

**PARLIAMENT OF KENYA
THE SENATE**

SENATE BILLS DIGEST

**THE COMMUNITY LAND BILL, 2015
(NATIONAL ASSEMBLY BILLS NO. 45 OF 2015)**

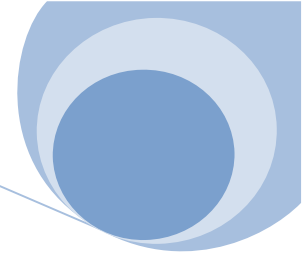
Sponsor:	Hon. Aden Duale
Date of Publication:	18 th August, 2015
Date of First Reading:	2 nd June, 2016
Committee referred to:	Land and Natural Resources
Type of Bill:	Ordinary Bill

1. Purpose of the Bill

The Bill seeks to give effect to Article 63(5) of the Constitution which require Parliament to enact legislation to give effect to Article 63 which deals with Community land. To this end, the Bill establishes a legal framework for the recognition, protection, management and administration of community land. The Bill further provides for an institutional framework to facilitate ownership, registration and administration of community land.

2. Background

Article 61 of the Constitution provides that all land in Kenya belongs to the people of Kenya collectively as a nation, as communities, and as individuals. Article 61(2) then proceeds to classify land as public, community or private. The constitution therefore recognises community land in Kenya.



Article 63 specifically deals with community land and provides among other things that community land vests in and be held by communities identified on the basis of ethnicity, culture or similar community interest. Article 63(2) of the Constitution defines what community land consists of while Article 63(5) of the Constitution requires Parliament to enact legislation governing community land in Kenya. The constitution therefore provides the basis for the enactment of a community land legislation to give effect to Article 63.

The Community Land Bill, 2015 is therefore a Bill that is subject to the constitutional time limit of five years as extended by the National Assembly. The legislation should therefore be enacted by 27th August, 2016.

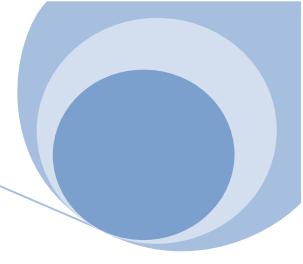
The National Assembly passed the Bill with amendments on 21st April, 2016 and forwarded it to the Senate for consideration.

3. Overview of the Bill

The memorandum of objects and reasons of the Bill as published states that the principal object of the Bill is to provide for a legislative framework to give effect to Article 63 of the Constitution and to provide for the recognition, protection, management and administration of community land. The Bill proposes an institutional framework through which community land shall be owned, registered, managed and administered.

(1) Preliminary provisions

Clause 1 of the Bill provides for the short title while **clause 2** deals with definition of terms as used in the Bill. Some of the key words defined include; community, community land, communal use of land, community tenure system, and customary land rights among



others.

“community” is defined to mean ‘ a consciously distinct and organised group of users of community land who are citizens of Kenya and share any of the following attributes—

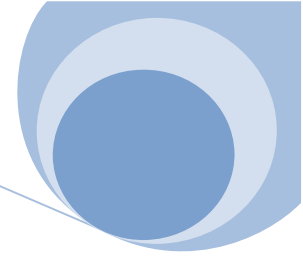
- (a) Common ancestry;
- (b) Similar culture or unique mode of livelihood;
- (c) Socio-economic or other similar common interest;
- (d) Geographical space;
- (e) Ecological space; or
- (f) Ethnicity.

Clause 3 of the Bill states the principles to guide every person dealing with community land. It requires the person to observe —

- (a) the principles of land policy set out in Article 60 of the Constitution. The principles enunciated under Article 60 include equitable access to land; security of land rights; sustainable and productive management of land resources; transparent and cost effective administration of land; elimination of gender discrimination in law, customs and practices; and encouragement of communities to settle land disputes through recognized local community initiatives consistent with the Constitution; and
- (b) the national values and principles of governance set out in Article 10 of the Constitution.

(2) Ownership and Tenure Systems

Part II of the Bill deals with recognition, protection and registration of community land rights.



Clause 4 of the Bill states that community Land is owned by the community. The clause further provides for the tenure systems under which community land shall be owned. The tenure systems are customary, freehold, leasehold or such other tenure recognized under the Bill or any other written law. **Clause 5** provides for the protection of community land rights.

(3) Registration and Ownership

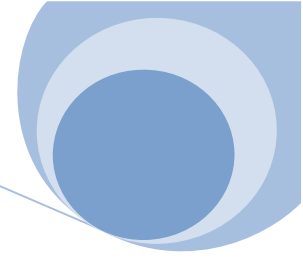
The Bill recognizes customary land rights and requires that the rights be adjudicated for and documented. County governments hold all the unregistered community land in trust for the communities.

Clause 7 provides for the procedure for registration of a community claiming to own community land. The community shall invite all its members by putting up a notice in a newspaper of nationwide circulation so that they can elect the members of the community land management committee established under clause 15 of the Bill.

The community land registrar appointed under clause 9 shall maintain a community land register which will be in accordance with the provisions of section 8 of the Land Registration Act no. 3 of 2012 which provides for what should be contained in the register.

(4) Administration and management of community land

Part III deals with matters of administration and management of community land. Clause 15 provides that a registered community shall have a community assembly consisting of all members of the community.



Clause 15(2) requires the community assembly to elect between seven and fifteen members of the community assembly to constitute the community land committee. The clause further provides for the functions of the community land management committee. The functions include coordination of development of community land use plans among others.

(5) Nature of community land title

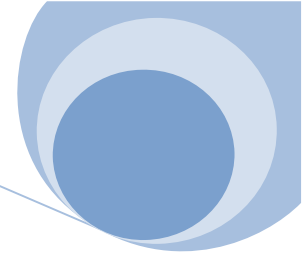
Part IV of the Bill deals with the nature of community land including interest conferred by registration, rights of a community as a propriety, land use and development planning of community land, and conservation and management of resources in community land.

Registration of Community Land creates general rights as provided for under **Clause 16**.

Clause 17 of the Bill gives the rights of a community as proprietor, to be held on behalf of the community together with all privileges and appurtenances, but are subject to any registered encumbrances showing in the register and such overriding interests as may affect the land and are provided for under section 28 of the Land Registration Act no. 3 of 2012.

Clause 18 provides for the issuance of a certificate of title to the community upon registration or to a purchaser upon transfer or transmission by the proprietor community.

Part IV of the Bill provides for the special rights and entitlement to community land, which are in line with the customary practices of the community. It also provides a framework for transactions in community land and leases over community land.



Clause 19 provides for the use and development planning of community land. It requires the registered community to submit their development plan to the County government for approval.

Part V deals with the conversion of community lands and provides that community land can be converted into any other category of land subject to the approval of two thirds of the community assembly in a special meeting convened for that purpose.

Clause 22 provides for the ways in which community land may be converted to public land to be compulsory acquisition, surrender or transfer with the approval of the members of the community. It allows the application of the Land Act and any other law necessary to effect compulsory acquisition of such land. The reversionary interests of such land lies first with the community.

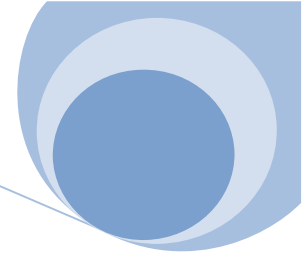
Clause 25 provides for ways of converting private land to community land to be by transfer, surrender, and operation of the law.

(6) Natural Resources and Benefit Sharing

Clause 35 provides for the use and management of natural resources found on community land, to be for the wholesome benefit of the members of the community.

Clause 36 of the Bill provides for the mode of sharing the benefits accruing from the investments made in the community land. It also seeks to govern the making of agreements relating to investment in community land.

(7) Power of the State Regarding Community Land



Clause 38 of the Bill gives the State power to regulate community land with regard to use, interests, and rights in the interest of defence, public safety, public order, public morality, public health or land use planning. This is in line with article 66 of the Constitution. This clause however, requires such regulation to be done pursuant to the provisions of section 22 of the Fourth Schedule to the Constitution.

(8) Dispute Resolution

Part VIII provides for the methods of settling disputes that relate to community Land. The methods are mediation, arbitration, traditional dispute resolution methods and judicial proceedings.

(9) Penal Provisions

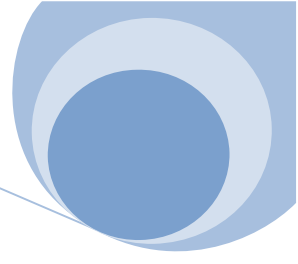
Unlawful occupation of community land is classified as an offence and clause 44 sets out a general penalty for anyone who commits an offence under the Act to be either a fine not exceeding five hundred thousand shillings or an imprisonment for a term not exceeding three years or both.

(10) Consequences of the Bill

The Bill if passed into law will provide for a legislative framework to give effect to Article 63(5) of the Constitution. It will also provide for an institutional framework to facilitate ownership, registration and administration of community land. It will further provide a legal framework on the role of County governments in relation to unregistered community land.

(11) Way Forward

The Bill was read a first time in the Senate on 2nd June 2016 and proceeded for the second reading on 14th June, 2016. The question was put on 15th June, 2016 when the Bill was lost.



The Bill is now set for mediation as required by the constitution.

Note:

1. This Digest reflects the Bill as published and does not cover any subsequent amendments to the Bill made after publication of the Bill.
2. The Digest does not have any official legal status.