



The Clerk Kenya National Assembly

Parliament Buildings

P.O Box 41842-00100

Nairobi, Kenya

3rd October, 2015

Re: Revised Proposed Amendments to the Community Land Bill, 2015

1.0. Introduction

Kenya Wildlife Conservancies Association (KWCA), Northern Rangelands Trust (NRT) and Laikipia Wildlife Forum (LWF) represent community groups across 27 counties, including over 80 Community Conservancies on Group ranches and Trust lands across Kenya.

KWCA is the national umbrella body representing conservancy landowners in Kenya while NRT regionally represent over 300,000 people in 33 Community Conservancies in 11 counties across Northern Kenya. LWF community members include 13 Group Ranches representing an estimated 38,000 people.

Conservancies on trust and group ranch land significantly contribute to Kenya's vision 2030 of a stable and socioeconomically empowered communities protecting natural resources, particularly wildlife, as a tool for poverty reduction. These community institutions, developed over the last two decades, have integrated customary and formal practices to become effective social arrangements for social cohesion, peace, community policing, land management and economic development.

It is based on our experience in working with and developing these community institutions, and our active community consultation and engagement in the development of the Bill since 2012, that we are submitting the following recommendations on the Community Land Bill 2015.

2.0. General and Specific Proposed Amendments

We recognize the significant developments in the Bill in particular, the recognition and mandate of land-use plans and by-laws for management of natural resources, including grazing management; provision of equal rights of access and benefits to land by all community members; consideration of customs and practices of pastoral communities and the requirement for fair and equitable benefit sharing from investments on community land.

However, we have serious concerns about the Community Land Bill 2015 which in its current form erodes the gains the country has made and is likely to cause confusion and conflicts among the pastoral communities.

1. The Community Land Bill 2015 substantially differs with the draft Bills of 2014 and 2013 formulated by the Taskforce on Community Lands and Evictions and Resettlement
2. The Bill in its current form is weaker than the Group (Representatives Land) Act and Trust Land Act and therefore fails to address their inefficiencies as envisaged by the Constitution.
3. Contrary to the Constitutional provision under Article 60, the Bill discriminates against communities as it accords weaker land rights compared to Private Land tenure regime.

A failure to address these issues suggests that people living in ASAL areas in particular, will again fail to obtain basic and equitable rights to land, the foundation for investment, economic engagement, security and equitable access to the bundle of property rights conferred on other land tenure

The Matrix below identifies the specific recommendations:

| ITEM | SECTION No. | COMMENT | PROPOSED AMENDMENT |
|---------------|----------------|---|--|
| PART I | Interpretation | <p>The following definitions need to be included and improved:</p> <ol style="list-style-type: none"> 1. Committee 2. Community assembly 3. Community land 4. Community Land Tenure-Current definition suggests that ‘a family or community leader’ can own and control community land. The effect of this is centralization of power in hands of a few people undermining collective involvement of the community members 5. Community member-the Bill does not provide for its definition and leaves it open for the community to spell out its members. This creates room for community to include or exclude membership based on tribal basis and exclude | <p>Include the following definitions:</p> <ol style="list-style-type: none"> 1. Committee- means a community land management committee 2. Community Assembly ‘a gathering of members of a community convened pursuant to section...(add applicable section) 3. Community land - all land used as community settlement area, farming area, grazing area, rangelands, fish landing sites, common resource area including watering points, salt licks, wildlife habitats, wildlife corridors, livestock passage routes and cattle dips 4. Community Land Tenure- “means unwritten land ownership practices in certain communities in which land is owned and managed by community collectively as a group” 5. Provide for definition of community member as follows, “ Any and all individuals, families and groups that historically live within the defined boundaries of the community land in question must be considered members of the community, with full membership extended to all male and female members above age of 18” |

| | | | |
|----------------|-----------------------------------|--|---|
| | | women as has been historically which is likely to cause conflicts and discrimination of women especially married women | |
| | Objects and Purposes of the Act | The Bill lacks objects and purposes of the legal framework which is recognised as a good principle in legislative drafting | <p>Include a section on the objects and purpose of this legal framework to include:</p> <ol style="list-style-type: none"> 1. Recognition, protection and registration of community land rights 2. Documentation and mapping of the existing forms of communal land tenure 3. Vesting of community land in the communities identified on the basis of ethnicity, culture or similar community of interests 4. Management and administration of registered community 5. Procedures for conversion of community land to other categories of land |
| | Guiding Principles | The guiding principles are inadequate | <p>Include:</p> <ol style="list-style-type: none"> 1. Affording equal status and recognition of title to community land with any other title; 2. Empowering members of the community to determine the management and administration of their land; 3. Affording equal rights to all members of the community; and 4. Elimination of all forms of discrimination. |
| PART II | 4(1)- Ownership and Tenure System | The language used “Community land in Kenya shall <i>vest</i> ...” reduces the strength of community land rights as it has a lesser impact that the word “ownership” | Replace the word vest with “shall be owned” in 4(1) |
| | 6-Role of County Government | The current provision 6(2) and creates room for County government to transact in unregistered community land through lease and license which is a potential incentive for county governments to impede on registration of community land | <ol style="list-style-type: none"> 1. Delete 6(2) 2. Reword 6(4) to read “A County government shall not license, lease, transact or dispose of any unregistered community land that it is holding in trust on behalf of the communities for which it is held” |
| | 7(1)- Application for | Registration of community under societies Law has the following effects: | 1. Replace community registration under Societies Act with: A community registered under this Act shall be a body corporate with |

| | | | |
|--|--|--|--|
| | Registration | <p>1. The community does not become a body corporate since the Societies Law does not confer such legal effect.</p> <p>2. The community does not have equal rights similar to those of a private land owner.</p> <p>3. The Societies Act lacks proper governance mechanism to provide oversight over land, varied use and management of natural resources and multiple community members</p> <p>The requirements for registration and annual filing under societies law introduces management burden to communities.</p> | <p>perpetual succession and a common seal.</p> <p>2. Add more provisions on Legal personality of communities as provided under section 14 of the 2014 Bill to include:</p> <p>a) Effects of being a body corporate</p> <p>b) Establishment of community land management committee by the registered community for purposes of adjudication, registration, management and administration of community land</p> <p>c) Business affairs of a registered community</p> <p>3. Delete requirement for registration of community through Societies Act</p> |
| | 8(3)- Procedure for recognition and adjudication of community land | The Provision fails to ensure majority participation of community members in the process of community land adjudication. This provides room for capture of the process by community elite or persons with conflicting interests | Add provision on 8(3) to read “The process of documenting, mapping and developing inventory land shall be participated by not less than two thirds of the community members |
| PART III- ADMINISTRATION AND MANAGEMENT OF COMMUNITY LAND | | <ul style="list-style-type: none"> • The 2015 Bill removes the existence of community assemblies and community land management committee which are replaced by ‘a registered community’. • ‘A registered community’ as an institution to oversee both the governance and management of the community land lacks clear structures that allow oversight and accountability in relation to land dealings and is subject to abuse and interference from external forces. | <p>1. Provide for establishment of community assemblies. This includes:</p> <ol style="list-style-type: none"> Composition; Meetings; Order of business in their annual general meetings and Functions <p>2. Provide for establishment of community land management committees and provide for their reference in other relevant provisions in the Bill. This includes:</p> <ol style="list-style-type: none"> Their establishment; Basic requirement; Guidelines for their election; Functions and powers; Term of office and Conduct of business |

| | | | |
|--|---|--|--|
| | | <ul style="list-style-type: none"> Subsequently, issues of absence of transparency and accountability; abuse and denial of community land rights are highly likely to be perpetuated. | |
| PART IV- NATURE OF COMMUNITY LAND TITLE | 20(2)(f)- Land use and development planning of community land | The requirement for a community land use plan to be “ bound any approved relevant physical development plan ” places community in a position where they have minimal influence and power over the planning and zoning of their lands as they have to bound by those of the County government plans. The provision limits communities to plan for land use activities that are community driven but dictated by the County government plans. | Delete 20(2) and reword the section to provide that County Government shall support community land use zoning and development plans |
| PART V- CONVERSION OF LAND | 22(2)- Conversion of community land | The section requires approval from at least fifty percent of the members of community land in which at least two thirds are present before conversion of community land to other land categories. This means only 37.5% of the community members could convert community land to other land categories. | <ol style="list-style-type: none"> Replace ‘a registered community shall..’ with ‘the committee shall’ Replace the fifty percent with, ‘....at least two thirds of members present in a special meeting convened for that purpose, in which at least two thirds of the community assembly are present’ |
| | 27-Setting aside community land for public purpose | Where community sets aside part of registered community land for public purposes, there needs to be clarification of the effect of the setting aside. This is to ensure that community land rights to such land are secure and prevent abuse of the principle | Add provision to section 27 to provide that, “The cabinet secretary shall develop regulations to guide process of setting aside community land for public purposes, community participation and rights” |
| PART VI- SPECIAL RIGHTS AND ENTITLEMENTS IN | 28(5)- Individual rights on community land | The instances for which land parcel granted to a member for exclusive use can revert to community are not adequate | Add the following provisions: 28(5)(d) member practices activities that threaten and or abuse the rights and or title of the community on the land, at the present or in |

| | | | |
|---|---|--|--|
| COMMUNITY | | | the future 28(5)(e) member practices activities contrary to the approved land use plan of the community land |
| | 29(5)-Grazing Rights | The provision leaves a loophole for conflict between pastoralists and other competing land uses other than farming that may interfere with grazing | Add 29(5)(e) to read that except with written authority of the committee and ratification by the community, no person shall “ carry out any activity on the land, other than lawful grazing of stock, which may prevent or restrict the residents of the traditional community concerned from a reasonable exercise of their grazing rights ”. |
| | 30(1)(g)-Designation of other land use rights in community land | The provision that community may reserve special purpose area for any other purpose as may be determined by “...county government or national government” creates room for the two level of government to interfere with management of community land and can override the community decisions at to which the land reserved can be used | Delete the words “county government and national government from 30(1)(g) and retain “any other purpose as may be determined by the community” |
| PART VII- ENVIRONMENT AND NATURAL RESOURCES MANAGEMENT | 37-Benefit Sharing | The provision fails to empower communities to enter into contracts with investors on investments on community land. | Add a subsection to 37(2) to read , “An Agreement made between community and investor shall be null and void unless it is ratified by a two thirds majority of community members in a community assembly” |
| PART IX- GENERAL PROVISIONS | 47(2)-Group Representatives, land buying companies, etc | Land buying companies etc. not provided in the Bill There is no provision to allow transition from the Group representatives to the new Community land management regime | Delete , land buying companies etc on the title of the section title S47(2) to read , ‘Upon registration, the respective group representatives shall cease to hold office <i>and the newly registered community shall elect a committee</i> ’ |
| | 48-Regulations | Important regulations omitted | Include the following Regulations: 1. Registration of communities as corporate body 2. Conversion of illegally acquired community land to community land 3. Setting aside of community land for public purpose |

| | | | |
|---|--|--|---|
| <p>OTHER RELEVANT PROVISIONS</p> | <p>1.Exclusion of requirement for women participation in community land governance</p> <p>2. Exclusion of youth, persons with disabilities and persons representing special interests in the community land management committee</p> | <p>1. 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</p> <p>2. The Bill fails to include representation of persons with disabilities and persons representing special interests</p> | <p>1. Add provisions requiring inclusion of women in community assembly and community land management committee to read’ “The membership of the committee shall observe the principle that not more than two thirds of its members shall be of one gender.</p> <p>2. Add provisions requiring inclusion of the youth and persons with disability in the community land management committee</p> |
| <p>SCHEDULE</p> | | <p>Important schedules omitted</p> | <p>Include the following schedules:</p> <p>1. Conduct of business and affairs of community assemblies</p> <p>2. Matters to be Provided for in the community Constitution</p> <p>3. Conduct of business and affairs of the Committees</p> |

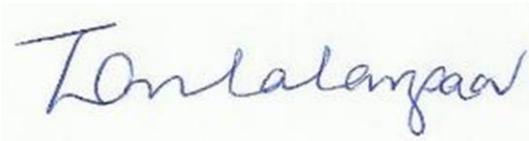
It is critical that the Community Land law provides true and unassailable land tenure security to the millions of Kenyans residing on community land. The Law must uphold the Constitutional principle that provides communities with equivalent land tenure rights to the private land tenure regime. This will provide the foundation for investment in the land, economic and social development, improved land management and natural resource utilization and conservation, and for the preservation of Kenya’s rich cultural and natural heritage.

Yours sincerely



Dickson Kaelo, CEO Kenya Wildlife Conservancies Association

Tel: 0722467344 ; email: dkaelo@kwakenya.com



Tom Lalampaa, CPO Northern Rangelands Trust

Tel: 0723468874 email: tom.lalampaa@nrt-kenya.org



Peter Hetz, CEO Laikipia Wildlife Forum

Tel: 0701161238 email: peter.hetz@laikipia.org

Cc:

Chair, Hon. Alex Mwiru, Parliamentary Lands Committee