

**THE ANALYSIS OF THE COMMUNITY LAND BILL 2015**  
**BY RECONCILE AND THE MEMBERS OF CSOs WORKING GROUP**  
**ON COMMUNITY LAND**

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LIST OF MEMBERS AND THEIR LOGOS

MARGINAL NOTE/TOPIC	CITATION/SECTION	ISSUE	PROPOSED AMENDMENT/COMMENTS
Introduction	The long title of the Bill	AN ACT of Parliament to give effect to Article 63 (5) of the Constitution; to provide for the recognition, protection and registration of community land rights; management and administration of community land; to provide for the role of county governments in relation to unregistered community land and for connected purposes	<b>The Bill has not clearly articulated the role of county governments in relation to unregistered land. It “provides that the county government will hold unregistered community land in trust” it is not clear what this entails in terms of transactions. Can county government lease community land on behalf of communities? What is the extent/boundary of their dealing with community land?</b>
<b>PART I-PRELIMINARY</b>			
Interpretation Section	Section 2	The following words have not been defined; <ul style="list-style-type: none"> <li>• Certificate of reservation</li> <li>• Organized Group</li> <li>• Registered Community</li> <li>• Vest</li> </ul>	Define the terms clearly to avoid vagueness in interpretation. For instance: <ul style="list-style-type: none"> <li>• <i>“Certificate of Reservation”- means a certificate issued in the interim by the registrar pending the registration of community land and acquisition of the certificate of title.</i></li> <li>• <i>“Organized groups” includes any or both formal and informal kinds of organization in the community set-up.”</i></li> <li>• <i>“Vested” means absolute and indefeasible ownership.</i></li> <li>• <i>“Registered Community” means a community that has fulfilled registration processes and is recognized under this as provided in section ....</i></li> </ul>
Introduce a new section before guiding	Section	The Bill lacks objective section. The objectives help in providing the scope of the law thus aiding interpretation	Insert the following objectives: The objects and purposes of this Act are to establish a legal framework and procedures for

			<ul style="list-style-type: none"> <li>(a) recognition, protection and registration of community land rights;</li> <li>(b) documentation and mapping of the existing forms of communal land tenure;</li> <li>(c) vesting of community land in the communities identified on the basis of ethnicity, culture or similar community of interests;</li> <li>(d) management and administration of registered community land;</li> <li>(e) conversion of community land to other categories of land;</li> <li>(f) resolving the problem of illegally acquired community land and resolving community land disputes;</li> <li>(g) setting apart community land for public purposes; and</li> <li>(h) holding of unregistered community land in trust by county governments</li> </ul>
Guiding Principles	Section 2	Art 60 and 10 of the CoK gives a good foundation for guiding principles. However, there is need to make provisions for the specific elements for the avoidance of doubt.	<p>In addition to the articles 10 and 60 of the CoK, add the following:</p> <ul style="list-style-type: none"> <li>a) Vesting of community land in communities</li> <li>b) Affording equal status of titles of community land with any other title</li> <li>c) Elimination of all forms of discrimination</li> <li>d) Community empowerment to manage and administer their land.</li> <li>e) Promotion of alternative dispute resolution</li> </ul>
<b>PART II – RECOGNITION, PROTECTION AND REGISTRATION OF COMMUNITY LAND RIGHTS</b>			
Role of County Governments	Section 6 (1)	County governments shall hold in trust all unregistered community land on behalf of the communities for which it is held.	Insert specific functions to be performed by County Governments as trustee of unregistered community land. This will help avoid any conflict that may arise regarding the meaning or the implication of 'holding in trust'

			<p>It is true they cannot sell the land but can they lease it on behalf of the communities?</p> <ul style="list-style-type: none"> <li>• What will be the role of County Governments in registration of communities and community land? This should be clearly thought through.</li> </ul>
Registration of Communities	Section 7 (1)	<p>“A community claiming an interest in or right over community land shall, be registered in accordance with the law relating to societies”</p> <ul style="list-style-type: none"> <li>• The societies’ framework doesn’t give the members equal rights in decision making on the governance and management of the entity. Leaders will take over the governance and management of the land.</li> <li>• With this law, the members of the community will not enjoy joint or equal rights as the official will be registered on behalf of the community.</li> <li>• The Societies Law doesn’t make the community a body corporate thus exposes the community land to elite capture.</li> <li>• Where should registration take place? At County or National Level</li> </ul>	<ul style="list-style-type: none"> <li>• Amend to provide for registration of communities as body corporates. This will vest ownership in the community.</li> <li>• Appropriate registration process other than societies should be considered. This law to provide for a legal framework of registering communities in away that makes it a body corporate.</li> </ul> <p>Consider these provisions in terms of community registration: Give proposals</p>
	Section 7(2)	<p>(2) Where a community claiming or occupying land identifies the extent and the boundaries of its land to the satisfaction of the Cabinet Secretary, the Registrar may issue an</p>	<p><b>Insert</b> provisions detailing the procedures or guidelines for the boundary identification before the issuance of the certificate of reservation.</p> <p>The idea is that this identification will be done as soon as the communities register themselves. The certificate of</p>

		<p>interim certificate of reservation for the community land to the community.</p> <ul style="list-style-type: none"> <li>• The challenge is that the procedure or guidelines for the process has not been given. This may lead chaos and unnecessary conflicts between communities and neighbours.</li> <li>• Who should be in charge of this process? Cabinet Secretary or County Government or NLC</li> </ul>	<p>reservation will thus be issued awaiting adjudication. Its main purpose is to secure the land.</p> <p>Can we go into details of procedures in generic terms? Outline your proposals:</p> <ul style="list-style-type: none"> <li>• Clearly define who is responsible considering the role of Counties in holding unregistered community land in trust, the role of the Ministry and the role of NLC.</li> </ul>
Procedures for recognition and adjudication of community land	Section 8 (1)	<p>Provides for the Cabinet Secretary to develop and publish a comprehensive adjudication programme.</p> <ul style="list-style-type: none"> <li>• There is to determine whole role it is to develop an adjudication programme. In doing this pay close attention to Art 67(c) of the CoK on the functions of the NLC</li> </ul>	<ul style="list-style-type: none"> <li>• Ensure that there are no contradictions with the constitution and other existing roles when</li> </ul>
Communal and reserve land	Section 13 (1)	<p>A registered community may recommend to the members of the registered community portions of community land to be set aside as communal or reserve land and for what purposes.</p> <ul style="list-style-type: none"> <li>• This does not make sense. A registered community recommending to a registered community</li> <li>• It shows the need for providing structures for community land management and administration, and the need to</li> <li>• Separate the governance framework from the management</li> </ul>	<p>This is a challenge that should be addressed by providing a structural or institutional framework for the management and administration of community land. The structures should clearly separate the management roles from the governance roles.</p>

**PART III-ADMINISTRATION AND MANAGEMENT OF COMMUNITY LAND**

<p>Manner and procedure of registration of community land.</p>	<p>Section 15</p>	<p>The Cabinet Secretary shall make regulations prescribing the manner and procedure for registration of community land for the purposes of this Act.</p> <ul style="list-style-type: none"> <li>• Why wait and make regulation yet this law can provide for this?</li> </ul>	<p>The procedures be provided for in this law. The CS is being given too much powers yet the practice has been to devolve power to reduce corruption and promote good governance.</p>
<p>Functions and Powers</p>	<p>Section 16</p>	<ul style="list-style-type: none"> <li>• The term a registered community is amorphous. Does it mean community assembly?</li> <li>• This section doesn't provide for the specific structures/institutions for governance and land management e.g institutions like community assembly and community Land Management Committees are not provided for.</li> <li>• This opaqueness must be addressed to ensure that issues of accountability, transparency and community rights are adhered to.</li> <li>• This provision lays a strong ground for elite capture, grabbing of community land rights by unscrupulous people.</li> </ul>	<ul style="list-style-type: none"> <li>• Provide for establishment of community Assemblies. These should include:             <ol style="list-style-type: none"> <li>i. Composition;</li> <li>ii. Meetings;</li> <li>iii. Order of business in their annual general meetings and</li> <li>iv. Functions</li> </ol> </li> <li>• Provide for establishment of Community Land Management Committees and in other provisions in the Bill. These should include:             <ol style="list-style-type: none"> <li>i. Their establishment;</li> <li>ii. Basic requirement;</li> <li>iii. Guidelines for their election;</li> <li>iv. Functions and powers;</li> <li>v. Term of office and</li> <li>vi. Conduct of business</li> </ol> </li> <li>• Provide for Community Land Boards to oversight the Committees as was provided for in the Task Force Bill of February 2014</li> </ul>

**PART IV: NATURE OF COMMUNITY LAND TITLE**

Certificate of title to be evidence of Proprietorship.	Section 19 (2)	<p>A certified copy of any registered instrument, signed by the Registrar and sealed with the Seal of the Registrar, shall be received in evidence in the same manner as the original.</p> <ul style="list-style-type: none"> <li>• What would happen is somebody corrupts the Registrar and gets a certified copy signed by Registrar and sealed with the Seal of the Registrar?</li> </ul>	<ul style="list-style-type: none"> <li>• There is need to ensure that opportunities that would tempt people to corruption are sealed. This provision needs to be strengthened to ensure that corrupt people don't buy these certified copies from the Registrars fraudulently.</li> </ul>
<b>PART V: CONVERSION OF COMMUNITY LAND</b>			
Conversion of Community Land	Section 22 (2)	<p>A registered community shall, before the conversion of registered community land into any other category of land seek and obtain approval from at least fifty percent of members present in a special meeting convened for that purpose, in which at least two thirds of the members of the community are present.</p> <ul style="list-style-type: none"> <li>• 50% of the vote doesn't constitute the majority. Moreover it has the potential of dividing the community in the middle thus fuelling conflict.</li> </ul>	<p>Replace the fifty percent with, 'at least two thirds of members present in a special meeting convened for that purpose, in which at least two thirds of the community members/assembly are present'</p>
Conversion of community land to private land.	Section 24 (b)	<p>Allocation by the registered community, subject to ratification of the assembly.</p> <ul style="list-style-type: none"> <li>• This should be linked with Sec 22 (2) above to give the threshold for ratification.</li> </ul>	<p>Add ' in line with section 22 (2)</p>
<b>PART VI: SPECIAL RIGHTS AND ENTITLEMENTS IN COMMUNITY LAND</b>			
Non-discrimination	Section 31 (3)		<p>Add youths</p>
<b>PART VII: ENVIRONMENT AND NATURAL RESOURCES MANAGEMENT</b>			
Regulation of community	Section 39 (2)	<p>Despite the provisions of Part 1 and pursuant to section 22</p>	<p>Can we consider having a rider that this law will take precedence on issues dealing with community land and the</p>

land use planning.		<p>of the Fourth Schedule to the Constitution, the management of community land shall be subject to national government laws and policies relating to</p> <ul style="list-style-type: none"> <li>(a) fishing, hunting and gathering;</li> <li>(b) protection of animals and wildlife;</li> <li>(c) water protection, securing sufficient residual water, hydraulic engineering and safety of dams;</li> <li>(d) forestry;</li> <li>(e) environmental laws;</li> <li>(f) energy policy; and</li> <li>(g) exploitation of minerals and natural resources.</li> </ul> <ul style="list-style-type: none"> <li>• How do we deal with this area particularly to ensure that the provisions from other legislations are not used to water down key provisions of this law?</li> </ul>	natural resources embedded in it?
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PART VIII SETTLEMENT OF DISPUTES RELATING TO COMMUNITY LAND

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PART IX GENERAL PROVISIONS

Repeals	Section 45	<p>The following laws are repealed</p> <ul style="list-style-type: none"> <li>(a) the Land (Group Representatives) Act, (Cap 287); and</li> <li>(b) the Trust Lands Act, (Cap 288).</li> </ul>	<p>Add</p> <ul style="list-style-type: none"> <li>• Cap 283</li> <li>• Cap 284</li> </ul>
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Saving and transitional provisions	Section 46	<p>Unless the contrary is specifically provided in this Act, any right, interest, title, power, or obligation acquired, accrued, established, coming into force or exercisable before the commencement of this Act shall be deemed to have been acquired under this Act.</p> <ul style="list-style-type: none"> <li>• This clause has the potentials of legalizing the illegalities, and regularizing the irregularities committed between August 27<sup>th</sup> 2010 to date.</li> <li>• There should be no blanket provision</li> </ul>	<p>Provide for</p> <ul style="list-style-type: none"> <li>• Auditing of all community land transactions that took place between 27<sup>th</sup> August 2010 to the day the law comes to force before they are deemed to have been acquired under this Act.</li> </ul> <p>Legal team to provide a phrase that will express this clearly</p>
Schedules			Insert the schedule converting the coastal land from public to community.