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CONTENT

Act—

PAGE

The Community Land Act, 2016 525

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P. O. Box 10443 - 00100
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TEL: 2713231 FAX: 2712694

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THE COMMUNITY LAND ACT

No. 27 of 2016

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ARRANGEMENT OF SECTIONS

Section

PART I—PRELIMINARY

1—Short title.

2—Interpretation.

3—Guiding principles.

PART II—RECOGNITION, PROTECTION AND REGISTRATION OF COMMUNITY LAND RIGHTS

4—Ownership and tenure system.

5— Protection of community land rights.

6—Role of county governments.

7—Application for registration.

8—Procedure for recognition and adjudication of community land.

9—Community land Registrar.

10—Register of community land.

11—Registration of community land.

12—Classes of holding community land.

13—Communal and reserve land.

14—Confirmation of validity of existing customary rights of occupancy.

PART III—ADMINISTRATION AND MANAGEMENT OF COMMUNITY LAND

15—Functions and powers.

PART IV—NATURE OF COMMUNITY LAND TITLE

16— Interest conferred by registration.

17— Rights of a community as proprietors.

18— Certificate of title to be evidence of proprietorship.

19— Land use and development planning of community land.

20— Conservation and management of resources in community land.

PART V—CONVERSION OF LAND

21— Conversion of community land generally.

22— Conversion of community land to public land.

23— Conversion of community land to private land.

24— Conversion of public land to community land.

25— Conversion of private land to community land.

26— Setting aside community land for public purposes.

PART VI—SPECIAL RIGHTS AND ENTITLEMENTS IN THE COMMUNITY LAND

27— Individual rights on community land.

28— Grazing rights.

29—Designation of other land use rights in community land.

30—Non-discrimination.

31—Transactions in community land.

32—Leases over community land.

33—Cancellation of rights of leasehold.

34— Existing rights to use and occupy community land.

PART VII— ENVIRONMENT AND NATURAL RESOURCES MANAGEMENT

35—Natural resources on community land.

36—Benefit sharing.

37—Rules and bye-laws

38—Regulation of community land use planning.

PART VIII— SETTLEMENT OF DISPUTES RELATING TO COMMUNITY LAND

39—Dispute resolution mechanisms.

40—Mediation.

41—Arbitration.

42—Judicial Proceedings.

PART IX—GENERAL PROVISIONS

43—Unlawful occupation of community land.

44—General penalty.

45—Repeals.

46—Saving and transitional provisions.

47—Group representatives, land-buying companies etc.

48—Regulations.

SCHEDULE

SCHEDULE: Transitional Provisions

THE COMMUNITY LAND ACT, 2016

AN ACT of Parliament to give effect to Article 63 (5) of the Constitution; to provide for the recognition, protection and registration of community land rights; management and administration of community land; to provide for the role of county governments in relation to unregistered community land and for connected purposes

ENACTED by the Parliament of Kenya, as follows—

PART I—PRELIMINARY

Short title.

1. This Act may be cited as the Community Land Act, 2016.

Interpretation.

2. In this Act, unless the context otherwise requires—

"adjudication officer" means an officer appointed by the Cabinet Secretary under section 10(2);

"Cabinet Secretary" means the Cabinet Secretary for the time being responsible for matters relating to land;

"cadastral map" has the meaning assigned to it under the Land Registration Act, 2012; No. 3 of 2012

"certificate of reservation" means a certificate issued in the interim by the Registrar pending the registration of community land and acquisition of the certificate of title;

"community" means a consciously distinct and organized group of users of community land who are citizens of Kenya and share any of the following attributes—

(a) common ancestry;

(b) similar culture or unique mode of livelihood;

(c) socio-economic or other similar common interest;

(d) geographical space;

(e) ecological space; or

(f) ethnicity.

"community assembly" means a gathering of registered adult members of a community convened in accordance with this Act;

"communal use of land" means holding or using land in undivided shares by a community;

"community land" means includes—

(a) land declared as such under Article 63(2) of the Constitution;

(b) land converted into community land under any law;

"community land register" means the community land register established under section 8 of the Land Registration Act, 2012; No. 3 of 2012

"community land registration unit" means an area declared as such under section 10 of the Land Registration Act;

"community of interests" means the possession or enjoyment of common rights, privileges or interests in land, living in the same geographical area or having such apparent association;

"community reserve land" means any land set aside for communal or land allocated by the registered community for individual occupation and use;

"community tenure system" means unwritten land ownership practices in certain communities in which land is owned or controlled by a family, clan or a designated community leader;

"Commission" means the National Land Commission established by Article 67 of the Constitution;

"county government" means the county government provided for under Article 176 of the Constitution;

"Court" means the Environment and Land Court established under the Environment and Land Court Act, 2011 or any other court having jurisdiction over land matters as may be prescribed by any written law; No 19 of 2011.

"customary land rights" refer to rights conferred by or derived from African customary law, customs or practices provided that such rights are not inconsistent with the Constitution or any written law;

"fragile ecosystem" means an ecosystem hosting threatened biodiversity;

"natural resources" has the meaning assigned to it in Article 260 of the Constitution;

"organised group" includes any or both formal and informal kinds of organization in the community setup;

"Principal Secretary" means the Principal Secretary for the time being responsible for matters relating to land;

"Registrar" means the Registrar of community land designated in accordance with section 9 of this Act;

"registered community" means a community that has completed the registration processes and is recognized under this law;

"spouse" has the meaning assigned to it under the Marriage Act, 2014; No. 4 of 2014

"vested interest" means absolute and indefeasible ownership.

Guiding principles.

3. In the performance of the functions and exercise of powers under this Act, every person dealing with community land shall be guided by the following principles—

(a) the principles of land policy set out in Article 60 of the Constitution; and

(b) the national values and principles of governance set out in Article 10 of the Constitution.

PART II—RECOGNITION, PROTECTION AND REGISTRATION OF COMMUNITY LAND RIGHTS

Ownership and tenure system.

4. (1) Community land in Kenya shall vest in the Community.

(2) Subject to the provisions of this Act or any other written law, the State may regulate the use of community land in accordance with Article 66 of the Constitution.

(3) Community land shall vest in the community and may be held under any of the following tenure systems—

(a) customary;

(b) freehold;

(c) leasehold; and

(d) such other tenure system recognized under this Act or other written law.

Protection of community land rights.

5. (1) Every person shall have the right, either individually or in association with others, to acquire and own property, in accordance with Article 40 of the Constitution—

(a) of any description; and

(b) in any part of Kenya.

(2) Customary land rights shall be recognized, adjudicated for and documented for purposes of registration in accordance with this Act and any other written law.

(3) Customary land rights, including those held in common shall have equal force and effect in law with freehold or leasehold rights acquired through allocation, registration or transfer.

(4) Subject to Article 40 (3) of the Constitution and the Land Act, no interest in, or right over community land may be compulsorily acquired by the State except in accordance with the law, for a public purpose, and upon prompt payment of just compensation to the person or persons, in full or by negotiated settlement.

(5) Subject to the provisions of section 46 of this Act, any person who immediately before the commencement of this Act had a subsisting customary right to hold or occupy land shall upon commencement of this Act continue to hold such right.

Role of county governments.

6. (1) County governments shall hold in trust all unregistered community land on behalf of the communities for which it is held.

(2) The respective county government shall hold in trust for a community any monies payable as compensation for compulsory acquisition of any unregistered community land.

(3) Upon registration of community land, the respective county government shall promptly release to the community all such monies payable for compulsory acquisition.

(4) Any such monies shall be deposited in a special interest earning account by the county government.

(5) The respective county government shall transfer the amount and the interests earned to the communities as may be prescribed.

(6) Any transaction in relation to unregistered community land within the county shall be in accordance with the provisions of this Act and any other applicable law.

(7) Upon the registration of any unregistered community land in accordance with this Act, the respective registered community shall, assume the management and administrative functions provided in this Act and the trustee role of the respective county government in relation to the land shall cease.

(8) A county government shall not sell, dispose, transfer, convert for private purposes or in any other way dispose of any unregistered community land that it is holding in trust on behalf of the communities for which it is held.

Procedure for registration of communities.

7. (1) A community claiming an interest in or right over community land shall be registered in accordance with the provisions of this section.

(2) The community land registrar shall by notice in at least one newspaper of nationwide circulation and a radio station of nationwide coverage, invite all members of the community with some communal interest to a public meeting for the purpose of electing the members of the community land management committee.

(3) The notice shall also be given to the national county administrators and county government administrators in the area where the community land is located.

(4) The community land registrar may use all available means of communication including electronic media to reach the community members.

(5) The community shall elect between seven and fifteen members from among themselves to be the members of the community land management committee as provided in section 15, who shall come up with a comprehensive register of communal interest holders.

(6) The community land management committee shall come up with the name of the community and shall submit the name, register of members, minutes of the meeting and the rules and regulations of the committee to the Registrar for registration.

Procedure for recognition and adjudication of community land.

8. (1) Subject to this Act and any law relating to adjudication of titles to land, the Cabinet Secretary shall, in consultation with the respective county governments, develop and publish in the Gazette a comprehensive adjudication programme for purposes of registration of community land.

(2) The Cabinet Secretary shall, in consultation with the county governments ensure that the process of documenting, mapping and developing of the inventory of community land shall be transparent, cost effective and participatory.

(3) The inventory of community land referred to in subsection (2) may be accessed by the county governments for ease of access by members of the community.

(4) The Cabinet Secretary shall issue a public notice of intention to survey, demarcate and register community land.

(5) The notice shall—

(a) contain the name of the community;

(b) state which land is to be adjudicated;

(c) invite all interested persons with overriding interests or any other claim on the land, to lodge their claims;

(d) specify an area or areas of land to be a community land registration unit; and

(e) be for a period of sixty days.

(6) The Cabinet Secretary shall cause the land to be adequately surveyed but such survey shall exclude—

(a) all parcels already in use for public purposes; and

(b) adjudicated private land.

(7) A cadastral map of the land shall then be produced and presented to the Registrar for registration.

Community land Registrar.

9. The Chief Land Registrar shall designate a qualified registrar to be the community land Registrar responsible for registration of community land.

Register of community land. No. 3 of 2012

10. (1) There shall be maintained for each registration unit, a community land register in accordance with section 8 of the Land Registration Act, 2012 in which shall contain—

(a) a cadastral map showing the extent of the community land and identified areas of common interest;

(b) the name of the registered community;

(c) a register of members of the registered community which shall be updated annually;

(d) the user of the land;

(e) such particulars of members of the registered community as the Registrar may determine; and

(f)any other requirement under this Act.

(2) The Registrar shall not register any instrument purporting to dispose of rights or interest in community land except in accordance with this Act or any other written law.

(3) For the avoidance of doubt, until any parcel of community land has been registered in accordance with this Act, such land shall remain unregistered community land and shall, subject to this Act, be held in trust by the county governments on behalf of the communities for which it is held pursuant to Article 63(3) of the Constitution.

Registration of community land. No. 3 of 2012

11. (1) Community land shall be registered in accordance with the provisions of this Act and the Land Registration Act, 2012.

(2) The Cabinet Secretary shall by a notice in the gazette, appoint an adjudication officer in respect of every community registration unit who shall—

(a) facilitate in consultation with the respective county governments the adjudication of the community land including the recording of community land claims, demarcation of

community land and delineation of boundaries; and

(b) perform any other function conferred by this Act.

(3) Upon adjudication, the title relating to community land shall be issued by the Registrar in the prescribed form.

Classes of holding community land.

12. Community land may be held—

(a) as communal land;

(b) as family or clan land;

(c) as reserve land; or

(d) in any other category of land recognized under this Act or other written law.

Communal and reserve land.

13. (1) A registered community may by a resolution of the majority members of that community in a general meeting, reserve a portion of the community land for communal purposes.

(2) Any land which has been used communally, for public purpose, before the commencement of this Act shall upon commencement of this Act be deemed to be public land vested in the national or county government, according to the use it was put for.

(3) A registered community may reserve special purpose areas including areas for—

(a) farming;

(b) settlement;

(c) community conservation;

(d) cultural and heritage sites;

(e) urban development; or

(f) any other purposes as may be determined by the community, respective county government or national government for the promotion or upgrading of public interest.

(4) An area reserved for special purposes under subsection (3) shall be used exclusively for the intended purpose.

Confirmation of validity of existing customary rights of occupancy.

14. (1) A customary right of occupancy in community land shall in every respect be equal in status and effect to a right of occupancy granted in any other category of land and shall, subject to this Act, be—

(a) capable of being allocated by the community to an individual person, family, group of persons, clan, an association, partnership or body corporate wholly owned by citizens of Kenya;

(b) capable of being of indefinite duration; and

(c) governed by customary law in respect of any dealings.

(2) A customary right of occupancy on any community land subsisting before the commencement of this Act shall upon the commencement of this Act be a recognisable right of occupancy in the respective community land subject to Article 40(6) of the Constitution.

(3) A person, a family unit, a group of persons recognized as such under any customary law or who have formed or organized themselves as an association, a co-operative society or any other body recognized by any written law, who are members of a community may apply to the registered community for customary right of occupancy.

(4) The registered community shall, when considering the application have regard to—

(a) proposals made by the adjudication team or any sub-committee of the registered community set up for that purpose; and

(c) equality of all persons including—

(i) equal treatment of applications for women and men; and

(ii) non-discrimination of any person on the basis of gender, disability, minority, culture or marital status.

(5) Upon approval by the registered community, the registered community shall issue a certificate of customary right of use and occupancy in the prescribed form.

PART III—ADMINISTRATION AND MANAGEMENT OF COMMUNITY LAND

Functions and powers of the community land management committee.

15. (1) A registered community shall have a community assembly which shall consist of all adult members of the community.

(2) The quorum for decision making by the community shall not be less than two thirds of the community assembly.

(3) The community assembly shall elect between seven and fifteen members of the community assembly to constitute the community land management committee.

(4) The functions of the community land management committee shall be to—

(a) have responsibility over the running of the day to day functions of the community;

(b) manage and administer registered community land on behalf of the respective community;

(c) coordinate the development of community land use plans in collaboration with the relevant authorities;

(d) promote the co-operation and participation among community members in dealing with matters pertaining to the respective registered community land; and

(e) prescribe rules and regulations, to be ratified by the community assembly, to govern the operations of the community.

(5) Any decision of a registered community to dispose of or otherwise alienate community land shall be binding if it is supported by at least two thirds of the registered adult members of the community, while all other decisions of the registered community shall be by a simple majority of the members present in a meeting.

PART IV—NATURE OF COMMUNITY LAND TITLE

Interest conferred by registration.

16. Subject to this Act—

(a) the registration of a community as the proprietor of land shall vest in that community the absolute ownership of that land together with all rights and privileges belonging or appurtenant thereto; and

(b) the registration of a community or a person as the proprietor of a lease shall vest in that community

or person the leasehold interest described in the lease, together with all implied and express rights and privileges belonging or appurtenant thereto and subject to all implied or express agreements, liabilities or incidents of the lease.

Rights of a community as proprietor.

17. (1) The rights of a registered community as proprietor, whether acquired on first registration or subsequently for valuable consideration or by an order of court, shall not be liable to be defeated except as provided in this Act or any other written law, and shall be held on behalf of the community, together with all privileges and appurtenances belonging thereto, free from all other interests and claims whatsoever, but subject to—

(a) the leases, charges and other encumbrances and to the conditions and restrictions, if any, shown in the register; and

(b) such overriding interests as may affect the land and are declared by section 28 of the Land Registration Act, 2012 . No. 3 of 2012

(2) Nothing in this section shall be taken to relieve a registered community from any duty or obligation to which the registered community is subject to as a proprietor.

Certificate of title to be evidence of proprietorship.

18. (1) The certificate of title issued by the Registrar upon registration, or to a purchaser of community land upon a transfer or transmission by the proprietor community shall be considered by courts as prima facie evidence that the person named as proprietor of the land is the absolute and indefeasible owner, subject to the encumbrances, easements, restrictions and conditions contained or endorsed in the certificate, and it shall not be subject to challenge, except—

(a) on grounds of fraud or misrepresentation to which the person is proved to be a party; or

(b) where the certificate of title has been acquired illegally, unprocedurally or through a corrupt scheme.

(2) A certified copy of any registered instrument, signed by the Registrar and sealed with the Seal of the Registrar, shall be received in evidence in the same manner as the original.

Land use and development planning of community land.

19. (1) A registered community may, on its own motion or at the request of the county government, submit to the county government a plan for the development, management and use of the community land administered by the registered community for approval.

(2) Before submitting a plan to the county government under subsection (1) a registered community shall—

(a) consider any conservation, environmental or heritage issues relevant to the development, management or use of the land;

(b) incorporate in the plan a statement that it has considered those issues in paragraph (a) when drawing up the plan;

(c) consider any environmental impact plan pursuant to existing laws on environment;

(d) comply with the values and principles of the Constitution;

(e) seek ratification from the members of the registered community; and

(f) be bound by any approved relevant physical development plan.

(3) If a registered community submits a plan to the county government under subsection (1) and the government approves and notifies the registered community of that fact, the registered community shall develop, manage and use the land concerned in accordance with the plan as approved or subsequently varied as the case may be.

(4) The county government shall, in considering a plan submitted to it under this section comply with the relevant law relating to development planning.

(5) The county government shall on the request of the Commission submit records of development plans lodged with the county government in accordance with this section.

Conservation and management of resources in community land.

20. (1) For purposes of the sustainable conservation of land based natural resources within community land across counties, every respective registered community shall abide by the relevant applicable laws, policies and standards on natural resources.

(2) With respect to subsection (1), the communities shall establish—

(a) measures to protect critical ecosystems and habitats;

(b) incentives for communities and individuals to invest in income generating natural resource conservation programmes;

(c) measures to facilitate the access, use and co-management of forests, water and other resources by communities who have customary rights to these resources;

(d) procedures for the registration of natural resources in an appropriate register; and

(e) procedures for the involvement of communities and other stakeholders in the management and utilization of land-based natural resources.

(3) A registered community shall put in place measures necessary to conserve resources in community land.

PART V—CONVERSION OF LAND

Conversion of community land. No. 3 of 2012.

21. (1) The Community land register shall, in addition to the particulars set out under section 8(1) of the Land Registration Act, 2012, contain the particulars of all conversions involving community land.

(2) A registered community shall, before the conversion of registered community land into any other category of land seek and obtain approval from two thirds of the assembly in a special meeting convened for that purpose.

Conversion of community land to public land.

22. (1) Community land may be converted to public land by—

(a) compulsory acquisition;

(b) transfer; or

(c) surrender.

No. 6 of 2012

(2) Nothing in this Act limits the application of the Land Act, 2012 and any other law in relation to compulsory acquisition of land.

(3) Reversionary interest of such land shall lie with the community in the first instance upon expiry of such public use interest.

(4) Transfer of community land shall, subject to the approval of the members of the registered community in a community meeting, be done in accordance with the Land Act, 2012 and any other applicable law. No. 6 of 2012

Conversion of community land to private land.

23. Registered community land may, subject to the approval of the registered community, be converted to private land through—

(a) transfer; or

(b) allocation by the registered community, subject to ratification of the assembly as provided in section 21(2).

Conversion of public land to community land. No. 6 of 2012

24. (1) Public land may be converted to community land by allocation by the Commission in accordance with the Land Act, 2012

(2) Conversion of public land to community land under subsection (1) may be effected on a case by case basis.

(3) The Commission may, by an order published in the gazette identify other specific parcels to which subsection (2) shall not apply.

Conversion of private land to community land.

25. Private land may be converted to community land by—

(a) transfer;

(b) surrender;

(c) operation of the law in relation to illegally acquired community land; or

(d) operation of any other written law.

Setting aside community land for public purposes.

26. (1) A community may set aside part of the registered community land for public purposes.

(2) Where land is set aside for public purposes under subsection (1), the Commission shall gazette such parcel of land as public land.

PART VI—SPECIAL RIGHTS AND ENTITLEMENTS IN THE COMMUNITY LAND

Individual rights on community land.

27. (1) A registered community may upon application and with approval of the members of the registered community, allocate part of its registered community land to a member or a group of members of the community for exclusive use and occupation for such period as the registered community shall determine.

(2) Despite subsection (1), a separate title shall not be issued for such parcel.

(3) An individual entitlement under subsection (1) shall not be superior to community title in any way.

(4) A member granted exclusive use of a parcel of land under this section—

(a) shall pay to the registered community such premium or fees commensurate to the use as may be determined by the community from time to time;

(b) may develop the land subject to the provisions of any laws and regulations relating to land use;

(c) may not assign or lease the land to a third party who is not a member of the community;

(d) shall put the land into lawful use;

(e) shall surrender the land back to the community if the member no longer shall be entitled to quiet enjoyment of the land.requires the land; and

Grazing rights.

28. (1) The customs and practices of pastoral communities relating to land shall be taken into consideration by a registered community as long as they are consistent with the provisions of this Act or other applicable law.

(2) Community land in a pastoral community shall be available for use by members of the community for the grazing of their livestock, subject to—

(a) such conditions as the respective registered community may impose, including conditions relating to—

(i) the kind and number of livestock that may be grazed;

(ii) the section or sections of the land where livestock may be grazed and the grazing in rotation on different sections; and

(iii) a grazing plan;

(iv) the right of the community to utilize the portion of land in accordance with this Act.

(3) The registered community may upon application by any person who is not a member of the registered community, grant grazing rights and upon such grant, that person shall exercise the rights subject to the conditions referred to in subsection (1):

Provided that the registered community shall subject to the approval of the members of the registered community in a meeting convened for that purpose withdraw a grazing right granted under this subsection if, due to drought or any other reasonable cause, the registered community considers such cancellation to be in the interest of the residents of the community concerned.

(4) Notwithstanding subsection (1), a registered community may withdraw the grazing right of any member who—

(a) fails to observe in a material respect any condition referred to in this Act; or

(b) contravenes any provision of subsection (2).

(5) A person shall not, except with the written authority of the registered community—

(a) erect or occupy any building or other structure on the designated grazing land;

(b) plough or cultivate any portion of the land;

(c) take up abode on or occupy any portion of the grazing land; and

(d) obstruct the access to any watering place on the land, prevent or attempt to prevent any person from drawing water from, or watering stock at a watering place, pollute the water at a watering place or interfere with the operation of any windmill, water-pump, water-pipe, dam or storage tank or other appurtenance installed or constructed at such a watering place.

(6) A person who contravenes subsection (5) commits an offence and is liable, on conviction, to a fine not exceeding one hundred thousand shillings or imprisonment for a period not exceeding six months.

Designation of other land use rights in community land.

29. (1) A registered community may reserve special purpose areas including—

(a) farming areas;

(b) settlement areas;

(c) community conservation areas;

(d) access and rights of way;

(e) cultural and religious sites;

(f) urban development; or

(g) any other purpose as may be determined by the community, county government or national government for the promotion of public interest.

(2) An area designated for special purposes under subsection (1) shall be used exclusively for the designated purposes.

Non-discrimination.

30. (1) Every member of the community has the right to equal benefit from community land.

(2) Equality includes full and equal enjoyment of rights of use and access.

(3) Women, men, youth, minority, persons with disabilities and marginalized groups have the right to equal treatment in all dealings in community land.

(4) A registered community shall not directly or indirectly discriminate against any member of the community on any ground including race, gender, marital status, ethnic or social origin, colour, age, disability, religion or culture.

(5) For the avoidance of doubt, every man or woman married to a member of the community shall gain automatic membership of the community and such membership shall subsist until the spouses legally divorce and the woman remarries or the woman remarries after the death of a spouse.

(6) Subject to Article 159 of the Constitution, the culture of each community shall be recognized in accordance with Article 11(1) of the Constitution in the exercise of community land rights.

Transactions in community land.

31. (1) Subject to such exemptions as may be prescribed, or unless any condition attaching to a community land right or a right of leasehold under this Act provides otherwise, a customary land right may be dealt with only with the approval of the registered community in a meeting convened for such purpose.

(2) For the purposes of this Act, contracts and transfers over community land shall be carried out in a manner similar to transactions over private land as provided in the Land Act, 2012 and registered as provided in the Land Registration Act, 2012.

No. 6 of 2012
No. 3 of 2012

Leases over community land.

32. (1) A lease over community land shall be on the basis of an agreement between the community and the lessee and subject to such implied conditions, restrictions and covenants as may be contained in any other written law.

No. 6 of 2012

(2) Despite section 55 (1) of the Land Act, 2012, unless the agreement contemplated under subsection (1) otherwise provides, the general provisions on leases contained in Part IV of that Act shall apply to leases over community land.

Cancellation of rights of leasehold.

33. In addition to such grounds of cancellation as may be set out in a deed of leasehold, a right of leasehold may be cancelled by a registered community, with approval of the members of the registered community, if the leaseholder fails to comply with the requirements or to adhere to any restrictions imposed by or under any law pertaining to the utilization of the land to which the right relates.

Existing rights to use and occupy community land.

34. (1) Any person who immediately before the commencement of this Act, held a right to use and occupy any part of community land, whether by virtue of any authority granted under any law or otherwise than under a lease, may continue to use and occupy such land under that right, subject to the same terms and conditions until the lease expires, after which the provisions of sections 28 and 29 shall apply.

(2) Any conversion which commenced before the promulgation of the Constitution shall be deemed to have commenced under this Act, while any conversion commenced after the promulgation of the Constitution shall be null and void.

PART VII—ENVIRONMENT AND NATURAL RESOURCES MANAGEMENT

Natural resources on community land.

35. Subject to any other law, natural resources found in community land shall be used and managed—

(a) sustainably and productively;

(b) for the benefit of the whole community including future generations;

(c) with transparency and accountability; and

(d) on the basis of equitable sharing of accruing benefits.

Benefit sharing.

36. (1) Subject to any other relevant written law, an agreement relating to investment in community land shall be made after a free, open consultative process and shall contain provisions on the following aspects—

(a) an environmental, social, cultural and economic impact assessment;

(b) stakeholder consultations and involvement of the community;

(c) continuous monitoring and evaluation of the impact of the investment to the community;

(d) payment of compensation and royalties;

(e) requirement to re-habilitate the land upon completion or abandonment of the project;

(f) measures to be put in place to mitigate any negative effects of the investment;

(g) capacity building of the community and transfer technology to the community; and

(h) any other matters necessary for determining how local communities will benefit from investments in their land.

(2) An agreement relating to investment in community land shall only be made between the investor and the community.

(3) No agreement between an investor and the community shall be valid unless it is approved by two thirds of adult members at a community assembly meeting called to consider the offer and at which a quorum of two thirds of the adult members of that community is represented.

(4) The community may request the guidance and assistance of the county government or any other relevant stakeholders in considering the offer of investment.

Rules and by-laws.

37. Subject to this Act and any other written law, a registered community may make rules or by-laws for regulating the management and administration of their land and such rules or by-laws may provide for—

(a) the regulation of investments on the land;

(b) the determination of terms of any leases granted for purposes of investment;

(c) the conservation and rehabilitation of the land;

(d) land use and physical planning; and

(e) any other relevant matter.

Regulation of community land use planning.

38. (1) Pursuant to Article 66 of the Constitution, the State shall have the power to regulate the use of any land, or interest in or right over land, in the interest of defence, public safety, public order, public morality, public health or land use planning.

(2) Despite the provisions of Part 1 and pursuant to section 22 of the Fourth Schedule to the Constitution, the management of community land shall be subject to national and county government laws and policies relating to—

(a) fishing, hunting and gathering

(b) protection of animals and wildlife;

(c) water protection, securing sufficient residual water, hydraulic engineering and safety of dams;

(d) forestry;

(e) environmental laws;

(f) energy policy; and

(g) exploitation of minerals and natural resources.

PART VIII—SETTLEMENT OF DISPUTES RELATING TO COMMUNITY LAND

Dispute resolution mechanisms.

39. (1) A registered community may use alternative methods of dispute resolution mechanisms including traditional dispute and conflict resolution mechanisms where it is appropriate to do so, for purposes of settling disputes and conflicts involving community land.

(2) Any dispute arising between members of a registered community, a registered community and another registered community shall, at first instance, be resolved using any of the internal dispute resolution mechanisms set out in the respective community by-laws.

(3) Where a dispute or conflict relating to community land arises, the registered community shall give priority to alternative methods of dispute resolution.

(4) Subject to the provisions of the Constitution and of this Act, a court or any other dispute resolution body shall apply the customary law prevailing in the area of jurisdiction of the parties to a dispute or binding on the parties to a dispute in settlement of community land disputes so far as it is not repugnant to justice and morality and inconsistent with the Constitution.

Mediation.

40. (1) Where a dispute relating to community land arises, the parties to the dispute may agree to refer the dispute to mediation.

(2) The mediation shall take place in private or in informal setting where the parties participate in the negotiation and design the format of the settlement agreement.

(3) The mediator shall have the power to bring together persons to a dispute and settle the dispute by—

(a) convening meetings for the hearing of disputes from parties and keep record of the proceedings;

(b) establishing ground rules for the conduct of parties;

structuring and managing the negotiation process and helping to clarify the facts and issues; and

(c) helping the parties to resolve their dispute.

(4) If an agreement is reached during the mediation process, the agreement shall be reduced into writing and signed by the parties at the conclusion of the mediation.

Arbitration.

41. (1) Where a dispute relating to community land arises, the parties to the dispute may agree to refer the dispute to arbitration.

(2) Where the parties to an arbitration agreement fail to agree on the appointment of an arbitrator or arbitrators, the provisions of the Arbitration Act relating to the appointment of arbitrators shall apply.

No. 4 of 1995

Judicial proceedings.

42. (1) Where all efforts of resolving a dispute under this Act fail, a party to the dispute may refer the matter to court.

(2) The Court may—

(a) confirm, set aside, amend or review the decision which is the subject of the appeal; or

(b) make any order in connection therewith as it may deem fit.

PART IX—GENERAL PROVISIONS

Unlawful occupation of community land.

43. (1) No person shall occupy or use for any purpose any registered community land other than under a right acquired in accordance with the provisions of this Act.

(2) A person who contravenes this section commits an offence.

General penalty.

44. A person convicted of an offence under this Act for which no other penalty is provided shall be liable to a fine not exceeding five hundred thousand shillings or to imprisonment for a term not exceeding three years, or to both.

Repeals.

45. The following laws are repealed—

(a) the Land (Group Representatives) Act, (Cap 287); and

(b) the Trust Lands Act, (Cap 288).

Saving and transitional provisions.

46. (1) Unless the contrary is specifically provided in this Act, any right, interest, title, power, or obligation acquired, accrued, established, coming into force or exercisable before the commencement of this Act shall be deemed to have been acquired under this Act.

(2) Unless the contrary is specifically provided in this Act or the circumstances are such that the contrary must be presumed, if any step has been taken to create, acquire, assign, transfer, or otherwise execute a disposition in community land, any such transaction shall be continued in accordance with the provisions of this Act.

(3) Any instrument executed before the commencement of this Act whereby any disposition permitted under this Act is completed may be presented for registration in the prescribed register and—

(a) the question whether any instrument so presented is to be registered shall be determined by the Registrar by reference to the law in force at the time of its execution; and

(b) subject to the provisions of paragraph (a), the provisions of this Act shall apply to that instrument as if it had been executed after the commencement of this Act.

(4) If a lessor or chargor had initiated any steps to forfeit a lease or to foreclose a charge, as the case may be, before the commencement of this Act, a court may on the application of the lessee or the chargee issue an injunction to the lessor or, to the chargor to stop the continuation of any such step.

(5) If a court had issued an injunction under subsection (4), the lessor or chargor to whom the injunction has been issued may commence any action under this Act to terminate that lease or bring that charge to an end.

(6) For the avoidance of doubt, the Cabinet Secretary shall develop the adjudication programme and ensure that the new and existing adjudication programme shall, subject to this Act, be governed by the law applicable to it immediately before to the commencement of this Act and shall be concluded within three years of the enactment of this Act.

(7) If at the lapse of the time specified by the Cabinet Secretary under subsection (6) there is any adjudication programme not finalized, the Cabinet Secretary shall gazette new completion dates and finalize the registration under the provisions of this Act.

(8) The Director of Land Adjudication, an adjudication officer, demarcation officer, survey officer or a recording officer involved in an adjudication programme referred to under subsection (6) shall, for purposes of this section be deemed to be an officer of the national government.

(9) The provisions of this section shall be subject to the provisions of Article 63(4) of the Constitution and the legislation providing for the review of grants and dispositions.

Group representatives. Cap. 287

47. (1) In relation to land held under the Land (Group Representatives) Act, the respective group representatives together with the communities they represent shall be registered as a community in accordance with the provisions of this Act.

(2) Upon registration, the respective group representatives shall cease to hold office.

(3) Land held by group representatives referred to under subsection (1) shall not be sold, leased or converted to private land before it has been registered under this Act.

Cap. 287

(4) Title documents issued to group representatives under the Land (Group Representatives) Act shall continue to be in force until new titles are issued in the names of the respective communities or other institutions in accordance with this Act.

(5) The transitional provisions set out in the Schedule shall apply upon commencement of this Act.

(6) The Cabinet Secretary may prescribe regulations for giving effect to this section.

Regulations.

48. (1) The Cabinet Secretary, ensuring public participation may make regulations generally for the better carrying into effect of this Act.

(2) Without prejudice to the generality of subsection (1), the Cabinet secretary, ensuring public participation may make Regulations prescribing—

(a) the procedures of recognition and registration of all parcels of community land rights;

(b) procedure for settlement of disputes arising from the community land registration process;

(c) the requirements for investor partnerships;

(d) the procedures of registering any other entity holding community land;

(e) conversion of other categories of land into community land;

(f) the fees payable for any application or the issue of any certificate or other document in terms of this Act;

(g) the conditions, in addition to conditions imposed by or under any other law, under which prospecting or mining operations may be carried out on community land;

(h) public education and awareness on the rights of communities over community land;

(i) the combating and prevention of soil erosion and degradation, the protection of the pastoral resources and the limitation and control of the grazing of stock;

(j) payment of royalties to communities from income generated from resources within community lands.

(k) the timelines within which the adjudication programme must be gazetted, including guidelines on how to ascertain community or individual claims of interest in or right over community land;

(l) the rules and procedure for election of a community land management committee; and

(m) the procedures for registration of interest in community land as enshrined in Article 63 of the Constitution.

SCHEDULE (s. 47(5))

TRANSITIONAL PROVISIONS

Interpretation.

1. (1) In this Schedule—

"appointed day" means the day this Act comes into operation;

"former institution" means the institution by whatever name called registered under any of the repealed laws.

Rights and obligations.

2. (1) All rights, obligations and contracts which, immediately before the coming into operation of this Act, were vested in or imposed on a former institution shall be deemed to be the rights, obligations and contracts of the registered community.

(2) Notwithstanding any provision in this Act to the contrary, all agreements entered into between a community for the use of community land in the interest of defence, public safety, public order, public morality, public health, land use planning or shall continue in force.

Assets and liabilities.

3. On the appointed day—

(a) all funds, assets, and other property, moveable and immovable which, immediately before the appointed day were vested in a former institution, shall, on the appointed day, vest in the registered community;

(b) every public officer having the power or duty to effect or amend any entry in a register relating to property, or to issue or amend any certificate or other document effecting or evidencing title to property, shall, without payment of a fee or other charge and upon request made by or on behalf of the registered community, do all such things as are by law necessary to give effect to the transfer of property referred to under paragraph (a); and

(c) all rights, powers, liabilities and duties whether arising under any written law or otherwise howsoever, which immediately before the appointed day were vested in, imposed on or

enforceable by or against a former institution shall, by virtue of this paragraph, be transferred to, vested in, imposed on or enforceable by or against the registered community.

Legal proceedings.

4. On or after the appointed day, all actions, suits or legal proceedings whatsoever pending by or against the former institution shall be carried on or prosecuted by or against the registered community, and no such action, suit or legal proceedings shall in any manner abate or be prejudicially affected by the enactment of this Act.

Pending appeals to the Minister over community land.

5. The Cabinet Secretary shall prescribe procedures for the determination of all pending appeals to the Minister brought under any of the repealed laws.

Reference to written laws.

6. Any reference to a former institution in any written law or in any contract, document or instrument of whatever nature shall, on the commencement of this Act, be read and construed as a reference to the registered community.

Directions, orders, etc of former institution.

7. All directions, orders and authorizations given, or licenses or permits issued, or registrations made by a former institution and subsisting or valid immediately before the appointed day, shall be deemed to have been given, issued or made by the registered community under this Act.

8. Nothing in this Schedule shall be construed as giving exemption to the application of the provisions of Article 63(4) of the Constitution.