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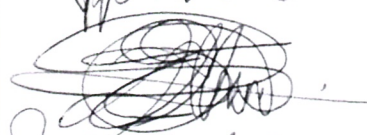
THE PARLIAMENT

ELEVENTH PARLIAMENT-FOURTH SESSION

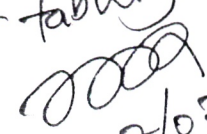
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by Sen. Henry Kivuti.  
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MEDIATION COMMITTEE ON THE COMMUNITY LAND BILL, 2015  
(NATIONAL ASSEMBLY BILL NO. 45 OF 2015)

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

Approved  
  
Speaker  
27/7/16

JOINT CLERKS' CHAMBERS JULY, 2016  
PARLIAMENT OF KENYA  
NAIROBI

Rt. Hon. Speaker  
You may approve  
for tabling.  
  
27/07/16

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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 21<sup>st</sup> June, 2016, and 28<sup>th</sup> June, 2016, respectively.

The members of the Committee were:-

- |                                      |                           |
|--------------------------------------|---------------------------|
| <b>1. Sen. Lenny Kivuti, M.P</b>     | <b>- Chairperson</b>      |
| <b>2. Hon. Alex Mwiru, M.P</b>       | <b>- Vice-chairperson</b> |
| 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 5<sup>th</sup> 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 13<sup>th</sup> July, 2016. The Committee considered the submissions from the stakeholders on the contentious clauses on Monday 18<sup>th</sup> 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.

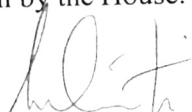
**1.6 Acknowledgment**

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.

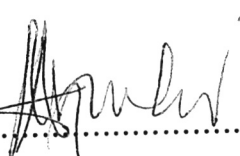
The Chairperson thanks all the Members of the Committee for their sacrifice, commitment and selflessness to the cause of the mediation process until common ground was arrived at.

**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 5<sup>th</sup> 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 21<sup>st</sup> 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 2<sup>nd</sup> June, 2016. The Senate rejected the Bill in its entirety during the second reading that took place on 15<sup>th</sup> 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 21<sup>st</sup> 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 13<sup>th</sup> 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 persons. 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><b>THAT</b>, 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><b>THAT</b>, 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><b>THAT</b>, 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><b>THAT</b>, 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

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Adopted as in the Bill

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Adopted as in the Bill

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Adopted as in the Bill

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Adopted as in the Bill

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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

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**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).

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Adopted as in the Bill



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Adopted as in the Bill

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Adopted as in the Bill

**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)”.

Adopted as in the Bill

Adopted as in the Bill

Adopted as in the Bill

Adopted as in the Bill

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Adopted as in the Bill

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

Adopted as in the Bill

Adopted as in the Bill

Adopted as in the Bill

Adopted as in the Bill

Adopted as in the Bill

**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”

Adopted as in the Bill

Adopted as in the Bill

Adopted as in the Bill

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42 Adopted as in the Bill

43 Adopted as in the Bill

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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”