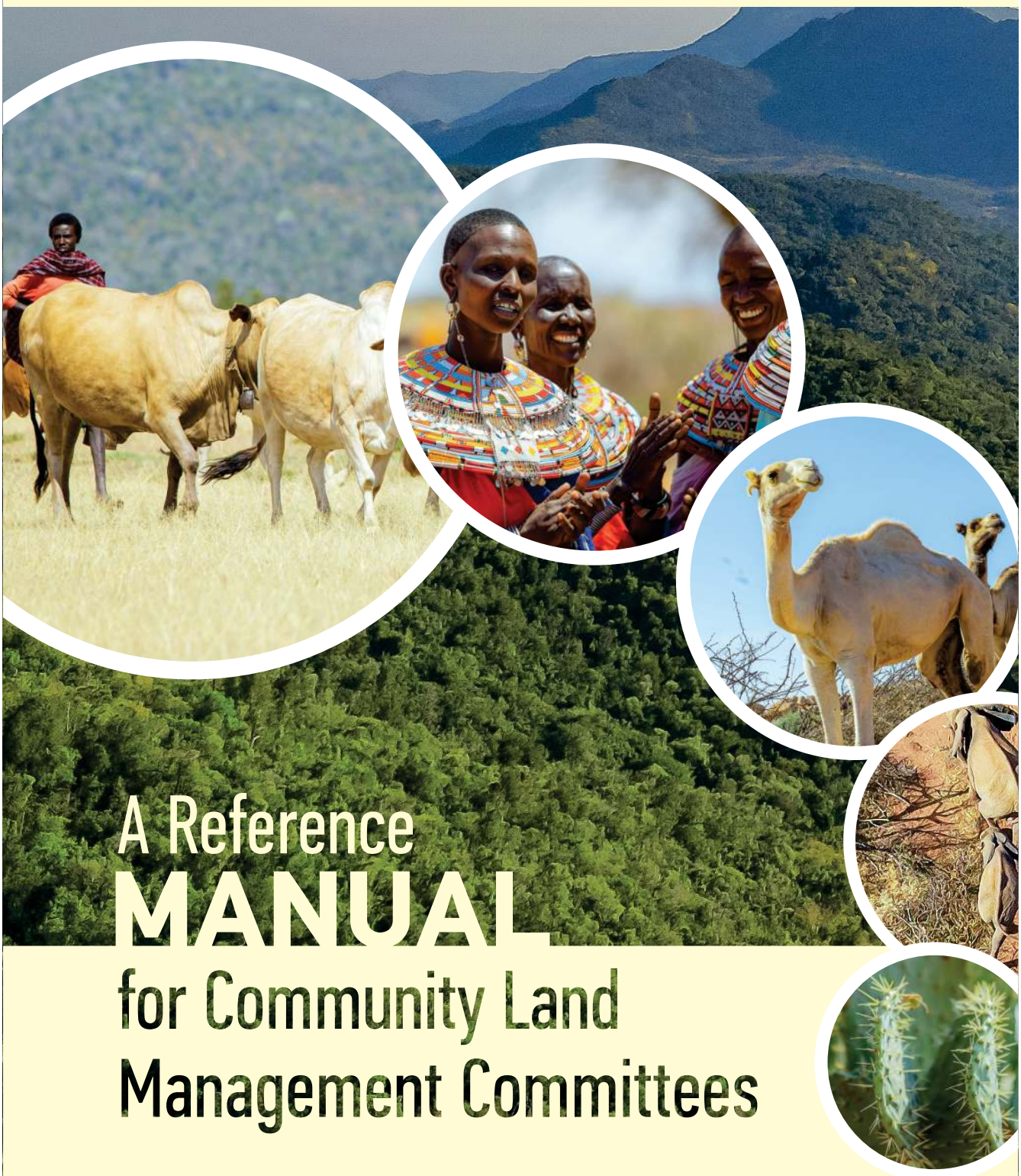
MINISTRY OF LANDS, PUBLIC WORKS, HOUSING AND URBAN DEVELOPMENT

STATE DEPARTMENT FOR LAND AND PHYSICAL PLANNING

NATIONAL LAND COMMISSION

Our Land, Our Wealth, Our Heritage



A Reference MANUAL for Community Land Management Committees

NAMATI

NATURAL JUSTICE

KWCA

Kenya Wildlife Conservancies Association

Living nature, Living people

AUTHORS: Andrew Khaemba, Dr. Mary Wandia, Robert Koech, Stephen Chebii, Esterina Dhoke, Joyner Koin, Joyce Kamire, Faith Ngina, Gladys Wairigia, Jacqueline Naami, John Leparsanti, Elijah Lempaira, Frank B Setek, Janet Parsanti, Ruth Okara, David J Arach and Amos Muli Musyoka.

Published in 2024

MESSAGE FROM THE CABINET SECRETARY



HON. ALICE WAHOME
Cabinet Secretary
MINISTRY OF LANDS, PUBLIC WORKS, HOUSING AND URBAN DEVELOPMENT

The enactment of the Community Land Act, Cap 287 marked a significant milestone in the pursuit of land tenure security for Kenya's Indigenous and Local Communities. It rekindled Communities' hopes that their constitutional rights to secure land tenure could be — and would be — realized. This transformative legislation empowers women, Indigenous and Local Communities by redefining leadership structures. It ensures accountability between community leaders and community members and facilitates meaningful engagement of all community members in land governance through the establishment of Community Assemblies and other progressive provisions. It protects the rights of minorities, children and vulnerable groups.

The Community Land Act, Cap 287 introduced a tiered governance structure, having the Community Assembly as the apex decision-making organ. The law has given elaborate roles to the county and national governments. Community Assemblies consist of all adults who have been included in the community register. A Community Land Management Committee (CLMC), comprising of between 7- 15 members carries out day-to-day operations affecting the Community Land. This committee is significant because their stewardship largely informs the success of the governance of the Community Land.

The Ministry with support from county governments and other partners have facilitated over 50 communities, most of whom are in Laikipia, Samburu, West Pokot, Turkana, Baringo and Garissa Counties, to register their Community Lands. The members of the CLMC have made significant progress as required of them under the law. These include convening annual Community Assembly meetings, developing registers for members and by-laws.

In the performance of their roles, CLMCs have been found to have deficiencies that are both procedural, statutory and regulatory. These have caused functional inadequacies. It is for this reason that the Ministry in conjunction with the National Land Commission, Namati, Natural Justice and Kenya Wildlife Conservancies Association have developed this manual.

It is the intention of the Ministry to ensure seamless implementation of the Act by Communities with the support of duty bearers and partners in former trust land areas and group ranches.

I therefore call upon the members of the Community Land Management Committees to refer to this manual while undertaking their pre- and post- community land registration mandate.

I also call upon our partners to collaborate with the Ministry in undertaking capacity building and dissemination of the manual throughout the country.

Thank you

MESSAGE FROM THE CHAIRMAN, NATIONAL LAND COMMISSION



Gershom Otachi Bw'Omanwa
Chairman|National Land Commission

Article 67(2)(c) of the Constitution mandates the National Land Commission to advise the National Government on a comprehensive programme for the registration of title land throughout Kenya. Further, pursuant to section 5(2) (b) of the National Land Commission Act, 2012, the Commission monitors registration of all rights and interests in land.

In actualizing part of the aforementioned mandates, the Commission in collabora-tion with Namati conducted a study on the 'Monitoring the Transition of Group Ranches to Community Land in Kenya'. The report, which was launched in Octo-ber 2023, established that approximately 15% of the Group Ranches had success-fully transitioned to Community Land. The study further revealed that that the communities that transitioned were expe-riencing challenges around compilation of the register of community members, involvement of the marginalized mem-bers of the community, management of community assembly meetings and elec-tion of representatives. The registered communities have been unable to de-velop land use plans which are a critical tool for proper management of the vast resources within the Community Land.

In this regard, the Ministry of Lands, Public Works, Housing, and Urban Development and the National Land Commission in collaboration with Namati, Natural Justice and Kenya Wildlife Conservancies Association developed this manual to guide the communities in pre-registration, registration and post-registration of Com-munity Land.

The development of the manual besides being timely also serves as a tool for strengthening the capacity of the Community Land Management Committee in guiding the Communities to realize land tenure security. This manual has broken down the complex legalese of the Community Land Act, Cap 287 into simpler and actionable steps.

The Commission appreciates the efforts of all the stakeholders who advocate for tenure rights for the communities.I encourage the stakeholders to work together and protect legal rights, social justice and environmental sustainability to effectively manage their land resources through participatory governance and sustainable practices.

MESSAGE FROM CSOs

The Community Land Management Committee (CLMC) Manual has been developed by the Ministry of Lands in partnership with the National Land Commission, Namati Kenya, Natural Justice, KWCA, and Communities. This is a practical guide to support communities in Kenya as they se-cure and steward their lands and natural resources. This manual is crafted to help Community Land Management Commit-tees—formed under the Community Land Act—fulfill their mandate effectively, em-powering communities to exercise their land rights with confidence and clarity.

The importance of community land ownership and management cannot be overstated. Secure land tenure is a foun-dational element for the social, economic, and environmental well-being of commu-nities, providing a basis for sustainable livelihoods, biodiversity conservation, heritage, and cultural preservation. How-ever, achieving this security is not without challenges. Legal and administrative procedures can be complex, particularly for communities. This manual aims to address these challenges by providing an accessible guide on navigating legal and practical processes, managing commu-nal land-based resources, and establish-ing strong governance structures within the CLMCs.

This manual offers practical steps for CLMCs in running the day-to-day affairs of their community; it is a tool for empowerment. By demystifying the steps and responsibilities involved in community land management, we hope to strengthen the capacity of CLMCs to uphold their communities' rights, respond to emerging challenges, and safeguard community lands for future generations.

We express our gratitude to all who contributed their insights and expertise to this manual—community leaders, policymakers, and CSOs. Your collective wisdom has been invaluable in creating a resource that reflects the lived realities of communities across Kenya.

It is our sincere hope that this manual will be instrumental in addressing the mistakes of the past, Improving accountability among community leaders, and allowing communities to live up to the vision of the Community Land Act

Namati - On behalf of the CSO partners

ACKNOWLEDGEMENTS

The successful completion of this manual was made possible through the unwavering support of a number of institutions and persons who gave logistical support, time and invaluable information.

First, I wish to express our sincere gratitude to Namati, Kenya Wildlife Conservancies Association (KWCA) and Natural Justice who provided the necessary logistical support during the various phases of the exercise.

Secondly, I wish to thank the leadership of the respective institutions, without whose support, accomplishing the exercise would have been an arduous challenge. Special thanks go to the Cabinet Secretary(Ministry of Land Ministry of Lands, Public Works, Housing, and Urban Development), Hon. Nixon Korir, (Principal Secretary, State Department for Lands and Physical Planning),Mr. Kennedy Njenga, (Director, Land Adjudication and Settlement-State Department of Lands and Physical Planning), Gershom Otachi, (Chairman, National Land Commission(NLC)), and Ms. Kabale Tache Arero(CEO, NLC) , Vivek Maru, (CEO, Namati Inc.), Eileen Wakesho(Director-LEC Program, Namati Kenya), Dickson Kaelo, (CEO, KWCA) and Sophie Adhiambo, (Manager, Natural Justice). I wish to thank all the institutions and staff who went out of their way to provide the requested information and useful feedback.

I also wish to acknowledge the members of the technical committee, bringing together the staff from partner institutions, specifically the State Departments for Lands and Physical Planning, Directorate of Land Adjudication and Settlement, the National Land Commission, Namati, Natural Justice and the Kenya Wildlife Conservation Association.

Special thanks to the authors: Andrew Khaemba, Dr. Mary Wandia, Robert Koech, Stephen Chebii, Esterina Dhoke, Joyner Koin, Joyce Kamire, Faith Ngina, Gladys Wairigia, Jacqueline Naami, John Leparsanti, Elijah Lempaira, Frank B Setek, Janet Parsanti, Ruth Okara and David J Arach.

This was indeed a worthy exercise, and it is the expectation of the Ministry that this manual shall go a long way in strengthening the capacity of the Community Land Management Committee (CLMCs) and ultimately the tenure security in community land.

Amos Muli Musyoka | Chairman, Technical Committee

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LIST OF ABBREVIATIONS:

ADR	Alternative Dispute Resolution
AJS	Alternative Justice Systems
CA	Community Assembly
CoK	Constitution of Kenya
CS	Cabinet Secretary
CSO	Civil Society Organization
CUC	Court Users Committee
CLA	Community Land Act(Cap 287 Laws of Kenya)
CLMC	Community Land Management Committee
DLAS	Director-Land Adjudication and Settlement
FPIC	Free, Prior and Informed Consent
GRA	Group Representatives Act
IPs	Indigenous Peoples
PWD	Persons with disabilities
TLA	Trust Lands Act

DEFINITION OF TERMS

Community: A consciously distinct and organized group of users of community land who are citizens of Kenya and share any of the following attributes: common ancestry, similar culture or unique mode of livelihood, socio-economic or other similar common interest, geographical space, ecological space, or ethnicity

Community Assembly: The highest decision-making organ of the community under the Community Land Act, consisting of adult members of the community who collectively make decisions regarding the management, use, and allocation of community land.

Community Land: Land declared as such under Article 63(2) of the Constitution; land converted into community land under any law;

Communal Tenure System: Unwritten land ownership practices in certain communities in which land is owned or controlled by a family, clan or a designated community leader.

Customary Land Rights: The enjoyment of land use that arises from customary, unwritten practice rather than written codified law.

Group Ranch: A form of communal land ownership where a group of individuals or families within a community collectively own and manage a specific area of land. This land is typically used for grazing livestock and can also serve as a valuable resource for pastoralist communities.

Group Representatives: Individuals chosen or elected to represent the interests of the members of the group ranch under the now repealed Land (Group Representatives) Act. These representatives played a crucial role in the decision-making and management of the group ranch.

Local Communities: Persons who share common attributes including ancestry and inhabit same geographic space

The Ministry: Refers to the Ministry of Lands, public works, housing and urban development, formerly known as the Ministry of Lands and Physical planning

BACKGROUND

I. PURPOSE AND INTENDED AUDIENCE OF THIS MANUAL

This manual sets out a practical roadmap for how Community Land Management Committees(CLMCs) can work with their communities to fulfill the requirements of the Community Land Act(CLA). It includes step-by-step explanations of activities that CLMCs can undertake together with their communities. It also includes a detailed narration of how CLMCs can handle the day-to-day management and administration of community lands.

This manual will describe the legally mandated roles and responsibilities given to CLMCs, highlight other important tasks and duties of CLMCs, and offer helpful tips on dealing with issues that every CLMC will face, such as financial management, maintaining and updating community registers, and enforcing by-laws. Several helpful tools and resources have been included at the end of this manual.

Statistics show that approximately 66% of Kenya's land mass consists of community land inhabited by indigenous and local communities.[1] Over 80% of this land is used communally for pastoralism or for hunting and gathering. Before the CLA, communities generally used their traditional customs and rules (mostly unwritten) to govern their land and natural resources.

Although CLMCs have very important roles, they do not own the community's land and they cannot decide to sell, lease, or give away land without bringing the matter to the Community Assembly(CA) for a vote. The CA consists of all adults over the age of 18 in the community who have been included in the community register.

This manual is intended for use by CLMCs, elected at a CA meeting or community members nominated by the community prior to formal CLMC elections. While this manual aims to be detailed and comprehensive, CLMCs will have slightly different roles and responsibilities depending on their own community's by-laws. As such, the manual focuses primarily on roles mandated by the CLA and community land governance issues that most CLMCs will face.

1 Kamere Mbote P, Land tenure, land use and sustainability in Kenya: Towards innovative use of property rights in wildlife management IELRC WORKING PAPER 2005 – 4.

II. CURRENT CONTEXT OF COMMUNITY LAND IN KENYA

The Constitution of Kenya, (CoK) recognizes three categories of land: public, private and community land. Article 63 of the CoK defines "Community Land" as:

- Land lawfully registered in the name of group representatives (former group ranches) under the provisions of the law.
- Land lawfully transferred to a specific community by any process of law.
- Any other land declared to be community land by any process of law.
- Land that is:
    1. lawfully held, managed, or used by specific communities as community forests, grazing areas, or shrines
    2. ancestral lands or lands traditionally occupied by hunter-gatherer communities
    3. lawfully held as trust lands by the county governments (former trustlands)

The CoK also outlines rights and principles that guide communities in managing their land and natural resources in an inclusive and participatory manner. A few of these include:

- Women and men have the right to equal treatment, including the right to equal opportunities in political, economic, cultural, and social spheres. (Art. 27(3))
- All elective and appointive bodies should abide by the two-third gender rule (Art. 27(8))
- Land shall be held, used and managed in a manner that is equitable, efficient, productive, and sustainable. (Art. 60(1))

The CoK also required Parliament to pass a law enabling communities to register and receive title to their lands. This law – the **Community Land Act(CLA), Chapter 287 of the Laws of Kenya** – was passed in 2016 and gives more details about how communities can claim legal rights over their land and natural resources.



SECTION ONE: INTRODUCTION TO COMMUNITY LAND

1.1: THE COMMUNITY LAND ACT, CAP 287 AND ITS REGULATIONS

When the CLA was enacted, it repealed other laws that governed community land namely the Trust Lands Act (TLA) and the Land(Group Representatives) Act (GRA). The CLA, under section 47(1), requires that all Group Ranches and Trust Lands be registered as "community lands". After going through the legal process of registration, a community's land will be fully owned and managed by the community members themselves, with the same legal rights and protections as privately held land, as per section 5(3) of the CLA.

The Community Land Regulations(CLR) were passed as subsidiary legislation to the CLA to give guidance on the procedural aspects of implementation of the CLA. They give guidelines on how communities can conduct elections for CLMCs, draft by-laws and settle disputes. They also contain various forms that communities and other persons would need when making applications for various purposes in relation to community land.

1.1.1: WHAT IS "A COMMUNITY" UNDER THE COMMUNITY LAND ACT?

The CLA (sec.2) defines a "community" as, "A distinct and organized group that shares any of the following attributes: 1) common ancestry 2) similar culture or unique mode of livelihood 3) socio-economic or other similar common interest 4) geographical space 5) ecological space or 6) ethnicity."

1.1.2: WHAT IS THE COMMUNITY LAND MANAGEMENT COMMITTEE (CLMC)?

The CLMC is the governance structure established by the CLA to oversee the process of registration of the community, including the development of its Constitution and Regulations, the registration of the land, and management of the day-to-day affairs of a registered community's land and natural resources. CLMC members bring on board experience in land governance and can help solve land-related issues and challenges as they arise. A well-functioning CLMC can help a community thrive, avoid conflicts, and ensure that all decisions about land and natural resources are in the community's best interest.

1.1.3: WHO CAN BE A CLMC MEMBER?

A CLMC member can be any community member, provided they are above the age of 18 and are elected by members of the Community Assembly. The law provides that communities must not discriminate against any aspiring CLMC member based on their gender, ethnicity, social, marital, and economic status.

1.2: THE ADMINISTRATIVE STEPS BEFORE THE COMMENCEMENT OF COMMUNITY REGISTRATION AND ESTABLISHMENT OF THE CLMC

Before the registration process and establishment of CLMCs, there are a number of administrative steps that must be undertaken by the government.

Step 1	Publication of a gazette notice declaring community land registration units by the Cabinet Secretary (CS) in charge of land matters (Community Land Regulations(r.10)
Step 2	Gazettement of land adjudication officers for each community registration unit by the Cabinet Secretary (CS)/Director Land Adjudication and Settlement (DLAS) (sec. 11(2) of CLA)
Step 3	Designation of Community Land Registrars for every registration unit by the Chief Land Registrar (sec. 9 of CLA)
Step 4	Preparation and submission (to the Ministry of Lands) of an inventory of unregistered community land by County Government (CG) – Form CLA 6 and the preparation of inventory of undissolved Group Ranches by DLAS (sec. 8(2), (3) of CLA)
Step 5	Civic awareness and sensitization of communities conducted by CS/DLAS, CG, NLC – Section 8(2) of CLA
Step 6	Unregistered communities submit applications for Recognition of Interest or Claim on Community Lands – Form CLA 1 to the Community Land Registrar

1.3: INVENTORY DEVELOPMENT AND COMMUNITY PARTICIPATION

The Community Land Regulations (r.10) provide that the CS shall declare community land registration units in accordance with the Land Registration Act (Cap. 300). The Community Land Regulations (r.12) also provides that every county government shall, in consultation with communities, prepare and submit to the CS an inventory of all unregistered community land within the county. Upon receipt of the inventory submitted, the CS shall develop and publish in the Gazette a comprehensive adjudication program.

The inventory shall contain the following details: a) the name of the community occupying the land or laying a claim on that land b) locality of the land c) the description of the perimeter boundary d) the current use of the land e) any other relevant information.

Once the county government, upon consultation with communities, develops and submits an inventory to the Ministry, it will be accepted if it fulfills the set requirements as indicated above. The CS will gazette the adjudication program as provided in law. Community par-

ticipation in the development of the inventory is paramount because this has a direct bearing on how the communities get to be defined in terms of actual land claim, ownership, and membership.

If the county government does not submit the inventory within the specified period, the CS, in consultation with the communities, prepares an adjudication program based on the existing data. Upon the publication of the comprehensive adjudication program, the CS shall issue notice of intention to commence demarcation, survey and registration of community land in Form CLA 7. Any person with a claim on the land in the program shall be required to appear in person to present their claim in Form CLA 8 to the adjudication team for consideration.

1.4: PREPARATION AND SUBMISSION OF CLA FORM 1

After the development and submission of the inventory, and the gazettement of the adjudication program, respective communities can commence the registration process by filing a claim of interest over community land through the submission of the CLA Form 1, which is submitted by the community to the community land registrar. The Form should:

- be submitted in duplicate with the duplicate copy being retained by the community
- be signed by at least fifteen members of the community
- be accompanied with the prescribed fee.

Upon receipt of the CLA Form 1, the community land registrar shall verify the interest, and if found valid, shall:

- Invite all members of the community with communal interest to a public meeting for the purpose of electing the members of the CLMC.
- The invitation notice shall be published in at least one newspaper of nationwide circulation and announced in a radio station of nationwide coverage in both official and local language
- The notice should include the date, time, place and purpose of the meeting. The registrar may also use other available means of communication including putting notices at the headquarters of the respective county, sub-county, wards, location, and in strategic places where the community land is situated.
- Copies of the notice shall be delivered to the administrators for both the national and county government in charge of the county, sub county, wards and location where the community land is situated.



SECTION TWO: REGISTRATION PROCESS

2.1: REGISTRATION OF THE COMMUNITY AS A LEGAL ENTITY

2.1.1 ELECTION OF CLMC AND OFFICIALS

The CLA requires the election of members of the CLMC by a Community Assembly. Elections should be held every three years. The election rules are prescribed by the Community Land Regulations as follows.

ELIGIBILITY OF CLMC CANDIDATES

Under Rule 5.1, a registered member of the community is eligible for election as CLMC member if he/she:

- is an adult member and possesses a National Identification Card
- meets the requirements of Chapter VI of the CoK
- has not be adjudged bankrupt (declared by court as not able to meet their debts when they fall due)
- has not been convicted of a crime involving fraud or dishonesty

Although not a legal requirement, it is advisable that potential candidates for CLMC should declare anything that might create a conflict of interest if they are elected to serve.

NOMINATION

The Regulations contain by-laws in the Third Schedule which communities can adopt. These include rules on nomination and election of the CLMC in clause 12 and 13.
The recommended steps for nomination and elections are as follows:



Sensitization and Awareness - The registered members of the community should be informed in advance by the community land registrar of the upcoming nominations who shall do this by placing notices in public and accessible places such as places of worship, markets, schools and hospitals and during community meetings. The community members should also be educated on rules on eligibility during such meetings.



During the Community Assembly meeting, The Registrar shall announce the vacant positions of the CLMC. He/she will then invite members of the Community Assembly to nominate candidates.



All the nominated members shall be proposed and seconded by at least two members of the community assembly.

The Registrar shall ensure that the required gender balance for the nominated members is met.

The Registrar will publicly confirm and declare the final list of nominated candidates who meet the criteria required.

ELECTION

Voting of the nominated candidates at the Community Assembly can be done through a secret ballot or any other method which can include hand count or queuing (known as mlolongo), as long as it is approved by the community assembly. The by-laws of the community could provide guidelines on the distribution of elective positions.



SECRET BALLOT

This is a method of voting in which each person indicates their choice on a piece of paper so that no one else knows how they have voted. The Community Assembly will be responsible for designating a specific day for conducting elections so that ballot papers for nominated candidates can be prepared.

VOTING BY ACTUAL COUNT

Hand count

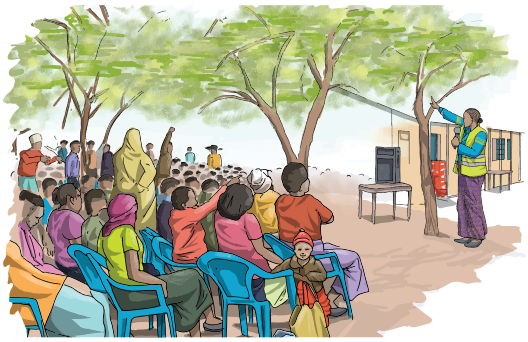
A method in which members raise their hands to show their vote. This method is best used only in small groups where everyone can see each other.

In this method, each of the nominated candidates shall be called out and those who support their election, shall be requested to raise their hands. The raised hands will be counted and tallied. The candidates with the highest count shall be declared to have been elected.



Stand and count voting

If the results of the count by show of hands is not accurate, the members can be requested to stand to be counted. Each member in support of a particular candidate will be asked to stand and will be assigned an actual number during the counting process and asked to sit once counted.





Queue voting - Mlolongo

The voting system where the voters line up in queues in front of a picture of their preferred candidates or in their physical presence. In some instances, several queues can be formed for one candidate if space does not allow.

ELECTION OF EXECUTIVE OFFICIALS

The members of the elected CLMC shall be required within seven days to elect the four executive officials, that is, the chairperson, vice-chairperson, secretary and treasurer. Due consideration should be given to minority groups such as women and persons with disabilities.

2.1.2 BY-LAWS DRAFTING PROCESS

The CLMC are mandated to coordinate the by-laws drafting process. The by-laws are rules and regulations that will guide governance, use and management of community land and resources. The process should be consultative and participatory. Below are the proposed steps.

CONVENING A COMMUNITY ASSEMBLY MEETING

The CLMC will convene an inaugural community assembly meeting for the purposes of informing the community members about the by-laws drafting process. The CLMC may co-opt members of the Community to support the by-law drafting process.

DOCUMENTING CUSTOMARY PRACTICES AND RECEIVING INPUT FROM MEMBERS OF THE COMMUNITY

The CLMC will engage with the community members with knowledge of customary norms to document existing customary practices that are aligned to the CoK and existing laws. These can include grazing patterns, natural resource management, dispute resolution, dealing with neighboring communities, governance of community land and land rights (use, access and ownership), and decision-making processes.

Additionally, the CLMC will convene forums with the community to receive feedback and input on the appropriate rules and regulations. The Committee shall ensure the time and days selected for the by-laws drafting forums are convenient. It is advisable to convene these forums within the existing villages/zones

WRITING THE BY-LAWS

The CLMC will prepare a written draft of the by-laws. The Committee may choose to engage relevant stakeholders in drafting the by-laws but must remain the primary author of the by-laws. The committee will be guided by the:

- Constitution of Kenya
- Community Land Act
- CLA Regulations
- Customary laws and practices
- Any other applicable laws

VALIDATION AND ADOPTION OF THE BY-LAWS

The Committee will present the drafted by-laws in various zones/villages for validation and receive any additional input. The committee shall then retreat to incorporate all the views and inputs in the final draft of the by-laws. The CLMC will afterwards convene a Community Assembly meeting for the purpose of adopting the by-laws. The below process shall be followed during adopting of the by-laws by the Community Assembly:

i. The Chairperson (or any other delegated person) shall read through the drafted by-laws
ii. The Community Assembly shall be given opportunity to critique and give their input to the draft by-laws
iii. The Chairperson shall thereafter present the by-laws to the community assembly for adoption

2.1.3 COMPILATION OF REGISTER OF MEMBERS OF COMMUNITY

The register of members of the community is a critical component of the community land registration process. The register identifies members that form part of the community and is also a basis for decision making. Compilation of the register therefore becomes one of the significant responsibilities of the CLMC. The template of the register is annexed to this manual (See Annex II).

The member details in the register shall include:

Full Names of the member, as per the National Identification Card or Birth Certificate Number in the case of minors
National Identification Card No./Passport No. or Birth Certificate No., whichever is applicable
Gender
Contact details (Telephone/Email)
Date of Registration as a member
Date of Cessation of membership
Special needs
Signature or thumbprint of the member



COMPILATION AND VALIDATION OF THE INITIAL REGISTER OF MEMBERS

To ensure that the process of compiling the register is conclusive and inclusive, CLMCs can use the following strategies:

- Identify members of the community, preferably elders, to assist CLMCs in compilation of the register, and specifically, verify the relevant details
- Designate specific days and places that are convenient to record the details of the community members.
- Convene a community assembly meeting for the purposes of validating and adopting the register of members.

UPDATING THE REGISTER OF MEMBERS

The register of members is updated annually to achieve the following objectives:

- Include members whose names are in the register of members of the community upon registration
- Include new members born or married into the community
- Include persons who gain membership by the resolution of the Community assembly
- Include persons who gain membership through a court order
- Remove persons who have since ceased to be members

The committee shall present before the community assembly, the list of new members to be admitted or removed, for their approval.

2.1.4 DESCRIPTION OF COMMUNITY LAND

The description of the community land shall depict the following:
- Geographical extent, using a sketch/GPS coordinates
- Locality including the county, sub-county, location and sub-location
- The approximate size in hectares
- Current user of the community land e.g. conservation, agricultural, etc

2.1.5 APPLICATION FOR REGISTRATION AS COMMUNITY USING CLA 3

Form CLA 3 is used by CLMCs to apply to the Registrar for registration of the community. It is accompanied by the following documents:
- Name of the community
- Register of members of the community
- A certified true copy of the minutes of the meeting at which it was resolved to seek application for registration
- Rules and regulations of the community (by-laws)
- Description of the interest in land being claimed by the community, including a sketch map.

2.2: REGISTRATION OF COMMUNITY LAND

2.2.1 ADJUDICATION AND SURVEY

Adjudication is a process of ascertaining rights and interest in community land. This process is carried out by an adjudication team from the national government. The CLMC is part of the adjudication team and will guide on the following:

- Survey of the perimeter boundary
- Identification of existing public land
- Reservation of land for public use
- Application and validation of customary rights of occupancy

Before the CLA, group ranches were defined as demarcated areas of range land, to which a group of pastoralists who graze their individually owned herds have official land rights. The Land (Group Representatives) Act was the basis of registration of group ranches in many pastoral communities, most of which have maintained their original boundaries and have no need of fresh adjudication when transitioning to community land.

2.2.2 DISPUTE RESOLUTION DURING ADJUDICATION

Any disputes arising from community land may be resolved through alternative dispute resolution mechanisms at first instance as provided for in the Act. These include using traditional governance structures such as elders. Where the community is unable to resolve the dispute arising from community land recognition, adjudication and registration process within a registration unit, Rule 25 of the CLR states that the complainant shall refer the dispute to the land adjudication officer using Form CLA 11 who shall record the dispute in a register in Form CLA 12. An ad hoc committee may be appointed for purposes of settling the dispute. A party dissatisfied with the decision of the ad hoc committee may appeal to the courts within 30 days.

2.2.3 OBTAINING CERTIFICATE OF REGISTRATION

Upon the completion of the adjudication process, the CLMC will obtain the certificate of registration of community land from the Registrar (Form CLA 4).





SECTION THREE: GOVERNANCE AND MANAGEMENT OF COMMUNITY LAND

3.1: DUTIES, POWERS AND RESPONSIBILITIES OF COMMUNITY LAND MANAGEMENT COMMITTEE IN ADMINISTRATION AND MANAGEMENT OF COMMUNITY LAND

The following are key functions of CLMCs:

3.1.1 PARTICIPATORY LEADERSHIP AND DECISION MAKING

Promote cooperation and participation among members in dealing with matters regarding the rights affecting community land. CLMCs must ensure they obtain their consent or approval on all matters regarding the disposition of land by 2/3 of its registered members.[2]

3.1.2 MAINTENANCE AND UPDATING OF REGISTER OF MEMBERS

Ensure that the register of members is updated annually and submit the names to the Community Land Registrar. CLMCs need to develop an annual calendar with specific periods, times or events when the community register can be updated. This will ensure inclusion of minorities. The law requires the CLMC to maintain a register of all community members, which will include minors. This will avoid a situation in which vulnerable individuals such as orphans or unmarried young girls struggle to have their names included in the register upon attaining the age of majority, due to the loss of direct family ties to members and patriarchal bias.

It is good practice to also maintain another register of adult members who form the community assembly. This will be for purposes of easing decision making and elections of CLMCs.

Communities are encouraged to maintain a soft copy of the registers which can be easily accessed and updated. However, caution should be taken to ensure that the details of the hard copy register match those in the electronic version.

2 Section 15(5), CLA.

3.1.3 LAND USE MANAGEMENT AND PLANNING

Coordinate the development of community land use plans in collaboration with the relevant authorities, e.g., county and national government agencies and departments. It is the role of the CLMC to ensure that the community land use plan is followed by members including enforcing grazing plans and rotations.

3.1.4 RULES AND REGULATIONS (BY-LAWS)

Enforce rules and regulations (by-laws) adopted by the community assembly to govern the operations of the community. These prescribe rules for good governance, membership, conservation and rehabilitation of the land, land use and physical planning, regulation of investments on the land, and determination of terms of any leases granted for purposes of investment. CLMCs should publicize and sensitize the community on the rules and regulations and follow up to issue penalties as prescribed in the by-laws where rules are not followed.

3.1.5 DISPUTE RESOLUTION

Resolve disputes between members or neighboring community lands. The possible disputes that can occur in connection to community land in Kenya include:

- Disputes between different communities over community land interests
- Disputes arising within the community
- Disputes between the community and county or national government
- Disputes between neighboring county governments for community lands that traverse county boundaries

These disputes can arise before formal registration of their community land or after registration. Whether conflicts arise before, during, or after registration,the CLA[3] emphasizes the use of alternative dispute resolution (ADR) mechanisms and customary law to resolve the disputes. The main ADR Mechanisms are:



MEDIATION:

In the event of a dispute, the CLMC shall encourage the parties to resolve it through mediation. In such a case, the following procedure shall be followed:

- Identify the venue where the mediation will take place.
- Identify mediator(s) from the community
- The mediator(s) will bring together persons to a dispute and settle the dispute by:

convening meetings for the hearing of disputes from parties and keep record of the proceedings
establishing ground rules for the conduct of parties which include structuring and managing the negotiation process and helping to clarify the facts and issues
helping the parties to resolve their dispute
If an agreement is reached during the mediation process, the agreement shall be documented in writing and signed by the parties at the conclusion of the mediation.

3 Section 39-41

ARBITRATION:

Arbitration is a procedure in which a dispute is submitted, by agreement of the parties, to one or more arbitrators who make a binding decision on the dispute. In choosing arbitration, the parties opt for a private dispute resolution procedure instead of going to court. Where a dispute relating to community land arises, the CLMC can encourage the parties to refer the dispute to an arbitrator. In such instances, the provisions of the Arbitration Act (CAP 49) relating to the appointment of arbitrators shall apply.

Where all efforts of resolving a dispute under this Act fail, a party to the dispute may refer the matter to court. The Court may confirm, set aside, amend or review the award (decision) of the arbitrator.

NEGOTIATION:

Where a dispute relating to community land arises, the aggrieved parties are allowed to meet to resolve the dispute. They need not involve a third party in the negotiations. Efforts need to be made to resolve disputes as soon as they arise. It is an ADR mechanism that is voluntary and informal. There are no prescribed rules in negotiation. The aggrieved parties adopt the rules they deem fit.



3.1.6 TRANSFER OF POWER

Hand over power to incoming members on expiry of their term of office or upon being voted out. The outgoing Secretary should submit Form CLA 2 indicating the change of CLMC to the Registrar of Community Lands within 14 days of elections. The outgoing committee should also hand over all the other documents and records to the incoming committee. These documents include books of accounts, title to land, minutes, register of members, handing over reports, change of signatories of the community account, contracts etc.

3.1.7 MANAGEMENT OF NATURAL RESOURCES

Management of natural resources on community land in a consultative, productive and sustainable way for the benefit of the whole community, including future gener-ations. Community land should be owned and managed in a productive manner that conserves the environment. The CLMC should organize and lead regular community meetings about the use and management of community land and natural resources. Benefits from the use of natural resources must be shared equitably among community members. Information about any money generated from natural resources on the com-munity land should be presented to the Community Assembly at least annually or upon request by community members.

3.1.8 NEGOTIATIONS

Representing the community in meetings with outsiders, including neighbors, investors, companies, and government officials. The community by-laws should give the CLMC power to attend official meetings on behalf of the community.

3.1.9 FINANCES

Managing community finances in a way that is accountable, transparent, and support-ive of the community goals. The CLMC needs to establish a sustainable financial man-agement practice. The following practices are critical to good financial management:

- **Open a bank account with at least 3 signatories** who should be either the chair-person, the vice-chairperson, treasurer or the secretary. All revenue generated by the community should be kept in the bank account and any bank account opened should be registered in the name of the community. Community by-laws should clearly state rules on how cash is to be handled including who may deposit or withdraw money from the community's bank account.

Note: Revenue generated from community land and natural resources should never be kept in a community member's personal bank account.

- Where bank accounts are not easily accessible, petty cash should be **stored in a secured cash box** that has at least three different locks so that no single commu-nity member is able to access the cash.

Note: Keeping large amounts of cash on hand often leads to theft, corruption, misuse of funds, and conflict.

- **Handle cash in a transparent and responsible manner**. Cash can be easily mis-placed or misused, so it must be handled carefully. The following are basic rules for handling cash properly:

Develop a budget for all related activities, programs or projects of the community to guide expenditure and cash withdrawals with approval by the Assembly
Be clear about handling community money. The community should ensure that there are clear, written rules about who and how the money can be accessed and used
Manage and monitor cash advances. Any cash given to community members to work on community projects should be accounted for.

Communities to make sure they get a receipt for every purchase and payment made using community funds. Proper issuance of receipts helps to protect against misuse of cash. Communities should purchase a pre-numbered duplicate receipt book and write all receipts for money received. Receipts should include the date that they are issued. The community should keep copies of all receipts issued.

- Keep **clear financial records.** The CLMC needs to maintain up-to-date financial records, which is critical to proving good financial management and uncovering bad financial management. Communities should establish simple systems to keep track of their finances. Financial record keeping (called accounting) can be kept manually in a book of accounts or in a computerized format using accounting software. The record of accounts is to be maintained by the treasurer and kept in safe storage that is accessible for community inspection. A finance/investments sub-committee may be established to help with this.
- Carefully **check bank statements**. If a community has a bank account, the account books should be checked against bank statements regularly, so as to identify any errors or omissions made by the bank or the community. Any major differences between a community's account books and the bank statements should be investigated and explained.
- Periodic **audit of accounts** should be carried out and provided for in the by-laws. An audit is the process by which an independent person(auditor) examines the books of accounts that have been prepared as a reflection of the financial position in order to verify their accuracy and correctness. This way, a community is able to hold to account their leaders who manage the financial resources on their behalf.

3.1.10 DOCUMENTS

Safe keeping of critical and important Community Land documents on the CLMC. Some of these documentations and records include the following:

Certificate of registration of the community: A certificate of registration gives the community the corporate personality status to sue and be sued, do things independent of its individual members in its name, trade, acquire property etc.

Community land title: The community whose name appears on the title document is the absolute registered owner of the said parcel of land. This is the 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: It shows the current status of the land and indicates whether there are any subsisting encumbrances, leases, or charges on the property. It also shows the size of the land and the date of registration of the said document. A search is valid for three (3) months.

Copy of the Green Card (where relevant): It shows the land's history. Whereas an official search shows the current status of the land as of the date of application, the Green Card shows all entries on the land since the day of first registration including all previous registered owners.

Declaration (Obtained during adjudication process): This is a document that describes the land. It usually describes the location of the land using landmarks and physical features like rivers, mountains, hills, roads, etc. It is the first document that is generated before a map is issued or a land title is generated.
Registered Index Map (RIM) deed plan: The map shows the exact coordinates and location of the land. Location and beaconing of land are mainly done by a surveyor who locates the coordinates and the position of the land. When doing beaconing or surveying of the land a person must insist on a licensed surveyor or a government surveyor to demarcate and beacon your 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 and should only be used by the authorized member/s of the CLMC.
The community constitution / by-laws: The constitution spells out the rights, powers, duties and responsibilities of community members and the CLMC. It also spells out the term of office of the committees as well as how benefits sharing on community resources will be shared. The constitution is indeed a guiding document
Community land use maps
Minutes and resolutions of community assembly meetings
Minutes and resolutions of the CLMC
Contracts, agreements, leases and other documents e.g. certificate of customary right of use and occupancy that affect the community land rights

It is important that CLMCs protect these documents from any damage that could be occasioned by the following risks: fire, water, theft, accidents, loss or natural disasters. Some of the options that can be considered by the CLMC to ensure safe custody of community land documents and records are:

- Safe deposit box: Safe deposit boxes can be rented for a small fee from financial institutions like banks. This option provides a high level of security and protection from theft and disasters.
- Safes: modern safes are reliable for storing crucial documentation. They can be stored at home, office or undisclosed storage institutions. Safes offer features like fire and flood proofing, key locking, combination or digital locks, and bolt attachments.
- Lawyers: Advocates can act as custodians of sensitive documents such as title deeds.
- Digital copies: In addition to physical storage, it is also advisable to consider digitizing the documentation e.g. through scanning and storing them securely online. This provides an extra layer of protection against loss.

3.2 HOW CAN CLMC BETTER PERFORM ITS FUNCTIONS & DUTIES?

3.2.1 MEETINGS

1. **Conducting CLMC meetings:** CLMC meetings should be held according to the by-laws or needs and availability of the members but at least once in every 3 months. The quorum is normally stated in the by-laws of the community but should normally be ⅔ of the CLMCs. Such meetings should encourage women, youth and other minority groups such as PWDs to participate and share their ideas by choosing an appropriate venue, time and communicating the same in a timely manner. The person chairing the meeting should also encourage the more quiet or reserved CLMC members to air their opinions. This might mean that members could take turns in giving their opinions and not cutting anyone short when they are speaking.
2. **Community assembly meetings:** The by-laws should give the details of the quorum and procedure for conducting a community assembly meeting. Special meetings are usually held to take a vote when the rights relating to the land are affected, for example, when a new investment is proposed or the community land is to be converted into private land. CLMCs need to identify days where community members are easily available for them to hold community meetings.
3. **Annual general meeting (AGM):** An AGM for the community assembly should be held once a year at a specified date usually stipulated in the by-laws. During deliberations, different population groups can be separated to ensure there is full participation. For example, the women, young men and elders can sit in different groups to discuss a matter and then choose a representative who will share with the larger group. This approach is useful especially where cultural norms discourage free interaction and sharing between different age and population groups.

3.2.2 OBTAINING QUORUM FOR MEETINGS:

The community assembly is the decision-making body for the community especially on critical matters such as conversion of the land and investments on it. For any land disposition, sec.15(5) of the CLA requires the consent of ⅔ of the registered members. Agreements with investors require the consent of ⅔ of adult members at a community assembly in which ⅔ of the adult members are present. Obtaining such a quorum might prove very difficult, especially for bigger communities. CLMCs can recommend by-laws to the assembly for effective participation which could recommend the following steps:

- Adult members of the community can be grouped into smaller units such as villages, zones or homesteads. The number of members from each unit must be clearly defined.

- Each of the above units can then nominate representatives and these should include CLMCs. Such representatives can then be tasked with mobilizing their respective units for a meeting to discuss and take a vote on specific issues as they arise. The by-laws can include rules for conducting village/unit level meetings on things such as how members will be notified, who will record the proceedings of such meetings and how voting will be done.
- The representatives could then count all the votes and present the same to the CLMC during a special meeting or at the community assembly. All the votes could then be tallied and read aloud during the community assembly meeting.
- If the total votes cast make up at least $^{2}/_{3}$ of the community assembly then the majority decision of the members will count as the decision of the community assembly.

3.2.3 OTHER USEFUL TIPS FOR CLMCS

- **Sub-committees:** CLMC may establish sub-committees, to address specific key issues and interests of the community including grazing, conservation, community development and investments, finance etc. Sub-committee members are drawn from the CLMC and can co-opt other community members. The sub-committees report to the CLMC and should have clear terms and codes of conduct to address the maximum number of sub-committees that can be established - good practice is that there should not be more than three sub-committees with five members each.
- CLMC must hold meetings for **follow-ups on the projects** they are undertaking on behalf of their communities, at least once in 3 months.
- Create **open structures** for community members to reach them physically and remotely ie having a physical community office where the CLMC is hosted, having a community email address,
- **Timely communicate** decisions or recommendations of committee to community
- Always serve in the **collective best interest** of the community
- Smooth and **complete handover** to the incoming CLMC when term expires

3.2.4 A CLMC MEMBER MUST NEVER DO THE FOLLOWING:

- Unilaterally vary decisions passed at AGM
- Conduct themselves as if they are the landowners excluding their community
- Exceed their term of office; they should not hold office for more than 2 terms of 3 years each
- Withhold crucial information or documents from community e.g. on proposed and on-going investments, financial information
- Make substantive decisions on land e.g. leasing, investment, conservancy development, land use and development planning, **without consulting and approval** by community assembly
- Keep or store money, property and official documents of the community at their personal houses or personal banks.

3.3 GOOD GOVERNANCE AND LEADERSHIP

3.3.1 PRINCIPLES OF GOOD GOVERNANCE

Ethics and good leadership: For CLMCs to have the capacity to govern well, it is important that they have certain qualities that make them good leaders. Such qualities include integrity, honesty, transparency and accountability. These are discussed below:

	Integrity: A CLMC member needs to be truthful, reliable and consistent in standing up for what is right and fair. This means putting the community's interests first before their own and not being compromised by influential persons. This also means that they need to have a level of independence in their thinking.
	Transparency: This means that a CLMC member needs to disclose or make available all the information relevant to other community members in a timely manner.
	Accountability: A CLMC member should be able to account for all their words and actions with respect to their role and bear responsibility for any loss or damage. In this way, the community ensures that their rights are protected.
	Communication: This requires the relaying of key information in a regular, timely and appropriate manner. It also requires one to be a good listener, state clearly what they mean and use the appropriate channels to deliver a message.
	Courage and resilience: A leader must show courage in the face of challenges. This does not mean that one should not be afraid, but a leader should never be afraid to take action because of fear, especially when they are right. Resilience means the ability to help the community go through a challenge without giving up.

3.3.2 GENDER JUSTICE AND INCLUSION

CLMC members are required to ensure that women, who would typically compose half the community population, are not only recognized as rightful members in the community register, but also included in governance and leadership. Inclusion can reflect in the following:

- **CLMC leadership:** CLMC executive officials have major responsibilities within the CLMC. Due to cultural barriers, many women are discouraged from vying from executive positions. The CLMC members should create by-laws that can encourage rotational leadership in these positions and therefore have more women nurtured as leaders. Further, the CLA does not state that women should compose a third of the representation of the CLMC. They can be as many as two thirds of its composition, as long as they don't exceed $^{2}/_{3}$ of the total membership of the committee. Youth and PWD(Persons with disability) representation within the CLMC are also not to be regarded as men's positions, women too can be encouraged to fill such positions.

- **Recognition and membership:** The CLA (sec.30) states that adult women who are members of a community should be included in the community register as well as their spouses and children. PWDs should also be included in the register and allowed to participate in land governance. Children born to members of the community should automatically be considered members of the community, regardless of the marital status of their parents. Once they attain the age of the majority, women should also be included in the community register of the CA regardless of their marital status. By-laws that exclude single women and children born out of wedlock from membership are against the constitutional principle of non-discrimination. To ensure inclusion, communities should keep separate registers that would include the children of the members and another with the names of the community assembly members.
- **Minority communities/ "foreigners":** People who do not share any ethnic or cultural ties but have resided in a specific community for a considerably long time should be given the option of making an application for membership subject to the fulfillment of certain conditions that the by-laws can recommend. This discourages alienation and discrimination within the community and is in line with the constitutional principles that encourage national cohesion and inclusiveness.

3.3.3 FREE, PRIOR, AND INFORMED CONSENT (FPIC)

FPIC refers to the right of Indigenous Peoples and local communities to consent on a free, prior and informed basis, to development and investment initiatives that affect them and the lands on which they live. The consent must be given voluntarily without coercion, intimidation, or manipulation. It is recognized in the international human rights law, specifically derived from their right to property through ownership or traditional use. FPIC protects the rights of IPs and local communities to land, resources, full and active participation and enables them to negotiate the conditions under which the projects will be designed, implemented, monitored and evaluated in their territories. However, FPIC is not an absolute power but a standard that guarantees the land and resource rights of indigenous peoples.

Its various elements are discussed below:



FREE

- Information should be delivered freely. and A community should be in a position to act or make decisions freely,through channels agreed by the community, and without control by its leaders, another community, government or the investor.
- This means consent is given voluntarily, without coercion, manipulation, intimidation or externally driven expectations or timelines.
- This means the process is self-directed by the community, with all community members given free and equal opportunities to participate regardless of gender, age or standing, including women, youth and PWD.



PRIOR

- The consent of the community should be sought far before the start of activities, at the early stages of a development of investment and when need arises to obtain approval from the community.
- The community should be allowed time to understand, access and analyze information on the proposed activity, with respect to community timelines.
- FPIC is therefore a continuous process, before, during, at the close of the project and after the project (M&E).



INFORMED

- The communities must be able to make informed decisions about the project.
- Information should be accessible, clear, consistent, accurate and transparent.
- Information should be delivered in the local language and in a culturally appropriate format, with complete coverage of both the positive and negative impacts.
- Information delivery should respect cultural norms and timeframes compatible with the communities, ensuring human rights principles are observed but also putting into consideration other decision-making structures that have been agreed upon.
- Information should be delivered with ample time for the community to deliberate. What is considered 'ample time' depends on the circumstance and the issues under consideration.



CONSENT

- The community must be able to make collective decisions through a mutually agreed decision-making process.
- The decision may be a "yes" a "no" or a "no with an option to reconsider when certain facts change".
- The process of acquiring consent should be self-directed by the community – the community organizes themselves as they wish without any externally driven expectations or timelines. They should not be organized by others or be told how to organize themselves.

3.3.4 GUIDING PRINCIPLES OF FPIC

When planning to invest on community land, investors should:

- Develop and implement FPIC through effective consultation with representative institutions of IPs in activities that affect lands and natural resources, livelihoods and cultures.
- Respect and enhance the rights of indigenous peoples and local communities to their lands and natural resources.
- Recognize key international human rights and principles.
- Respect and recognize cultural heritage, traditional knowledge and livelihood systems.
- Respect the system of self-government/organizing to freely pursue their economic, social, and cultural development and their right to self-government/organize in matters relating to their internal and local affairs, as well as ways and means for financing their decision-making functions.

3.3.5 EXAMPLES WHERE FPIC PRINCIPLES APPLY

- In community land use and development planning
- In establishing grazing plans
- In establishing a conservancy
- When getting into lease agreements
- In projects or activities with potential impacts on lands and natural resources subject to traditional ownership or under customary rights of occupation such as exploitation of mineral, water or other resources
- In relocation of Indigenous Peoples from their 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, as well as the non-physical expressions of culture, such as traditions, language, identity, ceremonial, or spiritual aspects), priority will be given to the avoid such impacts.
- Whenever interventions undertaken present potential serious implications on Indigenous Peoples' and Local Communities health, territorial integrity, collective identity, cultural integrity, livelihoods, social cohesion, and wellbeing.

3.3.6 GOVERNMENT INSTITUTIONS AND LEGAL TOOLS RELEVANT TO THE GOVERNANCE OF COMMUNITY LAND IN KENYA

CLMCs can build their capacity to govern and are encouraged to do the following:

- Invite and work together with both state and non-state actors such as the Ministry of Lands, Ministry of Environment, Forestry and Climate Change, National Land Commission(NLC), County Governments, local administration, civil society organizations(CSOs), and private sector stakeholders.

- Engage traditional institutions such as council of elders particularly around grazing plans and granting other communities customary rights of occupation. The development of the grazing plan should be participatory, ensuring women and youth have an avenue to provide their inputs.
- Enhance coordination with the neighboring CLMCs on the right to access natural resources such as water and pasture. The CLMC and council of elders should work together in resolving resource-based conflicts.
- Engage the county government and national government officials to plan emerging trading centers, townships or proposed access roads, land development plans, livestock and wildlife corridors.

3.4 CLIMATE CHANGE MITIGATION AND ADAPTATION

WHAT IS CLIMATE CHANGE?

Climate change refers to the changes in the world's climate patterns owing to emission of greenhouse gases. The increasingly negative effects of climate change are leading to environmental hazards and risks that are directly hurting indigenous communities' livelihoods. These hazards include biophysical changes (i.e. unpredictable rain patterns, prolonged droughts, drying of water sources, raising temperatures), as well as socio-economic or political changes (i.e. conflicts with neighbors).

Communities in Kenya have adopted survival strategies to adapt to aggressive environmental pressures. The CLMCs should take the lead in developing interventions to adapt to climate change. Some are elaborated below:

- Awareness and training about climate change, which will focus on the effects of climate change, sustainable use and exploitation of natural resources, emerging climatic trends, how to mitigate and to adapt to climate change, peaceful coexistence, and community rights as custodians of the land.
- Develop rules and regulations on access to water catchment areas, conservation of water points, and support communities identify spaces and opportunities for water harvesting [rock catchment, water pans, shallow wells].
- Conduct comprehensive resource mapping of the land to identify degraded areas and inform response actions, such as control of invasive species, soil erosion, rangelands restoration, reseeding, land rehabilitation and reclamation.
- Train and guide on alternative sources of livelihoods as a mechanism to diversify their income streams i.e. crop farming adaptable to dry areas, beadworks, commercial farming such as aloe vera plantations [which are income generating and help in soil erosion control], beekeeping, seeking/applying for license to keep wild animals such guinea fowls, introduction of resilient livestock breeds.
- Explore opportunities for value addition for their products, which might include purchasing milk coolants, processing ghee, hide and skin, gum arabica, branding products such as honey, etc.
- Develop grazing plans that will control access to pasture during wet and dry seasons, fostering coordination with the neighboring communities' CLMCs.

3.5 COMMUNITY-LED CONSERVATION

The CLA provides that a registered community ought to consider any conservation, environmental or heritage issues relevant to the development, management or use of the community land. A registered community may establish a conservancy within their community land, through a resolution by the community assembly. The CLMC, being responsible for the overall management administration and management of community lands, may either serve as the governing body of the conservancy or establish a conservancy committee that serves as the governing body of the conservancy. Where a conservancy committee is established, it may include representation from CLMC and other community members. Clear terms of service of the conservancy committee should be developed and approved by the CLMC and the community assembly, which provides the tenure they serve, reporting mechanisms, powers and responsibilities, benefit sharing from conservancy investments, among others. A conservancy board does not, however, have the legally established mandate of a CLMC.

A registered community may also enter into other legal arrangements with third parties for purposes of conservation including conservation leases, concession agreements, and easements. Such agreements will follow the respective conditions under the relevant laws.

3.6 INVESTMENTS ON COMMUNITY LAND

Land is an essential resource for communities in Kenya. It is a source of livelihood for millions of Kenyans and an important part of individual and collective identities. Over the years, the increase in demand for land and natural resources has led to communities losing their land unlawfully to individuals, private companies/investors, and the government. This underpins the need for communities to understand the procedure of contract engagement with investors. Investments in mining are governed by the Mining Act, Cap 306 whereby decisions are made by the Community Development Agreement Committee.

3.6.1 LEASES OVER COMMUNITY LAND

Leases are the most common form of land disposition. Communities enter to lease agreements with investors in order to generate revenues from their community land. Leases on community lands must be approved by $^{2}/_{3}$ of the registered members of that community at a community assembly with at least $^{2}/_{3}$ quorum.

A lease arises when the community grants a third party the right to exclusive use of a part(s) of their community land. The Community (in this case, to be known as the Lessor) will enter into an agreement with the person who wishes to lease (known as the Lessee) and approach the Community Land Registrar for registration of the lease. A short-term lease (for 2 years or less without an option of renewal) does not need to be registered but all leases must be approved by the Community Assembly.

After consent of the community is sought, the investor may be required to conduct an Environment Impact Assessment (EIA) and Social Impact Assessment (SIA) to identify the kind of impact the investment will have on the community and on the environment. The EIA and SIA are submitted to the National Environment and Management Authority (NEMA) who approve or disapprove the project.

Leases may be registered in favor of investments such as lodges, conservancies, ranches, large-scale farming or natural resource harvesting, e.g. sand mining.

3.6.2 CONTRACTS

WHAT IS A CONTRACT?

A contract is a legally binding agreement between two or more parties. Parties usually enter into contracts for a specific purpose, and once the purpose has been completed, the contract comes to an end. However, there are certain obligations that can be fulfilled even after the contract phase is completed, such as contracts that require confidentiality from the parties involved. Therefore, communities need to understand terms of every contract they are party to, and know their rights, responsibilities, duties, and obligations as stated in the contract.

The CLMC will develop by-laws that will guide communities' engagement with investors, highlighting clear procedures of meaningful community participation. At each stage, certain facts must be established as indicated below:



BEFORE SIGNING THE CONTRACT.

- Due diligence of the investor:
- Name and nature of business
- Area of operation and how long they have been in existence
- Other possible investments in Kenya and if any relate to the investment project in the community
- Is the company registered in Kenya and are they allowed to carry out their work in Kenya
- Offer in comparison to current value of the land
- Duration of the contract (especially for a lease)
- Payment plan
- When and how can the contract be terminated



DURING CONTRACT NEGOTIATION

- Ensure that the lawyer (if the community has agreed to engage one) consults the community at every stage of the negotiation process
- Understand each term of the contract and ask for clarification if need be
- Advocate for the best interest of the community, if possible, have the contract signed at the community assembly



AFTER THE CONTRACT HAS BEEN SIGNED

- Adherence to the terms of the contract by both the community and the investor
- Is payment being made as per the payment plan
- For a lease: is there a provision for extension of lease and how would this be determined
- What is the process and when should the investor apply for extension of lease
- When and how can the contract be terminated

3.7 COMPULSORY ACQUISITION AND COMPENSATION [4]

The government can acquire land for public interest or public use in accordance with the Constitution. This is known as compulsory acquisition of land. It is a process by which the government acquires land for public purposes. There must be fair and prompt compensation to the owner of the land. This role is played by the NLC on behalf of any acquiring government body or agency.

3.7.1 OFFICIAL STEPS IN COMPULSORY LAND ACQUISITION

The following are summarized key steps in this process (see the Land Act, Cap 280 Sec 112-119):

STEP 1	The National Land Commission receives a request from the acquiring government body either through the cabinet secretary (if the acquiring body is the national government) or the county executive committee member in the case of the county government.	Role of CLMCs None
STEP 2	A due diligence meeting is then held between the acquiring body and the commission whereby they provide all the details regarding said parcel and all affected parcels of land.	CLMCs should be present in the due diligence meeting
STEP 3	Notice of intention to acquire the said land is published in the Kenya gazette and a copy is delivered to the land registrar and all persons with interest in the land. The notice runs for 30 days.	To notify the community members of gazettement of the notice of intention to acquire

4 Rule 15, Community Land Regulations

STEP 4	An inquiry meeting is held within 15 days from the date of expiry of the gazette notice. During the inquiry meeting, all compensation claims or all queries are delivered to the commission for consideration.	Participate in the inquiry meeting. Present an inventory of the assets and other resources held in the affected areas. Present queries arising from the community, including any grievances arising.
STEP 5	Ground inspections and valuations are carried out to record any improvements affected by the proposed projects.	Accompanying the valuers during the ground inspection
STEP 6	A notice of award of compensation and offer is served to the interested persons by the commission for consideration.	Receive award letters on behalf of the community
STEP 7	If the compensation award is accepted then the commission shall promptly pay compensation to the interested party. In a situation where the award has not been accepted or in a situation where a dispute arises as to who is entitled to compensation, the amount is paid to a special compensation account.	Make arrangements to receive the compensation and disclose the same to the community. Where a dispute exists, inform the community and spearhead a dispute resolution process
STEP 8	Where any amount has not been paid or claimed by the interested party the commission shall open an interest-earning account at the prevailing bank rates from the time of taking possession until payment is made.	Follow up with the commission and ensure that the money has been deposited.
STEP 9	After payment of the award to the interested party, the commission then serves notice to every interested party before taking possession of the land. Title to the land is then vested in the national or county government.	Inform the community about the payment
STEP 10	The interested persons then surrender title documents for cancellation or registration and issuance of new titles where the whole parcel was not required.	Surrender the documents to the relevant government authority
STEP 11	Where any party has any dispute, the dispute is taken to the commission, Land Acquisition Tribunal, Environment and Land Court or other dispute resolution mechanisms for determination.	Support the community to file their grievances.
STEP 12	The land is then georeferenced (final survey) and authenticated by the commission through the mandated departments.	The CLMCs are required to present before the community assembly details of the land that has been compulsorily acquired

3.7.2 COMPENSATION

The NLC considers the following when valuing the land.

- The prevailing market value of the land.
- Structures on the land and the damage to be caused during acquisition.
- Expenses to be incurred by the affected persons by change of their residence or place of work or any installed amenity or infrastructure
- Loss of business and earnings due to displacement.
- Improvements on the land.
- Fifteen percent (15%) disturbance charge on the value of the land.
- The valuation of natural resources in terms of goods and services enjoyed by the communities e.g. culturally significant sites, water sources, forests

3.8 LAND USE AND DEVELOPMENT PLANNING

Land use and development planning is an important component of community land management. It ensures that land is reserved for various uses including conservation, settlement, grazing, farming, cultural and religious purposes. Land use and development planning is guided by the Physical and Land Use Planning Act, Cap 303. The following table summarizes the key steps to be followed:

3.8.1 PROCEDURE FOR COMMUNITY LAND USE AND DEVELOPMENT PLANNING

	Phase	Step	Activities
1	Preplanning	Initiation	Preparation of the concept paper
		Notice of intention to plan	Publication in two local dailies and Kenya Gazette
2	Planning	Data collection	Scoping of the content
			Delineation of the planning area
			Base map preparation
			Preparation of the survey report
			Identification and analysis of key planning issues
			Preparation of thematic plans
		Visioning	Formulation of an agreed upon vision
		Formulation of proposals	Identification of interventions
			Selection of best intervention
			Formulation of development strategies
			Formulation of guidelines and standards
		Plan validation	Presentation of plan

			Incorporation of comments
			Circulation of plan for comments
		Notice of completion	Publication in two local dailies and Kenya Gazette
3	Approval	Plan approval	Submission of plan to the County for approval
		Notice of approval	Publication in two local dailies and Kenya Gazette

3.8.2 LAND RESERVATION

Land reservation entails setting aside a piece of land for a communal purpose. This can be done during or after adjudication. The CLA (sec. 13) empowers the CLMC to facilitate reservation of land for special purposes such as farming, settlement and community conservation areas, access paths, cultural and religious sites, urban development, or any other purpose for the promotion of public interest.

In facilitating the reservation of land, the following steps are taken

1. The CLMC or the community assembly may propose that an identified section of land should be reserved.
2. The proposed portion of community land to be reserved will be delineated and physical extent identified. The CLMC shall thereafter draw a sketch depicting the identified portion.
3. The sketch, together with the description of land and the justification for reservation as well as the proposed rules for its use, access and management shall be presented to the Community Assembly meeting for approval.
4. Upon approval, the CLMC shall update the Community Land Map and the by-laws to indicate the reserved land and the relevant rules.

3.8.3 CUSTOMARY RIGHT OF USE AND OCCUPANCY.

Most pastoralist communities in Kenya risk losing rights to seasonal grazing areas and water resources they shared with other communities upon registration of shared land in the name of a specific community. Likewise, a community may acquire title over one area and fail to secure access, transit, pasturing, and watering rights in other areas. Customary rights of use and occupancy allow the use or occupation of community land (or part of it) by a member/group of the community or from another community for a predetermined period of time or indefinitely, with or without payment. Communities usually rely on their customary practices in such instances. These rights are explained by the CLA under sec. 14. Form CLA 9 is filled by the interested person(s) and submitted to the community for consideration through the CLMC. Once the right is granted, a certificate of customary use and occupancy, known as CLA Form 10 is issued.

3.8.4 SPECIAL RIGHTS ON COMMUNITY LAND

A community may, with the approval of its members, allocate land to a member or a group of members for exclusive use and occupation for such a time as the community will determine. However, an individual entitlement shall not be superior to the community title and a separate title shall not be issued.

3.9 CONVERSION OF COMMUNITY LAND.

Conversion of land occurs in situations where land changes from one category to another e.g., private land to public, community land to public, and vice versa. Community land may be converted into:

PUBLIC LAND, BY:

- Compulsory acquisition
- Transfer
- Surrender

PRIVATE LAND, BY:

- Transfer
- Allocation

Unless acquired by way of compulsory acquisition, any conversion must be done after a ²/₃ community assembly majority is obtained.



ANNEX I: FREQUENTLY ASKED QUESTIONS (FAQS)

(I) WHAT ARE THE ROLES AND RESPONSIBILITIES OF NATIONAL, COUNTY GOVERNMENTS, AND DEVELOPMENT PARTNERS INCLUDING CSOS?

The National Government, through the Ministry in charge of Lands, has a statutory mandate to conduct a national awareness program on the registration of community lands, then initiate and facilitate the registration process to its logical conclusion. The Community Land Registrar is required to process the registration of community lands, with other specific responsibilities including overseeing the CLMCs elections and conducting national sensitization campaigns.

The National Land Commission is required to gazette public land within the community land.

County governments, besides the development of the inventories in consultation with communities, are mandated to undertake continuous public participation. The Constitution further mandates that county Governments ensure, coordinate, and assist communities in developing administrative capacity for participation in governance at the local level.

Development partners, NGOs, and civil society organizations play a crucial role in supporting the registration of communities. They do this through public awareness, supporting the facilitation of community meetings, drafting the by-laws, developing community register, land use, development planning, and mapping.

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 a designated 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 then 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 that a community develop a land use and development plan 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 continued public education and awareness on the Community Land Act.

(II) WHAT ARE GAZETTE NOTICES AND WHAT ARE THEIR TIMEFRAMES?

These are notices required to be published by law or policy. They are announcements for general public information as required by law.

The following gazette notices are required under the CLA and all require a period of 60 days;

- Gazette Notice establishing Community Land Registration Units by Cabinet Secretary (CS) in Charge of Land matters (Section 10 of Land Registration Act, 2012)
- Gazette notice for the election of CLMC
- Gazette notice for the adjudication and survey of a community land.

(III) WHAT ARE THE FUNCTIONS OF THE COMMUNITY ASSEMBLY (CA)?

The CA are all adults (above the age of 18 years) whose names appear in the community register. The CA can also be referred to as a gathering of registered adult members. They are the supreme decision-making body of a community, and the quorum for decision making by the community shall not be less than two thirds of the CA. The CA is tasked to elect between seven and fifteen members of the CA to constitute the CLMC.

The CA oversees the functions of the CLMC and ratifies suggestions and proposals raised by the CLMC. Any major decisions that affect access, use, and ownership of community land must be ratified by the CA.

(IV) WHAT ARE THE KEY ELEMENTS OF THE COMMUNITY BY-LAWS?

To be comprehensive enough, community land by-laws should include the following provisions that give guidance on the following:

- Membership and rights
- Governance
- Customary rights of occupancy and special rights
- Sustainable use of land and natural resources
- Conservation and investor relationships

(V) CAN COMMUNITY BOUNDARIES OVERLAP THE COUNTY BOUNDARIES?

Community boundaries are decided by community members as determined by the provisions in the Constitution and the CLA and can overlap with county boundaries.

(VI) DOES SIZE OR POPULATION MATTER IN COMMUNITY LAND REGISTRATION AND ADMINISTRATION?

While determining their definition, communities are encouraged to think about the scope of their community in geographical scope, size in acreage, and population. Experience has shown that extremely large communities are hard to administer, as it isn't easy to convene a large CA living several kilometers apart. Communities are encouraged to envisage a context where they can easily come together and meet to deliberate on community land matters. A manageable community size is easy to govern and administer as compared to a very large community.

(VIII) WHAT HAPPENED TO LEASES THAT EXISTED BEFORE THE ENACTMENT OF THE COMMUNITY LAND ACT

Unless the contrary is specifically provided in the CLA, 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. All transactions that have been executed before the commencement of the CLA need to be presented to the Community Land Registrar for registration.

ANNEX II: SAMPLE COMMUNITY REGISTER

FORM CLA .....

001

REPUBLIC OF KENYA

COMMUNITY LAND ACT NO. 27 OF 2016

REGISTER OF MEMBERS ..... COMMUNITY ..... COUNTY..... SUB COUNTY

Registration No.	Name	ID/Passport/ Birth Certificate No.	Gender	Contact (Telephone/ Email)	Date of Registration as a member	Date of Cessation of membership	Special needs	Signature/ Thump print	Remarks

Confirmed by:

..... Sign.....Title..... Date .....

For: Community Land Management Committee

ANNEX III: GUIDING QUESTIONS FOR BY-LAWS DRAFTING

GUIDING QUESTIONS ON RESOURCE MANAGEMENT

- What are the resources on the community land? Please list them all (including forests, trees, water, sand, stones, etc.)
- What are the rules for accessing and using each resource?
- Who can access and use each resource?
- When can people access each resource?
- How is access to each resource managed?
- What actions are taken against those who do not follow the set access regulations?
- What resources are shared with other communities, and what does a non community member need to do if they want to use the resource?
- How can we ensure that resources do not get depleted and are managed in a sustainable manner?
- Does your community currently share its grazing land with other communities?
- How will the community decide to share its grazing land with other communities?
- Are there any limitations on shared grazing?
- How will community members be informed about agreements to share grazing land with other communities?
- Are there currently any areas of the community land that are used for public purposes (schools, hospitals, government offices, shrines, etc.)?
- Are there any areas that the community would like to designate for public purposes in the future?

- Are there any areas that the community would like to designate for other purposes?
- How often will you review decisions about how land has been allocated?
- How will decisions be made about allocating land for specific purposes in the future?
- If the government or an NGO proposes a development project to the community, how will the community decide whether to agree to the project?

GUIDING QUESTIONS ON MEMBERSHIP AND RIGHTS

- Who is a community member?
- What shall qualify as discrimination in the community?
- What will be the penalty for those who discriminate against others?
- Under what circumstances shall a person become a member?
- Under what circumstance shall one lose membership?
- How often will the member register be updated?
- How will members be awarded parcels of land to settle on or for individual interests?
- What will be the terms and conditions?
- What are the general roles and responsibilities of women in the community? What are the general roles of men?

GUIDING QUESTIONS ON GOVERNANCE AND DECISION-MAKING

DECISION MAKING

- What decisions can be made by the CLMC alone? Which ones must be approved by the community assembly?
- What will be the step-by-step process to make decisions?
- How will the Community Land Management Committee consult the community before making decisions?
- What decisions will need consultation with the county government?
- Who on the CLMC will communicate with the county government during consultation?

COMMUNITY LAND MANAGEMENT COMMITTEE

- What will be the number of committee positions and titles?
- What will be the roles and responsibilities of each position for which the incumbent will be held accountable by the community members/assembly?
- What is the eligibility to serve on the committee? What will be the composition of the CLMC in terms of gender (one-third rule)?
- What will be the step-by-step process for election/selection of the CLMC? What will be the terms governing who can serve on the committee?
- What would it take for a committee member or even the whole committee to be replaced before their term expires?
- What will be the penalties for committee members who breach/act contrary to their roles? How can community members bring a complaint against their Community Land Management Committee if they are not happy with how the committee is acting or with the committee's decisions?

COMMUNITY ASSEMBLY AND COMMUNITY MEETINGS

- What will be the roles and responsibilities of the Community Assembly?
- How will community-wide meetings be convened? When? How about Community Land Management Committee meetings?
- How will community members be notified about meetings?

FINANCIAL MANAGEMENT

- Who will be responsible for managing funds from fees and fines, or for developing agreements with outsiders?
- How will the community make sure that all finances are secure?
- How often will reports about community finances be shared?
- How will decisions be made about how to use money generated by the community?
- How will the community make sure that all money is used properly

CONFLICT AND DISPUTE MANAGEMENT

How will the community manage disputes over the community land involving fellow community members? How about disputes involving outsiders?
How will disputes be resolved?

INTERACTION WITH OUTSIDERS/INVESTORS

- If an outsider (investor) arrives asking for land, what processes should be followed?
- What will be the process to make decisions involving external investors?
- Who participates in meetings that make decisions involving external investors?
- What benefits will the community seek from external investors? This might include, but is not limited to terms of employment, knowledge sharing, social responsibilities, royalties, or percentage share from annual profits. How shall the community use/share the benefits?
- What sort of punishment/fines will be levied on outsiders who violate agreed-upon rules for sustainable use of the resources?

INTERACTION WITH INTERNAL INVESTORS

- If community members want to engage in livelihood activities like small-scale mining and small-scale timber production, are there places they should or should not do these activities?
- How will individual community members seek community consent to invest on parts of the land?
- What will be the process to make such decisions? What will it take for such investments to be canceled?
- How shall the wider community benefit from such investments?
- What will be the penalties for those who violate the agreements?