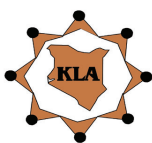




**A GUIDE FOR THE DEVELOPMENT OF COMMUNITY
LAND BY-LAWS IN LINE WITH THE COMMUNITY
LAND ACT, 2016**

THE KENYA LAND ALLIANCE



Brot
für die Welt

ACKNOWLEDGEMENT

While this guide is a Kenya Land Alliance (KLA) production, it was developed through the significant and invaluable efforts of a team of different professionals who worked tirelessly on research, review and content creation to the flawless outcome that is the policy document.

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ACRONYMS

ADR	Alternative Dispute Resolution
CEMC	County Executive Committee Member
CLMC	Community Land Management Committee
CA	Community Assembly
Cap	Chapter
CLA	Community Land Act
CLR	Community Land Registrar
CSOs	Civil Society Organization
NLUP	National Land Use Policy
NGOs	Non-governmental Organizations
PWDs	People with Disabilities

EXECUTIVE SUMMARY

The enactment of the Community Land Act, 2016 presents a paradigm shift from the land registration system propagated circa 1950s in which security of rural tenure lay in the extinction of customary rights and their replacement with freehold or leasehold entitlements issued to individuals or corporate entities.

Under the Community Land Act, 2016, each community may, if it wishes, secure a single collective title over all or part of its lands, and lawfully govern this property. This includes regulating traditionally 'private' possession of portions of land within the community domain, as allocated to individual families for settlement or farming purposes. Customary practices may be applied within constitutional parameters of human and social rights.

In spite of the great prospects of the Community Land Act, 2016 its implementation has been slow due to administrative challenges including the problematic understanding the provisions of the Act by various stakeholders and dismal mobilization of resources for effective implementation. This has in turn created challenges for agencies, institutions and private investors interested in undertaking development projects in Community Land.

Per Section 7 of the Act, in concert with Section 15, the process of registration of Community Land commences with the application to the Community Land Registrar of an application for recognition of interest in or right over community land by representatives of a particular community.

This is followed by a series of actions guided by the Constitution of Kenya, including the election of the Community Land Management Committee to oversee the day-to-day administration and management of the community land on behalf of the community. This committee prescribes and submits to the Community Land Registrar, the rules and regulations to govern the operations of the community in relation to land.

This is just a small section of the process and procedure to be followed in handling Community Land matters. The purpose of this guide to clarify the threshold of the community by-laws to stakeholders for implementation of the Community Land Act, including the county governments, Technical Officers in the Ministry responsible for lands, elected and community leaders, communities, civil society organizations and the general public.

The guide gives an overview of policy and legal framework of community land, the registration process, roles of various duty bearers in the registration process and key elements of the community by-laws.

The key objective of the guide is to increase efficiency and effectiveness of registration of Community Land through the standardization of the attendant processes and procedures. This document is a reference for training public officers, communities and induction of Community Land Management Committees.

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SECTION 1: BACKGROUND INFORMATION

1.1 Introduction

The Constitution of Kenya classifies land in the country as public, community and private and provides that all the land in the republic belongs to people of Kenya collectively as a nation, as communities and as individuals.

Article 63 of the Constitution provides the scope of Community Land and Sub-Article (5) provides for enactment of a legislation by Parliament administration and management of such land. The Community Land Act which was enacted in the year 2016 to give effect to Article 63(5) of the Constitution lays a legal foundation for majority of rural land security. It focuses on communities which hold, use and transact lands under their own, usually customary norms, and whose lands remain un-surveyed and untitled and is approximated to account for over 70% of the national land mass.

The Act provides for the recognition, protection and registration of Community Land rights; management and administration of community land; and provide for the role of the county governments in relation to unregistered community land.

The enactment of the Community Land Act, 2016 presents a paradigm shift from the land registration system propagated circa 1950s in which security of rural tenure lay in the extinction of customary rights and their replacement with freehold or leasehold entitlements issued to individuals or corporate entities. Through provisions of the present legislation, each community may, if it wishes, secure a single collective title over all or part of its lands, and lawfully govern this property. This includes regulating traditionally 'private' possession of portions of land within the community domain, as allocated to individual families for settlement or farming purposes. Customary practices may be applied within constitutional parameters of human and social rights.

In spite of the great prospects of the Community Land Act, 2016 its implementation has been slow due to administrative challenges including understanding the provisions of the Act by various stakeholders and mobilization of adequate resources for effective implementation. The slow roll out of registration activities has in turn created challenges for agencies, institutions and private investors interested in undertaking development projects in community land.

According to Section 7 of the Act read with Section 15, the process of registration of Community Land commences with the application to the Community Land Registrar of an application for recognition of interest in or right over Community Land by representatives of a particular community. This application is channelled through Form CLA 1 as prescribed in the attendant regulations.

It's a requirement of the Act under Section 15(3) (e) that upon the election of the Community Land Management Committee to oversee the day-to-day administration and management of the Community Land on behalf of the community, the committee should prescribe and submit to the Community Land Registrar rules and regulations to govern the operations of the community. These rules and regulations or community by-laws are to accompany the application for registration of the community by the Registrar in Form CLA3 and are a precondition for eventual issuance of a Certificate of Registration to the community by the Registrar.

1.1.1 Purpose of the Guide

The purpose of this guide to clarify the threshold of the community by-laws to stakeholders for implementation of the Community Land Act, including the county governments, Technical Officers in the Ministry responsible for lands, elected and community leaders, communities, civil society organizations and the general public. The guide gives an overview of policy and legal framework of community land, the registration process, roles of various duty bearers in the registration process and key elements of the community by-laws.

1.1.2 Justification

Since the enactment of the Community Land Act in the year 2016, there has been slow progress in the registration of Community Land an issue that could be occasioned to inadequate awareness on the provisions of the Act. Although the Third Schedule of Community Land Regulations, 2017 are prototype community by-laws which the communities are expected to customise and adopt and to aid the registration process, several communities are still faced with the challenge of formulating realistic and comprehensive rules and regulations to govern the operations of the community. Several communities have resorted to procuring the services of legal practitioners and other expertise to formulate the by-laws, a resource intensive undertaking.

This guide seeks to further clarify the process of formulating the by-laws so as to make the process as cost-effective as possible. It has also been noticed that various pertinent provisions have been left out in the formulation of the bylaws. The position of unmarried women, children born out of marriage and women escaping SGBV back to the community of birth have always been frowned upon.

1.1.3 Objectives

The main objective of the guide is to increase efficiency and effectiveness of registration of Community Land by standardization of the processes and procedures.

The guide will act as a reference for training public officers, communities and induction of Community Land Management Committees.

1.1.4 Scope of the Guide

The guide outlines the nine-step process of registering Community Land and specifically for the process of formulating the community by-laws.

1.1.5 Reference Documents

The guide should be read together with the Community Land Act, 2016 and attendant Regulations, 2017.

1.2 Policy, Legal and Institution Framework of Community Land

In pre-colonial times, communities in Kenya had their own traditional system based on their customs and practices. Communities shared land under the authority and advice of community elders and clan heads. Bundles of rights (including access and grazing rights) in the same land could be held by different persons and group rights in particular areas of land or common property rights also existed.

Land was conceived as an unbounded resource to be used, and not as a commodity to be measured, plotted, sub-divided, leased, pawned or sold. Using land as opposed to holding it implied the absence of strict boundaries and landlord-type authorities. The community members accessed land in order to subsist and had a ritualistic relationship to land. There was no difference between land for agricultural/pastoral or other purposes or use.

After independence, Government land policy was geared towards the group ranches system. In 1965, the Government commissioned an inquiry into 'Land Consolidation and Registration in Kenya.' The Inquiry report, otherwise known as the Lawrence Report, concluded that group, rather than individual registration of land, had greater relevance to range areas. In order to secure this land tenure system, the government developed and passed into law four pieces of legislation:

1. The Land Consolidation Act Cap. 283
2. The Land Adjudication Act Cap. 284
3. The Land (Group Representatives) Act Cap. 287
4. The Trust Land Act Cap. 288

1.2.1 Sessional Paper No.3 of 2009 on National Land Use Policy

The Sessional Paper No.3 of 2009 on the National Land Policy is a key land mark that laid down policy response to Community Land matters and addressed land rights challenges of minority, marginalised and vulnerable groups. The Policy calls on the Government to:

- a) Secure pastoralists tenure to land and recognise pastoralism as a legitimate land use and production system;
- b) Review the Land (Group Representatives) Act and provide for pastoralism in the Land Act;
- c) Establish suitable methods for defining and registering land rights

- in pastoral areas while allowing pastoralists to maintain their unique land systems and livelihoods;
- d) Establish a legislative framework to regulate transactions in land in pastoral areas;
 - e) Ensure that the rights of women in pastoral areas are recognised and protected;
 - f) Provide for flexible and negotiated cross boundary access to protected areas, water, pastures and salt licks among different stakeholders for mutual benefit; and
 - g) Ensure that all land uses and practices under pastoral tenure conform to the principles of sustainable resource management.

1.2.2 Sessional Paper No.1 of 2017 on National Land Use Policy

The National Land Use Policy (NLUP) sets out long term goals on land use management. The policy is responsive to the challenges relating to the efficient use of land including; rapid urbanization, inadequate land use planning; unsustainable agricultural methods, poor environmental management, inappropriate ecosystem protection and management.

The principal objective of NLUP is to provide a legal, administrative, institutional and technological framework for optimal utilization and productivity of land and land related resources in a sustainable and desirable manner at National and County levels. The Policy recognizes rangelands, which are mainly spread in the ASALs and constitute approximately 80% of the national surface as having the capacity to support large scale livestock production, conservation and other economic activities.

It appreciates that the rangelands are however severely degraded due to overgrazing, poor animal husbandry practices and conversion of rangeland to crop farming leading to shrinkage of land available for wildlife, reduced productivity levels and unsustainability. This forms the basis for preparation of land management plans for registered Community Land to ensure sustainable utilization of the land.

1.2.3 The Constitution of Kenya

Article 60 (1) and (2) states that land in Kenya shall be held, used and managed in a manner that is equitable, efficient, productive and sustainable

and in accordance to the principles of equitable access to land; security of land tenure; 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 laws, customs and practices related to land and property in land; and encouragement of communities to settle land disputes through recognised local community initiatives consistent with the constitution. These principles shall be implemented through national land policy and through legislation.

Article 61(1) and (2) states that all land in Kenya belongs to the people of Kenya collectively as a nation, as communities and as individuals. Land has also been classified as public land, community or private.

Article 63 (1) states that Community Land shall vest in and be held by communities identified on the basis of ethnicity, culture or similar community of interest. Community Land shall consist of:

- a) Land lawfully registered in the name of group representatives under the provisions of any law;
- b) Land lawfully transferred to a specific community by any process of law;
- c) Any other land declared to be Community Land by an Act of Parliament; and
- d) Land that is—
 - i. Lawfully held, managed or used by specific communities as community forests, grazing areas or shrines;
 - ii. Ancestral lands and lands traditionally occupied by hunter-gatherer communities; or
 - iii. Lawfully held as trust land by the county governments excluding any public land held in trust by the county government.

The Community Land Act, 2016 gives effect to Article 63(5) of the Constitution.

1.2.4 The Land Registration Act No.3 of 2012

The Act applies to registration of interests in public, community and private land as enshrined under the Constitution. It defines 'community' as 'a clearly defined group of users of land identified on the basis of ethnicity, culture or similar community of interest' as provided under Article 63(1) of the Constitution, which

holds a set of clearly defined rights and obligations over land and land-based resources. It establishes Community Land register for each registration unit subject to Section 8 of the Community Land Act. The Act prohibits alienation of Community Land unless sanctioned by the Community Land Act.

Upon finalization of the adjudication of community land, the Community Land Registrar is to issue a certificate of title or certificate of lease for Community Land in the name of the community in line with the Land Registration Act and register all future transactions and/ or encumbrances in accordance with the Community Land Act, 2016.

1.2.5 The Land Act No.6 of 2012

Section 8 of the Act contains provisions in relation to conversion of public land to Community Land subject to public interest demands, conversion of Community Land to private or public land subject to the provisions of the Community Land Act, 2016. Section 37 of the Act stipulates that the management of Community Land shall be in line with the provisions of Community Land Act. Section 55 of the Act exempts Community Land from provisions governing leases.

1.2.6 The Land Adjudication Act Cap.284

The Act defines a group as ‘a tribe, clan, section, family or other group of persons, whose land is recognized under customary law and belongs communally to the persons who are for the time being the members of the group, together with any person whose land the group determined to be the owner under the provision of Section 23(2)(a) of the Act.’

The Land Adjudication Act was designed to enable the ascertainment and recording of rights and interests in trust land to ensure that individuals, families and groups are recorded and registered as landowners. The Act also applies to areas to which the Land Consolidation Act applies and where a record of existing rights has not been completed and certified under section 16 of this Act.

Upon the enactment of the Community Land Act, 2016 in 21st September 2016 and related Regulations on 24th November, 2017, the Land Adjudication Act is only applicable to the adjudication areas that had been declared as such on or before 23rd September, 2019. All areas not declared as adjudication areas by this date are to be adjudicated and registered under the provisions of the Community Land Act.

1.2.7 Community Land Act, 2016

Community Land Act was enacted on 21st September 2016 to give to effect Article 63(5) of the Constitution. The Act provides for the recognition; protection; registration of Community Land rights; management and administration of Community Land and the role of county governments in relation to unregistered community land.

The Act repealed the Land (Group Representatives) Act, Cap. 287 and the Trust Land Act Cap. 288. It also provides for the finalization of land adjudication under the Land Consolidation Act, Chapter 283 and the Land Adjudication Act, Chapter 284 of the laws of Kenya, within a period of three years from the date of its enactment – by 21st September, 2019. Any subsequent adjudication programmes are to be established in accordance with the Community Land Act, which provides for collective ownership of land by communities

The salient principles of the Act include:

- i. Appreciation of customary land rights like grazing rights and communal rights to clan land such as family interest in Community Land;
- ii. Conversion of public land to Community Land or conversion of Community Land to private or public land;
- iii. The process of communal holding and eventual registration of Community Land;
- iv. Empowering traditional structures for resource management of community land;
- v. Creating a framework of securing Community Land rights such as governing the grant to, and regulation of user rights to members' and non-members.

The Community Land Act, 2016 has a unique institutional framework, with the government playing a facilitative role in the registration of communities and their land. The mandate of registering communities vests with the Ministry responsible for Lands while the coordination of the administration and management of the land vests in the county governments where such lands are situated and the registered communities.

Every community is expected to have a supreme decision-making organ called the Community Assembly that is made up of all adult members of the community. The day-to-day management and administration of the land is vested in the communities through the 7 to 15-member Community Land Management Committees elected by the Community Assembly from among the adult members of the community.

Decisions on land transactions on the registered Community Land including allocation, reserving land for public or special purposes, conversion of land or establishing partnerships and investments are pegged on a two third quorum of the Community Assembly. This departs from the practice in the group ranches where such decisions were vested with the group representatives. Additionally, the Act has embraced inclusivity with a requirement for consideration of the needs of different community groups by gender, age, race, marital status or special needs when constituting the management committee, making decisions on resource sharing and in general access and use of community land.

Implementation framework of the Act is highly participatory. At the onset, the Cabinet Secretary, in liaison with the County Governments, is mandated to establish a public education and awareness programme to acquaint the various stakeholders with the provisions of the Act. This includes the induction of the members of the Community Land Management Committees, once constituted prior to their assuming office. Upon registration of the communities, the County Governments are expected to carry on with the public education and awareness programme.

The adjudication phase of the registration process is also participatory where the Government through the adjudication team provides the technical assistance in company of the land management committees.

Disputes arising in course of the adjudication process or in consequent administrative processes are to be solved in the first instance through an elaborate Alternative Dispute Resolution Mechanisms provided in the Act. These mechanisms have in-built options of Traditional Dispute Resolution methods adoptable by the respective community, Internal ADRs set out in community by-laws, invoking provisions of the Arbitration Act, formation of ad hoc Dispute Resolution Committee by the Cabinet Secretary and finally referring unresolved cases to Court.

The attendant Regulations of the Act, which were formulated to operationalize Community Land Act, 2016 in line with Section 48 of the Act clarify the process of registration of communities and Community Landas well as the structure of the rules and regulations that communities need to follow as they seek registration from the Community Land Registrar.

1.2.8 Physical and Land Use Planning Act, 2019

This Act provides for preparation of various types Local Physical and Land Use Development Plans in the country. Sections 13, 19, 26, 27 and 38 of the Community Act provide for planning process of unregistered and registered community land. The planning interventions thus envisaged shall be prepared and approved under the provisions of the Physical and Land Use Planning Act. In case of dissolution of a registered community and winding up of the communal tenure, the land shall be sub-divided to the beneficiaries while adhering to the physical and land use planning standards.

1.2.9 The Survey Act (Cap 299)

The Act provides for surveys, geographical names and the licensing of land surveyors as well as the function of the Director of Surveys. Upon the finalization of the adjudication exercise under the Community Land Act, the Adjudication Team is mandated to prepare and submit to the Community Land Registrar a georeferenced cadastral map to inform the registration of the land. The cadastral plan shall be prepared within the provisions of the Survey Act. The type of survey envisaged for registration of Community Land Act is fixed survey. Fixing the boundaries of the land by geo-referencing shall be done under the provisions of the Survey Act.

1.3 Community Land Act Registration Process

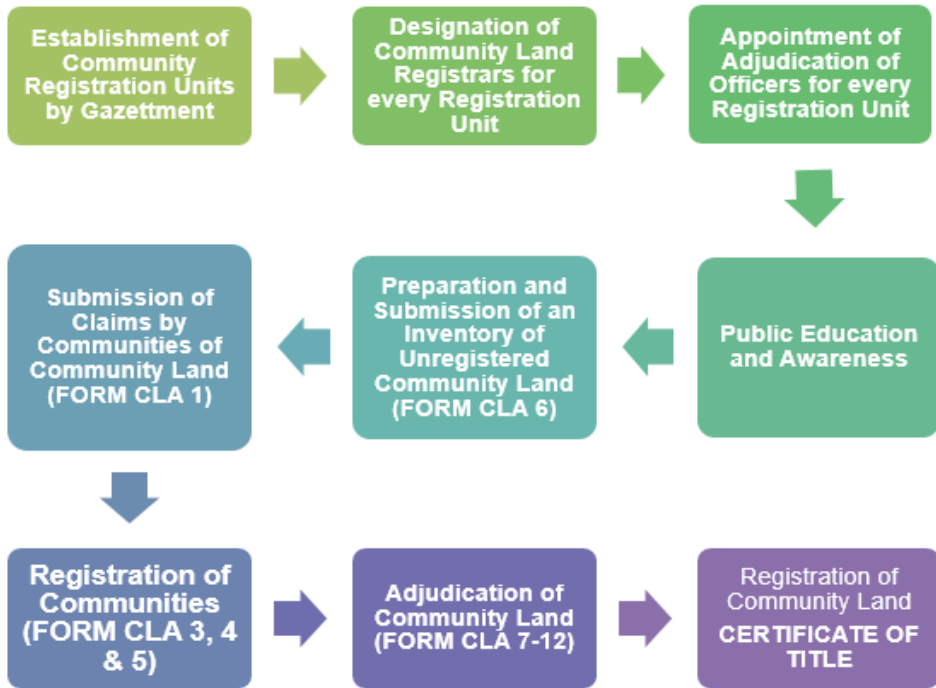
The process for registering community entails the following comprehensive steps:

- 1) Declaration of Community Land registration units by the Cabinet Secretary, Lands in line with provisions of the Land Registration Act, 2012.
- 2) Cabinet Secretary designates Community Land Registrars to guide the registration process.
- 3) Cabinet Secretary gazettes Land Adjudication Officers for every Registration Unit in line with provisions of the Community Land Act, 2016.
- 4) Cabinet Secretary launches public education and awareness creation to the National and County Government leaders as well as the communities and other key actors and stakeholders on the provisions of the Community Land Act, 2016 and Regulations, 2017.

- 5) Submission to the Cabinet Secretary, an inventory of unregistered Community Land through Form CLA 6, by the county governments.
- 6) Cabinet Secretary writes to the respective County Government to confirm receipt of the inventory and to seek confirmation and concurrence by the county government of public participation and or consensus by the communities in compiling the inventory.
- 7) Cabinet Secretary Gazettes the submitted inventory of Community Land of the respective counties.
- 8) Community applies to the Community Land Registrar for recognition and registration of their Community Land rights vide Form CLA 1.
- 9) The Community Land Registrar places a notice for a meeting to elect members of the Community Land Management Committee and convenes the meeting where the Community Assembly (CA) elects the Community Land Management Committee (CLMC) for the particular community.
- 10) Cabinet Secretary inducts the CLMC on its mandate as per the CLA.
- 11) CLMC prepares a comprehensive register of all the community members including men, women, youth and children as well as by-laws in readiness for the application for registration of the community by the Community Land Registrar.
- 12) CLMC applies for registration of the Community as a cooperate body vide Form CLA 3.
- 13) The Community Land Registrar issues a certificate of registration of the community vide Form CLA 4.
- 14) Cabinet Secretary prepares and publishes in the Gazette a comprehensive adjudication programme for the respective County.
- 15) Cabinet Secretary issues a notice of intention to commence adjudication, demarcation, survey and registration of Community Land in Form CLA 7.
- 16) Adjudication Team comprising of the Gazetted Adjudication Officer, Physical Planner, Surveyor and CLMC commences the adjudication of Community Land excluding public land /public purpose land/ private land.
- 17) The Adjudication Team and or Ad Hoc Committee constituted by the Cabinet Secretary resolves any disputes arising in the course of the adjudication process such as inter and intra Community Land boundary disputes by employing the established ADR Mechanism.
- 18) The Adjudication Team prepares a cadastral map of the Community Land to support its registration.
- 19) The Community Land Registrar registers Community Land and issues a certificate of Title in the name of the Community.

These processes can be summarized into 9 broad steps as illustrated in the figure below:

Figure 1: Nine (9) Broad Steps for Registration of Community Land Rights in Kenya



Source: Ministry of Lands, Public Works, Housing and Urban Development, 2023

SECTION 2: COMMUNITY BY-LAWS

2.1 Description of Community By-Laws

Section 15(4) (e) of the Act provides that the Community Management Committee is to prescribe rules and regulations to govern the operations of the community. These rules are to be ratified by the Community Assembly, which is the supreme governing body of the registered community. The approved community rules and regulations or by-laws are to be submitted to the Community Land Registrar by the Committee among other documents during the application for registration of the community.

The community rules and regulations/ by-laws or constitution is the set of fundamental guidelines for governing operations and management of a registered community, its assets and governance matters. The rules provide the structures and processes of governance including the rights of and obligations of community members, use and management of assets, resource amongst other aspects.

2.2 Elements of Community Rules and Regulations/By-Laws

The Second Schedule of the Community Land Act Regulations, 2017 outlines the Guidelines for preparation of community rules and regulations. The key elements to consider when developing the by-laws are: -

2.2.1 Description of the Registered Community and Community Land

- 1) The name of the community, physical and postal address.
- 2) A description and extent of the land which the community has, under recognized customary law, exercised rights of use and occupation

2.2.2 Membership of the Community

- 1) The persons who are eligible as the members of the community.
- 2) The persons to whom membership is open.
- 3) Rights and obligations of members.
- 4) Cessation of membership.

2.2.3 Conduct of Community Land Management Committee

- 1) The particulars of the members of the Committee, term of office, the method and frequency of their election, appointment, suspension and dismissal.
- 2) The authority for and the method of filling vacancies occurring amongst the officers of the Committee.
- 3) Duties and powers of the committee.
- 4) Responsibilities of committee members.
- 5) Payment of allowances to Committee members and other officers of the Committee.
- 6) The frequency of, quorums for, method of calling and dates of the annual general meetings.
- 7) Notice of meetings.
- 8) Record of business of the Community Assembly

2.2.4 Management of Community Assets and Investment

- 1) Power to borrow.
- 2) The custody and investment of the funds and property of the community, and the designation of the persons responsible.
- 3) The purposes for which the funds and property of the Community may be used.
- 4) Signatories of community accounts.
- 5) Common seal for the community.

- 6) 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.
- 7) The periodic audit of accounts.
- 8) Inspection of documents

2.2.5 Discipline

- 1) Fines for breaching rules and regulations.

2.2.6 Dispute Resolution

- 1) ADR mechanism for resolving disputes

2.2.7 Amendment of the Rules and Regulation/By-Laws

- 1) The manner of making and amending the name, constitution or rules of the community.

2.2.8 Dissolution of the community

- 1) The manner of the dissolution of the community and the disposal of its property on dissolution.
- 2) The mechanisms for dispute resolution

The Third Schedule of the Regulations provides a prototype community rules and regulations which can be customized to fit the needs of a particular community.

2.3 Additional Aspects that Maybe included in the Rules and Regulations

Paragraph 23 of the prototype rules outlined on the Third Schedule of the Regulations provides that the community may make such other regulations in addition to the outlined ones, as it may be deemed necessary for the conduct of community's business.

Section 37 of the Act provides for the making of rules of by-laws on: -

- 1) The regulation of investments on the land;
- 2) The determination of terms of any leases granted for purposes of investment;
- 3) The conservation and rehabilitation of the land; and
- 4) Physical and land use planning.

Section 28 of the Act provides for upholding of the customs and practices of pastoral communities relating to land as long as they are not repugnant to the Act and other applicable law. Thus, a registered community may prepare regulations on management of grazing land including but not limited to:

- 1) The kind and number of livestock that may be grazed.
- 2) The section or sections of the land where livestock may be grazed.
- 3) A grazing plan including rotational grazing.
- 4) Granting and or withdrawal of grazing rights to non-members.

2.4 Key Considerations for Developing By-Laws

When developing additional rules and regulations, CLMC should ensure that:

- 1) The provisions are not repugnant to the Constitution and the various Statutes. Specifically, the rules should:
 - a. Uphold provisions of Section 13,19, 22, 26, 27 and 29 on the need to prepare land management plans for Community Land and portions of the land earmarked for conversion, excision and allocation of the land respectively.
 - b. Uphold provisions of section 22 and Part VII of the Act on conservation and management of resources in Community Land in adherence to applicable laws, policies and standards on natural resources.

- c. Uphold provisions of Section 30 of the Act on promoting equity, equality and inclusivity.
 - d. Ensure that the rules do not affect the enjoyment of special rights on Community Landas generally provided for in Part VI of the Act.
- 2) The regulations do not subvert the roles of the various institutions and duty bearers as provided for in the Act and other applicable laws.
 - 3) The draft regulations are ratified by the Community Assembly as provided for in Section 15 of the Act.
 - 4) It promptly submits the amended version of rules and regulations to the Community Land Registrar in line with Section 15 of the Act.

2.5 Steps for developing Community By-Laws

2.5.1 Defining the scope of by-laws

The scope of the community by-laws should be informed by:

- 1) The matters provided for in the Community Land Act and Regulations – that is the prototype rules and regulations outlined on the Third Schedule of the Community Land Regulations.
- 2) The nature of the socio-economic activities that the community is engaged in such as pastoralism, crop farming, horticulture, conservation etc. It follows that every community is unique and so are its land management standards.
- 3) Customary rules and regulations that govern the general operations of the community and management of land.
- 4) Inclusion of gender perspective, orphans and vulnerable children, children born out of marriage, unmarried women, women running away from SGBV to their place of birth and PWDs.
- 5) Any emerging realities such as climate change, invasive species and natural disasters.

CLMC should first acquaint itself with provisions of the Act, Second and Third Schedules of the Community Land Act Regulations and identify any gaps that need to be included in the community by-laws.

2.5.2 Formulation of draft by-laws

The mandate of formulating the community by-laws is vested with the CLMC. The committee may use internal capacity or outsource services of an advocate or relevant professional. Other key stakeholders that could assist the communities in the preparation of the by-laws include the civil societies, development partners and other relevant institution. Partnerships and collaboration are encouraged to assist the related communities with required technical and finances necessary to support the development/ formulation process.

In instances where the committee resolves to outsource the formulation process, the Committee should develop clear agreement with explicit terms of reference to govern the process.

2.5.3 Presentation of draft by-laws for validation

The mandate of formulating the community by-laws is vested with the CLMC. The committee may use internal capacity or outsource services of an advocate or relevant professional. Other key stakeholders that could assist the communities in the preparation of the by-laws include the civil societies, development partners and other relevant institution. Partnerships and collaboration are encouraged to assist the related communities with required technical and finances necessary to support the development/ formulation process.

In instances where the committee resolves to outsource the formulation process, the Committee should develop clear agreement with explicit terms of reference to govern the process.

2.5.4 Approval

Participatory approach should be employed in the development of community by-laws. Upon formulation of the draft by-laws, the CLMC should present them to the Community Assembly for comments and validation. Comments received from the validation meeting should be incorporated.

2.5.5 Submission

Upon incorporation of comments from the validation sitting and the Community, the CLMC should present the revised draft by-laws to the Community Assembly for approval by the two-thirds majority.

2.5.5 Amendment

The amendment process should follow the formulation process

SECTION 3: ROLES OF DIFFERENT ACTORS IN DEVELOPMENT OF BY-LAWS

3.1 Roles of Community Assembly

The Community Assembly is the supreme decision-making body of the community. Thus, it is charged with the responsibility of: -

- 1) Providing the requisite resources for the formulation of the by-laws.
- 2) Ratifying the draft-by-laws formulated by the CLMC.
- 3) Ensuring the rules and regulations are enforced to the letter.
- 4) Approving any amendments to the by-laws.
- 5) Approve partnerships and collaboration arrangements between the CLMC and identified partner/s for the formulation process.

3.2 Roles of CLMC

The CLMC is charged with formulating the community by-laws. Specifically, the CLMC is responsible for:

- 1) Undertaking research to identify issues that need to be regulated.
- 2) Formulating the by-laws either internally or by partnership or outsourcing the process.
- 3) Ensuring prudent utilization of resources devoted for formulation of the by-laws.
- 4) Approve partnerships and collaboration arrangements between the CLMC and identified partner/s for the formulation process.
- 5) Enter partnership and collaboration with state, non-state, and development partners to harness the required technical and finances necessary to support the development/ formulation process.
- 6) Convening the Community Assembly for purposes of ratifying the draft by-laws.
- 7) Incorporating comments by the Community Assembly and identified key stakeholders.
- 8) Submitting the revised draft to the Assembly for approval.
- 9) Submitting the approved by-laws to the Community Land Registrar.
- 10) Adhering to the provisions of the by-laws in undertaking the day-to-day operations on behalf of the community.

- 11) Communicating the proposed areas of amendment to the Community Assembly
- 12) Incorporating any agreed amendments.
- 13) Re-submitting the amended version of the by-laws to the Community Land Registrar.
- 14) Avail copies of the by-laws to community members and interested persons for perusal on demand in a user-friendly language and version

3.3 Roles of Community Land Registrar

The Community Land Registrar is mandated under the Act to approve and be the custodian of a copy of the approved community by-laws. In addition, the Registrar should: -

- 1) Ensure that the community undertakes any transactions on the registered Community Land in adherence to the by-laws by communicating any deviations to the provisions to the CLMC.
- 2) Avail the copy of the by-laws to accredited persons for perusal.
- 3) Propose to the CLMC amendments to the by-law to incorporate changing dynamics or address new emerging challenges.

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