COMMUNITY
LAND
SUMMIT

PROTECTING THE COMMONS FOR
A SHARED FUTURE

COMMUNIQUE
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COMMUNITY
LAND SUMMIT 2021

REVIEWING PROGRESS MADE, CHALLENGES AND OPPORTUNITIES IN THE IMPLEMENATION OF COMMUNITY LAND ACT 2016 IN KENYA

NANYUKI, LAIKIPIA COUNTY, 22 – 23 NOVEMBER 2021

"One thing we need to ask ourselves is, what are we doing right now to secure community land rights for now and for future generations?

~Truphosa Achar

MESSAGE FROM CONVENER OF THE COMMUNITY LAND SUMMIT

In 2016, Parliament enacted into law the Community Land Act, Providing a framework for recognition and registration of customary land rights. The Act aspires to foster these rights and address the pro longed unresolved historical land and natural resource injustices.

It is five years down the line since the promulgation of the Community Land Act, 2016 (CLA). Communities continue organizing themselves to meet the requirements proclaimed in the Act and timelines. The law guides customary landholding communities towards securing discrete collective titles to their lands. While not compulsory, formalization is accepted by communities and government alike as now urgent to double-lock their constitutionally recognized possession. This is due to longstanding historical subordination of communal rights and continuing encroachment and threat to these lands. Those affected by number and area are predominantly pastoral and agro pastoral communities whose customary domains extend over much of northern and eastern Kenya. Hunter-gatherer communities, primarily forest peoples, and settled communities seeking formal title over commons may also benefit

The convening has been informed by the need to interrogate the barriers and facilitators to the implementation of Community Land Act 2016. This has been informed by the institutionalized and the participatory nature of the land use planning as reflected within the local, regional and national contexts.

The rationale is further anchored on the need to strengthen the exploration and exploitation of natural resources through a system which is based in and ecosystem in spite of the perceived or existing political or and administrative boundaries. Consensus has been thus that the absence of strengthened communities' rights on the management of land and natural resources has been detrimental to the land use planning, investment, and the dignity of local communities. The convening is aiming at covering the 24 Counties with communal lands.

It is intended that the conference shall inform the review of the CLA 2016 through evidence and experiences. It is intended that this shall go along way into ensuring that amendments are informed by experiences of the piloted communities and the bottle necks on the implementation of CLA. In addition, this summit shall create a platform to strengthen the already existing community of CLA champions and sustain the land reform agenda. Finally, the summit shall enable communities present their own petition to the duty bearers on the glaring gaps in the Community Land Act, 2016.

Mali Ole Kaunga
Convener, Community Land Summit

Participants at the Community Land Summit 2021, keenly following the deliberations at the Sportsman Arms Hotel in Nanyuki.

Nanyuki Declaration

> *IMPACT and the NLC hosted the first ever Community Land Summit.*

Under the joint facilitation of Indigenous Movement for Peace Advancement and Conflict Transformation (MPACT) Kenya and the National Land Commission (NLC) in partnership with other partners , hosted the 1st ever Community Land Summit, as underscored in a Memorandum of Understanding signed between IMPACT Kenya and NLC in May 2021 towards the implementation of CLA2016.

We, 221 participants of the Community Land Summit held on 22 – 23 November 2021 representing leaders and representatives of communities living in community land (undissolved Group Ranches, Trust Lands, Wetlands and Forests) including traditional leaders, forest dwellers, hunters and gathers, women, the youth and Persons with Disability (PWD); representative of NLC and the Ministry of Lands and Physical Planning of Kenya (MLPP); County Government officials from Laikipia, Samburu, Isiolo, participated in Community Land Summit and shared experiences, lessons learnt and aspirations as regard to progress made in the implementation of CLA2016 in Kenya.

Delegates at the first ever held Community Land Summit, discuss on the way forward in securing the rights of communities and indigenous people across Kenya.

We, appreciated the importance this 1st Community Land Summit in Kenya in creating and promoting consultative, participatory, inclusive, and interactive space for dialogue between local communities, national and country government and Civil Society Organizations on the implementation of the CLA 2016, reviewing progress and reflecting on emerging issues.

We, agreed on the importance of open discussions that focused on creating a platform for real voices of community members and their leaders, forest dwellers, hunters and gathers, women, youth and PLWD, with direct and robust engagement with national and county government representatives on progress made in the implementation of the CLA2016.

We, commend Kenya government as a longstanding signatory of the Universal Declaration of Human Rights, the African Charter of Human and Peoples Rights, International Covenant on Civil and Political Rights (ICCPR 1966), the International Covenant on Economic, Social and Cultural Rights (ECESCR 1976); the Convention Concerning Indigenous and Tribal Peoples in Independent Countries (No. 169) of the International Labour Organization (ILO) that secure community land rights, gender equality and Free Prior and Informed Consent (FPIC).
We, acknowledged the provisions in the constitution of Kenya 2010, the National Land Policy 2009 and related land legislations that aims to secure community land rights and promote meaningful participatory consultation as a tool for inclusive social change and development.

We, affirmed the importance of CLA 2016 that gave effect to article 63 (5) of the Constitution of Kenya to provide for recognition, protection and registration of community land rights, management, and administration of community land, the role of County governments in relation to unregistered community land.
We, recognized the important of the NLC and its distinct role in the implementation of CLA2016 spelt out in the Act and its Regulations including monitoring registration of community land rights and use of ADR processes in resolving disputes.

Basic Facts on

THE COMMUNITY LAND SUMMIT 2021

60%

Kenya's land mass and at scale 25 out of 47 counties in Kenya undescore the value of responsible community land administration and management.

221
Participants

03
County Governments

19
Counties

12
Successfully registered Community Lands

Multi-sectoral panel of experts giving their submissions on the progress of the implementation of the Community Land Act 2016.

- We, further recognized the functions of NLC as provided in the CoK2010, the National Land Commission, 2012, and other laws including investigation of historical injustices, acquisition of land for public projects and ensuring prompt compensation to those affected,

- We, acknowledged that community land accounts for over 60% of Kenya's land mass and at scale in 24 out of 47 counties in Kenya, underscoring the value of responsible community land administration and management for Kenya's social, economic, and environmental transformation, achievement of Kenya's Big Four Agenda, Vision2030 and the SDGs.

- We, applauded commitment demonstrated by the MLPP in the implementation of CLA2016 in close collaboration with CSOs to foster good working relationship and ensuring that community lands are registered and monitored in accordance to the Act, as evidence by the transition of 12 undissolved group ranches to community land, securing communal land rights of communities.

> ***"Community Land accounts for over 60% of Kenya's land mass***

- We, celebrated the 12 Communities in Laikipia, Samburu, Kajiado and West Pokot Counties that have successfully registered their community lands and secured title deeds in compliance with the Community Land,2016.
  We, agreed that CLA 2016 is progressively securing women's land rights through registration of women as members of communities, giving them a voice, and power through inclusion in decision making bodies such as Community Land Management Committees.

- We, affirmed that youth are a key stakeholder in administration and management of community land; and their participation in decision making is their social and economic right, promote inclusive and sustainable use of land and natural resources for posterity.

- We, appreciate the role of the Working Group on Implementation of Community Land Act2016 (WGICLA) that brings together the NLC and the MLPP, towards coordination and implementation of CLA2016;

While acknowledging several milestones achieved in the implementation of CLA2016;

We, agreed that there is slow progress realized in transitioning undissolved Group Ranches, registration of unregistered community lands, restitution and conversion of community and public forest land to community land. Only 50% (12 /24) counties have submitted their inventories of their respective unregistered community land to MLPP in readiness for registration.

We, are concerned about pending claims on historical and post historical injustices over land that remain unresolved and demand urgent attention for restitution, review and revoke previous grants acquired illegally and to secure such land rights for affected communities especially those most at risk marginalization, discrimination and extinction for peace and development.

We, agreed that there exist legal gaps in CLA2016 in securing community land rights for communities that require review of grants; de-gazettement and securing rights of communities living in forests already gazetted as "Public forests" among other issues.

We, agreed on the need and importance of promoting and supporting the use of Alternative Dispute Resolution (ADR) in resolving the high number of community land and natural resources disputes especially boundary disputes to avert further escalation of conflicts and facilitate swift registration of community lands.

We, noted the importance of land use planning for secure wildlife and livestock corridors and routes for transhumance (migration, access to water points, pasture, breeding and holding grounds) and its associated impacts on peace and security especially among the pastoralist communities in Northern region of Kenya.

We, acknowledged the importance of using technology in land administration and management of community land including mapping and adjudication; while noting the risks of exclusion of communities if such technologies are implemented in isolation of public participation and consultation.

We, agreed that Free Prior and Informed Consent (FPIC) is a practical mechanism for ensuring meaningful, inclusive, and informed consultation, consent and fair compensation and hence the need to clarify the role of County Government in receiving compensation as custodians of community land such as in the LAPSSET projects.

We, further agreed that local communities still need to be adequately sensitized about the CLA2016 and the Regulation including the roles and responsibilities of key actors to avoid risk of leaving such communities behind especially women and communities living in conflict prone areas.

We, learnt of alleged unlawful acts by some county governments that are disposing former trust lands prior to transitioning to Community Land, contrary to the stipulations of section 6 (8) and section 10 (2) of the CLA2016; demanding urgent attention.

We, noted that some County Governments have been slow in presenting their inventories to the MLPP, low collaboration with communities and national government structures leading to duplication of efforts, discontentment on their lack of efficiency, which in turn slows the progress in the implementation of the CLA2016.

We, noted the limited resources mainly budgets allocation by the Ministry of Lands and Physical Planning, NLC and County Governments for the implementation of the CLA contributing to slow progress made, and that most of Communities that have since transitioned have received external support from donors and or well-wishers.

We, agreed on the need to sensitize and strengthen community's capacity on sustainable land use planning, and rangelands management to reduce land degradation for resilient livelihoods, minimize the effects of climate change for sustainable ecosystem-based services for all– e.g., water, pasture, aesthetics for tourisms etc.

We, agreed with the study findings by Ministry of Lands and Physical Planning on challenges facing communities in the implementation of CLA2016 including boundary disputes, fear of marginalization and discrimination, lack of fair compensation for land acquisition and paying such compensation to communities affected through County Governments without communities consent, inadequate number of technical staff including surveyors, land adjudication officers and registrars available to support land registration processes at County level; slow flow of inventories from Counties to MLPP and lack of inclusivity in the

Delegates at the Community Land Summit, 2021 following proceedings, as communities congregated to reflect on the status of the implementation of the Community Land Aact 2016, five years on.

election and activities of Community Land Management Committees and preparation of bi-laws.

Noting the proceedings and deliberations from the Summit, we hereby call on following Governmental and Non-Governmental Actors and Recommend as Follows:

Ministry of Lands & Physical Planning of Kenya

The Ministry of Lands and Physical planning is called upon to:

- Continue sensitization and awareness raising on the CLA2016 its Regulation to local communities in accessible languages and mediums,
- Strengthen capacity of grassroots women on leadership to better engage in decision making structures and secure their rights for inclusion in community land registers as provided for in the Act.
- Urgently deploy technical officers especially registrars, surveyors, and adjudication officers to all counties to unlock key processes needed to efficiently implement the CLA2016.
- Promote the uptake of inclusive, gender responsive and participatory technological services in administration and management of community land including mapping and adjudication that leave no one behind especially women and marginalized communities.
- Prioritize the registration of community lands with the aim to achieve the MLPP target to have all 387 Group Ranches and 84 Communities registered by 2024.
- Identify and legally recognize communities and their land rights that exist at smaller scale outside the 24th Counties and initiate processes to facilitate their claim and registration of their community land rights as per the CLA2016.
- Increase budget allocation to facilitate implementation of community land including community sensitization, identification, adjudication, and registration of community land.
- Pilots inclusive land conservation approaches which vest ownership and conservation conditions to forest dwellers or wetlands communities in the context of CLA2016.
- Strengthen collaboration with National and County governments and CSOs towards complementation and building synergies on the implementation of the CLA2016 including community sensitization of women, youth and communities in conflict prone areas.
- Carry out urgent rapid assessment/investigation on the status of former trust lands with regard to the implementation of CLA2016 and role of County Governments in securing trust lands for communities,

and where applicable, reverse all unlawful allocations made by County Governments back to respective communities.
- Undertake review of CLA2016 and other legislations as may be required to address legal gaps and make it more responsive to community land rights including rights to forest, wetlands and security of Trust Lands.

The National Land Commission

The National Land Commission is called upon to:
- Expedite and facilitate processes to address historical and post historical land injustices to prevent forced evictions, while prioritizing those most at risk of extinction communities including Elmolo, Yaaku,and all other forest dwellers.
- Promote and use of Alternative Dispute Resolution (ADR) in resolving the high number of community land and natural resources disputes mainly boundary disputes.
- Advise the MLPP on a comprehensive titling programme for community lands as envisioned in CLA2016 and provide recommendation for action including the review of Section 22 and 23 of the Act to make it more responsive to community land rights issues.
- Advise the MLPP on the need for development of a policy on the adoption of FPIC in all matters relating to land acquisition, fair compensation and benefit sharing including revenue from conservation initiatives, and the role of County governments.
- Need to map and monitor natural resources including minerals, sacred places, historical sites for conservation and preservation for posterity.
- Carry out regular monitoring of the implementation CLA2016 to provide sex disaggregated data and information for planning and policy decisions.

County Governments

The County Governments are called upon to:
- Apply the CLA2016 and its Regulation, while respecting community will/wishes.
- Collaborate with communities and national government to expedite submission of pending Counties inventories to fast-track registration of community lands.
- Restrain from any unlawful allocation of former trust lands to local or international investors before transitioning to community land; and under strict adherence to community FPIC.
- Prioritize and allocate budget resources to support the implementation of CLA2016 through public participation in budget processes.
- Facilitate dialogues between local communities, their leaders with County and National Governments on policies and procedures for community land acquisition, fair compensation, revenue and benefit sharing from conservation efforts, application of FPIC and roles of County Government.
- Promote peace and security through secure community land rights for all in and between countries; including supporting efforts for inter and intra-county boundary disputes resolution.

Civil Society Organisations

Civil Society Organisations are called upon to:
- Continue being the 'watch dog' to ensure due processes are followed in the implementation of CLA2016 as per its regulation in letter and spirit,
- Continue sensitizing local communities on sustainable land use planning, and rangelands management to reduce land degradation and minimize the effects of climate change,
- Undertake research that document and profile community experiences, challenges, emerging issues, and best practices in the implementation of the Community Land Act in Kenya,
- Contribute information including case studies, data, and technical expertise to County and national governments, and other development agencies led initiatives that advance the implementation of the CLA2016, land use planning and conservation efforts.
- Encourage IMPACT Kenya, other non-state actors and in partnership with the County governments, NLC and MLPP; and development partners to make the Community Land Summit an annual event addressing key issues facing communities living community lands in Kenya.
- Promote synergies among CSOs, while working closely with County Governments, NLC, MLPP and other development partners to advance the implementation of CLA2016.
- Disseminate this communique widely to MLPP, NLC and other stakeholders in land administration and management of community lands in Kenya and beyond.

> *If you don't have you can't eat, we are urging the registrar to look into our pleas about the community.*
>
> *~Ann Anyango, Siaya County*

The Private Sector

Private Sector is called upon to:

- Uphold human rights, indigenous peoples' rights and respect FPIC in the acquisition of community land through meaningful public consultation, fair compensation, and benefit sharing.
- Support access to and use of technological innovations that promote inclusive community land administration and management that leaves no one behind.
- Embrace investment models that respects community rights to land and natural resources and doesn't require alienation of land rights.
- Promote gender equality and human rights for all in undertaking of land-based investment projects; averting any acts that would further deepen gender inequalities, injustices in land rights, handling of compensation and benefit sharing.
- Undertake comprehensive, participatory, and inclusive social and environmental impact assessments and make public investment contracts including their financiers; benefit sharing and other project information to promote transparency and accountability at all levels.

The Local Communities

Local communities are called upon to:

- Embrace CLA2016 and its regulation as tool to securing community land and natural resources rights, promoting peace and development.
- Use ADR to resolve land and natural resources disputes resulting from the implementation of the CLA2016 and beyond, and only seek formal court interventions as a last resort.
- Commit to protect and preserve land rights for all community members including women, the youth and PWDs as provide for in CLA2016 and its regulations, making all activities and structures inclusive.
- Seek the support of the NLC in addressing historical and post historical land injustices including restitution and review of grants to enable community to enjoy their rights to land and other natural resources.
- Build on values, culture, and indigenous knowledge of the respective communities to facilitate good stewardship of land and natural resources, land conservation and management to reduce land degradation, foster resilient to climate change and promote sustainable livelihoods for people and the planet.
- Share experiences, lesson learnt, challenges and opportunities presented by the implementation and post implementation of the CLA2016 to local, national, and international forums.

Development Partners

Development partners are called upon to:

- Provide technical and financial resources to state and non-state actors to facilitate overall implementation of CLA2016, including programmatic intervention such as sensitization, policy review, land and peace building, and gender mainstreaming. r.
- Support research initiatives on emerging issues affecting the implementation of CLA2016, land use planning and conversation efforts, and map challenges and opportunities for evidence-based policy decisions.
- Pilot initiatives that focus on conservation of community land, forest, and wetlands from a community management point of view as a 'proof of concept' in the management of "public forests and wetlands" under the CLA2016.

Delegates from 19 counties in Kenya, registering at the first Community Land Summit held at Sportsman Arms Hotel in Nanyuki.

The Summit concluded with observations from participants who:

01

Recorded their appreciation of the Community Land Summit as a platform that allowed open and honest dialogue between communities, CSOs, national and county governments and the needs to host the Summit annually.

02

Urgent call for attention in addressing existing and emerging land and natural resources-based disputes without delay and encouraging IMPACT Kenya in collaboration with County and National Governments, and other stakeholders to convene a Peace Summit before end of the year 2021.

This communique is affirmed by 221 delegates attending the Community Land Summit on this day of 23rd November 2021 in Nanyuki, Laikipia County in Kenya; representing the voices of local community members and leaders from dissolved and undissolved group ranches, former trust lands, forest dwellers, hunters and gatherers, traditional and religious leaders, women, the youth, PWD, CSOs drawn from 19 out of 24 counties with community land at scale; representative of County Governments and National Government through NLC, MLPP, and other stakeholders.

Ministry of Lands & Physical Planning

County Government of Laikipia