



Procedure for Acquisition and Registration of Registered Community Land in Kenya

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Understanding Basic Terms

“Community” means an organized group of people using community land, who are citizens of Kenya and share any of the following things -

- a. common ancestry;
- b. similar culture or unique mode of livelihood;
- c. socio-economic or other similar common interest;
- d. geographical space;
- e. common environmental; or
- f. ethnicity.

“Community assembly” means a gathering of registered adult members of a community convened for the purpose of discussing issues related to community land (just indicate the purpose)

“Community land” means a territorial rural land that is in possession or under the control of a community or group representative as a forest, grazing area, shrine, or for related use.

“County Government” means the public administration of a specific county to which the Community Land Act applies. The county consists of two arms: the County Assembly, which exercises the representative, legislative and oversight authority of the government; and the County Executive which exercises the executive authority of the county government.

“Court” means the Environment and Land Court or any other court gazzeted to hear land matters

“Registrar” means the Registrar of community land

“Registered community” means a a group of people with shared interest on community land and have registered that interest on land.

CHAPTER ONE

1.1 Introduction

Community land registration process is governed by the Community Land Act, No. 27 of 2016 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.

1.2 Purpose

This booklet has explained the procedure for registration of community under the Community Land Act. The procedures have been synthesized and explained in a manner that has considered the challenges that most community members have faced in their attempts at registering community land. The booklet has comprehensively covered all forms of land that fall within the community land Act.

Any person who interacts with this booklet will be familiar with both the process of registering community land and the common terms used in the process of registering land. It has specifically covered the core areas of:

- a. Registering of a community.
- b. Establishing the CLMC.
- c. The role of both the CLMC and the community assembly.
- d. Management of community land
- e. Registration of different types of community land
- f. The pivotal role of the Community Land Registrar
- g. Applying for registration
- h. Dispute resolution module
- i. Registration of community land.

This booklet is therefore a simple and suitable guide for both practitioners and community members in guiding them through the community land registration process.

1.3 Effect of Registration

Section 5(3) of the Act provides that conversion of the registered community land, non-registered community land and group ranches would have equal force and effect in law like freehold or lease hold titles under the law. The NLMC would have no power to dispose of the community land unless it obtains a super majority of 2/3 of the members to approve such a transaction.

The Registrar will not approve an NLMC that is not representative of the Women, youth, minority, persons with disabilities and marginalized groups who have the right to equal treatment in all dealings in community land. 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. This ensures that all decisions in regard to community land is inclusive and comprehensive. This would also make it difficult for communities that have scant respect for women and children to find it very difficult to register an interest in community land until such time that they are able to adopt a paradigm shift in their cultural practices.

A person convicted of an offence under the 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.

This booklet provides information on the step by step followed to register community land.

CHAPTER TWO

2.0 Procedure for Registering a Registered Community Land

A Registered community land is piece of land that has been registered and certificate of title has been issued. The title could be in the name of a community or a private person.



STEP 1: Registration of the community

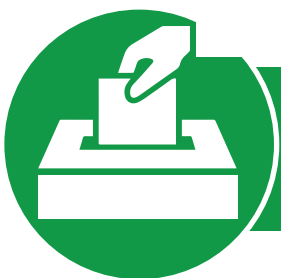
A community that intends to register its interests in a communal land must first of all be registered. The registration process of a community shall follow the following general procedure:

- a. The members of the community shall meet and pass a resolution of their intention to register their interests in the community land.
- b. The community shall notify the community land Registrar (the Registrar) of their intention to register a communal land. This is intended to help them obtain confirmation that the land is suitable for registration.
- c. The community will call for a meeting where they will introduce the issue of registration and also elect interim officials to help them kick start the process.
- d. Hold meetings to;
 - i. Carry out public education and awareness in the community on the need to register the community land.
 - ii. Convince a majority to agree on the need to register their interest in land.
 - iii. Ensure that everyone understands the registration process in a manner that can make it possible for them to participate in the subsequent community discussions. The process must ensure the participation of women, children and persons with disability in the making of main decisions.
 - iv. The community must in particular be educated on the effects of the registration, role of the County Assembly, the powers that CLMC shall have over the entire process and the criteria for election of members into the CLMC.
- e. After the public education and awareness is completed to the satisfaction of the community members, then the community could proceed to hold an introductory public meeting to formally introduce the issue of the intended registration of land.
- f. Before the decision to register the land is made the number of elders in the community will be verified and compiled in the Register of community members. This could be done by the elders or by an interim leadership that has been formed to commence the process. The decision to register land will thereafter be made on a consensus basis, or on a majority basis if a consensus is not obtained.
- g. The interim officials would notify the Registrar once the decision is made. The notice which will be accompanied by the prescribed fees shall be made in duplicate using a prescribed Form which must be signed by at least 15 members of the community. **FORM CLA 3 See attached.**



STEP 2: Notice of Public Meeting

- a. Once the notice from the Community is received, the Registrar shall issue a notice in at least one newspaper of nationwide circulation and a radio station of nationwide coverage inviting all members of the community to a public meeting. The local model of reaching all community members like chief's barazas and fixing of notices in places that are frequently visited by the locals like the chief's office, County offices sub-county offices, Ward offices and other strategic places would also be adopted to ensure that all members attend the meeting.
- b. The Registrar will issue the same notices to the national government administrators, county government administrators and influential leaders like church elders and politicians in the area where the community land is located.
- c. The main agenda of the meeting would be for the Registrar to:
 - i. ensure that the community is well informed and is aware of the process they are about to undertake,
 - ii. Agree on the procedure for election of Community Land Management Committee (CLMC)
 - iii. Agree on the number of CLMC members
 - iv. Agree on qualification and criteria for the CLMC members. comply with the two third gender rule, fair administrative action, the national values and principles of governance and the principles of land policy. This will be contained in the community's constitution.
 - v. Preside over the election of the Community Land Management Committee (CLMC) together with the National County Administrators, the County Executive member responsible for land and the sub-county administrators of the area where the land is located.
- d. When convened, the meeting shall become a Community Assembly meeting that is presided over by the Registrar or a public officer that he has appointed in writing.



STEP 3: Election of Community Land Management Committee

- a. All adult members of the community qualify to be CLMC members except those that do not meet the qualification of Chapter 6 of the constitution.
- b. Election shall be done by secret ballot.
- c. The membership of CLMC can be between 7 to 15 members.
- d. The CLMC shall appoint its Chairperson and Executive Committee at its first meeting.
- e. The CLMC members shall serve a term of 3 years. However only a third of the members shall cease to hold office at the 1st election to ensure continuity in the office. The members who shall retire first shall be determined by the CLMC members by a cast of a ballot at their first meeting. Two thirds of the members shall be up for election in the subsequent CLMC elections.

- f. A CLMC member who dies in office or ceases to hold office for whatever reasons shall be replaced by the members through a process that is espoused in their constitution.
- g. The list of officials and minutes of election shall be forwarded to the Registrar. This makes it possible to henceforth verify the legitimacy of the people that he shall work with into the future. The Registrar must also be notified of any changes to the CLMC.
- h. The new CLMC member will take up office once the Registrar has effected the changes.
- i. The Notice of replacement of a member of the CLMC shall be served on the Registrar vide a prescribed form within 28 days of such a resolution. **(FORM CLA 2) see attached at the back**
- j. The main function of CLMC are:
 - i. Registering the community
 - ii. Registering the community land
 - iii. Managing the community land
 - iv. Execute all documents in relation to the community land
 - v. Keep the registration document for the community land.
 - vi. Come up with name for community land.
 - vii. Keep register of all member
 - viii. Develop all governance instruments for the community



STEP 4: Registering the Community Land

- a. Community should debate and agree on a name presented to it by the CLMC. The name shall give it a corporate identity from which it can sue and be sued.
- b. Community should approve all governance documents required for registration which includes the Community's constitution, its rules and regulations and an updated list of all community members.
- c. The CLMC shall pay the prescribed fees and apply for the registration of the community land using a prescribed form. **(FORM CLA 1)** the following shall accompany the application:
 - i. The name used by the community is unique and not in use by any other community.
 - ii. All the requirements in the Act and the community's constitution have been met.
 - iii. The Constitution, Rules and regulations and other governance instruments presented to him are acceptable in form and substance.
 - iv. The land has not been committed for public purpose use or is registered to other parties.
- d. The Registrar shall satisfy himself that:
 - i. The name used by the community is unique and not in use by any other community.
 - ii. All the requirements in the Act and the community's constitution have been met.
 - iii. The Constitution, Rules and regulations and other governance instruments presented to him are acceptable in form and substance.
 - iv. The land has not been committed for public purpose use or is registered to other parties.
- e. The Registrar shall proceed to issue the title of the interest sought in the name of the community subject to any conditions that he may deem fit. **(FORM CLA4)**

- f. The title of registration shall be held in trust by the CLMC for the benefit and use of the community.
- g. In the event that the registration is declined, then the Registrar shall give reasons for his decision. The NLCM will be at liberty to resolve the issue using the available negotiation mechanisms.

CHAPTER THREE

Common Questions

What is community land?

Community land consists of the land lawfully registered in the name of group representatives under the repealed Land (Group Representatives) Act Cap 287. ; land that has been transferred to a specific community; land declared to be community land by an Act of Parliament; and land that is lawfully held, managed or used by specific communities as community forests, grazing areas or shrines; ancestral lands and lands traditionally occupied by hunter-gatherer communities; or land lawfully held as trust land by the county governments.

Can community land be transferred to a 3rd party without my knowledge?

No, it cannot be passed to a third party without members informed consent.

Can community land be converted to private or public land?

Yes, this may be done through compulsory acquisition, transfer, surrender or allocation by the CLMC provided that approval of both the Community Assembly and the County Assembly is obtained.

Are women allowed to be members of the CLMC?

Yes. The composition of the CLMC is required to be compliant with the constitutional requirements of ensuring that at least a third of its membership is made up of persons of the opposite gender. This requirement shall be enforced by the Registrar and the County Executive in charge of land matters in the area where the land is located.

Can a community land be registered if the Community assembly are in conflict and unable to agree to the registration?

Alternative dispute resolution mechanisms of mediation and arbitration shall be applied to resolve the dispute. If no consensus is obtained then the issue shall be presented to a vote at the Community assembly and the registration process will go on if 2/3 of the members give CLMC the approval to proceed with the registration process.

Do members who are opposed to the registration process of the community land have any legal alternative once they lose the vote at the Community assembly?

Yes, they can petition the Environment and Land Court to stop the registration or any other ongoing process.

Have community land registrars been appointed?

The government has appointed and gazetted over 100 community land registrars and published gazette notices for the appointment of the community land adjudication officers for 24 Counties where community land ownership is prevalent.

Is the County government involved in the community land registration process?

Yes, it is required to provide budgetary support to help in the registration process, civic education, facilitating the publication of any gazette notices, facilitate and support the appointment of CLMC, coordinate the convention of the community assembly, mediate on dispute resolution processes, protect community land pending the registration process and approving any legislations that could help support this registration process.

Can community land be allotted to an investor?

Yes, and the benefits of the resources exploited from the land shall be negotiated pursuant to Article 71 of the Constitution, provided that at least 30% of such investment income shall be allocated to the community.



References

- i. Constitution of Kenya 2010 2.
- ii. The Land Act, 2012 3.
- iii. The Community Land Act 2016.
- iv. The Land Act, No. 6 of 2012
- v. The Land Registration Act, No. 3 of 2012
- vi. Kenya Land Alliance, A Guide on Public Land Acquisition Within Community Land.
- vii. Thomas Reuters Foundation –A historic step towards securing Community Land Rights
- viii. National Land Commission, Frequently Asked Questions on Land Matters Booklet

Anexures: Cla Forms

FORM CLA 1



(r. 3(I))

**REPUBLIC OF KENYA
MINISTRY OF LANDS AND PHYSICAL PLANNING**

APPLICATION FOR RECOGNITION OF INTEREST/ CLAIM ON COMMUNITY LAND

To: The Registrar of

We the.....community, hereby apply for recognition of our interest/ claim in the community land referred to herein.

Our interest/ claim are as shown in the attached sketch diagrams /maps/plans and described in the Schedule.

Schedule

| S/No. | Locality | Approx. Area (Ha) | Current Use of the land |
|-------|----------|-------------------|-------------------------|
| | | | |
| | | | |
| | | | |

Details of the Applicant(s)

Name of Persons/Group/Community:.....
 Registration No.:.....
 Postal/Email Address:.....
 Tel. No.:.....
 Dated at..... this..... day of20.....

Signature of Chairperson

.....

For Official Use Only:-

.....

Signed

Registrar.....

FORM CLA 3



(r. 8(2))

**REPUBLIC OF KENYA
MINISTRY OF LANDS AND PHYSICAL PLANNING**

Application for Registration of a Community

To:
The Community Land Registrar
P.O. Box
Nairobi.

We the undersigned community land management committee hereby inform you that at a community assembly held at on the day of 20. in accordance with section 7 of the Community Land Act, 2016 rules and by-laws were adopted. The draft rules and by-laws of the Community are attached to this application together with a register of the proposed members and a certified true copy of the minutes of the said meeting. We hereby apply under section 7(6) of the Community Land Act, 2016, for registration of the..... Community.

The following are particulars of the community:—

- a. The name of the community
- b. Description of the area determined in accordance with the Community Land Act, 2016.....
.....
- c. Registered office of the community (if any)
- d. Postal address of the community
- e. Object and purpose of the community
- f. Names, addresses, occupations and dates of birth of the community land management committee

| Name | Addresses | Occupation | Age | Signature |
|-------|-----------|------------|-------|-----------|
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Provision is made in the draft rules and by-laws of the community for all other matters connected with the community and its functions.

Date

*To be signed by all the members of community land management committee

FORM CLA 4



(r. 8(4))

REPUBLIC OF KENYA
MINISTRY OF LANDS AND PHYSICAL PLANNING

Certificate of Registration

Registration No.

I hereby certify that the Community under the name of.....
 community and its rules and by-laws have this day
 been registered by me in the Community Register in pursuance to the provisions of the Act and the
 Regulations made thereunder.

Given under my hand at this day of, 20.....

.....
 Community Land Registrar

FORM CLA 8



(r. 12(6))

REPUBLIC OF KENYA
MINISTRY OF LANDS AND PHYSICAL PLANNING

Application for Recognition and Adjudication of Claim on Community Land

To: The Registrar of

Details of the Applicant(s)

Name of Community:

Registration No.:

PIN No:

Postal/Email Address:

Tel. No.:

We, the above named Community situated within(locality) in.....County hereby apply for recognition and adjudication of community land rights over the parcels of land shown in the attached sketch diagrams/maps/plans. The description of the parcels is as follows:-

- i.
- ii. :.....
- iii.

Current use of the land.....

Dated at..... this..... day of20.....

.....

Signature of Applicant

For Official Use Only:-

.....
.....
.....

Signed

For: Chairman,
Community Land Management Committee



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