

# Women's Property Rights in Kenya's Community Land Act 2016





## Part A: Salient Features of the Community Land Act that Promote Women's Property Rights in Kenya

### Introduction

The Community Land Act (CLA) 2016 provides for the recognition, protection and registration of community land rights and how to manage the land.

The legislation applies to various pastoralist and agro-pastoralists communities in Kenya including Maasai, Somalis, and Borana.

### Classification of land in Kenya?

Land in Kenya is classified under three categories

**Public land:** This is land used for public use including roads, schools and hospitals construction among other things.

**Private land:** This is land used for individual use including farming, residence, business among others.

**Community land:** Community land is held by communities identified on the basis of ethnicity, culture or similar community of interest.

### Who is affected by the Community Land Act?

The CLA affects communities.

A community is defined as a consciously distinct and organized group of users of community land who are citizens of Kenya and possess the following attributes: common ancestry; similar culture or unique mode of livelihood; socio-economic or other similar common interest; geographical space; environment; or ethnicity.

## Categories of community land in Kenya

There exists four (4) categories of community land as follows:

- land registered in the name of group representatives;
- land transferred to a specific community;
- any other land declared to be community land by law; and
- land that is lawfully held, managed or used by specific communities as community forests, grazing areas or shrines; ancestral lands and land traditionally occupied by hunter-gatherer communities; or lawfully held as trust land by the county governments.

A community land may be held as: communal land, family or clan land; reserve land; or in any other category of land recognized under the law.

## What are the some of the women's property rights inherent in the CLA?

Elimination of gender discrimination in law, customs and practices related to land and property in land is inherent in the 2009 land policy and the Constitution.

The following provisions are relevant to promoting women's property rights in the context of CLA:

- i. The right to equal benefit from the community land: Women have the right to enjoy full and equal rights of use and access of community land except for the legally divorced women who are remarried or women who are remarried after the death of a spouse.
- ii. The right to apply for customary right of occupancy: Women should be treated equally as men when applying for customary right of occupancy in terms of use or staying on a land.
- iii. Right of participation in the community assembly. The community assembly should consist of all adult members of the community including women and other marginalized groups.
- iv. Right of representation in community land management committee. Women in the assembly must ensure that fellow women are elected as part of the seven to fifteen members' community land management committee, which performs the following functions:
  - have the day to day running of the functions of the community;
  - manage and administer registered community land use plans in collaboration with relevant authorities;
  - promote the cooperation and participation among community members in dealing with matters pertaining to the respective community land; and
  - prescribe rules and regulations to be ratified by the community assembly, to govern the operations of the community.
- v. Right of participation in the process of planning for the development, management and use of community land. Women's views must be included in the plans for the development, management and use of the community land administered by the registered community before it is submitted to the county government for approval.
- vi. Right of inclusion in the sustainable conservation of land based natural resources. Women should be included in the sustainable conservation of land based natural resources within county land across counties including:
  - Measures to protect critical ecosystems and habitats
  - incentives for communities and individuals to invest in income generating natural resource conservation programmes
  - measures to facilitate the access, use and co-management of forests, water and other resources by communities who have customary rights to these resources;
  - procedure for the registration of natural resources in an appropriate register; and

- procedure for the involvement of communities and other stakeholders in the management and utilization of land-based natural resources.
- vii. Right to vote during community meetings. Women should be allowed to vote during community meetings before the decision to transfer community land to public land is made.
- viii. Right to apply for exclusive use and occupation of community land. Women should not be stopped from applying for allocation of a registered community land for their exclusive use and occupation.
- ix. Right to access remedy: In case of discrimination against women, women should be able to access remedy.

## Part B: The Process of Registering a Community Land in Kenya



Any community claiming an interest in or right over community land is required to register it.

Registration of a community land gives that community the absolute or total ownership of that land together with all the rights and privileges over the land. Similarly, the registration of a lease gives the community or person the leasehold interest described in the lease.

Any land that is left unregistered may be taken over by the county government and therefore it is important for communities to register their interests. The county government holding the unregistered community land is doing so only for purposes of safeguarding it and therefore the county government cannot sell or transfer it to any other person(s).

The following 6 steps may guide members in registering their community land:

### **Step 1: Notification of the Registrar**

Members of the community to notify the Community Land Registrar of their intention to register their interest in land. The notice shall be made in duplicate through a prescribed form signed by at least 15 members of the community and upon payment of prescribed fees.

### **Step 2: Publication of the notice**

Upon receiving the notice, the Community Land Registrar issues and publishes a notice inviting all members of the community with some communal interest to a public meeting in at least one newspaper of nationwide circulation and a radio station of nationwide coverage. The notice may

also be published at the headquarters of the respective county, sub-county, wards, location, and in strategic places where the community land is situated. The notice of the meeting will also be given to national government administrators and county government administrators where the community land is located.

### **Step 3: Election of the Community Land Management Committee**

The public meeting which convenes as a Community Assembly and chaired by the Community Land Registrar or a public officer appointed by the Registrar in writing, is then to elect 7 to 15 members from among themselves to the Community Land Management Committee (CLMC) for a period of 3 years. This process is overseen by national county administrators, the county executive committee member responsible for lands and the sub-county administrator(s) for the area where the land is located. Strict compliance with the two thirds gender rule, the national values and principles of governance and the principles of land policy is required.

### **Step 4: Appointment of the Executive Committee**

The CLMC shall at its first meeting appoint its executive committee consisting of a Chairperson, Vice Chairperson, Secretary and Treasurer in accordance with their Constitution to perform the following functions; registration of the community; registration of the community land; and management of the community land. The CLMC will come up with a name to be inserted in the certificate of registration, compile a register of members of the community; draft the constitution of the community including its rules and regulations to be approved by the Community Assembly; and apply for registration to the Registrar.

### **Step 5: Application to the Registrar**

The application to the Registrar shall contain: the name of the community; the register of members of the Community; a certified true copy of the minutes of the Community Assembly at which it was resolved to apply for registration of the community; the constitution of the community; and a description of the interest being claimed by the community.

### **Step 6: Registration**

The Registrar may issue a certificate of registration to the community (subject to any conditions, limitations, or exemptions) upon being satisfied that: the name proposed to be registered has not been used by any other registered community; the requirements of the Act and regulations with respect to registration have been complied with; and the rules and regulations of the community are acceptable in substance and for. Upon being issued with a certificate of registration, the community shall have the power to sue and be sued in its name, and to acquire, hold, charge and dispose of property of any kind, and to borrow money with or without giving security.

## Part C: Creation of By-Laws



According to the Second Schedule of the CLA Regulations, the guidelines on preparation of rules and regulations are as follows:

- i. The name of the community.
- ii. A description and extent of the land which the community has, under recognized customary law, exercised rights of use and occupation.
- iii. The persons who are the members of the community.
- iv. The persons to whom membership is open.
- v. The particulars of the members of the Committee, term of office, the method and frequency of their election, appointment, suspension and dismissal.
- vi. The authority for and the method of filling vacancies occurring amongst the officers of the Committee.
- vii. Payment of allowances to Committee members and other officers of the Committee.
- viii. The frequency of, quorums for, method of calling and dates of the annual general meetings.
- ix. The custody and investment of the funds and property of the community, and the designation of the persons responsible.
- x. The purposes for which the funds and property of the Community may be used.
- xi. The maintenance and inspection of books of account, the register of members and the record of interests, by any member or officer of the community. The periodic audit of accounts.
- xii. The manner of making and amending the name, constitution or rules of the community.
- xiii. The manner of the dissolution of the community and the disposal of its property on dissolution.
- xiv. The mechanisms for dispute resolution.



### **NAIROBI OFFICE**

Kuwinda Lane, Off Lang'ata Road, Karen C  
P O Box 112 - 00202, KNH Nairobi  
Tel: +254 020 2515790  
Mobile: +254 710 261 408 / +254 788 220 300  
Fax: 020 386 1390

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### **KISUMU OFFICE**

Nyalenda Railways Estate, Block 9/220  
Off Nairobi Road Opposite YMCA  
P.O Box 7708 - 40100, Kisumu - Kenya  
Tel: +254 057 204 1001/+254 020 251 5790  
Cell: +254 716 978 740/+254 710 261 408