



The Clerk,
Parliamentary Mediation Committee,
Lands and Natural Resources,
Parliament Buildings
Nairobi, Kenya,

14th July, 2016

Re: COMMUNITY LAND BILL PROPOSED AMENDMENTS

Introduction

Kenya Wildlife Conservancies Association is the national umbrella body representing conservancy landowners in Kenya who have set aside their land for wildlife conservation. Conservancies complement national parks and reserves as wildlife habitats, corridors, migratory routes and dispersal areas.

Community conservancies are located on trusts lands and group ranches covering over 3 million hectares of land, which is about 4% of the country's landmass. In effect, community conservancies are a key stakeholder to be affected by the Community land legislation.

These proposed amendments are suggested to be considered in the Mediation Committee discussions on the Community Land Bill now before the Senate.

Clause	Provision	Comment	Proposed Amendment
2	Interpretation	The community land management committee established under clause 15 should be expressly defined under clause 2. in the following manner:	Replace definition as: Community Land Management Committee- means the community land management committee established under section 15
4	Vesting of community land	<ol style="list-style-type: none"> 1. The provision/wording that "community land in Kenya shall be owned by the community" is inconsistent with Article 63(1) of the Constitution 2010. 2. There needs to be a provision deterring drafting of persons any right to land. 	<ol style="list-style-type: none"> 1. Rewrite clause 4(1) to read: "<i>Community land shall vest and be held by communities identified by attributes under clause 2</i>" 2. Add clause 4 (4): 'No right conferring freehold or leasehold ownership is capable of

			being granted or acquired by any person in respect of any portion of community land.’
7	Procedure for registration of communities	<p>1. Subsection (3) wrongly cross refers to section 16 which is on interest conferred by registration</p> <p>2. Section 7 fails to provide for the type of legal body the community shall be registered as. This in effect does not empower the community to enter into any form of transactions in their own capacity.</p>	<p>1. Correct subsection (3) to cross refer to section 15, which establishes the community land management committee.</p> <p>2. Rewrite subsection 7 (1) to read: <i>Every community shall be registered under this Act as a body corporate with perpetual succession and a common seal and shall be capable in its corporate name of—</i></p> <p>(a) suing and being sued;</p> <p>(b) purchasing, acquiring, holding, charging and disposing of property;</p> <p>(c) entering into contracts;</p> <p>(d) borrowing money; and</p> <p>(e) doing all such other things or acts necessary for the proper performance of its functions under this Act, which may lawfully be done by a body corporate</p>
8	Procedure for recognition and adjudication of community land	1. Subsection (1) fails to provide for timeline within which the Adjudication Programme must be Gazetted	Add timeline of 1 year within which the Adjudicated Programme shall be gazetted
	Communal	What constitutes majority	Rewrite to include a two thirds

13 (1)	land and reserve land	members under this section should be specified as in section 21 (1), that is, a 2/3 rd majority.	majority as follows: “A registered community may by a resolution of a two thirds majority members of that community in a general meeting, reserve a portion of the community land for communal purpose
15	Functions of a community land management committee	<ol style="list-style-type: none"> 1. The definition of a Community assembly should be included. 2. The elections of the community land management committee require to ensure compliance to national principles and values of governance 3. The Bill fails to expressly provide provisions that ensure women inclusion in decision making in governance and management of community land thus maintaining the status quo where land matters are a preserve of men 4. The Bill fails to include representation of persons with disabilities and persons representing special interests 	<ol style="list-style-type: none"> 1. Include definition to read, ‘means a gathering of members of the community convened pursuant to section 15 (1).’ 2. Add a subsection after 15 (2) to read, ‘<i>The community assembly shall observe the principles and values of governance in the elections of the members of the community land management including that not more than two thirds of its members shall be of one gender and include minority representation</i>’
19	Land use and development planning of community land	Subsection (f) requiring that the land use and development plans of community to be bound by any approved physical development plan, subjects communities to plan for their land based on County plans thus reducing communities’ control over their land. The provision should therefore be deleted and	Replace subsection (f) with, ‘ <i>county government shall support community develop land use zoning and development plans to ensure consistency with the physical development plans</i> ’

		replaced.	
23	Conversion of community land to private land	Subsection (b) refers to section 22 (2)	Correct section 23(b) to cross refer to section 21 (2)
28 (5)	Grazing rights	This provision may cause conflict between pastoralists and other competing land uses that may interfere with grazing	Add provision (5) (e) to read: ‘carry out any activity on the community land, other than lawful grazing of stock, which may prevent or restrict the members of the community concerned from a reasonable exercise of their grazing rights.’
29	Designation of other land use rights in community land	Provision 29(1) (g) where land may be reserved for ‘any other purpose as may be determined by county government or national government...’ leaves a loophole for abuse or misuse of community land in the name of public purpose.	Replace the current (g) with: <i>‘any other purpose as may be determined by the community, county government or national government in consultation with the community assembly’</i>
34	Existing rights to use and occupy community land	The cross-referenced sections 28 and 29 are not in tandem with the provisions of the sections themselves.	Amend cross-reference from <i>section 28 and 29.</i>
36	Benefit sharing	There is no provision for benefit sharing for natural resources that occurs beyond the border of one community land thus posing the threat of conflict over benefit sharing of the bordering communities	Add subsection (5): <i>‘Where natural resources are shared between two or more community land boundaries, the respective community land management committees shall develop fair and equitable benefit sharing mechanism of the resources.’</i>
39	Dispute resolution mechanism	The dispute resolution system provided should be tiered to each other. Further, prior to the communities coming up with their own by-laws, the Act should expressly provide that they will utilize alternative dispute resolution.	Add subsections: <i>(5) Where parties fail to reach agreement using the internal dispute resolution mechanisms in subsection (2), parties may resort to the mechanisms in section 40 and 41.</i> <i>(6) Prior to the community establishing its own by-laws on dispute resolution, the community may utilize the mechanisms in section 40 and</i>

			<i>41 of the Act.</i>
47	Group representatives, land-buying companies etc.	<ol style="list-style-type: none"> 1. There are no provisions within the section that relates to land-buying companies. 2. Subsection (2) fails to provide for a transition from the group representative administration structure to that under community land law. 	<ol style="list-style-type: none"> 1. Delete <i>land-buying companies</i> from the marginal note. 2. Amend Subsection (2) by adding, ‘upon registration, the respective group representatives shall cease to hold office <i>and the registered community shall elect a new community land management committee.</i>’
48	Regulations		<p>Add the following regulations in subsection (2):</p> <ul style="list-style-type: none"> ▪ Setting aside community land for a public purpose ▪ Code of conduct of a community land management committee (provisions to include term of office, powers of committee, meetings of committee etc.)

PROPOSED ADDITIONAL CLAUSES

Clause	Objects and purpose	<p>As a principle of good legislative drafting, every legislation ought to have a clause on objects and purpose based on:</p> <ul style="list-style-type: none"> ▪ Substantive rights; ▪ Procedural rights; and ▪ Institutional Structure. <p>The Bill includes its objects in the short title but not in the body of the legislation.</p>	<p>Add the following Objects and Purpose:</p> <ol style="list-style-type: none"> i. <i>Recognition, protection and registration of community land rights;</i> ii. <i>Establishment of the institution for the management and administration of community law;</i> iii. <i>Providing for the procedures for management and administration of community land rights;</i> iv. <i>Providing for the role</i>
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			<p><i>of county governments in relation to unregistered community land;</i></p> <p>v. <i>Documentation and mapping of the existing forms of communal land tenure;</i></p>
Prohibition against fences		Bill needs to provide for restriction of unauthorised fencing within community land to protect the land from fencing for individual use	<p>Add clause e.g. under section 29(3): <i>“Subject to such exemptions by the Committee as may be prescribed:</i></p> <p><i>(1) no fence of any nature shall be erected in community land; and where it exists prior to commencement of this Act the community land management committee shall determine whether it shall be retained or removed.</i></p>

Yours sincerely



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