



KENYA LAND ALLIANCE

CONSULTANCY TO DEVELOP LAND ACQUISITION AND COMPENSATION GUIDE IN UNREGISTERED COMMUNITY LANDS

1. ABOUT KENYA LAND ALLIANCE

The Kenya Land Alliance (KLA) is an umbrella network of civil society organizations and individuals committed to effective championing for the reforms of policies and laws governing land, environment and natural resources in Kenya. KLA was founded in 1999 as a membership not-for-profit and non-partisan network and got registered in November 2000 by the government of Kenya as a Trust. In Compliance with the new Public Benefit Organization Act, KLA was re-registered as an NGO in July, 2013. KLA Secretariat is based in Nakuru and its current membership comprises of 27 Non-Governmental Organizations, 31 Community Based Organizations and 32 Individuals.

2. LAND ACQUISITION IN THE CONTEXT OF UNREGISTERED COMMUNITY LAND

The acquisition of land in unregistered community land for development projects in Kenya has posed many practical challenges when gauged using constitutional values and principles. Where investors have sought access/or acquired land, the questions whether the transactions have happened at an arm's length arise. The fact that no formal market transactions have been registered over these types of land presents challenges as to how open market values are or can be established. In the absence of a registered legal entity from the community pauses a challenge on who to engage with among the community members w .The investor is left with no alternative but to engage with the county government as the trustee of unregistered community land yet communities desire is to engage directly with acquiring bodies.

There are significant concerns that acquisition of unregistered community land will have negative economic, social and cultural impacts to the community. One particular concern is the increase in violent conflict between and within communities and with the investor companies. Historically, communities have engaged in violent conflict with neighboring ethnic groups and this is driven by contests over natural resources upon which their livelihoods depended on i.e. livestock, pasture and water. Specific to land and natural resource rights, the fuelling factors for violent conflict include;

- Communities having no understanding of their community land and natural resource rights and having fear that investments may infringe on their rights.

- Communities not being aware of the existing formal channels through which they can lodge their claims with regards to violation of land and natural resource rights.
- Exclusion from relevant related decision-making processes.

National Land Commission together with the Ministry of Lands and Physical Planning in collaboration with Kenya Land Alliance is working towards raising awareness among communities on their land and natural resource rights as one of the ways to reduce conflicts between and within communities as well as community investor conflict. This is geared towards promoting more structured dialogue between community, government and investor companies as three main stakeholders where land and natural resource (NR) issues are concerned. Specifically, KLA is doing this through grass root level awareness raising forums, printing of simplified IEC materials, research to inform evidence-based advocacy and establishment of Natural Resource Networks that will help spearhead discussions around land and NR related issues. While National Land Commission has the responsibility to ensure proper procedures are followed when acquiring land for investments in unregistered community land.

3. THE TASK: INTRODUCTION TO THE ASSIGNMENT

Land access, acquisition and compensation on unregistered community land remains a complex issue that needs deeper interrogation and discussion. With the most recent quest for land for investments in areas of unregistered community land, there is need have proper guidelines that every community can adopt whenever they are approached to provide land for investments so that they can have the benefit of engaging at arm's length.

However, there are concerns that acquisition and compensation has proceeded without clear legal framework governing displacement, resettlement and compensation of communities in a context of community land ownership structure.

Kenya has enacted a number of relevant legislations that include the Community Land Act 2016, Land Act 2012, the Land Registration Act 2012, and the Land Index Act 2019 that can facilitate the Acquisition process.

Development of guidelines that guide the process for acquisition and compensation explicitly provides for how this is to be done where communities are involved. Situation is exuberated by the fact that communities on the said land don't have ownership documents to their land as the Community Land Law is still being implemented. Kenya land alliance therefore seeks the services of a qualified consultant to carry out a desk review of the legislative framework(s) that guides land acquisition, displacement and compensation for communities in unregistered community land setting.

3.1 Objectives of the Assignment

- a. Analyzing existing policy (ies) and legislation(s) (laws and bills) governing acquisition, compensation, displacement and/or resettlement of communities in unregistered community land. The review should look at the Kenya Constitution 2010 as the “mother” of all laws and subsequent relevant laws and bills i.e. the Land Act 2012, Community Land Act 2016, Land Value Index law and any other relevant national or county policy and legislation.
- b. Develop guidelines on the current land acquisition processes giving recommendations on how to develop a just approach to acquisition, displacement, resettlement and compensation for affected communities in unregistered community land.

Key issues of concern for the consultant should include and not limited to;

- How acquisition and compensation of unregistered community land should be carried out
- What are the emerging approaches with respect to how communities are dealing with the issues of land acquisition in the context of unregistered community land in the absence of a finalized guiding framework that can be adopted as best practices (Both locally and internationally).
- What key principles should be considered where acquisition and compensation for unregistered community land is involved?

3.2 Proposed methodology

Desk Review: The consultant will complete a thorough review of legal and policy documents governing acquisition, compensation, displacement and/or resettlement of communities in unregistered community land.

Validation Meeting:

Facilitate an internal NLC meeting with Commissioners to validate the document and a stakeholder validation meeting to critique the land acquisition guide.

3.3. Outputs

a. A guide on land acquisition and compensation of unregistered community land

NECESSARY KNOWLEDGE, SKILLS AND EXPERIENCE

Qualifications	Essential	Desirable
Level of education	Degree	Master's Degree or post qualification in relevant subject such as Law, political science, Social Sciences, International Relations or related degree
Experience	<ul style="list-style-type: none"> - At least 10 years' experience in research management at National or International level. - Excellent Research and writing skills - Affiliation to a research institute is an added advantage 	<p>Experience working within the extractives sector or on research relating to policy advocacy for the community land</p>
Knowledge and skills	<ul style="list-style-type: none"> - Strong knowledge on land and natural resource rights with respect community land and land acquisition and compensation - Excellent communication skills. 	

5. ETHICAL STANDARDS AND INTELLECTUAL PROPERTY

The consultant should take all reasonable steps to ensure that the study is designed and conducted to respect and protect the rights and welfare of the people and communities involved and to ensure that the report is technically accurate and reliable. The consultant will also commit to adhering to Kenya Land Alliance (KLA) Safeguarding Programme Participant Policy and Code of Conduct. All products arising from this research will remain property of KLA. The consultant will not be allowed, without prior authorization in writing, to present any of the analytical results as his or her own or to make use of the research results for private publication purposes.

6. SUBMISSION OF PROPOSALS

Based on the above, KLA is inviting interested parties to submit expressions of interest. Individuals or firms applying shall detail the following:

- Interpretation of the Terms of Reference (TORs), including detailed implementation plan, time frames and budget.
- Consultants' profile and Capability Statement describing the technical capacity and experience of the individual, firm or group of individuals.
- The application to be submitted to; procurement@kenyalandalliance.or.ke and copy info@kenyalandalliance.or.ke by 4th November 2020.