RECONCILE



GUIDE TO REGISTRATION OF COMMUNITIES AND COMMUNITY LAND

Contents

Table of Contents

A word from the director ii

Acknowledgements iv

CHAPTER ONE

INTRODUCTION 1

1.0 Overview of the Guide 1

1.2 Context analysis 4

1.3 Methodology 11

CHAPTER TWO

REGISTRATION OF A COMMUNITY 13

2.0 Introduction 13

2.1 Notice to the Community Land Registrar 14

2.2 Notice and Invitation to Public Meeting 16

2.3 Proceedings of the Public Meeting 17

2.4 Certificate of Registration and Effects of Registration 24

2.5 Register of communities 25

CHAPTER 3

REGISTRATION OF COMMUNITY LAND 26

3.0 Overview 26

3.1 Principles and values guiding registration of community land 28

3.2 Preparing Communities for registration of land 28

3.3 Implementation of community education and awareness programme 29

3.4 Procedure for registration of unregistered community Land 31

3.5 Procedure for Registration of Community Land from Group Ranches 40

3.6 Effects of Registration of community land 42

Annexes 43

A WORD FROM THE DIRECTOR

After many years, Kenya now have a comprehensive legal framework governing the administration and management of the land that cover about 70% of the country. The realization of Community Land Act 2016 is therefore an important milestone in institutionalizing land reforms in the country.

The process for the development of community land law was long and treacherous. It required full time alertness and swiftness to take advantage of opportunities to engage with policy and decision makers. The Civil Society Organizations Working Group on Community Land under the coordination of RECONCILE did a splendid job. The members of this group included: Action Aid, Haki Jamii, Kituo Cha Sheria, Kenya Wildlife Conservancies Association, FIDA, Kenya Land Alliance, Kenya Human Rights Commission, Pamoja Trust and Groots Kenya. The working group collaborated with other CSOs, government agencies, academia to ensure that the community land law reflected the will and expectation of communities. The zeal, focus and dedication to ensure that communities get the best out of the community land law witnessed during the formulation process is what inspired the development of this manual.

The law put responsibility on the communities to organize themselves and initiate the process of registering their land rights. This cannot happen without adequate awareness and education on the key provisions of the Act. RECONCILE supported by Christensen, ICAN Project and International Land Coalition (ILC) through the Rangeland Initiative established a core team to work on the development of this guide. The team included: Michael Ochieng Odhiambo, Shadrack Omondi and Priscilla Nyagah who were lead facilitators and drafters of the guide supported by, Philip Kilonzo (Action Aid), Angela Nyanchama (RECONCILE), Melissa Cheruyiot (RECONCILE), and Shadrack O. Omondi (RECONCILE). The team benefited greatly from analyses and discussions during the Land Sector Non State Actors (LSNSA) meetings. LSNSA provided a good forum to unpackage the legislation. In puts and reviews from experts like Liz Widley played a big role in shaping the guide.

It is our expectation as RECONCILE that this guide will inform the development of

other more simpler and very community oriented materials as we continue with the strategic awareness creation and education. We therefore encourage stakeholders to feel free and use relevant components to produce more materials such as step by step guides on boundary demarcation, conducting community assembly meetings among others.

On behalf of the RECONCILE board of directors, I wish to sincerely thank everyone that has been involved in this process. I recognize and appreciate the financial contributions made by our partners, collaborators and friends. I am proud of you because I know your decision to support us will greatly benefit communities who need this information. I know the future of community land in Kenya will soon be secured because of you. Lets continue the work until we see the reality of registering community land happening across this great nation of Kenya.

Thank You!



SHADRACK O. OMONDI
Executive Director, RECONCILE.

ACKNOWLEDGEMENTS

We would wish to recognize with gratitude the technical support and contributions from the following individuals: Ken Otieno, Irene A. Mukalo, Angela Nyanchama, Dr. Steve Ouma,Odenda Lumumba, Pauline Vata, Samuel Olando, John Pamita Letai and Jarso Morku among others. We also appreciate Land Sector Non State Actors (LSNSA), Kenya ASALs Advocacy Group (KAAG), ASAL Stakeholders Forum, friends and partners of RECONCILE across the counties whose discussions and presentations on community land issues informed the development of this guide.

We also appreciate Christensen Fund for supporting this initiative. For years, the impact of your support shall be felt as communities and trainers use this guide and the associated resources. We are grateful.

CHAPTER 1

INTRODUCTION

1.0 Overview of the Guide

The journey of creating this guide was made up of many important pieces - coordination, ideas, steps, people, and resources. The design phase was when all these pieces came together. When finished, the guide has presented a blueprint of what the training will look like. A glimpse of the bigger picture was provided: audience; their identified needs; learning objectives, outline, and instructional methods; trainers and other resources; etc. The guide is designed to document the process and good practice in establishing and registering a community and community land registration.

The preamble of this guide is to create awareness towards the marginalized and oppressed community and to build a guide that is based on communities organizing themselves such as the pastoralist community. Marginalized communities need to make their own decisions when confronted with an issue or a problem thus by them organizing themselves such issues will be easily realized and dissolved. The guide is to train and equip community organizers and leaders to help the community organization process and strengthen the oppressed community.

Purpose of the Guide

This guide envisions to delve in explaining the procedure for registration of community under the Community Land Act (includes election of Community Land Management Committees, development of community bylaws), the registration of community land as well as how best to strengthen governance structures on Community Land focusing on;

a. Facilitate the establishment of CLMC;
b. Facilitate the registration of communities;
c. Facilitate the registration of community land;
d. Facilitate the process of setting of structures/institutions who are to deal with the management and administration of community land;
e. Provide the roles of the structures; and
f. Facilitate the constitution formulation of the communities.

1.1.2 Scope of the Guide

Explains the nature, limits, coverage and content of the Guide

Key considerations

simple but comprehensive, focus on process of registration, based on the relevant laws

Scope

This guide is designed to be simple but comprehensive. It will focus on the process and procedures of community registration and community land registration with clear reference to the relevant laws. The guide is to be defined by the different sources of Law within Kenya as well as the Constitution but the focus is to be on Community and Community Land Registration process.

1.1.3 Target group for the Guide

Identifies the groups for which the Guide is developed and justifies why they are the target

Question: what about stakeholders?

The target audience is the community members but other actors will use the guide to help the communities understand the content with regards to Community Registration and Community Land Registration process.

1.1.4 How and When the Guide will be used

Explains the circumstances/instances in which the Guide shall be used; and stages (in the registration process) at which it will be used

How to use the guide

The guide will be used at community setting by community members to create awareness to communities (citizens of Kenya), CSOs, International Organizations, Governmental Organizations both at National and County level. It will provide a quick reference- easy to read and understand guide in terms of community registration and community land registration to the above mentioned stakeholders/actors. In essense, the guide is to act as a mode of reference by simplifying the content in relation to the source.

The timelines of the guide is to provide on the when aspect of the guide's importance. The guide will be much more effective in awareness creation during the community mobilization on community registration and community land registration process. The rationale of the guide at this hour is due to the demand and vacuum that has been created by repealing the old laws under section 45 of the Community Land Act and enacting the Community Land Act giving effect to Article 63(5) of the Constitution. This will thus enable and enhance public participation as the guide will provide simplified knowledge on community registration and community land registration process.

1.1.5 Structure of the Guide

Explains how the Guide is structured and the logic of the structure

1.2 Context analysis

The Community Land Act came into force on 21st September 2016, marking a pivotal point in Kenya's land reform process. The introduction of community land tenure is a key achievement of the National Land Policy of 2009 and the Constitution of Kenya 2010. It provides an opportunity for securing collective land rights founded on customary law, by giving legal recognition of customary rights in land as lawful forms of property with equal legal force and effect as rights obtained and transacted under freehold and leasehold tenure . In so doing, it addresses the foundational issue that has historically undermined land rights of rural communities since colonial times.

Community land tenure rests on two pillars – the registration of a community, and registration of the community land. It is through the act of registration that the community attains the legal personality to be registered as owner of land. This is an important first step as only a registered community within the meaning of section 2 of the Community Land Act can apply to be registered as a landowner. As part of the registration process, the community elects a Community Land Management Committee (CLMC), which oversees the process of registration of the community, including the development of its Constitution and Regulations, the registration of the land, and its management on behalf of the community upon registration.

Registration of community land is done in accordance with the provisions of the Community Land Act and the Land Registration Act. It is preceded by adjudication, which includes the recording of community land claims, demarcation of community land and delineation of boundaries. Upon registration, a title deed in the prescribed form is issued in the name of the community. Thereafter, the community under the leadership of the CLMC can plan the development and management of the community land and the natural resources on it.

The process of developing Community Land Regulations that will facilitate implementation of the Community Land Act is ongoing at the time of developing this Toolkit. The Regulations will make detailed provisions on procedures for implementation of the Act. It is through such implementation that communities will get to enjoy the benefits of the reforms introduced by the National Land Policy and the Constitution.

The communities which stand to benefit most from these reforms are mainly pastoralists and agro-pastoralists living in the Arid and Semi-Arid Lands (ASALs) of Kenya. They will need support by way of education, awareness creation and capacity development on the Community Land Act and its Regulations as well as the National Land Policy, the Constitutions and other policies and laws that have a bearing on community land rights. This Guide is a first step in providing such communities with the understanding and skills that will enable them take advantage of the reforms introduced to strengthen community land rights.

1.2.1 Related policies, laws and regulations

The Community Land Act and its implementing Regulations should be seen as part of a menu of policies and laws that aim to empower communities to have greater control of their land and natural resources as a means of securing land-based livelihoods, promoting sustainable management of land, environment and natural resources, and mitigating conflicts over the said resources. Such empowerment is also critical in strengthening resilience and facilitating adaptation to climate change. The major relevant policies and laws are identified below and their relevance to community land administration and management highlighted.

The National Land Policy

Prior to the adoption of the National Land Policy, land in Kenya was designated as government land, trust land, and private land. The Policy changed this and introduced in its place the current designation of land as public land, community land and private land.

The Policy introduced community land to address the challenges with customary land tenure occasioned by the process of individualization of tenure implemented in Kenya since colonial times. The Policy acknowledges that this process undermined traditional resource management institutions and ignored customary rights not

Section 5(3) of the Community Land Act provides that "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"

deemed to amount to ownership. It also acknowledges the widespread abuse of trust within the Trust Land and Group Representatives systems that were supposed to secure communal land rights.

In order to secure community land rights, the Policy commits the government to: document and map existing forms of communal tenure with a view to facilitating the orderly evolution of community land law; repeal the Trust Land Act, vest community land in the community; enact legislation to govern administration and management of community land; build capacity of communal land governance institutions; and facilitate flexible and negotiated cross-boundary access to natural resources among communities . Enactment of the Community Land Act and its implementing Regulations are therefore important steps in actualizing the land reform process.

The Constitution of Kenya, 2010

Until the promulgation of the Constitution of Kenya 2010, a major challenge to land administration and management was the fact that land was not a constitutional prerogative, meaning that there was no constitutional foundation for norms and values for governance of the sector. This situation undermined the sector as there was no overarching normative framework for reconciling competing imperatives and demands on land and natural resources. Communal land rights and associated collective interests were rendered most vulnerable as they did not qualify as property protected by section 75 of the old Constitution.

The Constitution entrenches principles of land policy and affirms the categorization of land in Kenya into public, community and private land . It stipulates that "community land shall vest in and be held by communities identified on the basis of ethnicity, culture or similar community of interest" . It identifies community land to include land that is lawfully held or used by communities as grazing areas, thereby applying this category of land to communal pastoral lands of the ASALs. Article 63(5) of the Constitution stipulates that Parliament shall enact legislation to give effect to its provisions on community land. It is in compliance with this stipulation that the Community Land Act has been enacted.

The New Land Laws and Regulations

The National Land Policy identifies "the existence of very many land laws, some of which are inconsistent and incompatible" as one of the challenges to land administration in Kenya; and commits the government to "consolidate, harmonize and streamline all land registration statutes to ensure clarity and reduce bureaucratic bottlenecks" . The Constitution entrenched this obligation in Article 68, stipulating that Parliament shall "revise, consolidate and rationalize existing land laws".

Thus it is that Parliament enacted the Land Act, the Land Registration Act, the National Land Commission Act (collectively known as "the Land Laws") in 2012, and thereafter the Community Land Act in 2016. Regulations for implementation of the land laws have also been adopted. The laws passed in 2012 were subsequently amended in 2016 by the Land Laws (Amendment) Act to make provision for, among others, removal of illegal occupiers of community land .

The Land Act was enacted for the specific purpose of giving effect to Article 68 of the Constitution, to revise, consolidate and rationalize land laws, and to provide for the sustainable administration and management of land and land based resources. It makes elaborate provisions for administration and management of public and private land. With respect to community land it provides that the same "shall be managed in accordance with the law relating to community land enacted pursuant to Article 63 of the Constitution" , which is the Community Land Act. The only substantive provisions that the Land Act makes with respect to community land are those on removal of illegal occupiers alluded to above.

Land Registration Act was enacted to revise, consolidate and rationalize the registration of titles to land and to give effect to the principles and objects of devolution with respect to land registration. It provides for registration and recording of community interests in land and issuance of a certificate of title or certificate of lease . A Community Land Register shall be maintained in each registration unit, in which shall be kept such details of community land as: a cadastral map; a register of members of the community; the user of the land; and the identity of group representatives . It prohibits the registration of "any instrument purporting to dispose of rights or interest

in community land except in accordance with the law relating to community land" .

The National Land Commission Act makes detailed provisions on the powers, functions, composition, qualifications and procedures for appointment of members of the National Land Commission established by Article 67 of the Constitution. The Commission constitutes an important element in the reform of land governance in Kenya. It is primarily responsible for management of public land on behalf of the national and county governments, but it also exercises certain powers over the entire land sector.

The Commission is mandated to "monitor and have oversight responsibilities over land use planning throughout the country" , and to "monitor registration of all rights and interests in land" . Communities will thus have to interact with the Commission when they undertake land use and development planning and when they register community land.

Regional and global policies of relevance

The land reforms introduced in Kenya by the National Land Policy and the Constitution of Kenya 2010 are in line with developments at the regional and global levels, where increasing demands for tenure security for smallholder producers, including pastoralists and agro-pastoralists have been articulated and strategies developed. Examples of such policies include the Framework and Guidelines on Land Policy in Africa, the Policy Framework for Pastoralism in Africa, and the Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security (VGGT).

The Framework and Guidelines on Land Policy in Africa, developed through a collaborative effort of the African Union Commission, the United Nations Economic Commission for Africa, and the African Development Bank, was approved by the African Union Assembly of Heads of State and Government in July 2009. It aims to strengthen land rights, enhance productivity and improve livelihoods. In addressing the need for land reforms to secure communal land rights, especially for pastoral and agro-pastoral communities, the document calls for "policies that address issues of

tenure security, the role of pastoral communities in pastoral management, guarantee equal access to pastoral resources for women, establish processes for the resolution of cross-boundary disputes, and improve technologies of resource use" .

The Department of Rural Economy and Agriculture of the African Union Commission spearheaded the development of the Policy Framework for Pastoralism in Africa to address the root causes of pastoral vulnerability in Africa. Its objectives are to secure and protect the lives, livelihoods and rights of pastoral peoples, and to reinforce the contribution of pastoral livestock to national, regional and continent-wide economies. With regards to land tenure, the Policy Framework proclaims the need to acknowledge the legitimate rights of pastoralists to pastoral lands by granting them communal land ownership on a priority basis .

The VGGT aim "to contribute to the global and national efforts towards the eradication of hunger and poverty, based on the principles of sustainable development and with the recognition of the centrality of land to development by promoting secure tenure rights and equitable access to land, fisheries and forests" . The Guidelines call on states to provide appropriate policy and legal recognition and protection of legitimate tenure rights of communities with customary tenure systems, including their rights to shared resources .

These regional and global policy instruments provide the backdrop for the implementation of the Community Land Act in Kenya and the accompanying rules, regulations and guidelines.

1.2.2 Comparative best practice

This will document the best practices by other countries that provide that adoption of having a guide will simplify the process of community registration and community land registration. The following are some of the highlights of the best practices of having a guide;

a) Community Land Rights Recognition (CLRR) Model.

The CLLR Model was developed by the Kenya government in collaboration with the

Kenya Secure Project with facilitation from the USAID. The model was developed after a comprehensive participatory study of the customary land administration and management systems among the Boni people who live in the Boni forest of Lamu County.

The overall goal of the CLRR Model was to provide a mechanism for registration of community rights and interests to land. This was in recognition that there was no other operational law guiding the registration of community land apart from the Land (Group Representatives) Act Cap 287, which at the time had its own shortcomings.

The Community Land Rights Recognition Model sought to:

- Provide a new process for the recognition, protection and registration of community rights to land and land based resources as recommended by the National Land Policy
- Actualize the new classification of community land given under Article 63 of the Constitution, and facilitate vesting of such land to communities
- Develop a land tenure and property/resource rights recognition process that is cost-effective and affordable, efficient, participatory, equitable and sustainable among other positive attributes
- Set principles and ideas that would inform the design of law and institutions envisaged by the Constitution and National Land Policy for securing community land rights under community land tenure and;
- Create awareness among key stakeholders towards the implementation of the Constitution and the National Land Policy with regards to protection of community land rights.

The CLLR Model was one of the main reference documents in the preparation of the Community Land Act 2016 and contributed substantively to the process adopted for the recognition, protection and registration of communities and community land in Kenya.

(provide a summary of the stages in the CLRR for recognition, protection and registration of land)

Namati Community Land Protection Model.
Village Land Act of Tanzania Model.
Customary Land Association in Uganda, Mozambique and Namibia Model.
Alternative Dispute Resolution Modules

1.3 Methodology

RECONCILE in the interest of developing a comprehensive guide on the registration of community land convened a write shop session with key resource persons to brainstorm, develop the structure and work on the contents of the guide. The guide is to aid communities in understanding the process, the requirements and to acquire the knowledge and or skills for the registration of the communities and their land. The tasks were as follows;

a. Develop an outline or the structure of the Community Land Registration Guide. This should include the section or key topics/areas/processes and how they will be broken down to provide necessary information to the communities.

b. Identify and document key processes that will be required for the registration of communities and their land based on the provisions of Community Land Act 2016, and the Draft Community Land Law Rules and Regulations. The relevant provisions in the other land laws will be brought on board.

c. Describe the processes identified above in terms of sequential stages and how/what communities need to do per stage/step in each process. When un-packaging the processes, it would be good to include what communities will need to actualize each process. Text boxes can be describing resources, forms etc that will be needed can be included.

d. Agree on how to finalize the remaining work on the development of a comprehensive registration guide.

e. Define on how to take the agenda forward of the tools kit such as the

Gap of the tool kit in relation to the institutions to be formulated such as Community Land Registrar. There is need to ensure that the Community tool kit tags in the governmental processes as well as other actors within those who work on Community Land Act. Capturing the interests of the other actors. Tag on the aspect of section 48(2)(h).

In developing the registration guide, pastoralist communities will be given a lot of consideration as most of the community land are in pastoralist areas as well as how to ensure harmonization of the inclusion element of the marginalized groups. In terms of knowledge and capacity, they are also the most challenged. The Guide is therefore to help them have a working tool to steer them through the registration process.

The Methodology and Work plan of the Working group was as follow to ensure time lines are up to date;

a. Defining the structure and frame work of the guide;
b. Consolidating all available and relevant data in terms of best practice data, policies and laws;
c. Desk Review and analysis of the consolidated data both on policies and Laws as well as best practices;
d. Draft of the guide content;
e. Review and Editorial of the guide;
f. Validation feedback: Undertake consultations with diverse stakeholders who work directly or indirectly with ICCA's at county and national level physically or remotely. This will highlight the status on policy/law formulation and implementation as well as socio-economic dynamics;
g. Integrate feedback of the consultation; and
h. Finalize the draft and have the document finalized.

CHAPTER 2

REGISTRATION OF A COMMUNITY

2.0 Introduction

The procedure for registration of "a community claiming an interest in or right over community land" is set out in section 7 of the Community Land Act and detailed in Part II of the Community Land Regulations.

A community as defined by the Community Land Act (see box) having agreed on the need to register their interest in land, will initiate the process of registration, which

"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 Land Act, section 2

involves the following critical steps, namely:

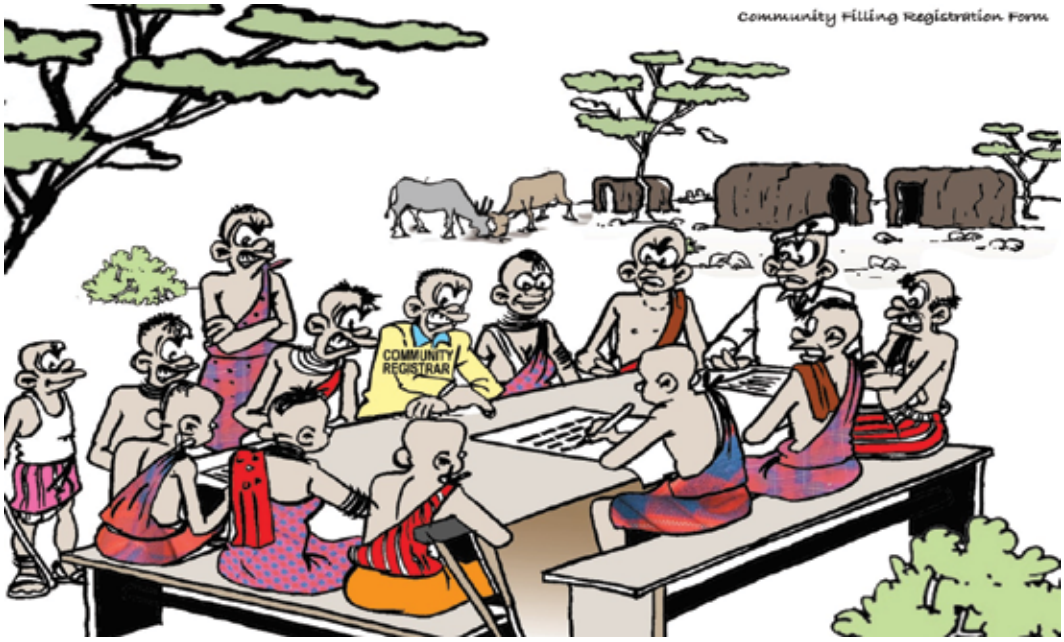
1. Members of the Community notify the Community Land Registrar of the intention to register their interest in land
2. Members of the Community hold a public meeting
3. They elect members of the Community Land Management Committee (CLMC)
4. The CLMC spearheads the process of registration of the community



2.1 Notice to the Community Land Registrar

The community shall meet and agree on the need to register their interest in land. This decision should be reached with the participation of all categories of members of the community. In particular, the participation of women, youth, minorities and persons with disability must be ensured. It is recommended that communities considering registration of their interest in land are taken through a process of education and awareness creation on the applicable provisions of the Constitution and the Community

Land Act to prepare them to effectively and meaningfully participate in the process. In particular, community members should be educated on the implication of community land registration, the roles and responsibilities of the Community Assembly and the CLMC, and the criteria for election to the CLMC.

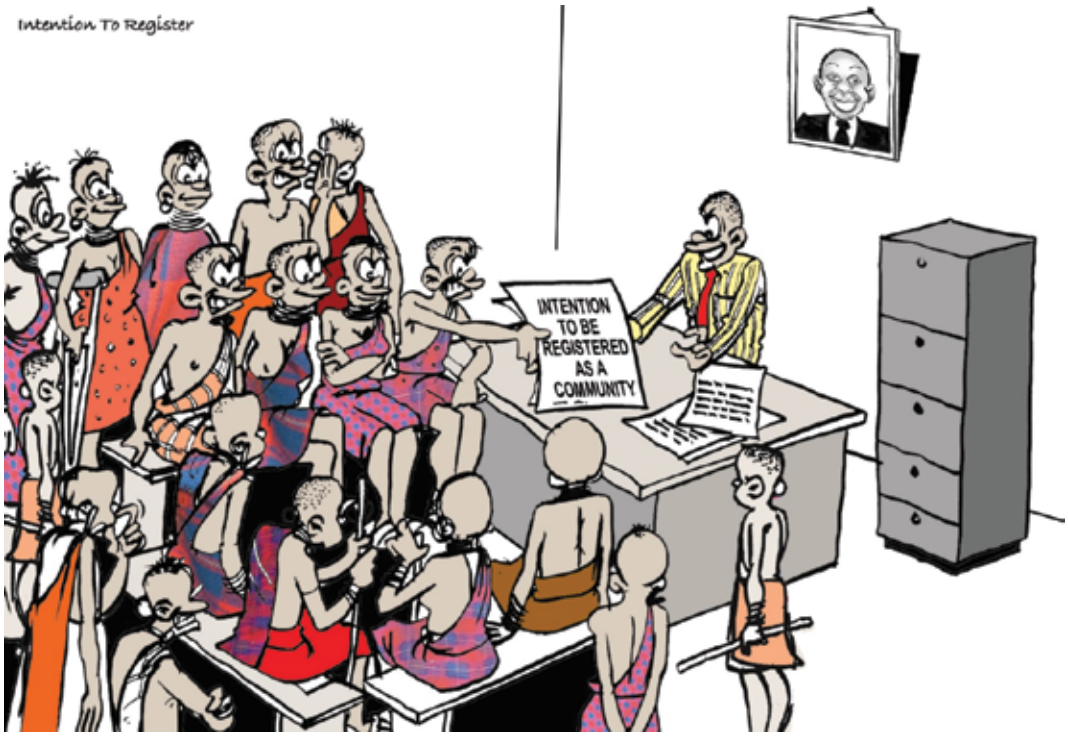


Community leadership is key at this point, to ensure that the decision to register the interest in land is one of the majority. It is important at this point to confirm the number of adults in the community and begin to compile the Register of community members. Where a community has traditional leadership in place, it will play this role. Otherwise, an interim leadership should be elected to spearhead the process of generating consensus on the need to register their interest in land. The said leadership is the one that once the decision is made shall notify the Community Land Registrar.

Community members should be educated on:

- *Implications of registration as a community*
- *Implications of registration of community land*
- *Membership and participation in the Community Assembly*
- *Functions and powers of the CLMC*
- *Criteria for election to the CLMC*

The Community Land Regulations stipulate that the Notice the Community Land Registrar shall be made in duplicate through a prescribed Form signed by at least 15 members of the community and upon payment of prescribed fees .



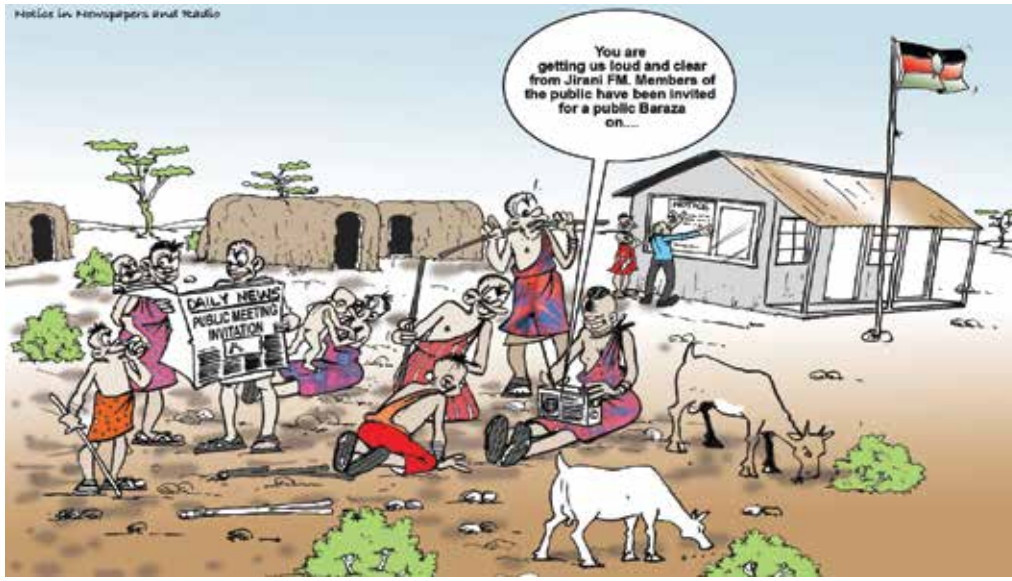
2.2 Notice and Invitation to Public Meeting

Upon receiving the notice by the community, the Community Land Registrar shall issue and publish a notice "inviting all members of the community with some communal interest" to a public meeting, the purpose of which is to elect members of the CLMC. The notice by the Community Land Registrar shall be published "in at least one newspaper of nationwide circulation and a radio station of nationwide coverage".

"Community Assembly" means a gathering of registered adult members of a community convened in accordance with this Act

Community Land Act, section 2

The widest possible circulation of the notice of the meeting is important so that all members of the community are aware of the meeting and are given the chance to attend. Thus, the Act provides that the Community Land Registrar "may use all available means of communication including electronic media" to reach community members. Apart from the notice published in a newspaper and through a radio station, community members may be invited by email and through phone calls and text messages. The Community Land Regulations further provide for affixing notices at the headquarters of the respective county, sub-county, wards, location, and in strategic places where the community land is situate".



Notice of the meeting is also given to national government administrators county government administrators in the area where the community land is located.

2.3 Proceedings of the Public Meeting

When the public meeting convenes, it becomes a Community Assembly the proceedings of which are governed by the provisions of section 15 of the Community

The two-thirds gender rule refers to the principle that not more than two-thirds of the members of elective or appointive bodies shall be of the same gender
Art. 27(8) of the Constitution

Land Act. It is chaired by the Community Land Registrar or a public officer appointed by the Registrar in writing. The principal agenda of this first Community Assembly is to elect 7 to 15 from among the members of the Assembly to constitute the CLMC. However, the meeting should include a process of orientation and agreement on the procedure for election, including agreement on the number of CLMC members, and clarification of qualifications and criteria.

The Community Land Regulations provide that the election of members of the CLMC shall be 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". These officials shall provide guidance to the Community Assembly to ensure that the proceedings and the elections are conducted in accordance with the relevant laws and regulations. Of particular relevance in this regard is compliance with the two third gender rule, the national values and principles of governance, and the principles of land policy.



Conducting Community Assembly



2.3.1 Election of Members of the CLMC

The Community Land Regulations detail the procedure for election of members of the CLMC, which involves:

1. Nomination: by the Community Assembly of eligible persons to vie for membership of the Committee
2. Election by secret ballot: of between 7 and 15 members to constitute the Management Committee

Qualification for election as member of the CLMC

Every member of the Community Assembly (that is to say every adult member of the community) qualifies for election as a member of the CLMC, except for those who have been convicted of a crime involving fraud or dishonest, do not meet the requirements of chapter VI of the Constitution, have been adjudged bankrupt, or are below the age of eighteen years.

Term of membership of the CLMC

A Committee once elected, shall hold office for a period of 3 years. At the end of the period, a third of the members of the Committee shall be eligible for re-election, meaning that two-thirds of the members of the Committee after every election subsequent to the first election shall be newly elected.

Replacement of Members of the CLMC

The Community Assembly shall, by resolution replace a member of the CLMC who dies, becomes incapable or retires. The procedure for replacement shall be detailed in the Constitution of the community.

Notice of replacement of a member of the CLMC who has died, become incapable or retired shall be given to the Registrar of Community Land in the prescribed form within 28 days of such replacement. The Notice shall be accompanied by a certified true copy of the relevant Minutes of the meeting at which the resolution was passed.

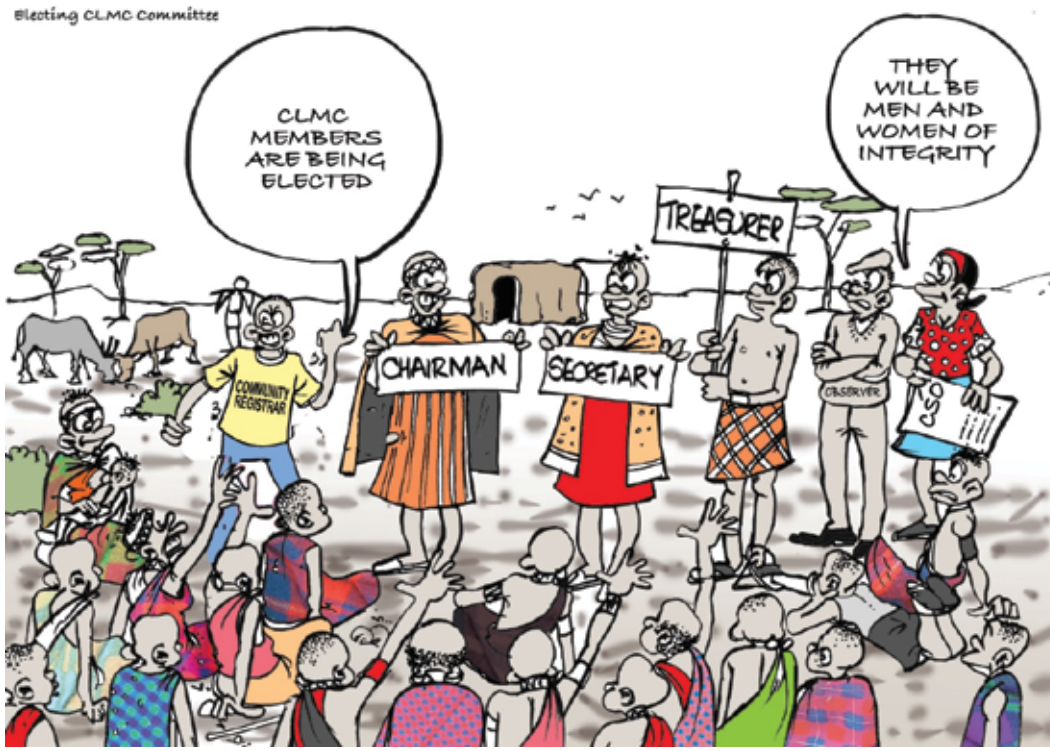
Upon receipt of the Notice of Replacement, the Registrar shall amend the register to reflect the changes.

Executive Committee of the CLMC

The Committee shall at its first meeting appoint its Executive Committee consisting of a Chairperson, Vice-Chairperson, Secretary and Treasurer. Detailed provisions for appointment or election of the Executive Committee shall be specified in the Constitution of the community

National values and principles of governance include: *patriotism, national unity, sharing and devolution of power, the rule of law, democracy and participation of the people; human dignity, equity, social justice, inclusiveness, equality, human rights, non-discrimination and protection of the marginalized; good governance, integrity, transparency and accountability, and sustainable development –* ***Art. 10 of the Constitution***

Principles of land policy are: equitable access to land, security of land rights, sustainable and productive management of land resources, transparent and cost effective administration of land, sound conservation and protection of ecologically sensitive areas; elimination of gender discrimination in law, customs and practices related to land and property in land; and encouragement of communities to settle land disputes through recognized local community initiatives consistent with this Constitution – ***Art. 60(1) of the Constitution***



2.3.2 Functions and Powers of the CLMC

The CLMC has three principal functions, namely:

a) To spearhead the registration of the community
b) To spearhead the registration of the community land; and

The CLMC shall:

(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.

Section 15(4) Community Land Act

c) To manage the community land
a) Registration of the community

The first function of the CLMC is to spearhead the process of registration of the community. This process entails:

1. Coming up with the name with which the community is to be registered
2. Compiling the Register of Members of the community
3. Drawing the Constitution of the Community, including rules and regulations for the CLMC, and getting the same approved by the Community Assembly
4. Applying to the Registrar for registration

Summary steps in registering community

Step 1: Name of the community

The community is expected to agree on a name with which it gets registered. This is the name that shall be registered and inserted in the certificate of registration.

Step 2: Register of Members

The Register of Members of the community is important as the basis of inclusiveness, ensuring that all eligible members are identified and recorded. The number of members is important as certain decisions require to be validated by a specific proportion of the total number of registered members of the community . The Constitution of the community shall specify the details to be included in the Register of members, and how the register shall be maintained and updated.

Step 3: Constitutive documents of the community

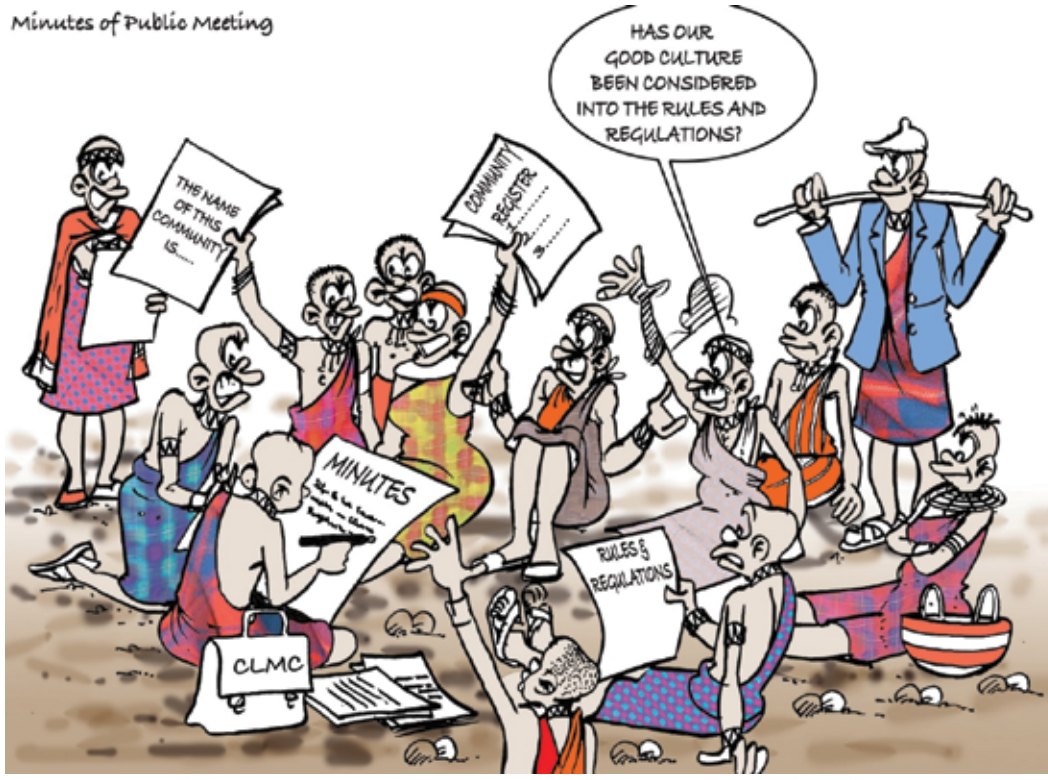
Operations of the community shall be governed by rules and regulations drawn by the CLMC and ratified by the Community Assembly. The rules and regulations are embodied in the Constitutions of the community, which is among the documents to be presented in support ofr registration.

Step 4: Application for registration of the community

The CLMC shall apply to the Registrar of Community Land for registration of the

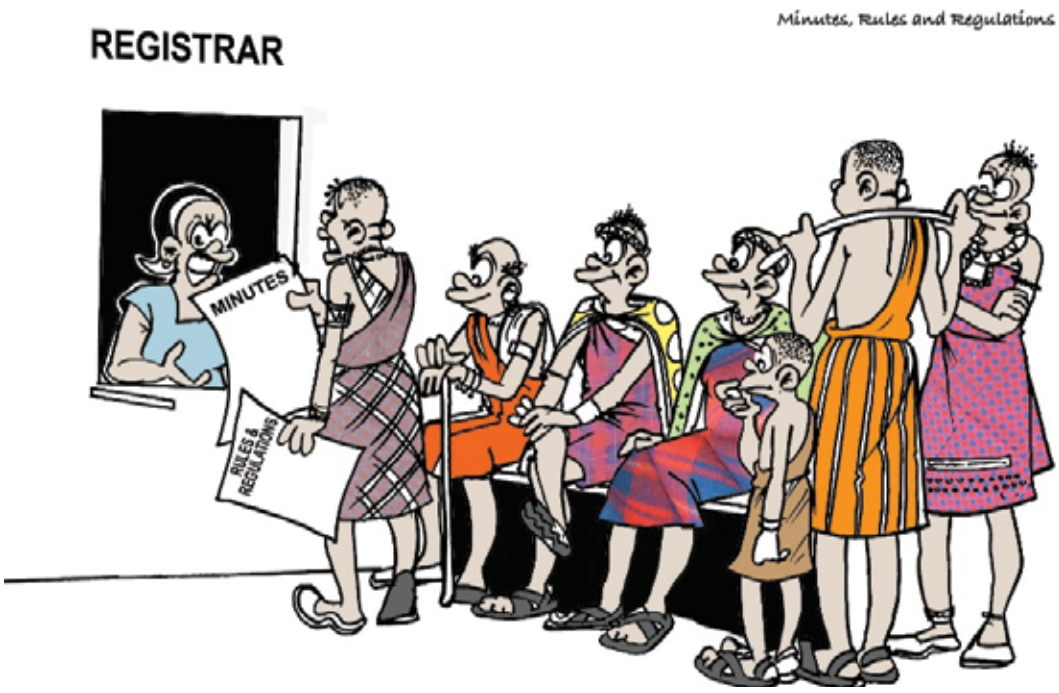
community, using the Form prescribed by the Community Land Regulations. The application shall be accompanied by:

(a) The name of the community
(b) The register of members of the community
(c) A certified true copy of the Minutes of the Community Assembly at which it was resolved to apply for registration of the community
(d) The Constitution of the community
(e) A description of the interest being claimed by the community



2.3.3 Obligation of the CLMC to members of the community

Upon registration and issue of the certificate of registration, members of the CLMC shall become officers of the community. They are under a duty to hold any property which they hold, and to exercise their powers, on behalf and for the collective benefit of all the members of the community, and fully and effectively to consult the other members of the community on such exercise".



2.4 Certificate of Registration and Effects of Registration

Once the Registrar is satisfied that:

(a) the name proposed to be registered has not been used by any other registered community;

(b) the requirements of the Act and regulations with respect to registration have been complied with; and

(c) the rules and regulations of the community are acceptable in substance and form

He may issue a certificate of registration to the community in the prescribed form "subject to any conditions, limitations or exemptions which he considers appropriate". Upon being issued with a certificate of registration, the community shall, subject to the Act, the Regulations, and the conditions, limitations and exemptions in the certificate, have "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".



2.5 Register of communities

The Registrar of Community Land shall maintain a register of registered communities in the prescribed form. The Register shall contain: the application for registration, the name of the community, register of members of the community, rules and regulations of the community, duplicate of certificate of registration and all subsequent notifications, applications, returns and certified extracts from the minutes of meetings forwarded by the community to the Registrar. It shall be updated to reflect changes that are communicated to the Registrar in the prescribed form.

Article 61(2) of the Constitution created community land as a specific category of land separate from public and private land. This category includes unregistered community lands identified by the Constitution as well as land previously registered as group ranches under the repealed Land (Group Representatives) Act Cap 287 in the name of group representatives.

CHAPTER 3

REGISTRATION OF COMMUNITY LAND

3.0 Overview

Unregistered community land refers to land that has not been alienated, demarcated, surveyed and registered in the name of the respective community. According to Article 63(3) of the Constitution and Section 6 of the Community Land Act 2016 all unregistered community land is held in trust by relevant county governments on behalf of the communities for who the land is held. The national government in collaboration with relevant county governments is required by law to establish an inventory of all unregistered community land for purposes of facilitating adjudication and registration of such land. Once the land is registered, the trusteeship role of the county government over such land ceases and the land becomes registered community land under the management of the community assembly through their elected community land management committee.

Article 63 (2)(a) of the Constitution converted land previously registered in the name of group representatives in group ranches to community land to be administered and managed under the Community Land Act. Although many group ranches were established across the country at the height of the adjudication programmes, several groups have been dissolved and the land subdivided into individual, privately owned parcels. Other groups are in the process of dissolution or awaiting approval for dissolution. However, land belonging to groups that are not dissolved is by default community land administered under the new Act.

Community land is usually the most vulnerable category of land and is prone to different forms of abuse. This is because the land often lacks adequate mechanisms to protect it from alienation and in many cases fall prey to large scale land grabbing and all forms of illegal allocations. Majority of community land is primarily unregistered and lacks legal recognition. Where the land is registered as group ranches, the members hardly have any biding responsibility over its management making it equally prone to abuse.

The Community Land Act, 2016 was enacted to give effect to Article 61(2) of the Constitution and to provide a mechanism for the recognition, protection and registration of community land. The purpose of the Act is also to provide principles to guide the administration and management of the registered land. In addition, the Community Land Act Regulations provide the directions to be followed for proper implementation of the Act. However, many communities are still not aware of the existence of the Community Land Act; and those who may be aware do not fully understand the opportunities created by this Act for recognition, protection and registration of their land.

The Act requires communities to take up a bigger oversight responsibility in the management of unregistered community land to ensure that county governments do not sell, dispose, transfer or convert the unregistered land for private purposes. Other stakeholders too, including non-governmental organizations, have a responsibility to sensitize communities on their roles and responsibilities over unregistered community land.

The guidelines in this chapter provide a simplified process that will ultimately result in registration of community land. The guidelines cover:

- Principles and values guiding registration of community land
- Community preparation for land registration
- Implementation of community education and awareness programme
- Procedure for recognition, protection and registration of unregistered community land
- the process of registration of community land registered under group representatives.

3.1 Principles and values guiding registration of community land

The principles of land policy provided in Article 60 of the Constitution and the values in Section 8 of the National Land Policy will be key guides in registration of community land. In particular gender sensitivity, equity in access, inclusivity, participation by community assembly members and sustainable use and management of resources on the community land will be important in making community land registration and management successful. This is in recognition of failures observed in previous community land registration initiatives especially in group ranches where failure to observe these principles and values led to exclusion of some community members and/or dispossession of bona fide land owners; as well as wanton plunder of natural resources on the community land without due consideration of the community interests.

3.2 Preparing Communities for registration of land

In preparing communities for successful implementation of the Community Land Act and registration of community land, certain activities will require to be undertaken. These include:

a) Confirmation of the community registration status - this is necessary to ensure that the community is ready to own land and that any disputes relating to community membership have been resolved. Where a community is not registered, education on the entire community registration process should be provided.

b) Community consultations on views regarding land registration – Engagement with relevant community will help assess their understanding of what is involved in registration of land as well as establish their level of knowledge and any gaps that require to be addressed through education. The engagement will also bring out any fears the community may have regarding the process of registration and which should be addressed before the activity commences. During the community consultations, any conflicts relating to acceptance of community rules and regulations will also be resolved.

c) Bridging the gaps- the fears raised by the community and the knowledge gaps identified during community consultations will be addressed through education and awareness programmes targeting specific communities.

3.3 Implementation of community education and awareness programme

Although the Community Land Act was enacted in September 2016, many communities who are expected to benefit from the provisions of this Act are still not aware of the opportunities created by the Act. This is because there has not been coordinated approach to community mobilization and education around this Act to help communities interrogate the benefits therein as well as their role in the implementation process.

Community education and awareness programmes are important in allaying community fears regarding implementation of the Act as well as addressing the identified knowledge gaps. The education and awareness programme should be a collaborative effort between the national and county governments; non-governmental organizations that have land related programmes; development partners; and any other stakeholders with interests in community land programmes.

The education and awareness programmes will entail the following activities.

a) Mobilization of communities- the respective communities will be mobilized into organized entities that have a defined membership and have a claim and/or own some community land. The community leaders working together with national and county government representatives and non - governmental and faith based organizations in the respective areas

will zone out areas perceived to be community lands and which require sensitization. These groups will form the focus for community sensation education and programmes.

b) Development of learning materials and tools- based on the gaps identified during the community consultation sessions, learning materials and tools will be developed to help communities to understand the provisions in the Community Land Act in order to take full advantage of the opportunities offered. The training materials and tools will cover all the relevant areas to ensure that the target community has comprehensive understanding of the processes involved, institutions and the roles and responsibilities of each in the processes. The learning materials will include posters, fliers, pictorial messages, videos; and others that would make the community understand the subject better.

c) **Training of trainers for the community education and awareness programme.** Training of communities will require people with critical understanding of subject matter of the Community Land Act and matters related to community land. A training of trainers' course will therefore be necessary in order to create a pool of competent trainers who will in turn train communities, management committees, and other trainers. This will ensure that the message and interpretation of the messages delivered to the target communities is uniform and accurate.

d) **Roll out of community education programme.** The roll out of the community education programme will be based on the zoning done in the community preparation and mobilization stages. It will involve organizing training sessions for different target groups to ensure that they acquire knowledge on the identified gaps and create confidence in the community land registration process. The training will revolve around:
   - The Community Land Act and the opportunities provided by the law;
   - Community Land Act regulations
   - the steps involved in the process of registration of Community entity

and the requirements

- the steps involved in the process of recognition, protection and registration of community land rights and the requirements;
- institutions involved in the registration of both communities and the community land;
- community land governance structures;
- management of registered community land and the role of community land management committees and the community assembly;
- Dispute resolution mechanisms during registration of communities and community land; and
- any other subjects that will help communities exercise their roles and responsibilities in a better manner.

3.4 Procedure for registration of unregistered community Land

The procedure for recognition, protection and registration of unregistered community land comprises of a series of activities a community undertakes in collaboration with different stakeholders. The lead player in this process is the adjudication team which comprises of land adjudication officers, surveyors and the Community Land Management Committee representing the community. The team works in close consultation with the community assembly which is the main decision-making body in the community.

The process involves the following major steps:

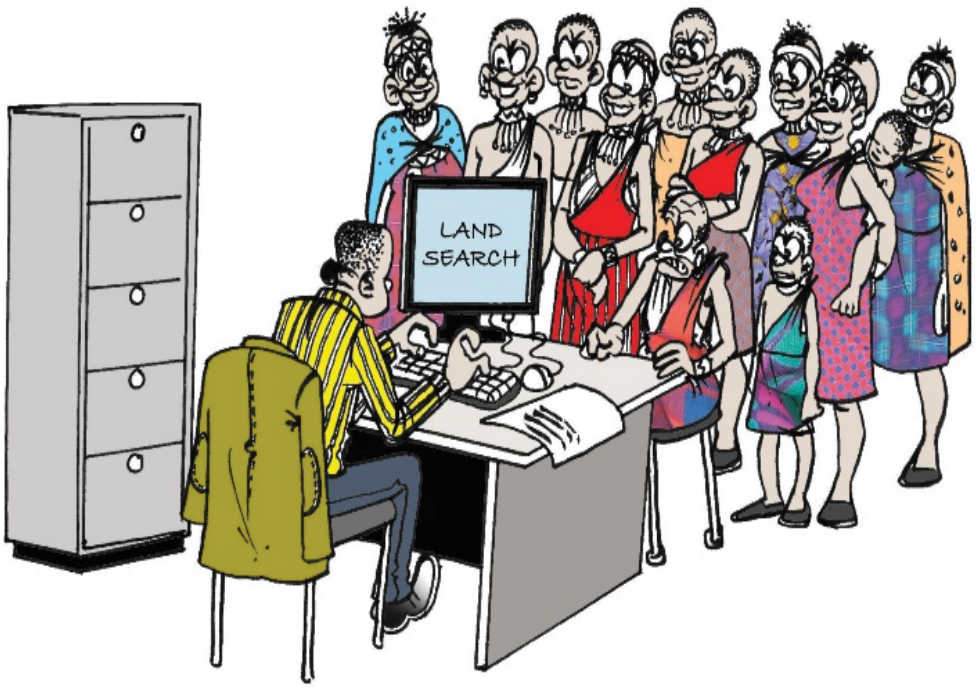
a) Application for registration of community land
b) confirmation of availability of the land
c) Notice to adjudicate and register community land
d) Public baraza
e) Establishment of the boundaries and adjudication of community land
f) Inspection of the community land register
g) Resolution of disputes arising from adjudication of community land
h) Publication of Maps and checking of Adjudication records
i) Registration of community land

a) Application for registration of community land

A registered community will be required to submit a notice of intention to register a claim in an interest in land to the Community Land Registrar and request to have an identified parcel of land registered in the name of the community. The notice is issued in the prescribed notification forms available at the office of the Registrar and must be signed by at least fifteen members of the community. The form is filled in duplicate the original submitted to the registrar while the community retains the duplicate.

The duly completed notification form is submitted to the Registrar together with any fees that may be payable.

b) Official confirmation of availability of the land for which the community has applied for registration



This is an internal activity undertaken in the lands office and involves checking of existing records and maps and matching the same against the land for which the community seeks registration. The objective of this activity is to establish the registration status of the earmarked land and to ensure that the land is available for registration to the community. This step is very critical in the process of community land registration because there are some communities that occupy and claim land that may not necessarily be available for registration or which may have already been alienated and registered to other parties. The outcome of the confirmation exercise determines the direction in which the registration process proceeds. If the land is available, a notice to adjudicate the land will be issued. If the land is committed for public purpose use or is registered to other parties, the community may pursue other available mechanisms for negotiations leading to possible conversion of the land to community land.

c) Notice to adjudicate and register community land

The Cabinet Secretary shall issue a public notice in the media, sub county offices and on the land the community has applied for registration. The notice is intended to inform the general public and all persons with an interest in the said land of the intention to demarcate, survey and register the land. The notice will also give the timelines within which the activities will be carried out and what the community and any other person with an interest in the land are supposed to do.

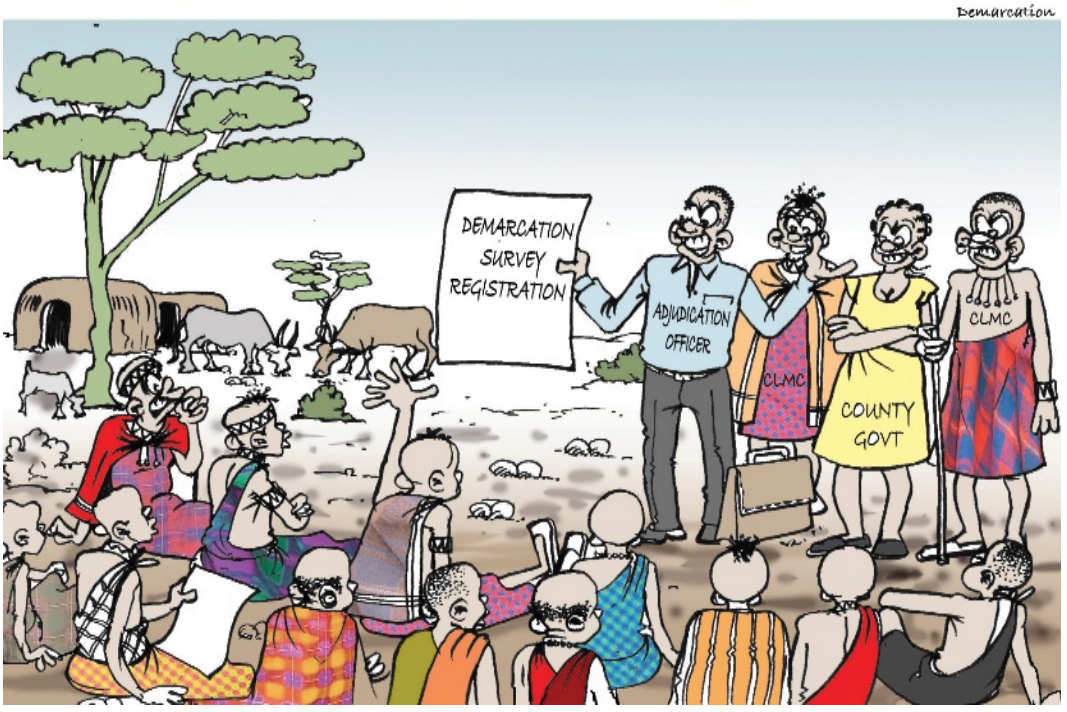
d) Public barazas

The Land Adjudication Officer gazetted for the area to be adjudicated will, in consultation with the registrar, the relevant County government and the Community Land Management Committees call for a public baraza to sensitize the entire community on commencement of demarcation, survey and registration of the community land. The community will also be sensitized on their roles, responsibilities, and any requirements including fees and charges payable to facilitate registration of the land.

Consultation for Public Baraza



Demarcation



e) Establishment of the boundaries and adjudication of community land



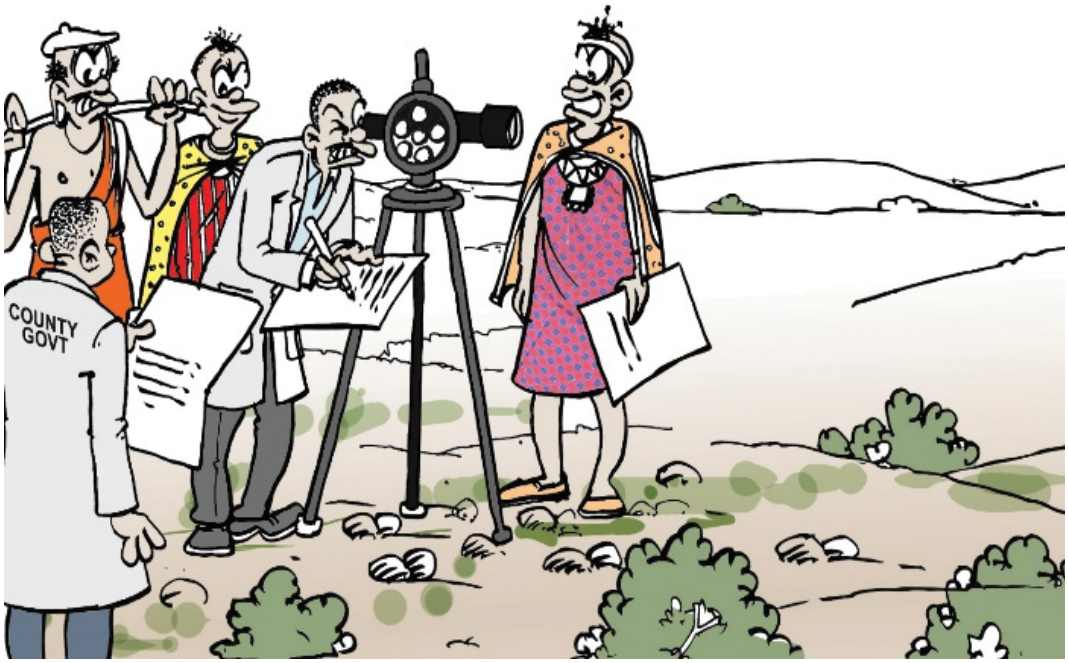
The Community Land Management Committee shall, on behalf of the community assembly work with the adjudication team of Surveyors, Land Adjudication Officers and Planners in the establishment of community land boundaries, field demarcation and survey; preparation of preliminary community land adjudication record as well as the cadastral map(s). All the adjudication records are done in the prescribed format indicating the name of the registered community.

Specifically,

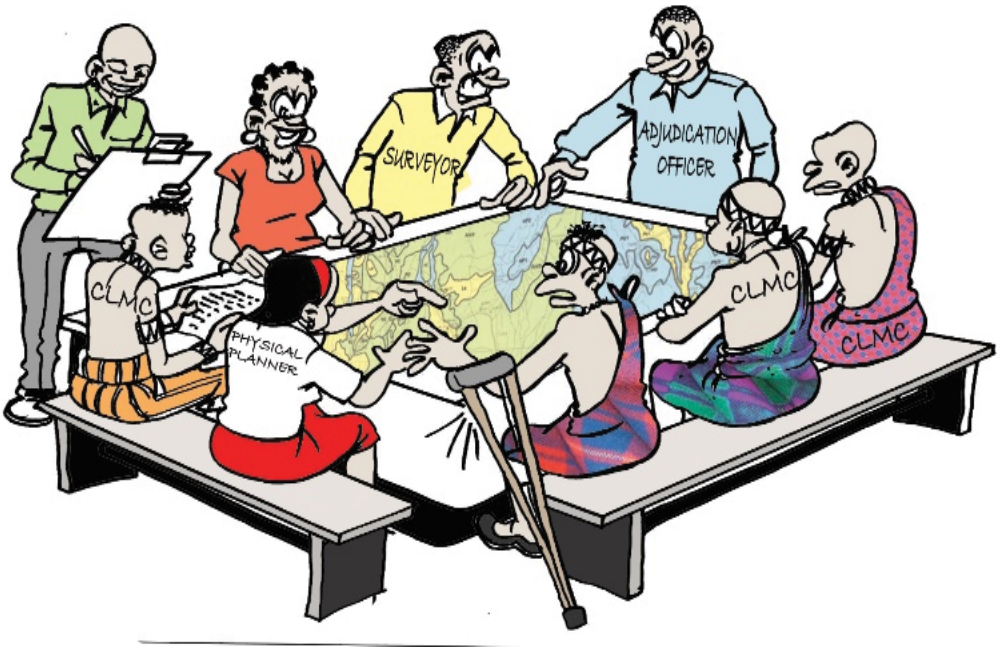
the activities will involve:

- Walking the community land boundary and picking of boundary coordinates
- Noting and recording any disputed areas and the nature of disputes
- Noting and recording areas of special purposes like water points, salt licks, sacred areas, and any others identified for special recognition.

Taking Cordinates



f) Inspection of the community land register



validating Map



The community land register is made up of the adjudication records and the cadastral map(s). Once the documents are ready, the Land Adjudication Officer shall give a 14 days' public notice for inspection of the adjudication register at an agreed place within the community land. The inspection period gives opportunity to the community members to confirm the boundaries of their land on the maps, the names of members included in the community land records and any other information of interest to the community. This inspection is important because any errors noticed in the documents can be corrected at this point before they are submitted to the Registrar of Community Land for registration.

g) Resolution of disputes arising from adjudication of community land

(Recognize the role of community in dispute resolution before bringing in the role of LAO)

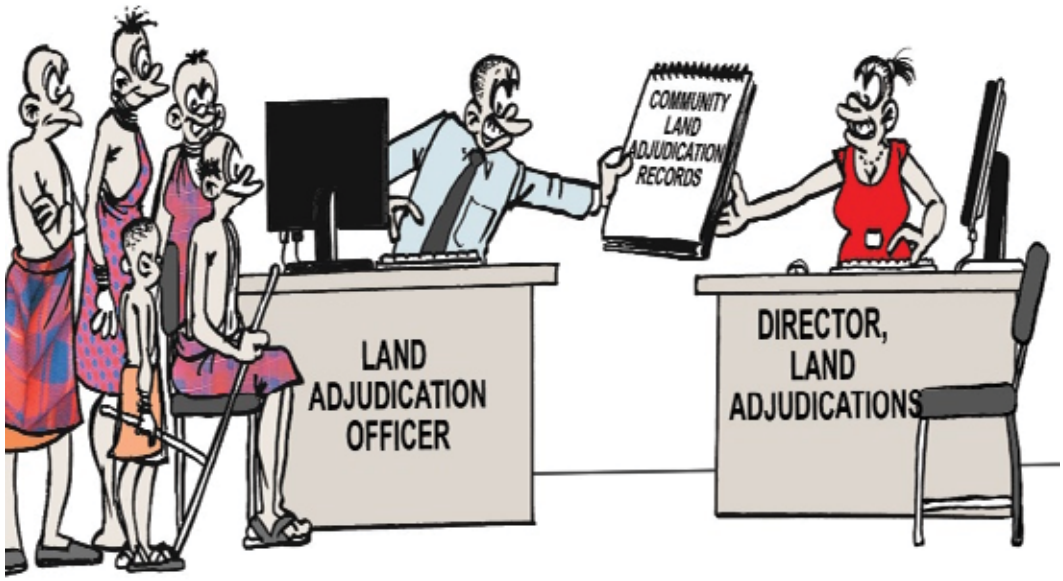
The Land Adjudication Officer in-charge of an adjudication unit shall compile a list of disputes that may arise from the process of adjudication of community land rights. These disputes will be resolved by the adjudication team and the CLMC at the first

instant as per the community rules and regulations; or be referred to an ad hoc dispute resolution committee established for that purpose. Any disputes that are not resolved by the ad hoc committee will be resolved as per the Act.

h) Publication of Maps and checking of Adjudication records

Once the disputes are resolved, the surveyor in the adjudication team will finalize the maps and submit the final cadastral map to the office responsible for survey for authentication and publication while the Land Adjudication Officer in the team forwards the adjudication records to the Director Land Adjudication and Settlement for checking and publishing. The finalized maps are forwarded to the Director of Land Adjudication and Settlement.

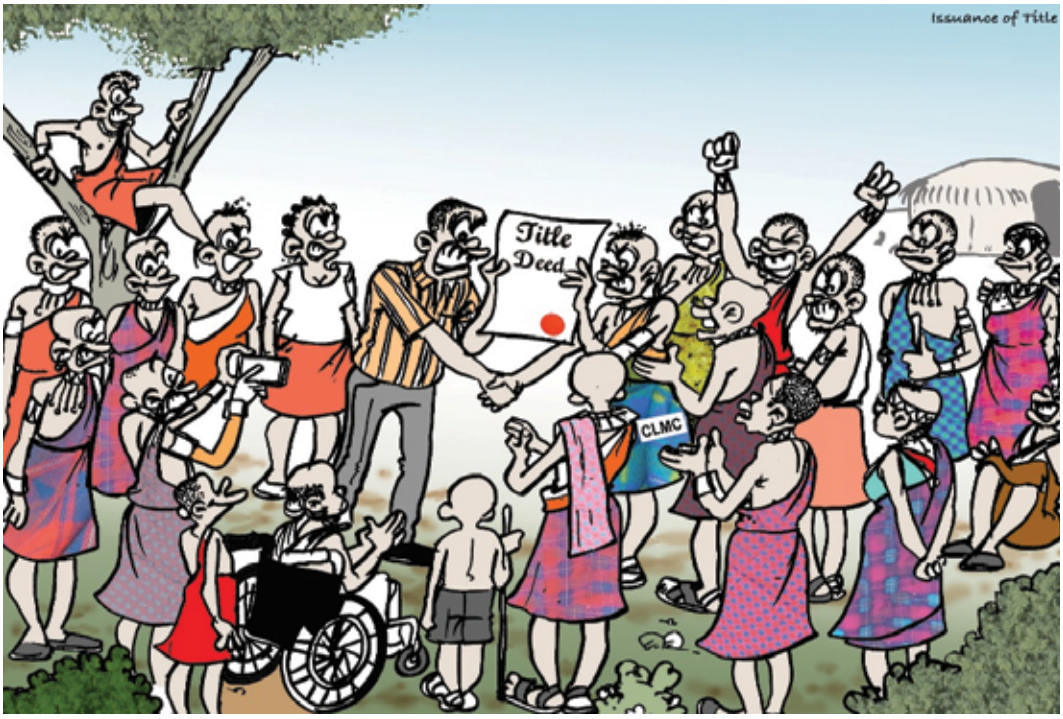
Checking and Publishing





i) Registration of community land

Upon finalization of the Adjudication Register comprising of the Cadastral maps and Adjudication records, the Director of Land Adjudication and Settlement shall issue a Certificate of Finality which shall be forwarded to the Registrar of Community Land together with the adjudication register. The Registrar of Community Land shall register the land and issue a Certificate of Title or a Certificate of Lease to the respective community.



3.5 Procedure for Registration of Community Land from Group Ranches

Section 47 of the Community Land Act requires all registered group ranches to seek fresh registration and transform themselves into communities in accordance with the Act. To convert from the group representatives to registration under the Community Land Act 2016, the following process will be followed:

Step 1: Preparation of inventory of group Ranches

All group representatives holding land under the repealed Land (Group representatives) Act, Cap 287 will be required to provide information to the Director Land Adjudication and Settlement indicating their status. The information will be used to prepare an inventory of all the land held by group representatives. A copy of the inventory will be forwarded to the Registrar of Community Land.

Step 2: Notification to the group representatives

Upon receipt of the inventory of land held under group representatives, the Registrar shall notify all the representatives of groups that have not been dissolved and their members, of the requirement to convert into a community. Where members do not

receive notification from the Registrar and they have not dissolved, the representatives will be required to consult the registrar for direction.

Step 3: Application for Registration as Communities

Within twelve months of the commencement of the Regulations on Community Land Act, groups that have not dissolved shall make an application to the Registrar of Community Land to be registered as community entities. In making the application the groups shall ensure that:

- The register of the community members is updated to capture all members including women
- The community rules and regulations are reviewed and updated in accordance with the guidelines provided in the Community Land Act 2016.
- Election of a community land management committee is held.
- The application is made in the prescribed forms available at the Registrar's office and which must be signed by at least fifteen members of the community.

Step 4: Registration as a community entity

Upon successful application the Registrar shall issue a certificate of registration to the community and shall enter the community's particulars into the community land register in accordance with section 8 of the Land Registration Act, 2012. The community land management committee will be the custodian of the certificate on behalf of the community.

Step 5: Registration of community land

A community once registered shall:

- Surrender the existing title document and certificate of incorporation issued under the Land (Group Representatives) Act for cancellation. Certificates that are not surrendered at the expiry of a thirty
  days' gazette notice to that effect will be deemed cancelled.
- Receive a new certificate of title or certificate of lease in the name of the community under the Community Land Act.

Step 6: Handing over from group representatives to CLMC

- Group representatives will hand over the management of the registered

community land to the community land management committee in a process supervised by a representative of the Director Land Adjudication and Settlement on behalf of the Cabinet Secretary.

- Groups that have been issued with certificates of dissolution will be allowed to finalize the process
  within three years.

3.6 Effects of Registration of community land

Section 5(3) of the Community Land Act 2016 confirms that customary land rights including those held in common shall have equal force and effect in law with freehold or leasehold rights acquired through other means recognized in law. Registered community land is eligible for:

- allocation to members of the community for different purposes;
- allocation for investment and prospecting purposes;
- compulsory acquisition with compensation;
- transfer to members of the community;
- conversion to other categories of land;
- allocation on short term leases; and
- use as collateral for financing of community development among others.

However, any transaction relating to registered community land must be approved by a two thirds majority of the community assembly before taking effect.

Annexes

Annex I: Detailed Roles and responsibilities of community and other stakeholders in registration of unregistered community land

Stakeholders	Roles and responsibilities
Community	• Register as a legal community entity
	• Apply for registration in the prescribed forms and provide all the necessary information, accompanying documents and fees
	• Follow up on the registration process with Community Land Registrar
	• Keep the registration document in safe custody
	• Administer and manage the registered community land.
Cabinet Secretary	• Develop a national programme for public education and awareness in consultation with the National Land Commission and the respective county governments.
	• In consultation with the relevant County Governments and other stakeholders, undertake community awareness and mobilization programmes, training and induction for the newly elected CLMC.
	• Declare the Community Land Registration Units in accordance with Land Registration Act.
	• Issues public notices of intention to survey, demarcate and register specified community lands.
	• Gazette Land Adjudication Officers to facilitate recording of community land claims, demarcation and delineation of community land boundaries for subsequent survey and registration.
	• In consultation with respective county government constitute additional community land registration units in specific sub-counties for purposes of ensuring reasonable access to land administration and registration services.
	Develop and publish in the Gazette a comprehensive adjudication programme.

County Government	• Hold in trust and ensure safe custody of all unregistered community land
	• Receive and keep in safe custody on behalf of the communities, any monies paid as compensation for compulsorily acquired community land and royalties paid as benefit for use of unregistered community land.
	• Participate in development of a national programme for public education and awareness.
	• Participate in implementation of the public education and awareness programmes
	• Prepare and submit to the CS an inventory of all unregistered community land within their jurisdiction to facilitate preparation of a comprehensive adjudication programme.
National Land Commission	• Gazette any community land identified as public purpose land and facilitate registration in the name of the identified public entity
Director of Land Adjudication and Settlement.	• Identify and recommend to CS, officers to be appointed to adjudicate community land.
	• Constitute an adjudication team comprising of Land Adjudication Officers, Surveyors and physical planners.
	• Prepare a programme for finalization of ongoing adjudication programmes
	• Issue certificate of finality for adjudicated community land
Land Adjudication team	• Receive record and determine claims from the registered community entity.
	• Receive, record and determine together with community; any overriding claims on the community land and respond to the applicants
	• Delineate and establish the boundary limits of the community claims
	• Survey, demarcate and prepare cadastral maps and plans
	• Forward the cadastral map and other accompanying documents to the Community Land Registrar for registration and issuance of Certificate of Title or Certificate of Lease

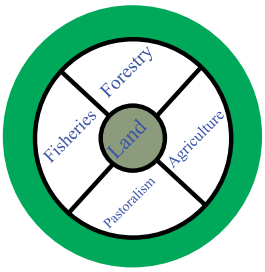
Community Land Registrar	• Receive the application of intention to register as a community entity.
	• Issue a notice in newspapers, strategic places and any other available means inviting all the members of the community to a first meeting.
	• Preside over the election of the CLMC during the first meeting.
	• Receive application for registration of community entity and issuance of community registration certificate
	• Receive application for registration of community land and issuance of certificate of title or certificate of lease.
	• Open and maintain a community land register in the name of the community in accordance with section 8 of the Land Registration Act, 2012.
	• Note any transaction within community land in the register.
Community Assembly	• Elect the Community Land Management Committee
	• Approve and adopt the community rules and regulations
	• Approve commencement of the process of registration of community land by notification to the registrar.
	• Nominate at least 15 members of the community to sign the land claim application forms before the election of CLMC is held.
	• Submit the application to the Community Land Registrar. Approve claims lounged by people with overriding interests on community land
	• Approve all transactions and dealings in registered community land
	• Inform the CLMC of transactions within the community land.
Community Land Management Committees.	• Implement the programme for public education.
	• Day to day administration and management of registered community land
	• Implementation of the decisions of the community assembly
	• Inform the registrar of transactions within the community land
Non-governmental organizations	• Community mobilization and sensitization

Annex II: Detailed roles and responsibilities of Group Representatives and other stakeholders in registration of registered group ranches as community land

Stakeholder Roles and Responsibilities

Director of Land Adjudication and Settlement	• Preparation of an inventory of land held under repealed Land (Group representatives) Act.
	• Analyze and indicate the status of the land in the inventory.
	• Provide the Community Land Registrar with information on the status of all group ranches
	• Together with the Community Land Registrar, facilitate the handing over of group records, assets, liabilities and other facilities; by group representatives to community land management committees and changes caused by implementation of the Act
Community Land Registrar	• Receive a detailed report on the status of land held by group ranches from Director of Land Adjudication and Settlement
	• Notify the group representatives of their status and the actions they require to undertake to facilitate registration
	• Notify the group representatives of the dissolution status and where necessary advice the groups to initiate the process of registering into a community
	• Call for the first meeting of all the group members including women and facilitate election of CLMC
	• Register the group ranch community
	• Open a register for the registered group ranch community and enter the records of particulars and interests as well as certificate of registration as per the Land Registration Act

	• Issue certificate of title or lease in exchange for the old title or lease
	• Cancellation of the existing title document and certificate of incorporation issued under the Land (Group Representatives) Act.
Note: Failure to surrender result to automatic cancellation of the existing title document and certificate of incorporation at the expiry of thirty day notice.	
Group Representatives	• Initiate process to convert into a community as per the Community Land Act if the dissolution process has not gone through.
	• Undertake fresh registration of all the community members as required by the Community Land Act
	• Review and/or make rules and regulations to govern the registered community land
	• Make application to register as a community.
	• Surrender the existing title document and certificate of incorporation under the repealed Land (Group Representatives) Act.
	• Handing over of all community assets and documents to the community land • management committee
	• Finalize the process of dissolution within three years if they have applied for dissolution and have been issued with the certificate.



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