



Republic of Kenya

MINISTRY OF LANDS

COMMUNITY LAND RIGHTS RECOGNITION (CLRR) MODEL

FOR THE RECOGNITION, PROTECTION AND REGISTRATION OF COMMUNITY

RIGHTS TO LAND AND LAND BASED RESOURCES

SEPTEMBER 2011

Land Reform Transformation Unit
Ministry of Lands
Ardhi House
2nd Floor, Wing A
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Executive Summary

The Community Land Rights Recognition Model (CLRR) sequences specific actions to be undertaken by the Government of Kenya for the recognition of community land rights as stipulated by Article 63 of the Kenyan Constitution 2010. This proposed process is a result of many months of consultation between a team of Ministry of Lands officials, the SECURE Project (funded by USAID and implemented by Tetra Tech ARD), four targeted pilot communities in Lamu County, local administration, and other stakeholders. The process commenced with a review of the current processes used by the Ministry to adjudicate land rights to coastal communities, namely the Squatter Settlement Scheme stemming from the Agriculture Act (Cap 318), and enhanced it with input from external consultants with specific experience in the recognition and delimitation of community lands in Ghana, Liberia, Mozambique, Nigeria, Uganda, Sierra Leone, Sudan, and elsewhere.

Essentially, the CLRR Model provides steps and processes that enable the divestiture of land from one category to the Community Land category. It acknowledges that community land rights may incorporate overlapping claims of land rights and therefore ensures that in the conversion of lands from their previous tenure regime to Community Lands, all layers of overlapping claims are captured while at the same time serving to provide evidence for any conflicting land claims that require special attention to be resolved. Furthermore, the Model deals with the National Land Policy's call for the establishment of Community Land Boards by incorporating steps for the establishment of an appropriately constituted land holding and governance entity to be registered and become the legal entity in which ownership of Community Lands would reside. The Model also envisages the need for a speedy, cost-effective, dispute resolution mechanism to help resolve boundary and other land-related disputes. In this regard an alternative dispute resolution (ADR) agenda is enshrined in the Model through the identification of existing local ADR mechanisms and institutions, and training and enhancement to provide community land dispute resolution services.

In more specific terms, to recognise and register community lands, the proposed Model offers six stages of activities. These are: (A) the generation of demand for community land rights recognition among communities; (B) community engagement to educate them about the steps involved in the process; (C) the recording of community land claims and governance rules; (D) field

demarcation of the extent of a community's lands; (E) the validation of community's claims by relevant government agencies; and (F) the issuance of certificate of title to the community. The main rationale behind these six stages is captured by Chapter 3 of the National Land Policy, which calls for the equal recognition and protection of all modes of tenure in Kenya to facilitate the reconciliation and realisation of the critical values land represents.

The Model aims to achieve three main objectives: 1) to develop a customary land tenure and property/resource rights recognition model that, among other characteristics, is cost-effective for the Government of Kenya, affordable to beneficiaries, equitable and fair, and legally recognized; 2) to pilot principles and ideas that will inform the design of law and institutions envisaged by the Constitution and National Land Policy for securing community land rights; and 3) to build capacity among key stakeholders towards the implementation of the Constitution and the National Land Policy with regards to protection of community land rights.

Finally, the CLRR Model recognises that there would be potential challenges to achieving its objectives and, therefore, endeavours to offer built-in solutions to general challenges, ranging from political manipulations to the perception that Community Lands would stymie investments in land. It also offers solutions to potential operational challenges such as the lack of clear definition of communities, cost implications of community titling to beneficiaries, and mechanisms for recognizing individual entitlements within communities.

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1.0 Introduction

1.1 Background

Land is critical to the economic, social, and cultural development of Kenya and was a key reason for the struggle for independence. According to the Constitution of Kenya 2010, “land” includes: the surface of the earth and the subsurface rock; any body of water on or under the surface; marine waters in the territorial sea and exclusive economic zone; natural resources completely contained on or under the surface; and the air space above the surface.

Kenya occupies a total area of approximately 582,646 sq km, of which only 20% can be classified as medium- to high-potential agricultural land, and the rest is mainly arid or semi-arid. The current population is estimated at around 40 million, and with an annual growth rate of 2.9%, is expected to rise to 55 million by 2050. The challenge of Kenya’s rapid population growth on its limited arable land is reflected in high rates of rural-urban migration leading to rapid urbanization and land fragmentation in the high- to medium-potential areas leading to uneconomic plot sizes and rising land conflicts. The system of land management inherited at the time of independence has not adequately addressed the above challenges. The National Land Policy observes that the system of land management in Kenya is characterized by a systematic breakdown in land administration and delivery procedures and inadequate participation by communities in the governance and management of land and natural resources. Other problems include gross disparities in land ownership, gender and trans-generational discrimination in succession and transfers of land and the exclusion of women in decision-making processes involving land.

Over the years, the Ministry in charge of Lands in Kenya has worked to protect citizens’ rights to land and providing security of tenure to individuals and groups. These rights were formerly derived from government lands and trust lands, which have since been reclassified as public land and community land, respectively, by the Constitution of Kenya 2010. The provision of tenure is done through implementation of various statutes, which include the Government Land Act (Cap280), the Land Adjudication Act (Cap 284), the Land (Group Representatives) Act (Cap 287), the Agriculture Act (Cap 318), among others. Apart from the Land (Group Representatives) Act, all the other statutes are geared towards individualization of land, with few or no provisions for recognizing

communal rights and interests to land.

Although provision of secure tenure to land has been ongoing since the late 1950s, no concrete effort was made to recognize rights and interests to land that is claimed communally. The Government of Kenya has not had a single and clearly defined criterion for recognizing customary and community land ownership. In addition, there has not been a tangible definition of community as an entity with regard to ownership and registration of rights and interests to land. However, attempts to recognize land ownership by people living communally in informal settlements, traditional Swahili villages, or old colonial villages have been going on guided by scattered pieces of legislation.

One such attempt in defining land rights and interests in the context of a community has been under the Land (Group Representatives) Act, which provided for the incorporation of representatives of groups who were recorded as land owners under the Land Adjudication Act. The recording of these groups as owners and occupiers of land occurs in a process of adjudication aimed at extinguishing customary land ownership in favour of individualization of land. This initiative presupposes that there is an adjudication process that is on-going, and that there are groups that will be recorded to own land communally. Therefore, this Act is not adequate to cater for other categories of land that may require to be converted to community land. In addition, Cap 287 was more or less a land-use and management tool in pastoral areas and has little to do with provision of secure tenure to community land.

On the other hand, the Trust Land Act (Cap 288), vested community land in the county councils, to hold and manage on behalf of the people. This was an attempt to have land reserved for communities, but which, in practice, rarely benefited them because of the fact that communities were not adequately organized as an entity to own and manage the land on their own.

In cases where people live as communities in squatter villages and other informal settlements, the tendency has been to individualize rights and interests to such land through the squatter settlement processes in the Agriculture Act or issuance of individual letters of allotment under the Government Land Act, as opposed to formal recognition of their communal rights. The process of subdivision of such land is complex and at times separates extended families against their desire.

The situation is that way because both Acts have no clear method of recognizing rights and interests to land for such communities without individualizing ownership. Both initiatives have no guidelines and regulations on how the village, as an entity, can register and manage their rights and interests to land.

All the initiatives discussed above have not adequately addressed the plight of community land rights, which are threatened by continuous individualization to other interests. However, the Constitution of Kenya 2010, now gives communities the opportunity to hold and manage their own land. Under Article 61(2), the Constitution has reclassified land in Kenya to public, private, and community. Therefore, it is critical that clearly defined mechanisms be put in place for recognition of community rights and interests to land and protecting this land against further alienation.

1.2 Legislative Provisions for the Recognition of Community Land Rights

As a system of land tenure in Kenya, “Community Land” is a new category introduced by Article 63 of the 2010 Constitution. This Article strengthens various provisions in the National Land Policy regarding the recognition of all modes of tenure. To give equal legal recognition to Community Lands, the Policy under Section 3.1 paragraph 33 seeks to adopt a plural approach, in which different systems of tenure coexist and benefit from equal guarantees of tenure security. The rationale for this plural approach is that the equal recognition and protection of all modes of tenure will facilitate the reconciliation and realisation of the critical values which land represents”.

To secure community lands, the Land Policy further requires the government to “document and map existing forms of communal tenure, whether customary or contemporary, rural or urban, in consultation with the affected groups, and incorporate them into broad principles that will facilitate the orderly evolution of community land law” (Section 3.3.1, paragraph 66 (a.)).

The government is further required to “lay out...a clear framework and procedures for: the recognition, protection and registration of community rights to land and land based resources taking into account multiple interests of all land users, including women” (Section 3.3.1, paragraph 66 (d) i).

To facilitate implementation of these principles, the CLRR Model was developed and lays down the procedure for recognizing community land rights. To make the model operational, the following issues have to be noted:

1. The model is not a legal framework. The existing legal framework has no provision for community tenure to land, except in areas called Trust Land and Group Ranches (demarcated areas of rangeland to which groups of pastoralists, who graze their individually owned herds on it, have official land rights if they have customary rights over the range or pastureland in question).
2. The Model is in line with the Constitution of Kenya 2010 and the National Land Policy 2009, both of which provide for community land. The Land Policy goes further by requiring that communal tenure, whether customary or non-customary, be documented and mapped in consultation with the affected groups. The CLRR process is a step in this direction.
3. The land covered by the Model does not fall immediately under the currently available legal mechanisms for community land, namely, Group Ranches and Trust Land. However, Article 193 of the Land Policy requires the government to put in place a framework for conversion of Government Land in the 10 mile coastal strip into Community Land.
4. The absence of clear and secure property rights for communities has been an impediment to full enjoyment by communities of rights to land, productive use of land and national development. It has also led to defensive titling of land into individual holdings to protect land from encroachment by the government or other entities.
5. The Model answers three critical questions with regard to the land under the Model, “what land?”, “who holds the land?” and “what interest?”. These are very important for the Model because the ultimate objective is to secure the rights of the community to the land.

6. There is need to define community using the parameters given in the Constitution: ethnicity, culture or other community of interest, and take cognizance of any other provisions in the Constitution that prohibit discrimination on any basis. Some of the communities in Kenya may be an amalgam of all three parameters.
7. Whatever interests are conferred to the community under this Model, the residual powers of compulsory acquisition and development control apply to community land for regulatory purposes and for provision of land for the public interest.
8. The interest created in the implementation of the CLRR Model is vested in an identified entity which will hold paramount or allodial title above whatever rights any one person has to the land.
9. It is appreciated that different legal models exist for corporate holding of interests – society, company, group representatives and trust. Whichever legal entity is selected the proposal is that the CLRR Model be adopted to secure the rights of the community.

10. There is need to build the capacity of communities to actualize community rights.

The Model takes the normative provisions of the Constitution and the National Land Policy to a practical level and will be a useful guide in helping frame community land rights legislation. It is, however, necessary to capture the living customary law used (what people are using on a day-to-day basis), as opposed to narratives of customary law that are out of use.

1.3 The Recognition of Community Land Rights

The National Land Policy, passed by Parliament in December 2009, was the first step towards the recognition of community rights and interests to land which was strengthened further by the Kenya Constitution 2010. This recognition ultimately required that a mechanism be put in place to secure these rights and interests. This marked the birth of the Community Land Rights Recognition (CLRR) Model.

The CLRR is a tenure assessment tool designed to capture all the layers of community and local practices of land rights and land relations and record them in a participatory process. The Model sequences specific actions to be undertaken for the recognition of community land rights and has been designed to specifically deal with Article 68.c (ii) of the Constitution, which requires that legislation be enacted to regulate the manner in which land may be converted from one category to another. The CLRR Model is expected to inform the operationalisation of the community land concept in the Constitution and may be used to convert trust lands to community land and government lands within the 10-mile coastal strip to community lands as stipulated in the National Land Policy.

The CLRR Model itemises required activities in six stages, a combination of which may be undertaken concurrently. They are:

The National Land Policy captures the rationale to put in place a mechanism for recognizing community land and recommends adoption of a pluralistic approach to land administration, in which equal recognition and protection of all modes of tenure will facilitate the reconciliation and realisation of the critical values which land represents.

<p>Stage A Demand for community land rights recognition</p>	<p>The public is informed of the opportunity to secure community land and resource rights via the CLRR process.</p>
<p>Stage B Community Engagement</p>	<p>The community is engaged in the process of taking inventory of their land and resource rights.</p>
<p>Stage C Recording of Community land claims and governance rules</p>	<p>The community's land claims and land governance rules are recorded.</p>
<p>Stage D Demarcation</p>	<p>Actual physical demarcation of community boundaries is undertaken with the participation of the community.</p>
<p>Stage E Validation & Finalization</p>	<p>All documents and maps are reviewed and agreed upon by the community and relevant government agencies.</p>
<p>Stage F Issuance of Title</p>	<p>A Certificate of Title of Community Land Ownership is conferred to the community land-holding entity.</p>

1.4 Rationale for the development of the CLRR Model

The main rationale underpinning the development of the CLRR Model for recognising customary land rights is captured in Chapter 5 of the Constitution Kenya 2010 and Chapter 3 of the National Land Policy.

a) From the Constitution

The Constitution, in Chapter 5 on Land and Environment, gives prominence to community land holding for the first time.

- i. Recognition for Community Land ownership is given prominence through the classification of land under article 61(2): Land in Kenya is classified as public, community or private.*

- ii. Community land shall vest in and be held by communities identified on the basis of ethnicity, culture or similar community of interest.*

- iii. Community land shall not be disposed of or otherwise used except in terms of legislation specifying the nature and extent of the rights of members of each community individually and collectively.*

The three statements in effect commit governments, both national and county, to respect communal land holding.

b) From the NLP

Chapter 3 of the National Land Policy captures the rationale to put in place a mechanism for recognizing community land and recommends:

- i. *Adoption of a pluralistic approach to land administration “in which different systems of tenure co-exist and benefit from equal guarantees of tenure security. The rationale for this plural approach is that the equal recognition and protection of all modes of tenure will facilitate the reconciliation and realisation of the critical values which land represents” (Section 3.1 paragraph 33);*
- ii. *To secure community land, the Government shall Document and map existing forms of communal tenure, whether customary or contemporary, rural or urban, in consultation with the affected groups, and incorporate them into broad principles that will facilitate the orderly evolution of community land law (Section 3.3.1, paragraph 66 (a)).*
- iii. *To lay out a clear framework and procedures for the recognition, protection and registration of community rights to land and land-based resources.*

- *is efficient in terms of time to implement;*
- *is replicable;*
- *is participatory;*
- *is transparent;*
- *is equitable and fair;*
- *supports and enhances sustainable land and natural resource use and management;*
- *is legally recognized;*
- *is registrable and incorporated into LIMS;*
- *is heritable and/or transferable;*
- *recognises and promotes local-level land governance structures;*
- *recognizes and promotes the rights of vulnerable and minority groups;*
- *establishes clear and inclusive guidelines and rules for community membership;*
- *addresses and protects existing overlapping land and natural resource benefit, use, and access rights;*
- *capitalizes on or promotes local-level dispute resolution mechanisms;*
- *has checks and balances built into the process (including downward and upward accountability mechanisms);*
- *capitalizes on existing government and local-level support systems and resources;*

1.5 Principles of the CLRR Model

The overall goal of the CLRR Model is to provide a The development of the CLRR Model was guided by the need for a land tenure and property/resource rights recognition process that:

- *is cost-effective for the Government of Kenya;*
- *is affordable to beneficiaries;*

The overall goal of the CLRR Model is to provide a mechanism for registration of community rights and interests to land:

- *To secure land and resource rights of indigenous communities*
- *To actualize the new classification of community lands given under Article 63 of the Constitution*
- *To set principles and ideas that will inform the design of law and institutions envisaged by the Constitution and National Land Policy*
- *To create awareness among key stakeholders towards the implementation of the Constitution and the National Land Policy with regards to protection of community land rights.*

- allows proof of land claims that is based on existing customary or local practices; and
- allows for future integrated development and supports community growth and prosperity.

1.6 Objectives of the CLRR Model

The overall goal of the CLRR Model is to provide a mechanism for registration of community rights and interests to land. Four specific objectives will be met:

1. To secure land and resource rights of indigenous communities by developing a new process for the recognition, protection and registration of community rights to land and land based resources. (See Appendix 3 for relevant excerpts of National Land Policy).
2. To actualize the new classification of community lands given under Article 63 of the Constitution, and facilitate vesting of such land to communities to hold on the basis of ethnicity, culture, or similar community of interest, as the case may be. (See Appendix 4 for relevant excerpts of the Constitution Kenya 2010).
3. To set principles and ideas that will 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
4. To create awareness among key stakeholders towards the implementation of the Constitution and the National Land Policy with regards to protection of community land rights.

1.7 Methodology

The proposed process is a result of many months of consultation between a team of the Ministry of Lands officials, the SECURE Project (funded by USAID and facilitated by TetraTech ARD), the

targeted pilot communities, local administration and other stakeholders. The process commenced with a review of the current processes used by the Ministry to adjudicate land rights to coastal communities, namely the Squatter Settlement Scheme process stemming from the Agriculture Act. Significant input was also provided by external consultants provided by the SECURE Project, with specific experience in the recognition and delimitation of community lands in Ghana, Liberia, Mozambique, Nigeria, Uganda, Sierra Leone, Sudan and elsewhere.

The greater part of the model was informed by the current practices and land holding patterns of four indigenous communities in Lamu chosen as pilot sites. Tenure assessment studies were carried out in the five villages in the Boni-Dodori corridor (Basuba, Kiangwe, Mangai, Mararani, and Milimani) and the villages of Kiunga, Mkokoni, and Kiwayu Island. The results of these studies provided insight into livelihood base of the communities; the resources claimed; land holding patterns; gender considerations in land holding, rules, and regulations for customary land governance; roles of local-level institutions; and dispute resolution mechanisms available to villagers to resolve land disputes. These studies also brought out the community preferences for communal holding of land and other common resources from which they derive part or all their livelihoods. The recommendations arising from these studies was a key basis for the development of the CLRR Model.

Most land in Lamu East and West Districts (outside of two gazetted areas, the Dodori National Reserve and the Kiunga Marine National Reserve) currently fall under the Public Land (formerly Government Land) tenure regime governed by the Government Land Act (Cap. 280). The Act vests all powers regarding leasing, granting, and disposition of these lands in the institution of the Presidency. The Act also retains the Commissioner of Lands (an appointee of the President under delegated powers) as the administrator of government lands. The Act treats the state as a private land owner with powers granted to the President to make grants of land to individuals and corporate interests. As a result, government lands were routinely allocated through non-transparent means, and sometimes extra-legally, with little regard to communities resident on such land. The Act failed to recognize the communal rights and interests to land, of these communities, rendering them as “squatters” on their own land (i.e., residing unlawfully or without authorization on Government Land). These minority communities continue to live in villages and share resources from which they derive their livelihoods,

All the stages of the CLRR Model aim to make it difficult for political meddling in community lands, and instead, empower the community.

but to which they have no security of tenure.

For the purposes of this process, the land rights and interests in the context of a community refer to local-level (known as customary) land claims and practices of land administration and governance that a community is currently practicing. They can be an amalgamation of traditional and modern methods of land and natural resource management and administration. The CLRR Model is designed with a built-in tenure assessment tool to capture all the layers of local practices of land rights and land relations and record and enhance them in a participatory process to form the rules of engagement to recognize community land ownership as provided for in the Constitution.

1.8 Essential Elements of the CLRR Model

The CLRR Model takes cognizance of key features that are crucial in the recognition of community land rights and for creation of community lands as stipulated by the Constitution. Therefore, inherent in the process are the following elements:

- i. *The Model acknowledges that community land rights may incorporate overlapping claims of land rights that may be enjoyed sequentially and/or concurrently, sometimes by different entities. To reflect this, the model ensures that in the transformation of lands from their previous tenure regime to Community Lands, all layers of overlapping claims are captured, while at the same time serving to provide evidence for any conflicting land claims that require special attention to be resolved.*
- ii. *Considering that land was previously classified as Government Land, Trust Land, and Private Land, there is need to divest targeted lands from their previous tenure category to Community Land as stipulated in the Constitution. The CLRR Model proposes steps and processes that will enable the divestiture of land from one category to the*

Community Land category.

- iii. *For a community (identified using the Constitution's criteria of ethnicity, culture, or similar community of interest under Article 63) to have land registered in their favour there is need for the establishment of community land holding and governance entities. The CLRR provides for the establishment of these entities early in the rights recognition process. These entities can take various legal forms which communities must be assisted to clearly identify. The Model incorporates steps for the establishment of appropriately constituted land holding and governance entity to be registered and become the legal entity in which ownership of community lands would reside. However, the appropriate legal form that the community land holding and governance entity should take will need to be clarified in detail in subsequent land legislation.*
- iv. *The Model envisages the need for a speedy, cost-effective, dispute resolution mechanism to help resolve boundary and other land related disputes among community members as well as with outsiders and neighbouring communities. Therefore, an Alternative Dispute Resolution (ADR) mechanism is enshrined in the Model through the identification of existing ADR mechanisms and building their capacity to cater for community land dispute resolution needs.*
- v. *The Model provides a rapid results method of "ring fencing" community rights and interests to land and protecting the same from alienation to other people against the community's interest.*

Clear demarcation of the geographical limits of the community's lands and registration puts an end on the ability of outsiders to encroach on the interests of the community.

2.0 The Detailed CLRR Model

Stages	Steps	Remarks	Inputs	Outputs
A Generate demand for community land rights recognition	1	Public awareness of opportunity to secure land/resource rights in communities	<ul style="list-style-type: none"> PIA materials National Land Policy Constitution 	
		<p>To ensure that communities have knowledge about the opportunity provided by law to have their community land rights recognized and registered by the Government, and enlighten communities on the emerging land governance dispensation.</p> <p>Communities express interest for recognition of their land rights, which are taken up by relevant institutions for implementation.</p>		
B Community Engagement	1	Community education of process to secure land/resource rights	<ul style="list-style-type: none"> The CLRR Model Entire community invited to public meeting through local administration 	
		<p>To ensure that the target community has comprehensive understanding of the CLRR process and are organized appropriately to meet their responsibilities in the process and clarify concerns and interests. The community will be made aware of:</p> <ul style="list-style-type: none"> - the new legal provisions - the nature of the rights that they will be granted - the process to recognize their community rights - their roles and responsibilities in the process - institutions involved - the need to establish a community land holding and governance entity 		
	2	Establish and register a community land-holding and governance entity	Guidelines for establishment of community land holding and governance entity	Community land-holding and governance entity established and application for registration is submitted.
		<p>A community land-holding and governance entity is established. Efforts will be made to ensure that the entity reflects a cross-section of the community and upholds the principles of leadership, integrity and equity as required by the Constitution.</p> <p>Upon establishment, community entity applies for legal registration by Government.</p> <p>The community land-holding and governance entity shall be structured in a manner to ensure equitable decision making, conflict resolution, and negotiation and determination of natural resource benefit sharing amongst community members.</p>		

Stages	Steps	Remarks	Inputs	Outputs		
	3	Undertake community land tenure & resource rights inventory	<p>This focused tenure inventory in the targeted community allows the community, facilitators and other stakeholders to better understand:</p> <ul style="list-style-type: none"> - the land tenure and resource rights arrangements in the community; - the history of settlement and migration in the community; - land use patterns; - natural resource assets and their uses; - existing governance structures and rules; - current and historical land claims; - overlapping claims; - use and access rights; - rights of way; - land-holding interests, which include interests of absentee land holders, returnees, natural resources such as forests, water resources, wetlands, beach landing sites, etc.; and - current and future development interests include catering for needs that are not established (i.e., social amenities, government institutions, roads, markets, shopping centres, etc.). 	<ul style="list-style-type: none"> • Guidelines for tenure inventory facilitators • Training of tenure inventory team(s) • Google Earth imagery and any existing maps of the area • How-to Guide of CLRR process for Community 	<p>Tenure Inventory File:</p> <p>Sketch maps of</p> <ol style="list-style-type: none"> 1) past; 2) present; and 3) future land interests, natural resource assets, and community infrastructure, etc. <ul style="list-style-type: none"> • Flowchart of community's current governance structure. 	
C	Recording of Community Land Claims and Governance Rules	1	Delineation of boundaries of customary land claims and interests	<p>Traverse community boundaries with knowledgeable and credible community representatives (i.e., members of community land administration institution, respected elders, women and youth representatives, etc.) to clarify and confirm the bounds and limits of community lands, which include settlement areas, farming areas, common resource areas (forests, watering points, beach land sites, salt licks, grazing areas, and wildlife habitat, corridors and dispersal areas, etc.).</p>	<ul style="list-style-type: none"> • Tenure Inventory File • Maps • Satellite images 	<ul style="list-style-type: none"> • A preliminary sketch map of boundaries • Documented agreements of boundaries (signed MOUs and/or planting boundary trees, taking photographs or other agreed mechanisms)

Stages	Steps	Remarks	Inputs	Outputs
		<p>Arrive at common understanding with neighbours and other users (e.g., pastoralists, etc.) in the form of agreements.</p> <p>Acknowledge disputed boundaries and refer to Alternative Dispute Resolution (ADR) mechanisms in the community.</p> <p>Contested decisions to be referred to the Environment and Land Court.</p>		
	2 Land status verification	Verify the land claimed by the community against existing land records, i.e., ownership, boundary plans.	<ul style="list-style-type: none"> Community sketch map of boundaries 	<ul style="list-style-type: none"> Land Status Verification Report
	3 Recording and enhancement of community rules and regulations for land and natural resource governance	<p>Community-wide brainstorming and recording of existing and new land use/ natural resource management rules. (Facilitators to prompt community to develop a comprehensive list of rules).</p> <p>Refine and/or develop rules to guide individual land rights options, their transfer, etc. in the context of community rights.</p> <p>Develop draft community resource management plan.</p> <p>Community to build consensus amongst themselves around the first drafts.</p>	<ul style="list-style-type: none"> Tenure Inventory File How-to Guide of CLRR process for Community Entire community 	<ul style="list-style-type: none"> Draft of community land governance rules Draft land and natural resources management rules and regulations and enforcement and monitoring plan Draft land use plan
D Demarcation	1 Demarcate boundaries	<p>Picking of boundary coordinates using appropriate technology (general boundary survey), noting any still unresolved disputed areas.</p> <p>Refer unresolved disputed areas to Environment and Land Court.</p>	<ul style="list-style-type: none"> Global Navigational Satellite System (GNSS) or other appropriate, low-cost technology Validated preliminary sketch map of boundaries Documented agreements with neighbours on boundaries 	<ul style="list-style-type: none"> Draft survey plan Marked boundary points

Stages	Steps	Remarks	Inputs	Outputs	
E Validation and Finalization	1	Statutory verification of survey plan	Verification of survey plan conducted by relevant institution.	Draft survey plan	Authenticated survey plan
	2	Community Finalization and Validation	Concurrent with Steps D1 & E1, Community works to finalize its governance rules and regulations and natural resource management plan, future land use plan, and ensures conformity with expressed community needs.	Technical file (sketch maps, survey plan, governance rules and regulations, land and natural resource management plan, etc.)	Final, validated draft to send for technical review
	3	Government review of Technical File	Relevant government resource agencies conduct technical review, of entire community Technical File, including: <ul style="list-style-type: none"> - governance rules and regulations, - natural resource management plan, - future land use plan, etc. to ensure compliance with existing national laws/policies 	Community-validated Technical file	Feedback from Government agencies for finalization of Technical File
	4	Finalization and Adoption of community rules and regulations for land and natural resource governance	Community review/discussion of Government agency feedback and any necessary amendments made to bring into compliance with relevant laws/policies. Community adopts final rules and regulations and management plan by consensus.	Feedback from Government agencies	<ul style="list-style-type: none"> • Final community land governance rules • Final land and natural resources management rules and regulations and enforcement and monitoring plan • Final land use plan
	5	Oversight of Compliance of rules by County Government	County Government to ensure and support community's adherence to rules and regulations		

Stages	Steps	Remarks	Inputs	Outputs
F Issuance of Title	1	Demarcated land divested to community	As provided for in the Constitution, the conversion of unalienated Public Land (formerly Government Land) or unalienated Trust Land to Community Land, will require the divestiture of those lands by the relevant authority.	Appropriate document of divestiture is issued
	2	Declaration of Community Land	A gazette notice is published declaring the demarcated land to the targeted community	Gazette Notice published
	3	Confer Certificate of Title of Community Land Ownership	A Certificate of Title is issued to community in name of the registered land holding and governance entity	Certificate of Incorporation of community land holding and governance entity

2.0 Challenges to Recognising Community Land Rights

In defining mechanisms for recognition of community rights and interests to land, the following challenges have been considered—and for most of them, solutions have been built into the CLRR Model. Some identified and other arising challenges may need to be addressed through appropriate future legislation.

a) General Challenges

1. **Political manipulations**

Land has often been used for political gains, and land issues used to achieve political ends. All the stages of the Model—from community awareness creation, through the formation and enhancement of community land governance entities, to demarcation and registration of community lands in government records—aim to make it difficult for political meddling in community lands, and instead, empower the community over the administration and management of their lands. Further checks are incorporated in the form of strengthening institutions that will serve as counter forces to politicians and local elite and make it difficult for the use of government power to take land arbitrary without incurring sanctions and losing political capital.

2. **Perception that Community Lands would curtail investments in land**

There is a perception that allowing communities to own and govern their land relations takes those lands away from efficient use and drives investments out of land. Emerging economic thinking and empirical evidence suggests otherwise. When community land rights are overridden through the use of government fiat, tenure insecurity is engendered and the land market operates inefficiently. Under these circumstances, the land market becomes ripe

The Constitution holds all tenure regimes at par under the law. Community titling is not of lesser value or inferior to individual titling.

Formally recognising community land rights allows communities to participate effectively in the land market and assures genuine investment opportunities for the creation of wealth and benefit sharing amongst the community.

for corruption and irregular alienation. Community land rights holders (or their representatives) then spend resources to defend and/or win their rights back through monies and time spent to orchestrate violence, destroy investments on lands they deem taken away from them illegitimately, and spending time and money to “advocate” the political system to recognise their community rights. Formally recognising community land rights allows communities to participate effectively in the land market and assures genuine investment opportunities for the creation of wealth and benefit sharing amongst the community.

3. **Exploitation of the vulnerable members of the community by elite members of the same community or others from outside**

This potential threat has been addressed in the Model by educating communities of their land and resource rights (Stage B). In addition, the Model helps in the creation and enhancement of community governing entities equipped with rules for protecting the vulnerable as well as limiting the powers of any special interest groups within or outside the community (Stage C). Furthermore, by clearly demarcating the geographical limits of the community’s lands and registering these in the government register (Stages D and F), outside interests are put in check. All of these measures aim to put an end to the ability of the elite in the community or outsiders to take over the interests of vulnerable members.

4. **Conflicts between neighbouring communities over common borders and common resources**

To minimize the occurrence of this, the demarcation of community boundaries in Stage D of the Model incorporates the formation of boundary committees

from both the target community and all abutting communities (if any) to walk the boundary line and agree on where the boundary between them actually lies. Any unresolved conflicts of boundaries still persisting are then resolved by ADR mechanisms built into the model. At Stage C of the Model, agreements are reached and recorded with regards to access and/or common resource use with any neighbouring communities so that these are enshrined in the register and respected mutually.

5. **Resistance to change from beneficiaries of unprotected community land**

The Model has anticipated the potential for resistance from some community members stemming mainly from misunderstandings and/or misinformation in the current state of land tenure regime in Kenya as to what constitutes secure titles to land and who is to grant them. This misunderstanding that could cause resistance is dealt with in Stages A and B of the Model, where awareness creation and education of the community about their land and resource rights under the Constitution and the creation of community land governance entities are undertaken. Once community members understand that their community land rights are enforceable and at par with other forms of tenure under the new constitutional dispensation, it is expected that resistance will be minimized, if not eliminated completely.

6. **Vested interests especially from people outside the designated community land**

The Model counters this threat in stages B, C, D, and E. By taking tenure inventory and recording the history of settlements, the Model removes the ability of outsiders to lay any claim to the community lands without recourse to the community land governance entity. Clear demarcation of the geographical limits of the community's lands and registration puts an end on the ability of outsiders to encroach on the interests of the community.

7. **Overlapping claims on land which are enjoyed sequentially and/or concurrently by different entities**

By undertaking tenure inventory, settlement history, and the establishment of a rules and governance entity, the Model allows the community to capture and register the rules and institutions that have enabled them to handle the existence of overlapping claims of land rights without conflicts. The formal incorporation of these rules and institutions in the land register

solidifies all overlapping claims to ensure that none is usurped without legitimate recourse to community rules. These are all captured in Stages B, C, D, and E. The Model, at the stages mentioned, also provides an opportunity for creating an inventory of any irregular alienation of land that could serve as helpful factual evidence for any national body that is set up to deal with the issue historical injustices in land that the Constitution alludes to.

8. **Vulnerability of economically impoverished communities to forego their rights to Community Land in exchange for compensation**

While accepting that this challenge owes more to economic empowerment (or the lack of it) and that it could be dealt with more directly through development initiatives, the Model attempts in Stages A, B, and C to empower community members against such attempts through intensive awareness creation, education on communities land rights that will highlight the dangers of disposing of community land rights, and the benefits of relying on the community governance entity to handle any potential land rights transfers.

9. **Perception that community titling is of lesser value/inferior to individual titling**

This perception stems from prevailing misunderstandings and/or misinformation as to what constitutes secure titles to land and who is to grant them under the current land tenure regime. In Stages A and B of the Model, where awareness creation and education of the community about their land and resource rights under the Constitution and the creation of community land governance entities are undertaken, the Model debunks this perception and reinforces the Constitution's position of bringing all tenure regimes to co-exist and held at par under the law.

10. **Conversion of Community Land to Public or Private Land**

The Model does not deal with this issue directly

...No individual rights and entitlements can be created to be superior to, and therefore, to undermine the superior community land title.

since such conversion will be defined by an Act of Parliament. Therefore, it is recommended that the issue be addressed in the proposed Land Act and/or the Community Land Act, taking special note to safeguard undue conversion to other categories to prevent the potential exploitation and abuse of the opportunity to convert without constraints.

It is further noted, that like any other category of land, Community Land is subject to compulsory acquisition laws that allow government to acquire lands of any category to achieve public purposes. Thus inherently, conversion of Community Lands is allowed under compulsory acquisition laws, which by their nature, are subject to predefined conditions of public purpose and procedures for invoking them.

11. **Operation of the Model within devolved government structures**

The Model has been designed with the devolved government structure in mind. However, the roles, responsibilities, and hierarchies of power interactions between government and the community governance entity should be defined carefully in new legislation in order to ensure that the operational reality does not defeat the constitutional expectations of communal lands recognition.

b) **Operational Challenges**

1. **No clear definition of communities**

Article 63 of the Constitution provides three clear criteria—ethnicity, culture, similar community of interest—for identifying communities vis-à-vis the recognition of community land rights. These constitutional community-identifying indicators guide the steps in Stages B, C, D, and E of the Model in identifying and defining communities for engagement, recording of tenure inventory, demarcation of boundaries, and registration. Care will be required to ensure that bona fide members of existing communities are appropriately respected in the conversion process to Community Lands so as to prevent the infringement by others of their Constitutional rights by being expelled based on ethnicity, culture, or other basis.

2. **The cost implications of community titling to beneficiaries**

For the entire land rights recognition process the Model has been structured in a way that minimizes the cost to community members. There is a one-off cost to communities for the registration of the land

rights governance entity at Stage B, and the final fees for registration at Stage F shall be borne collectively in an equitable manner by the entire community, not by individual members. At Stage D, the cost to the community is in the form of pro bono labour input into the boundary walking and demarcation exercise. Otherwise, the cost of technical staff and associated logistics are to be borne by government and/or donor agencies sponsoring the process.

3. **Mechanisms for recognizing individual entitlements within community land**

The decision to individualise plots within community lands is incorporated as an option that will be guided by the land governance rules and regulations set out by the community during Stage C and by any relevant statutory laws that will be put in place to govern administration of community land. Stages C and E allow the community to deliberate and incorporate, inter alia, rules, strategies, and options for individual entitlements within the community land enclave. These individual rights would derive from and be sub-interests of community lands so that they would maintain the cloak of community lands. This is to say that no individual rights and entitlements can be created to be superior to, and therefore, to undermine the superior community land title.

4. **Building in checks and balances into the Model**

At all stages in the process of community land rights recognition, checks and balances have been incorporated to guide against, among many potential abuses, unwarranted interference and manipulation by politicians, government officials, elite of the community, and other special interest groups. For example in Stages B and C, the Model insists that efforts are made to ensure the land governance entity reflects a cross-section of the community, involves all members of the community in the land claim and land rights inventory compilation, and relies on community members in the delineating of boundaries. These checks are then balanced by subjecting the final adoption of governance rules and regulations to a consensus vote in the community and then subjecting all resulting outcomes to government validation to ensure that no section of society takes advantage of the process to serve their own ends.

5. **Transacting with Community Land rights**

Here again the Model provides options for communities to define rules to govern community land rights transactions at Stages C and E. The community's rules

for transacting community land rights would be set in the context of any relevant statutory laws that would be put in place by Parliament to govern the administration of community lands. It is envisaged that all options for transacting in land, be they sale, mortgaging, leasing, pledging, etc., are available under community lands, provided that transactions are undertaken not to undermine the superior community land title and, of course, that they comply with state laws and the community's land governance rules and regulations.

6. Ensuring and supporting adherence to community land governance rules and regulations

At Stage E, the Model places a responsibility of general oversight on the County government for ensuring that community land holding and governance entity, and individual community members, adhere to the land rights rules and governance institutions they themselves have developed to govern their land relations.

7. Mechanisms for redressing individual grievances

In the course of taking inventory and recording of land rights and rules (Stage C), right through to demarcation of community land boundaries (Stage D), individual grievances are documented, and at Stage E, where agreement is sought from all stakeholders, these grievances will be redressed through the built-in ADR mechanism, or failing this, through appropriate adjudication processes before finality is achieved.

Appendix 1: CLRR Model vs. Squatter Settlement Scheme

The table below compares essential aspects of the CLRR Model against the Squatter Settlement Scheme, implemented under the Agriculture Act (CAP 318) to demonstrate potential benefits offered to communities through applying the CLRR process.

CLRR	Squatter Settlement Scheme
<p>The CLRR addresses some of the land questions raised in the Constitution and the National Land Policy that the Squatter Settlement Scheme process is not equipped to address. It borrows key aspects from the Squatter Settlement Scheme approach and introduces a few augmentations to respond to the constitutional requirement for the recognition of community land rights and hold them at par with titled rights.</p>	<p>The Squatter Settlement Scheme does not recognize land rights of existing communities per se. Instead, the process treats land as government owned, private owned, or council owned. Communities' occupation of such land is viewed as "squatting." The process of regularization is used to grant individual rights of ownership to the "squatters" based on decisions made through an identification and vetting process that involves a community-elected local committee working with government officers. The process as it is today does not address the Constitutional requirement for the recognition of community land rights.</p>
<p>The CLRR process is a more efficient and effective tool for divesting government land to community lands—as stipulated in the National Land Policy, but which can be replicated throughout the country to convert other lands to community lands as may be necessary.</p>	<p>Adopts a process that takes long to complete, is expensive for the Government to implement, and is costly for the beneficiary</p>
<p>The implementation of the CLRR Model can help to stem off external invasion, expropriation, or alienation of community lands from interests outside of the community.</p>	<p>Inherently contains elements that enable invasion, expropriation or alienation of land by internal and external interests without consultation with communities. This is because land is assumed to belong to "someone" else rather than community.</p>
<p>The CLRR proposes an economically efficient approach to land administration at the community level. By relying on community-level land rights rules and institutions (rules that are most likely to be better attuned to the communities' circumstances), it minimizes the cost of policing and enforcing checks and balances of land rights holdings to prevent corruption of the system.</p>	<p>Implementation of the Squatter Settlement Scheme is an expensive process (to government) of achieving land allocation and administration at community level by which the communities have been achieving through local land institutions without recourse to the government.</p>
<p>By acknowledging and formalizing community institutions and rules for land governance as part of the registration process of Community Lands, the CLRR provides an opportunity for the community to administer and manage their land rights, and tasks the county governments to respect such institutions and the set rules.</p>	<p>The Squatter Settlement process does not recognise community land governance rules and institutions during the formalization of individual rights of village residential areas, farm plots being cultivated, and common property areas. The process follows the set statutory procedures that only require that minimum disturbance be exercised in the adjudication of individual rights.</p>

CLRR

Squatter Settlement Scheme

After a one-off cost of demarcating and registering Community Lands as one communally owned portion, which is to be borne by the Government and/or donor agencies, there is no necessity of community members to bear any cost for the recognition of their land rights. The individual rights are already internally recognized through the land governance institutions and rules set by the community. The strength of the CLRR model lies in the ability to formalize community members' land holdings and protect them against invasion from outsiders without any individual or household having the necessity to procure titles to achieve the same objective.

Apart from the huge costs to government (in terms of technical personnel and other inputs), there is a cost to the community members where they pay a land charge to the Settlement Fund Trustee based on the potential of the land.

The cost of planning and survey is met by the government.

A major step in the CLRR process is the creation of public information and awareness to community members and all stakeholders as an initial necessary step to any formalization process.

The Settlement Scheme process does not include a formal public education and awareness process but has requirement for public meetings in which local level committees are elected to work with government officers in identification and vetting of genuine squatters. Dissemination of information on the process of formalizing individual land rights is done through the established institutions of government.

The CLRR incorporates an Alternative Dispute Resolution (ADR) mechanism and training of community members to augment and enhance dispute resolution institutional set ups that will handle land and other disputes arising from the formalization of Community Land rights.

Land-related disputes arising from the Settlement Scheme implementation process are resolved during the process by the local-level committees and the government officers implementing the schemes. ADR training is not part of the process and the committees usually do not have adequate capacity to resolve these disputes.

In the course of recording and documentation of community land rights institutions and rules in the CLRR process, community-evolved strategies for dealing with those of their members living away from the village and other vulnerable groups are captured and formalized. However, if existing community land rights rules are found inadequate in this regard, the CLRR invites community members to articulate and incorporate additional strategies that would make management of their land better and to cater for the vulnerable in their society such as women, children, disabled, etc.

The Settlement Scheme process relies on the local committee to ensure that the rights of genuine squatters are documented and registered, be they women or other vulnerable person. Children are usually not allocated land unless they are orphans living on land formerly occupied by their deceased parents, and in such cases they will always require an administrator. People living away from the village are not considered as eligible to own land in a squatter scheme.

Appendix 2: CLRR Model vs. Group Ranches Scheme

The table below contrasts key elements of the CLRR Model against the Group Ranches scheme under the Land (Group Representatives) Act (CAP 287) to demonstrate the comparative advantages to communities of using the CLRR process to secure community land tenure.

CLRR	Group Ranches Scheme
<p>Compared to the Group Ranches scheme, the CLRR is different in its recognition of customary land rights. The CLRR approach enables government to formalize all customary land rights and land use practices of existing communities without imposing constraints on communities land use practices and aspirations. This is unlike the Group Ranches that restrict communities land-use to livestock grazing. By relying on tried and tested community institutions and land rights, this process minimizes the potential of elite using the system to dispossess the communities, a problem observed in the Group Ranches registration.</p>	<p>The Group Ranches scheme was designed for a particular land use—livestock grazing. To the extent that customary land rights recognition is concerned, this approach only viewed community rights as rights over land for livestock grazing. No formal recognition was given to communities' existing customary land rights institutions. Consequently influential members managed to skew the system for their private benefit.</p>
<p>CLRR relies on communities' own rules and institutions, and is inherently designed to evolve and adapt to changes in the circumstances of the communities as their social and economic needs of land use change over time. Checks and balances to prevent abuse by community leaders extant at the time of recognition are expected to evolve to deal with new opportunities for abuse as they arise.</p>	<p>The Group Ranches scheme essentially depended on officially determined rules set out in an Act and therefore could not foresee and deal with changes in communities' land use preferences as, and when they occurred. This enabled corrupt leaders to take advantage of the situation as new opportunities arose and expropriate weaker members of their land rights.</p>

Appendix 3: Excerpts of Sessional Paper No. 3 of 2009 on National

1. *Tenure Regimes (Section 3.3.1)*—Land in Kenya is currently designated as government land, trust land and private land. The National Land Policy designates all land in Kenya as Public Land, Community Land and Private Land. The Government shall enact a “Land Act” to govern all categories of land.
2. *Community Land (Section 3.3.1.2)*—Community land refers to land lawfully held, managed and used by a given community as shall be defined in the “Land Act.” To secure community land, the Government shall:
 - Document and map existing forms of communal tenure, whether customary or contemporary, rural or urban, in consultation with the affected groups, and incorporate them into broad principles that will facilitate the orderly evolution of community land law;
 - Repeal the Trust Land Act (Cap 288);
 - Define, in the “Land Act,” the term “community” and vest ownership of community land in the community;
 - Lay out, in the “Land Act,” a clear framework and procedures for:
 - *The recognition, protection, and registration of community rights to land and land-based resources taking into account multiple interests of all land users, including women;*
 - *Governing the grant to, and regulation of, rights of use to members;*
 - *Reversion of former Government land along the Coastal region to community land after planning and alienation of land for public usage;*
 - *Governing community land transactions using participatory processes;*
 - *Accountability of groups, individuals, and bodies entrusted with the management of community land and community participation in the allocation, development, and disposal of community land;*
 - *Incorporating mechanisms for community land management and dispute resolution;*
 - *Members opting out of the communal arrangements and buying out of non-members;*
 - *Setting apart of community land for public use; and*
 - *Vesting fish landing sites to appropriate local institutions.*
- Invest in capacity building for communal land governance institutions and facilitate their operations.
- Community Land Boards will be responsible for:
 - *Holding and managing community land;*
 - *Documenting all community land;*
 - *Regulating all transactions relating to community land; and*
 - *Facilitating the recording and issuance of title for community by the National Land Commission.*
3. *Land Issues Peculiar to Coast Region (Section 3.6.4)*—The land question within the Coast region is complex due to its peculiar historical and legal origins. The processes of land adjudication and registration under the Land Titles Act (Cap 282) deprived many members of the indigenous coastal communities of their land. This led to the area having the largest single concentration of landless indigenous people living as squatters. It also gave rise to the problem of absentee land owners.
 - The slow land adjudication process and delay in finalization of settlement programmes have denied the communities secure access to land;
 - The grant of freehold and leasehold tenure on beaches has hampered public access, movement along the beaches, and fishing;
 - The ownership of beaches and some islands within the Indian Ocean by foreigners also poses a threat to national security;
 - Salt mining along the coast has not been rationalized with other land uses. As a result, salt harvesting companies have acquired large tracts of land suitable for agricultural production, but which they have left idle;
 - Private developments along and around navigation beacons, ship leading lights, and other control points have negatively affected the maintenance of these installations;
 - The Tana and Sabaki rivers have their deltas in the coastal regions of Kipini and Malindi, respectively. These deltas are Kenya’s key oceanic ecosystems and important wetlands housing unique varieties of mangrove trees among other life species. In spite of their ecological importance, speculative land

allocation and inappropriate land uses as well as inadequate conservation measures are rampant;

- Lamu Island is a famous World Heritage Site. Unfortunately, current land use and ownership practices are undermining the sustainability of the heritage. In addition, land transactions are now taking place on the island with the result that many local inhabitants are rendered landless;
- To address the Coastal land problems, the Government shall:
 - *Establish suitable legal and administrative mechanisms to address historical claims arising from the application of the Land Titles Act (Cap 282) of 1908;*
 - *Take an inventory of all Government land along the '10-mile coastal strip' and other parts of the province where the problem of squatters is prevalent and come up with a framework for conversion to community land for eventual adjudication and resettlement;*
 - *Provide a legal framework to protect the tenants at will;*
 - *Establish convenient public utility plots along the coastline to serve as landing sites and for public recreation, and open up all public access roads to the beach;*
 - *Regulate the construction of walls along the high water mark;*
 - *Provide a framework for beach management and the protection, conservation, and management of land that has been created through natural recession of the sea or through reclamation from the sea;*
 - *Establish a framework for consulting indigenous occupants of land before establishing settlement schemes and other land use projects;*
 - *Protect and conserve the Tana and Sabaki Delta ecosystems in collaboration with contiguous communities;*
 - *Sensitize and educate people on their land rights and land administration and management procedures;*
 - *Provide a framework for sharing benefits from land and land-based resources with communities; and*
 - *Initiate and support the preparation of an integrated coastal resource management plan.*

Appendix 4: Relevant Excerpts of 2010 Constitution of Kenya

CHAPTER 4—BILL OF RIGHTS

40 – Protection of right to property

(1) Subject to Article 65, every person has the right, either individually or in association with others, to acquire and own property-

(a) of any description; and

(b) in any part of Kenya.

(2) Parliament shall not enact a law that permits the State or any person-

(a) to arbitrarily deprive a person of property of any description or any interest in, or right over, any property of any description; or

(b) to limit, or in any way restrict the enjoyment of any right under this Article on the basis of any of the grounds specified or contemplated in Article 27 (4).

CHAPTER 5—LAND AND ENVIRONMENT

Part 1—Land

60 - Principles of land policy

(1) Land in Kenya shall be held, used and managed in a manner that is equitable, efficient, productive and sustainable, and in accordance with the following principles-

(a) equitable access to land;

(b) security of land rights;

(c) sustainable and productive management of land resources;

(d) transparent and cost effective administration of land;

(e) sound conservation and protection of ecologically sensitive areas;

(f) elimination of gender discrimination in law, customs and practices related to land and property in land; and

(g) encouragement of communities to settle land

disputes through recognised local community initiatives consistent with this Constitution.

(2) These principles shall be implemented through a national land policy developed and reviewed regularly by the national government and through legislation.

61 - Classification of land

(1) All land in Kenya belongs to the people of Kenya collectively as a nation, as communities and as individuals.

(2) Land in Kenya is classified as public, community or private.

62 - Public land

(1) Public land is-

(a) land which at the effective date was unalienated government land as defined by an Act of Parliament in force at the effective date;

(b) land lawfully held, used or occupied by any State organ, except any such land that is occupied by the State organ as lessee under a private lease;

(c) land transferred to the State by way of sale, reversion or surrender;

(d) land in respect of which no individual or community ownership can be established by any legal process;

(e) land in respect of which no heir can be identified by any legal process;

(f) all minerals and mineral oils as defined by law;

(g) government forests other than forests to which Article 63(2)(d)(i) applies, government game reserves, water catchment areas, national parks, government animal sanctuaries, and specially protected areas;

(h) all roads and thoroughfares provided for by an Act of Parliament;

(i) all rivers, lakes and other water bodies as defined by an Act of Parliament;

(j) the territorial sea, the exclusive economic zone and the sea bed;

(k) the continental shelf;

(l) all land between the high and low water marks;

(m) any land not classified as private or community land under this Constitution; and

(n) any other land declared to be public land by an Act of Parliament-

(i) in force at the effective date; or

(ii) enacted after the effective date.

(2) Public land shall vest in and be held by a county government in trust for the people resident in the county, and shall be administered on their behalf by the National Land Commission, if it is classified under-

(a) clause (1) (a), (c), (d) or (e); and

(b) clause (1) (b), other than land held, used or occupied by a national State organ.

(3) Public land classified under clause (1) (f) to (m) shall vest in and be held by the national government in trust for the people of Kenya and shall be administered on their behalf by the National Land Commission.

(4) Public land shall not be disposed of or otherwise used except in terms of an Act of Parliament specifying the nature and terms of that disposal or use.

63 - Community land

(1) Community land shall vest in and be held by communities identified on the basis of ethnicity, culture or similar community of interest.

(2) Community land consists 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, but not including any public land held in trust by the county government under Article 62(2).

(3) Any unregistered community land shall be held in trust by county governments on behalf of the communities for which it is held.

(4) Community land shall not be disposed of or otherwise used except in terms of legislation specifying the nature and extent of the rights of members of each community individually and collectively.

(5) Parliament shall enact legislation to give effect to this Article.

68 - Legislation on land

Parliament shall-

(a) revise, consolidate and rationalise existing land laws;

(b) revise sectoral land use laws in accordance with the principles set out in Article 60 (1); and

(c) enact legislation-

(i) to prescribe minimum and maximum land holding acreages in respect of private land;

(ii) to regulate the manner in which any land may be converted from one category to another;

(iii) to regulate the recognition and protection of matrimonial property and in particular the matrimonial home during and on the termination of marriage;

(iv) to protect, conserve and provide access to all public land;

(v) to enable the review of all grants or dispositions of public land to establish their propriety or legality;

(vi) to protect the dependants of deceased persons holding interests in any land, including the interests of spouses in actual occupation of land; and

(vii) to provide for any other matter necessary to give effect to the provisions of this Chapter.

