county commissioner has no role in community land

		community land management committee, which notice shall also be given to the sub-county administrator in charge of the area	
	Section 8(1)	Amend to read as follows; "Subject to this Act, the National Land Commission in consultation with the County Governments and the Cabinet Secretary shall, develop and Publish in the Gazette a comprehensive adjudication programme for purposes of Registration of community land."	Article 67(1) (c) of the Constitution provides that the national land commission shall advise the national government on a comprehensive programme for the registration of title in land throughout Kenya. (1) It is expected that all other carryover laws relating to land adjudication such from the old constitution such as the Land Adjudication Act Cap 284, the Land Consolidation Act Cap 283 and the Land (Group) Representatives Act Cap 287 and the Trust Land Act cap 288, Land Control Board Act of 1967, to be repealed by this Act, so that community land is managed through one Act of Parliament to avoid duplicity and confusion

			<p>in the Management of Community Land.</p> <p>The National Land Policy(2009) had identified the land adjudication act and the land consolidation act as the two acts that have led to delays and problems associated with land(see paragraphs 148-150 of Sessional Paper no 3 of 2009).</p> <p>(2)Article 67(2)(c) of the constitution mandates the National Land Commission to advise the national government on a comprehensive programme for registration of title in land throughout Kenya.</p>
	Section 8(3)	Amend by inserting the words “in consultation with the respective County Government” between Cabinet Secretary and shall.	Survey of land is a devolved function and the county government is mandated by law to offer assistance to the communities in survey
	Section 8(5)	Amend by deleting the word “the cabinet secretary” and replacing it with the words” the respective County Government”	Survey of land is a devolved function and of the county government therefore the cabinet secretary does not have the mandate to cause land to be surveyed
	Section 11(1)	Amend to read as follows; The cabinet secretary and respective County	Several communities can be identified in one geographical area based on

		Government shall by a notice in the gazette, appoint an adjudication officer in respect of every registration unit who shall-	the definition of a community and each one of them then forms a community registration unit hence within one geographical area there could be several land adjudication officers gazetted which might make registration of community land not cost effective and may render the officers redundant after registration.
	Section 22(1)(a)	Amend by inserting the following words immediately after "acquisition" compulsory acquisition for community land shall only be in the interest of defence, public safety, public order, public morality and shall be upon prompt compensation	The rationale for compulsory acquisition is meant to protect the communities from arbitrary dispossession of their lands
	Section 22(2)	Amend to read as follows Compulsory acquisition shall be only in accordance with this Act.	The rationale for compulsory acquisition is meant to protect the communities from arbitrary dispossession of their lands
	Section 22(4)	Amend to read as follows Transfer of Community land shall be subject to the approval of at least two thirds of registered community members/ assembly present in a special meeting convened for that purpose, and be done in accordance with the Land Act, 2012 and any other applicable law.	Approval should be by the majority to avoid any conflicts that may arise as a result

	Section 23(b)	Amend by deleting “22(2)” immediately after section and inserting “22(4)” in its place	This should be linked with Sec 22 (4) above to give the threshold for ratification as two thirds of the registered community members
	Section 32(1)	Amend by deleting the words “... as may be contained in any other written law” and replace by the words “...as contained in the said agreement”	The implied conditions, restrictions and covenants be as may be contained in the lessee agreement should be standard as in the conveyance practice and not subject to any undisclosed terms at the execution of the agreement
	Section 45	Amend to read as follows The following laws are repealed- (a)the Land(Group Representatives) Act,(Cap 287) (b)the Trust Land Act,(Cap 288) (C)the Land Adjudication Act, Cap 284 (d)the Land Consolidation Act cap 283;and (e)The Land Control Board Act of 1967	These laws have no place in community land because once community land is registered it becomes private to that community and cannot undergo further adjudication by again creating other committees to ascertain the rights which have already been ascertained
	Section 47(6)	Amend to read as follows “the Cabinet Secretary in	To ensure checks and balances thereby remove

		consultation with the respective County Government may make regulations giving effect to this section.	unfettered discretion from the cabinet secretary over group representatives, land buying companies etc land regulations
	Section 48(1)	Amend to read as follows “the Cabinet Secretary may form a committee comprised of -representative of the County Governments -representatives of the professional bodies -representative of the civil society -representatives of the national land commission -representative from the ministry of land both at the county and national level, to make regulations generally for the better carrying into effect of this Act.	To ensure checks and balances thereby remove unfettered discretion from the cabinet secretary over community land regulations

C. Conclusion

That the above proposed amendments be adopted by the mediation committee to safeguard the gains on land reforms and protect the public from injustices in the land sector while respecting the constitution particularly the constitutional functional assignment of the County Governments.

- July 13, 2016

ANNEX IV



NATIONAL LAND COMMISSION

Ngong Road

P. O. BOX 44417 - 00100

Nairobi

Tel: +254(0)20 2718050

MEMORANDUM ON COMMUNITY LAND BILL, 2015

PRESENTED TO THE PARLIAMENTARY MEDIATION COMMITTEE

13TH JULY, 2016

PREAMBLE.

The National Land Commission mandate on community land in the Constitution is through Article 67(2)(c) and 67(3). In the statutes, the Commission has mandate on Community land based on section 5(2)(e), 5(3) and 5(4) of the National Land Commission Act, 2012.

5(2)(e):to manage and administer all unregistered trust land and unregistered community land on behalf of the county governments

5(3): to ensure all unregistered land is registered within 10 years from the commencement of the National Land Commission Act.

However the Supreme court Advisory opinion in paragraph (226) (2)(a) stated that *the Commission has no special claim to the remit of administering or managing community land*; and proceeded to advise *Parliament to make amendments to section 5(2)(e) of the NLC Act to bring it in line with the Constitution*. The Commission respects and upholds the Supreme Court Advisory. The Commission would therefore not insist on administering and managing Community Land; but it is ready and available to offer advice and assistance if called upon. However, the Commission has a Constitutional mandate; *“to advise the national government on a comprehensive programme for the registration of title to land throughout Kenya” [Article 67(2)(c)]*. This constitutional advisory by the Commission to the national government covers registration of all categories of land (public, private and community)

The Commission has looked at the current version of the Community Land Bill that is before the Senate and it is satisfied that most of the issues that the Commission had contested in the previous bill have substantially been addressed. However, the Commission suggests a few amendments as pointed out below need to be considered in order to embrace the cardinal Constitution spirit of cooperation, consultation, collaboration and harmony.

The suggested amendments are contained in the matrix herewith attached.

MATRIX OF PROPOSED AMENDMENTS BY THE NATIONAL LAND COMMISSION.

CLAUSE	STAKEHOLDER	PROPOSED AMENDMENT AND RATIONALE
1	7(2) NATIONAL LAND COMMISSION	<p>Proposed Amendment Add the words “and local FM radio” immediately after the word “circulation”. Further add the words “and the county government” at the end of the sentence immediately after the words “sub-county administrator”</p> <p>Rationale Adding the local FM radio ensures that as many community members as possible receive the notification.</p> <p>On the second amendment, extending the notification to the county government, the community would be informing the county government that the community is intending to be registered as owners of the land that the county government has been holding in trust on their behalf as provided for in Article 63(3).</p>
2	8(1) NLC	<p>Proposed Amendment Add the words “the Commission and” immediately after the words “in consultation with”</p> <p>Rationale Clause 8 of the Bill signifies the commencement of the procedure for recognition and adjudication and subsequent registration of community land. The Commission has a constitutional mandate of “<i>advising national government on a comprehensive registration of title throughout the country [Article 67(2)(c)]</i>”. Secondly, as per section 6(1) of the Land Registration Act, the Commission has a statutory role of “constituting registration units”. Thirdly, as per the National Land Commission Act, section 5(2)(b), the Commission is required to “monitor the registration of all rights</p>

			<p>and interests in land". Fourthly, the National Land Commission Act section 33 requires that the Commission should prepare an Annual Report and submit to the President and Parliament. One of the key components of the report is "<i>information relating to the progress made in the registration of title in Land [section 33(1)(c)]</i>". In line with the above Constitutional and statutory requirements, it is imperative that the Commission should be informed on the programme and progress of land adjudication at the on-set and subsequently on registration throughout the country.</p>
3	8(2)	NLC	<p>Proposed Amendment Add the words "in consultation with the respective county government" immediately after the word "shall"</p> <p>Rationale Article 63(3) vests the responsibility, trust and care of unregistered community land with the county governments on behalf of the communities. The Article states that "<i>Any unregistered community land shall be held in trust by the county governments on behalf of the communities for which it is held</i>". In essence, any developments (like schools, health facilities, community social centres, market centres etc) as well as management of common pool resources (CPRs) within unregistered community land must be controlled by county governments. How then, would it be that; when the community land, which the county governments have been nurturing, taking care of and managing in trust of the community, transits to private ownership by the communities (through facilitation of the national government) without the county governments being involved? Surely, even in the corporate world, good corporate governance demands that when management changes, there is need for smooth hand-over. For county governments, the hand-over should not only be smooth, but it should be through the constitutional requirement of consultation, cooperation and collaboration, in order to ensure harmony. Therefore, involvement of the county governments in the adjudication and registration of community land should be a statutory requirement.</p> <p>Proposed Amendment</p>
4	8(3)	NLC	

			<p>Add the words "in consultation with the respective county government" immediately after the word "shall"</p> <p>Rationale Same as in No. 3 above. That is, involvement of the county governments in adjudication and registration of community lands should be a statutory requirement.</p>
5	8(5)	NLC	<p>Proposed Amendment Add the words "in consultation with the respective county government" immediately after the word "shall"</p> <p>Rationale Same as in No. 3 above. That is, involvement of the county governments in adjudication and registration of community lands should be a statutory requirement.</p>
6	11(2)	NLC	<p>Proposed Amendment Add the words "in consultation with the respective county government" immediately after the word "shall"</p> <p>Rationale Same as in No. 3 above. That is, involvement of the county governments in adjudication and registration of community lands should be a statutory requirement.</p>
7	New clause 45A	NLC	<p>Proposed Amendment Introduce a new clause 45A immediately before clause 45 as a recommendation to review/amend the Land Adjudication Act, CAP 284 to provide for recognition and definition of "Unregistered Private land".</p> <p>Rationale</p>

			<p>Land that is unregistered and it is not public land does not automatically become community land. There are many parts in the Republic of Kenya where land adjudication has not yet been declared but people own land as "private" awaiting adjudication and subsequent registration of individual titles. This land needs to be recognized in an Act of Parliament to give effect to Article 64(c). Since this category of land would eventually become private land through adjudication process, it recommended that the land Adjudication Act be amended to recognize such land as "Unregistered Private Land"</p>
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ISK VIEWS ON THE COMMUNITY LAND BILL, 2015 (NATIONAL ASSEMBLY BILLS NO. 45 OF 2015)

SECTION	STAKEHOLDER	PROPOSED AMENDMENT AND RATIONALE
2	ISK	<p><u>Provision</u> Provides for definitions of various terms used in the Act.</p> <p><u>Proposal</u> Insert "County Executive Committee Member" means the County Executive Member for the time being responsible for matters relating to land in the County.</p> <p><u>Rationale</u> Due to the involvement of the County Governments in Community Land matters, it is important to define the office of the officer in charge of lands in the County as the same is applicable in the Bill.</p>
9	ISK	<p><u>Provision</u> Provides for Chief Land Registrar having powers to designate of Community Land Registrar.</p> <p><u>Our proposal</u> Delete section 9 and replace with: "9 (1) There shall be appointed by the Public Service Commission a Community Land Registrar who shall report to the Chief Land Registrar. (2) A person shall not qualify for appointment as a Community Land Registrar unless such a person is an Advocate of the High Court of Kenya of not less than five years standing or an Advocate of the High Court; a land surveyor, land economist, physical planner with at least five years' experience in land administration." <u>Rationale</u> Giving the Chief Land Registrar powers to designate a community land registrar, is likely to cause misuse of powers hence the need to establish a</p>

SECTION	STAKEHOLDER	PROPOSED AMENDMENT AND RATIONALE
		<p>new office of Community Land Registrar. Our proposal is therefore to ensure that a requirement for community land registrars is done to be able to register community land.</p>
15 (3)	ISK	<p><u>Provision</u> Provides for the functions of the Community Land Management Committee</p> <p><u>Our proposal</u> Amend Section (3) by adding a new sub-sections: (f) and to read "encourage alternative dispute resolution mechanisms to assist in resolving disputes related to the community land".</p> <p><u>Rationale</u> This is to enhance and expound the functions of the Community Land Management Committee that are in the spirit of the Constitution of Kenya, 2010.</p>
17	ISK	<p><u>Provision</u> Provides for the rights of a community as a proprietor.</p> <p><u>Our proposal</u> Amend Section 17 (1b) by deleting "not to require noting on the register"</p> <p><u>Rationale</u> To bring clarity on the role and relevance of the overriding interests.</p>
21	ISK	<p><u>Provision</u> Provides for the Conversion of Community Land.</p>

SECTION	STAKEHOLDER	PROPOSED AMENDMENT AND RATIONALE
22	ISK	<p><u>Our proposal</u> Amend Section 21 (2) by deleting "special meeting convened for that purpose" and replacing with " annual or special general meeting convened by Community Land Management Committee"</p> <p><u>Rationale</u> Conversion of community land is a major decision that ought not to be carried out in a general meeting.</p> <p><u>Provision</u> Provides for Conversion of Community Land to Public Land.</p> <p><u>Our proposal</u> Amend section 22 (4) by deleting "the approval of the members of the registered community in a community meeting" and replacing with "section 21 (2) of the Act"</p> <p><u>Rationale</u> This is to provide for the threshold and ratification by the members of the registered community land in converting community land to public land.</p>
30	ISK	<p><u>Provision</u> Provides for non-discrimination as a right and entitlement in community land.</p> <p><u>Our proposal</u> Amend Section 30(3) by inserting after the word "women" the word "youth"</p> <p><u>Rationale</u></p>

SECTION	STAKEHOLDER	PROPOSED AMENDMENT AND RATIONALE
38 (1)	ISK	<p>Youth form an integral part of the Community and it is important that they are included as their rights are also provided for in Article 55 of the Constitution of Kenya, 2010.</p> <p><u>Provision</u> It provides for community land use planning.</p> <p><u>Our proposal</u> Amend Section 38 (1) by replacing the word "shall" with "may".</p> <p><u>Rationale</u> This is in line with Article 66 (1) of the Constitution of Kenya, 2010.</p>
46 (1)	ISK	<p><u>Provision</u> It provides for saving and transitional provisions</p> <p><u>Our proposal</u> Add "provided that the rights had not been acquired fraudulently"</p> <p><u>Rationale</u> This avoids legitimizing fraudulent transactions carried out before the commencement of this Act.</p>



ANNEX V

The Clerk,
Parliamentary Mediation Committee,
Lands and Natural Resources,
Parliament Buildings
Nairobi, Kenya,

14th July, 2016

Re: COMMUNITY LAND BILL PROPOSED AMENDMENTS

(National Assembly Community Land Bill No 45 of 2016, published on the 11th August 2015, with amendments, on 21st April 2016)

Introduction

Kenya Wildlife Conservancies Association is the national umbrella body representing conservancy landowners in Kenya who have set aside their land for wildlife conservation. Conservancies complement national parks and reserves as wildlife habitats, corridors, migratory routes and dispersal areas.

Community conservancies are located on trusts lands and group ranches covering over 3 million hectares of land, which is about 4% of the country's landmass. In effect, community conservancies are a key stakeholder to be affected by the Community land legislation.

These proposed amendments are suggested to be considered in the Mediation Committee discussions on the Community Land Bill now before the Senate.

Clause	Provision	Comment	Proposed Amendment
2	Interpretation	The community land management committee established under clause 15 should be expressly defined under clause 2. in the following manner:	Replace definition as: Community Land Management Committee - <i>means the community land management committee established under section 15</i>
4	Vesting of community land	1. The provision/wording that "community land in Kenya shall be owned by the community" is inconsistent with Article 63(1) of the Constitution 2010.	1. Rewrite clause 4(1) to read: " <i>Community land shall vest and be held by communities identified by attributes under clause 2</i> "

		<p>2. There needs to be a provision deterring drafting of persons any right to land.</p>	<p>2. Add clause 4 (4): 'No right conferring freehold or leasehold ownership is capable of being granted or acquired by any person in respect of any portion of community land.'</p>
7	Procedure for registration of communities	<p>1. Subsection (3) wrongly cross refers to section 16 which is on interest conferred by registration</p> <p>2. Section 7 fails to provide for the type of legal body the community shall be registered as. This in effect does not empower the community to enter into any form of transactions in their own capacity.</p>	<p>1. Correct subsection (3) to cross refer to section 15, which establishes the community land management committee.</p> <p>2. Rewrite subsection 7 (1) to read: <i>Every community shall be registered under this Act as a body corporate with perpetual succession and a common seal and shall be capable in its corporate name of—</i></p> <p>(a) suing and being sued;</p> <p>(b) purchasing, acquiring, holding, charging and disposing of property;</p> <p>(c) entering into contracts;</p> <p>(d) borrowing money; and</p> <p>(e) doing all such other things or acts necessary for the proper performance of its functions under this Act, which may lawfully be done by a body corporate</p>
8	Procedure for recognition and adjudication	<p>1. Subsection (1) fails to provide for timeline within which the Adjudication</p>	<p>Add timeline of 1 year within which the Adjudicated Programme shall be gazetted</p>

	of community land	Programme must be Gazetted	
13 (1)	Communal land and reserve land	What constitutes majority members under this section should be specified as in section 21 (1), that is, a 2/3 rd majority.	Rewrite to include a two thirds majority as follows: "A registered community may by a resolution of a two thirds majority members of that community in a general meeting, reserve a portion of the community land for communal purpose
15	Functions of a community land management committee	<ol style="list-style-type: none"> 1. The definition of a Community assembly should be included. 2. The elections of the community land management committee require to ensure compliance to national principles and values of governance 3. The Bill fails to expressly provide provisions that ensure women inclusion in decision making in governance and management of community land thus maintaining the status quo where land matters are a preserve of men 4. The Bill fails to include representation of persons with disabilities and persons representing special interests 	<ol style="list-style-type: none"> 1. Include definition to read, 'means a gathering of members of the community convened pursuant to section 15 (1).' 2. Add a subsection after 15 (2) to read, '<i>The community assembly shall observe the principles and values of governance in the elections of the members of the community land management including that not more than two thirds of its members shall be of one gender and include minority representation</i>'
19	Land use and development planning of community land	Subsection (f) requiring that the land use and development plans of community to be bound by any approved physical development plan,	Replace subsection (f) with, ' <i>county government shall support community develop land use zoning and development plans to ensure</i>

		subjects communities to plan for their land based on County plans thus reducing communities' control over their land. The provision should therefore be deleted and replaced.	<i>consistency with the physical development plans'</i>
23	Conversion of community land to private land	Subsection (b) refers to section 22 (2)	Correct section 23(b) to cross refer to section 21 (2)
28 (5)	Grazing rights	This provision may cause conflict between pastoralists and other competing land uses that may interfere with grazing	Add provision (5) (e) to read: 'carry out any activity on the community land, other than lawful grazing of stock, which may prevent or restrict the members of the community concerned from a reasonable exercise of their grazing rights.'
29	Designation of other land use rights in community land	Provision 29(1) (g) where land may be reserved for 'any other purpose as may be determined by county government or national government...' leaves a loophole for abuse or misuse of community land in the name of public purpose.	Replace the current (g) with: ' <i>any other purpose as may be determined by the community, county government or national government in consultation with the community assembly</i> '
34	Existing rights to use and occupy community land	The cross-referenced sections 28 and 29 are not in tandem with the provisions of the sections themselves.	Amend cross-reference from <i>section 28 and 29.</i>
36	Benefit sharing	There is no provision for benefit sharing for natural resources that occurs beyond the border of one community land thus posing the threat of conflict over benefit sharing of the bordering communities	Add subsection (5): ' <i>Where natural resources are shared between two or more community land boundaries, the respective community land management committees shall develop fair and equitable benefit sharing mechanism of the resources.</i> '
39	Dispute resolution mechanism	The dispute resolution system provided should be tiered to each other. Further, prior to the communities coming up with their own by-laws, the Act should expressly provide that they will utilize alternative	Add subsections: (5) <i>Where parties fail to reach agreement using the internal dispute resolution mechanisms in subsection (2), parties may resort to the mechanisms in section 40 and 41.</i>

		dispute resolution.	<i>(6) Prior to the community establishing its own by-laws on dispute resolution, the community may utilize the mechanisms in section 40 and 41 of the Act.</i>
47	Group representatives, land-buying companies etc.	<ol style="list-style-type: none"> 1. There are no provisions within the section that relates to land-buying companies. 2. Subsection (2) fails to provide for a transition from the group representative administration structure to that under community land law. 	<ol style="list-style-type: none"> 1. Delete <i>land-buying companies</i> from the marginal note. 2. Amend Subsection (2) by adding, 'upon registration, the respective group representatives shall cease to hold office <i>and the registered community shall elect a new community land management committee.</i>'
48	Regulations		<p>Add the following regulations in subsection (2):</p> <ul style="list-style-type: none"> ▪ Setting aside community land for a public purpose ▪ Code of conduct of a community land management committee (provisions to include term of office, powers of committee, meetings of committee etc.)

PROPOSED ADDITIONAL CLAUSES

Clause	Objects and purpose	<p>As a principle of good legislative drafting, every legislation ought to have a clause on objects and purpose based on:</p> <ul style="list-style-type: none"> ▪ Substantive rights; ▪ Procedural rights; and ▪ Institutional Structure. <p>The Bill includes its objects in the short title but not in the body of the legislation.</p>	<p>Add the following Objects and Purpose:</p> <ol style="list-style-type: none"> i. <i>Recognition, protection and registration of community land rights;</i> ii. <i>Establishment of the institution for the management and administration of community law;</i> iii. <i>Providing for the</i>
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			<p><i>procedures for management and administration of community land rights;</i></p> <p>iv. <i>Providing for the role of county governments in relation to unregistered community land;</i></p> <p>v. <i>Documentation and mapping of the existing forms of communal land tenure;</i></p>
Prohibiti on against fences		Bill needs to provide for restriction of unauthorised fencing within community land to protect the land from fencing for individual use	<p>Add clause e.g. under section 29(3): <i>“Subject to such exemptions by the Committee as may be prescribed:</i></p> <p><i>(1) no fence of any nature shall be erected in community land; and where it exists prior to commencement of this Act the community land management committee shall determine whether it shall be retained or removed.</i></p>

Yours sincerely



Dickson Kaelo,

CEO, Kenya Wildlife Conservancies Association

Tel: 0722467344

Email: dkaelo@kwcakenya.com

ANNEX VI

SUBMISSION TO THE MEDIATION COMMITTEE ON COMMUNITY LAND BILL 2015 AS AMENDED BY THE NATIONAL ASSEMBLY.

PRESENTATION BY RECONCILE AND CSOS WORKING GROUP ON COMMUNITY LAND LAW (HAKI JAMII, KENYA HUMAN RIGHTS COMMISSION, FIDA, PAMOJA TRUST, ACTION AID, OXFAM GB, KENYA LAND ALLIANCE AND WWF)

Emerging Areas of Concerns on the Community Land Bill 2015, Amended version.

- **Clarify the levels of acceptable registration of community land (definition of community viz a vis the classes of holding community land section 12).** As the Bill stands, you can register and own community land as family, clan, ethnic group, and as a group of common interest. The levels of registration for all these groups to own community land should be defined. For instance, if the community land is being owned by clan, what happens if a family or a group of individuals submits an application to register a portion of it as their own community land? It should be clarified for instance that areas where clan ownership is the norm, then family and other group ownership of community land should be derived under or below the clan title. How do you do this?
 - i. Provide in the Bill that before the registration is started, a study shall be done to document the dominant communal and customary land ownerships prevalent in the regions of the country. This will guide the overarching classification of the main title and then others can be derived under it through application to the Community Land Management Committee.
 - ii. Publish the regional main ownership to guide the application for community land
 - iii. Provide that in the event that the family, clan apply for the registration of community land directly, there shall be verification meetings at the clan and at geographical space levels eg at the constituency levels to seek the concurrence with the larger communities in the area.
- **Roles of county governments, Ministry of Lands and National Land Commission in the registration of community land.** (Section 11 (2) (a). There should be consultations between all these institutions and their roles should be clear. In the event that the mistrust and perception

of communities towards the role of these institutions in the registration of community land persists, we suggest to the Committee to take a bold step and propose a board or Task Force to oversee the registration of community land within the period of 5 -10 years.

- **Provisions on the involvement of communities on transactions relating to unregistered community land** (section 6) It has been provided that in the event that the unregistered community land is to be acquired, compensation shall be made to the county government who will open an interest earning account and save the money for the respective community (ies) upon registration, the money is transferred back to the communities. We suggest the following additional provisions:
 - i. The county government shall transfer the amount and the interests earned to the communities.
 - ii. The procedures for the compulsory acquisition of land shall be followed as stipulated in the Land Act 2012. For the avoidance of doubt, the community that is known to identify with the land in question shall be consulted and fully be engaged in the entire process.
 - iii. The NLC should on behalf of County Governments develop a data base on the unregistered community land available in the country one year after this law is put in place and update the same annually.

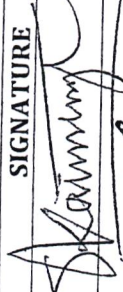










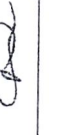
- **The absence of clarity between communal - public resources and the general public resources.** It is proposed in the bill that all the communal spaces being used for public purposes would be declared public land. This is confusing because there are resources and spaces communities are using for their own (community) public good eg community school, hospital, etc. This should be separated for instance from the markets or the general public health centers. (See section 13 (2))

- **In section 13, there is need to clarify the powers of the County and National Governments in reserving areas for special purposes.** It should be clearly provided that they shall propose to the communities concerned who will deliberate and make a determination. Otherwise, as it is, it can easily generate conflict.

ATTENDANCE LIST

MEDIATION COMMITTEE ON COMMUNITY LAND BILL, 2015 & LAND LAWS (AMENDMENTS) BILL, 2015

WEDNESDAY 13TH JULY, 2016

NO	NAME	ORGANISATION	DESIGNATION	CONTACT	SIGNATURE
1.	JACOB T. KAMUNDA	MOLPP	C.S	0722 223647	
2.	MARIAMU ELMARY	MOL & PP	PS	0712 415030	
*3.	TERRY GATHAGU	MOL & PP	C.S.C	072 1971310	
4.	Peter Kambho	MOL & PP	C.S	0722 2728849	
5.	ALFRED K. MARIAMU	MOL & PP	D.P.P	0722 691843	
6.	Francis Dindi	u	D.P.P	0722-61848	
7.	PASCAL MACHA	MOLPP	AD.C.A.S	0724362903	
8.	Ann B Nyikuli	MOLPP	D.A	0714-024 997	
9.	Lucy Wanga	MOLPP	Legal Advisor	0724494564	
10.	STEPHEN KIBUSHO	MOLPP	Legal Advisor	072239918	
11.	Paul Ndungu	MOLPP	A.G.A.D.O.S.	0722824050	
*12.	Angela Nyamongo	RECONCILE	Legal advisor	0727528947	

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WEDNESDAY 13TH JULY, 2016

NO	NAME	ORGANISATION	DESIGNATION	CONTACT	SIGNATURE
	D. Rosemary Njaramba	Council of Governors	Legal	0722481736	
	Sylvia Kembo	Council of Governors	Technical	0704511712	
	Christine Akello	ITCs	Information	9722241966	
	SPATS KIRIROI	MLC	Commissioner	0721910285	
	Eva Sime	Council of Governors	Legal	0721466302	
	Jacqueline Nyekyeri	COG	CEO	0726581049	
	Medline Mwarumbe	COG	Legal	0722783203	
	Pauline Vitha	Wajir County	E.O	0120233062	
	Linda Ikonye	Hakijamii	E.O	0704513 414	
	Glady's Wanjau	Kenya Wildlife Conservation Association	Legal	0900171295	
	GEORGE AYUKA	KWCA	Legal	0722442675	
	Aickson Ole Karo	KWCA	CEO	0722467344	

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WEDNESDAY 13TH JULY, 2016

NO	NAME	ORGANISATION	DESIGNATION	CONTACT	SIGNATURE
	SINDAK OMONO	HS CONSULTANTS	EXECUTIVE DIRECTOR	Sh. Indrakasidhi 0724 703 830	
	SAMUEL ODARI	NLC	DEPUTY ADJ. DIRECTOR	Okanyidoni @ yahoo.com	
	Mercy Njiruria	HLC	DIRECTOR	mercyn50@yahoo.com	
	Sarah Bennett	NLE	COMMUNICATIONS	silvastraw@yahoo.com	
*	John M. Mwiti	TOWITA Tanjetei COG	GOVERNOR	nullym@gmail.com	
*	Kwetha Wimbwa	MAKUMI COG	GOVERNOR	mauthandunthi@yahoo.com	
*	Peter Ngunjiri	COG	GOVERNOR	Petermunya672@gmail.com	
*	Julius Mbatia	Aisiri County, COG	GOVERNOR	jullimakabaka@ipr.com	

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