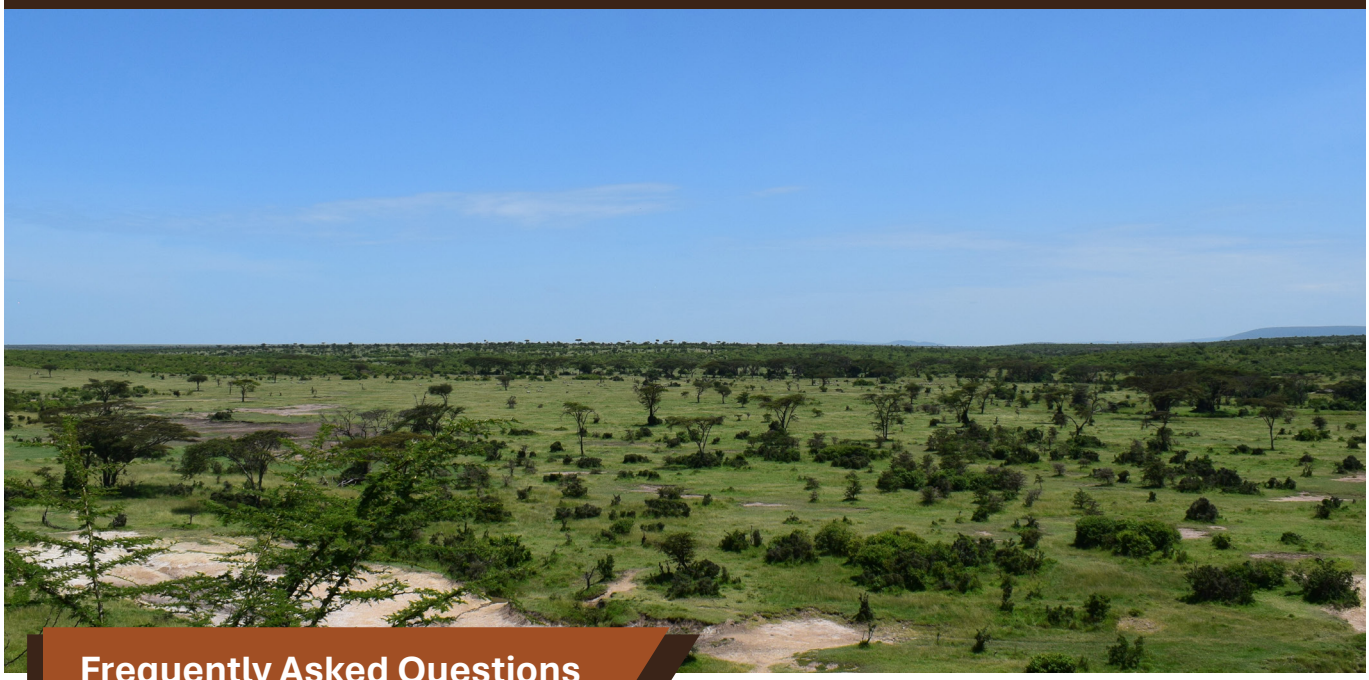
Kenya Wildlife Conservancies Association
Living nature, Living people

Management and Administration of Community Land under the Community Land Act 2016

Fact Sheet | **Issue Date:** October 2023



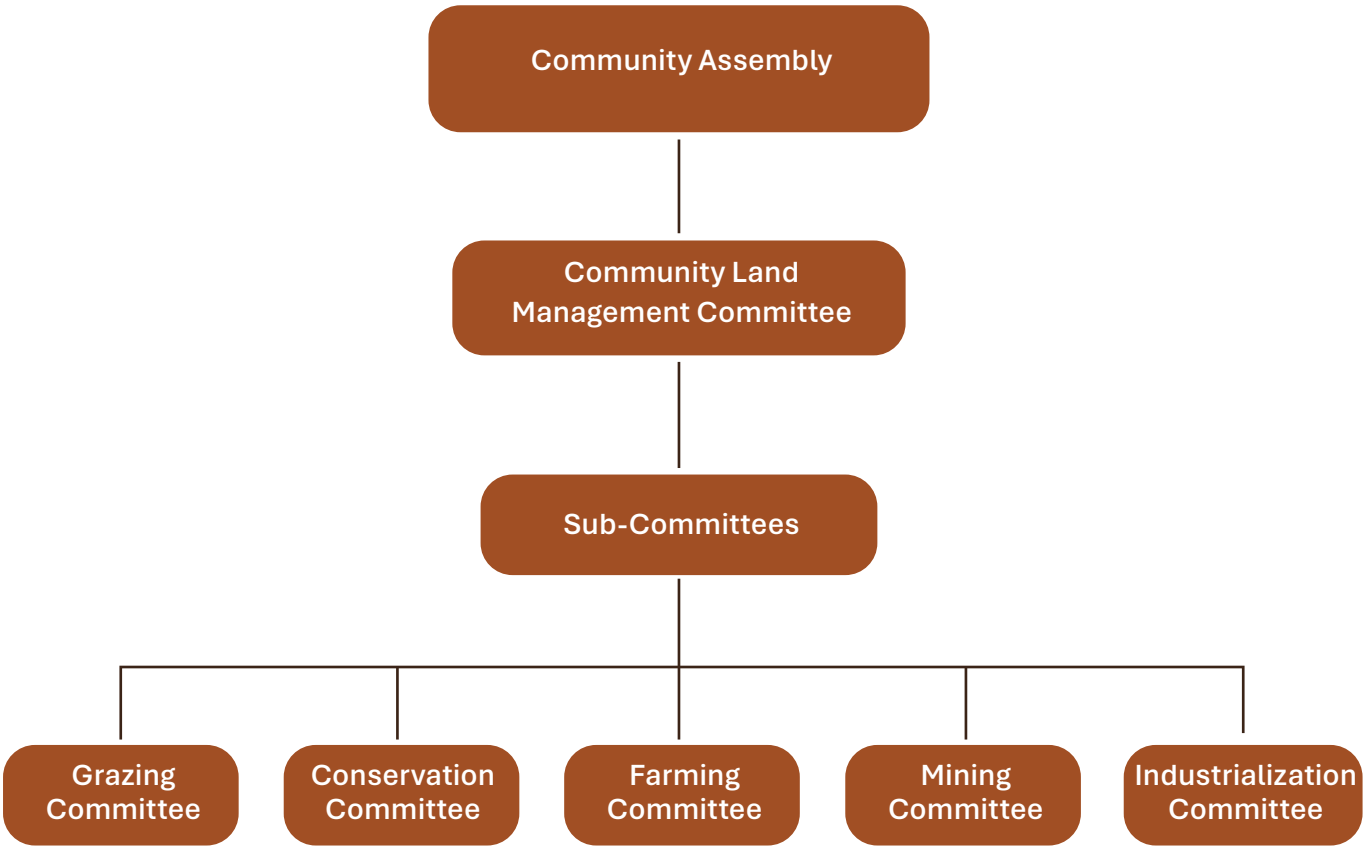
Frequently Asked Questions

I. COMMUNITY LAND MANAGEMENT AND ADMINISTRATION

a) Who is responsible for Community Land Management and Administration?

There are several stakeholders responsible for the management and administration of community land, they include:

i. Members of the Community (Community Assembly),
ii. Community Land Management Committee (CLMC) members,
iii. Community Land Registrar,
iv. National Land Commission,
v. Local Administration,
vi. County Governments, and
vii. National Environmental and Management Authority (NEMA), among others



b) What is the Community Assembly?

The Community Assembly is the gathering of registered adult members of a community, who are the ultimate decision-making organ on matters of community land governance and some management issues.

c) What are the functions and powers of a Community Assembly?

i. elect members of the community land management committee;

ii. approve land dispositions or alienation of community land ie.

iii. power to make and ratify their constitutions and certain decisions made by CLMC members.

d) What is the threshold for Community Assembly decision making in community land?

- The quorum for decision-making by the community shall not be less than two-thirds (2/3) of the community assembly members.
- Any other decision of the registered community shall be by a simple majority of members present in any meeting.

e) Who is Community Land Management Committee (CLMC)?

7-15 members of the community land who are elected by the community members to manage the community land on behalf of the entire community. CLMC is therefore the governing body of the community, elected from adult members of the community assembly.

f) Do we need to have women in the CLMC?

Yes, at least 1/3 of members of the CLMC must be from either gender.

g) How do we get women elected in CLMC who can effectively participate in roles of CLMC?

Continuous community land education and awareness meetings and programs must be held periodically to enable members of community to appreciate the role of gender balance in management and governance. It is also a legal requirement that the gender representation be present in all leadership and decision-making avenues.

h) Can a member of CLMC serve another term?

Yes, members of CLMC can serve as committee members for 2 terms of 3 years each. This means that one can only be a CLMC member for a maximum of 6 years. The second term is however not guaranteed, and only happens upon being elected by their community in an AGM.

i) How can communities remove CLMC members who fail to serve as per community constitution or within the Community Land Act?

Members can convene a Special Annual General Meeting and pass a vote of no confidence on a member who acts against the community constitution. They can also ask a member to resign from the committee.

j) How can a community elect a member of CLMC when a position becomes vacant, due to death, or other purpose, before the full term is served?

Members have an option of waiting until the next election if the CLMC can still operate. The members can also call for a Special Annual General Meeting for purposes of replacing that member, if there are more than six months before the next election.

k) How soon should a vacant position in CLMC be filled?

There is really no timeline for filling that vacancy. This largely depends on a community's constitution.



l) What are the key functions of Community Land Management Committee?

The following are key functions of CLMC;

i. **ELECT THEIR OFFICIALS** e.g., the chairperson secretary and treasurer within seven (7) days after being elected into office.

ii. Ensure that their members **PARTICIPATE AND GIVE THEIR CONSENT OR APPROVAL** on all matters on the disposition of land by 2/3 majority of its registered members.

iii. Responsible for **RUNNING THE DAY-TO-DAY FUNCTIONS** of the community. These includes to:

- manage and administer registered community land on behalf of the community;
- ensure that the register of members is updated regularly and submit the names to the Community Land Registrar;
- ensure that the community Land constitution is followed by members.
- ensure that the community Land Use Plan is followed by members including enforcing grazing plans and rotations
- promote cooperation and participation among members in dealing with matters about a registered community land.

iv. They coordinate the development of community land use plans in collaboration with the relevant authorities e.g., county and national government agencies and departments.

v. They prescribe rules and regulations to be ratified by the community assembly, to govern the operations of the community.

vi. They ensure equitable sharing and distribution of resources

vii. Resolution of disputes between members or neighboring community Lands.

viii. Hand over power to incoming members on expiry of their term of office

ix. Maintain safe custody of community land **documents** in safe storage.



These documents include:

- **Certificate of Registration:** gives the community the corporate personality status to sue and be sued, do things independent of its members in its name, trade, acquire property etc.
- **Community Land Title:** ultimate proof of land ownership.
- **Register of Members:** A person whose name appears in the register of members has equal and indivisible ownership of the community land.
- **Official Land Search:** shows the current status of the land and shows whether there are any subsisting encumbrances, leases, or charges on the property
- **Green Card:** It shows the history of the land with all entries on the land since the day of first registration including all previous registered owners.
- **Declaration (Obtained During Adjudication Process):** describes the land and its location using landmarks and physical features like rivers, mountains, hills, roads, etc.
- **Registered Index Map (RIM) Deed Plan:** shows the exact coordinates and location of the land.
- **Community Land Seal:** This is a special stamp that bears name of the community land i.e. **"Seal of Misitu Community Land".** It is used on important documents like lease agreements of community and should only be used by the authorized member/s of the CLMC
- **The Community Constitution / Bylaws:** spells out the rights, powers, duties and responsibilities of community members and the CLMC.

m) How can CLMC better perform its functions & duties?

- There should **never** be two committees in any community land. The duly elected CLMC should be in charge of all matters concerning their land. This will help in removing power wrangles.
- CLMC may establish sub-committees, to address specific key issues and interests of the community including grazing, conservation, community development etc.
- CLMC must hold meetings for follow ups on the projects they are undertaking on behalf of their communities, at least once in 3 months.
- The chairperson and the executive must delegate the meetings to ensure that all committee members are on one page.
- CLMC should develop an annual calendar with specific periods, times or events when the community register can be updated.
- CLMC should identify days where community members are easily available including market days, for them to hold community meetings.

DO'S by CLMC

- Create sub-committees, to handle specific issues and interests of the community;
- Develop annual calendar with specific periods, times or events e.g. update of community register, AGM, general meetings
- Maintain certified copies of essential documents in safe custody
- Create open structures for community members to reach them physically and remotely
- Conduct meetings of committee within community areas
- Timely communicate decisions or recommendations of committee to community
- Always serve in the collective best interest of the community
- Smooth and complete handover when term expires

The DO NOTs by CLMC

- Do not vary decisions passed at AGM
- Do not conduct themselves as if they are the land owners excluding communities
- Do not to exceed their term of office - should not hold office beyond term of 3 years
- Do not make decisions of community away from the community
- Do not withhold crucial information or documents from community e.g. on proposed and on-going investments, financial information
- Do not make substantive decisions on land e.g. leasing, investment, conservancy development, land use planning, without consulting and approval by community assembly
- Do not keep or store property and official documents of the community at their personal houses or personal banks.



II. SPECIAL/UNIQUE FEATURES ON COMMUNITY LAND

- **Customary right of use and occupancy**

  This is the process of allocating piece of land to a member of community land for a period of time with or without payment. It is only a member of the community who is eligible to apply.

- **Land use and development planning.**

  A registered community may submit to the county government a plan for the development, management and use of the community land, administered by the registered community for approval. The plans ought to reserve some areas for special uses including: farming, settlement community conservation areas, access and rights of way, cultural and religious sites, grazing, and urban development and any other use identified by community.

- **Grazing and illegal use of community land**

  The registered community must come up with grazing plans and can grant such rights to unregistered members who want to graze subject to conditions to be set and determined by the community.

III. SETTLEMENT OF DISPUTES RELATED TO COMMUNITY LAND

- **Traditional dispute resolution:**

  These include alternative Justice systems e.g., mediation, negotiations, conciliation, council of elders etc. Traditional dispute resolution mechanisms still have a strong belief in the principles of common humanity, reciprocity and respect for the environment and humanity.

- **Arbitration:**

  A form of alternative dispute resolution (ADR) that resolves disputes outside the judiciary courts. Both parties have to agree to one or more arbitrators who make a binding decision on the dispute. An arbitration decision or award is legally binding on both sides and enforceable in the courts.

- **National Environment Tribunal (NET):**

  A specialized and independent judicial body tasked with adjudicating environmental disputes, including those concerning community land use, conservation, and environmental impact assessments.

- **Environment and land courts:**

  hears and determines disputes relating to: the environment, use and occupation of land, title to land – land ownership, community land contracts, conservation and sustainable management and administration of land within ecologically significant areas

- **Annexed court mediation:**

  The courts may refer community land disputes to court annexed mediation, at the request of the parties. This approach involves court-supervised mediation sessions, where a trained mediator assists disputing parties in reaching a mutually agreeable resolution.

IV. ROLE OF COUNTY GOVERNMENTS:

1. The county government documents, maps out and develops a community land inventory in respect of all unregistered community lands, and submits it to the National Land Commission.
2. The county government is mandated to develop and publish, in consultation with the cabinet secretary, a comprehensive adjudication program for purposes of registration of community land.
3. The county government holds in trust, all unregistered community lands in their counties on behalf of communities.
4. Upon registration, the county government is mandated to surrender back the land to the communities for management and administration. The trusteeship role of the county government ceases.
5. The county government is to be present during the election of community land management committees. The community land registrar gives the notice to the county on the election date.
6. The county government may request a community to develop a land use and development plans for a community land.
7. It is the role of the county government to approve such plans.
8. County governments are also obligated to carry out continues public education and awareness on the Community Land Act.

V. OTHER IMPORTANT COMMUNITY LAND PROCESSES

a) Free, Prior and Informed Consent (FPIC):

the process where indigenous people and local communities (IPLCs) undertake their own independent collective decision on the matters that affect them. FPIC ensures that all members fully participate in the decision making, on all matters that affect them and their land.

b) Where does FPIC apply?

- When electing CLMC
- In land use planning - establishing a conservancy
- When getting into lease agreements
- In projects or activities with potential Impacts on lands and natural resources
- In starting projects where activities may potentially impact cultural heritage of indigenous peoples such as cultural and/or spiritual value, sacred groves, sacred bodies of water and waterways, sacred mountains, sacred trees, sacred rocks, burial grounds and sites.

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Kenya Wildlife Conservancies Association
P.O Box 1038-00517, Nairobi, Kenya.
Magadi Tenting Centre, Seminary Road,
Off Magadi Road
Email: info@kwcakenya.com
Cellphone: 0708 418 522
www.kwcakenya.com