

# FACILITATOR GUIDE

## KENYAN COMMUNITY LAND ACT



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# INTRODUCTION: BACKGROUND AND CONTEXT

This Facilitator Guide to the Community Land Act is designed to provide a practical approach to use Kenya's Community Land Act to empower communities to document and protect their land rights. The Guide sets out a practical roadmap for how to support communities to fulfill the requirements of the Community Land Act. It includes step-by-step explanations of activities that communities can complete to meet the requirements of the law.

## WHO SHOULD USE THIS GUIDE?

This Guide is created for community facilitators, paralegals, county government officials, and staff of grassroots organizations who are working to support communities legally claim their land rights as set out in Kenya's Constitution and the Community Land Act of 2016. Although the Guide uses the term "facilitator" to describe the people supporting community land registration and titling processes, anyone that has learned about the Community Land Act, reviewed the processes in this Guide, and has experience facilitating community meetings should be able to support communities to meet the requirements of the Act and the Constitution.

## THE HISTORY OF COMMUNITY LAND RIGHTS IN KENYA

Until 2016, the land communally used and managed in Kenya was mainly classified as Trust Lands (established by the Trust Lands Act of 1939) and some registered as Group Ranches established by the Land (Group Representatives) Act of 1968.

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**TRUST LANDS ACT OF 1939:** This law gave county councils the power to manage and hold in trust all land in Kenya that was not privatized or gazetted as public land. The Trust Lands Act set out that the county councils (later county governments) held the land "in trust" for the people who had been the rightful owners and managers of the land. This arrangement led to massive loss of land through arbitrary allocation to other non-pastoral uses with communities having no role in these decisions.

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**LAND (GROUP REPRESENTATIVES) ACT OF 1968.** Under this law, trust lands in some pastoral areas were registered as "Group Ranches" that were formally owned and managed by the pastoralist communities. Group Ranch members elected representatives, whose names were put on the group ranch title and were responsible for the day-to-day management of the Ranches. The management of group ranches were rife with mismanagement, sub-division of land in some areas led loss of pastoralists land to expanding settlements.

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# OVERVIEW OF CURRENT LAWS RELATED TO COMMUNITY LAND

Due to the challenges experienced in managing communally owned lands under the old laws, the legal status of all community lands in Kenya changed with the passage of the **Constitution of 2010** and the **Community Land Act of 2016**. These are now the two main laws related to community land in Kenya.

**The Community Land Act of 2016 repealed both the Trust Lands Act and the Land (Group Representatives) Act. Therefore, all communities living in Group Ranches are legally required to re-register as Community Land and all communities living on Trust Lands must be registered according to the Act.** If communities fail to register their lands, the law says that county governments must develop a plan to register community lands in their counties and communities might not be empowered to lead the registration process.

## KENYA CONSTITUTION OF 2010

Kenya's 2010 Constitution is the supreme law of Kenya. Chapter 5 of the Constitution deals specifically with land issues. Article 61 (2) classifies land as public, community or private, and recognizes and defines "Community Land" as:

- Land lawfully registered in the name of group representatives 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; or
- 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; or 3) lawfully held as trust lands by the county governments, but not including any public lands held in trust by the county government.

The Constitution includes rules that affect how communities must manage their lands and natural resources. The Constitution sets out the following:

- Land in Kenya shall be held, used, and managed in a manner that is equitable, efficient, productive, and sustainable. (Article 60, Section 1)
- Women and men have the right to equal treatment, including the right to equal opportunities in political, economic, cultural, and social spheres. (Article 27, Section 3)
- The State shall take legislative and other measures to implement the principle that not more than two-thirds of the members of elective or appointive bodies shall be of the same gender. (Article 27, Section 8)

These sections of the Constitution ensure that all people – women, men, elders, youth, ethnic minorities, and people with disabilities – have the same right to own, manage, govern, and inherit land. The Constitution also says that all land should be owned and managed in a "productive manner" that conserves the environment, and decisions about the land must be made by all people within a community (Article 60, Section 1).

The Constitution (Article 63, Section 5) also specified that the Parliament must pass a law to enable communities to register their lands and legally claim their land right. This law, the Community Land Act, was passed in 2016 and provides details about how communities can claim and register legal rights over their land and natural resources.

## COMMUNITY LAND ACT (CLA) OF 2016

The Community Land Act requires communities to complete a number of tasks in order to register their land with the government. These tasks are:

1. Drafting and adopting **by-laws** (locally created rules for land governance and management) for how the community wants to make decisions and use and manage its community land (CLA, Section 15.4.e).
2. Forming a **Community Assembly**, creating a Community Register that includes all adult community members, and registering the community as a legal entity. (CLA, Section 15.1).
3. Electing a **Community Land Management Committee** (7-15 members) that includes men, women, and representatives from all villages within the community land (CLA, Section 15.3).
4. Describing their land to create **evidence of the community's claims and resolving land boundary conflicts** (CLA, Section 39.2).
5. **Completing and submitting paperwork and fees** to the relevant government offices.
6. **Following up on land registration applications** to make sure they are processed in a timely manner.

## WHAT IS "A COMMUNITY" UNDER THE COMMUNITY LAND ACT?

The CLA defines "a community" as:

A distinct and organized group that share any of the following attributes:

- Common ancestry
  - Similar culture or unique mode of livelihood
  - Socioeconomic or other similar common interest
  - Geographical space
  - Ecological space
  - Ethnicity
- (CLA, Section 2).

Other than this definition, the CLA gives communities the right to define themselves, as long as the community's self-definition does not exclude people that have lived on the land and depended on it for their livelihoods (Constitution of Kenya, Section 39.3). This means communities must define themselves in a way that includes everyone who has been living on and using the land, including men, women, youth, minority tribes, members of all religions, people with disabilities, and people who have historically used and shared natural resources located within the community.

## HOW TO USE THIS GUIDE

The rest of this Guide explains in greater detail the community land registration procedures set out in the Community Land Act and describes activities that facilitators can undertake to help community members register and get a title to their lands while also strengthening participatory, inclusive land governance and sustainable natural resource management.

This Guide suggests completing the steps required by the law in a slightly different order than they are presented in the Community Land Act. It is strongly recommended that instead of the Community Land Management Committee (CLMC) drafting bylaws on behalf of the community, that the entire community (or village representatives) drafts bylaws and uses the drafted bylaws to elect/select the CLMC which is tasked to implement the bylaws and manage the day to day affairs of the community's land.

This is to ensure that as many community members as possible take part in the process of registering, governing, and managing their community's land. The process of supporting communities to use the Community Land Act to strengthen their land rights is not easy and can take a long time. If communities rush through these activities, then the process of registering community lands may disadvantage different groups of the community, and fail to realize the intended outcomes.

Facilitators should first study the community land act and related laws and read this entire guide before beginning to facilitate activities in the community so that they know the law and understand the full process.

## THE IMPORTANCE OF FULL COMMUNITY PARTICIPATION AND GOOD FACILITATION

It is very important that everyone in the community - including women, youth, men, elders, minority groups, people from various religions, and other marginalized groups - participate in the community land registration process. In many communities, men and elders are used to making all decisions about land and natural resources. Although the Constitution and Community Land Act clearly say that full participation in community land governance and management is the law, it does not always happen in reality. Therefore, facilitators should carefully facilitate all community land registration activities to make sure that all groups in the community participate. To ensure the full involvement and participation of all community members, their composition should be from multi-sectorial team and they should:

1. **Carefully plan for meetings, with a clear goal, agenda, and structure.** This involves thinking in advance about who should attend the meeting and how to ensure that all stakeholders' voices are heard. Facilitators might prepare questions in advance, make session guides, anticipate community reactions and be ready to address them, and ensure that mobilization occurs to ensure strong attendance and community awareness about the meeting's agenda and goals.
2. **Support women and minority groups to attend community meetings.** Facilitators should devise strategies to ensure women and other groups can attend and participate in meetings, such as:
  - Scheduling meetings in places and at times that women and practitioners of all livelihoods can easily attend.
  - Sending active community members door-to-door to request that women and members of minority groups attend meetings.
  - Proactively requesting that husbands bring their wives and other female household members with them to meetings.

3. **Convene special women-only meetings.** Organize meetings where women can work together privately to discuss and plan to advocate for their interests during large community meetings.
4. **Sensitize men and leaders about the benefits of strong land rights for women.** Efforts to educate only women about their rights ignore the fact that men are often the ones who decide whether women can use, access, inherit, or claim lands. Experience has shown that when men and leaders understand how women's land tenure security can increase household income and ensure their children's future prosperity, they are more likely to create rules that strengthen and protect women's rights.



# INTRODUCING THE COMMUNITY LAND ACT TO THE COMMUNITY

## ACTIVITY 1: INTRODUCTION MEETING WITH LOCAL LEADERS

(2-3 hours)

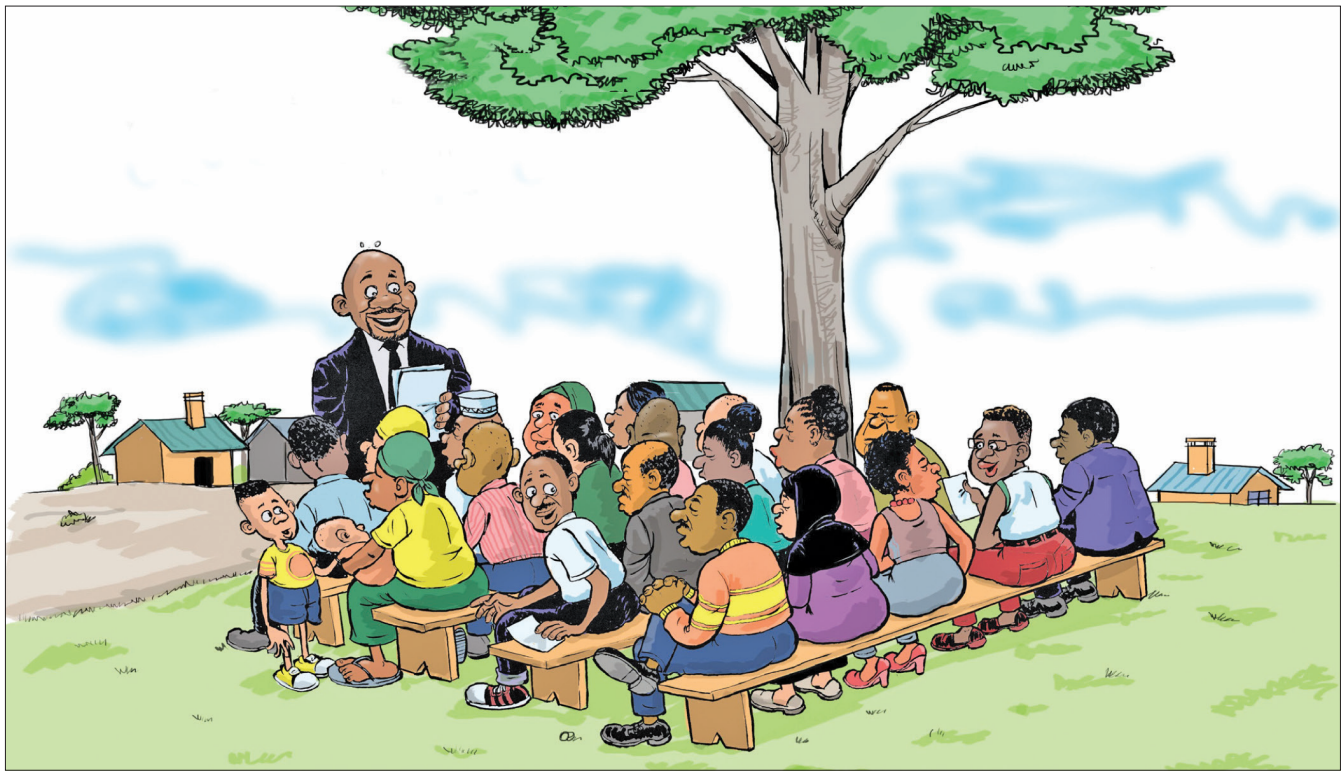
It is extremely important for facilitators to take time to introduce the Community Land Act and the work that they plan to do with the community to local leaders and Group Ranch officials before they begin the process.

A community's ability to meet the requirements of the Community Land Act often depends on whether local leaders are supportive of their efforts. When community leaders and/or Group Ranch Committee members are committed to ensure their community use the Community Land Act to secure their land rights, it will go much smoother than if they oppose the process. For example, when leaders agree to respect a harmonized boundary or commit to enforce agreed bylaws, community members are more likely to respect and abide by the boundaries and rules.

Facilitators should establish a good working relationship with all community leaders and then build leaders' capacity to support the process of meeting the requirements of the Community Land Act. To do this, facilitators should:

- **Step 1: Identify trusted community leaders.** Facilitators must be careful to work with local community leaders who are trusted by community members. Many local leaders play a major role in managing community land – especially elders and Group Ranch officials. Some of these leaders might feel threatened by the Community Land Act because it gives all community members power to govern and manage their land. Local leaders might feel like they will lose some of their power if the community uses the CLA to register their land, so it is very important that you get their support.
- **Step 2: Help leaders understand the Community Land Act.** It is very important that facilitators take time to explain the Community Land Act to local leaders before they introduce it to the rest of the community. This will help leaders understand that you are supporting the community to use the law to secure their land rights and that you are not just implementing an NGO project. If possible, it is helpful to bring a county government official to this meeting so they can help local leaders understand that you are working with them to implement the law.
- **Step 3: Explain the possible negative impacts of the community not taking initiative to meet the requirements of the law themselves.** County governments are required to develop a plan to title community land if communities do not take initiative themselves. This could result in community members and local leaders being excluded from the process of meeting the requirements of the law or county governments continuing to manage land "in trust" of communities.

- **Step 4: Answer questions that local leaders have about the Community Land Act.** It is likely that local leaders will have questions and concerns about the law. Facilitators should be prepared to answer any questions that they might have and to address their concerns. It is important to remember that the law is on our side – you are not doing a project, but rather supporting the community to secure their land and natural resources using the laws of Kenya. Facilitators must seek to build and instill a sense of confidence and trust among community leaders by dealing with any issues that may bring about lack of trust.
- **Step 5: Plan for a large community meeting to introduce the Community Land Act to the whole community and to complete CLA Form 1,** the first form that the community must submit to the government to begin the process of using the CLA to secure title to their community land. Although a small group of village representatives might lead most activities, it is very important to begin the process by meeting with as many community members as possible and all villages/settlement areas represented. It is very helpful to facilitate this meeting together with local leaders, so the community sees that their leaders are supportive of their efforts to secure their lands and to demonstrate that it will be a community-driven process.



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## ACTIVITY 2: COMMUNITY INTRODUCTION, BASIC LEGAL EDUCATION, AND COMPLETION OF CLA FORM 1

(4-5 hours)

The first meeting that you facilitate with the community is very important. In this meeting you should introduce yourself, clearly explain who you are and why you are meeting with the community, discuss the Community Land Act, agree on roles and responsibilities, manage expectations, and decide with the community about how to plan and carry out the activities needed to register their land. You should also make sure that the community understands that registering community land is not an easy task and will take months of meetings that require full community participation. The first meeting should be facilitated carefully—you must be knowledgeable, respectful, and willing to support the community to drive the process of registering their land using the Community Land Act.

- **Step 1:** Introduce yourself. Explain who you are, who you work with, and why you are supporting the community to use the Community Land Act to secure their land rights.
- **Step 2:** Ask the community what they know about what communities have to do to register their land under the Community Land Act and the Constitution of Kenya (rather than simply lecturing or presenting information). Once people have shared everything they know about the law, give an overview of the Community Land Act and what is required to register.

- **Step 3:** Ask the community what support they need to use the Act to secure their land rights. If community members have a difficult time answering, you can explain that you are meeting with them for these purposes:

- To help them understand how they can use the CLA to secure their land rights.
- To support them to use the Community Land Act to register their lands.
- To support the community to strengthen local governance over land and natural resources by agreeing on and adopting rules for land and natural resource management and governance.
- To support the community to resolve land conflicts with their neighbors, agree on the boundaries of their land, and create evidence of their land claim.
- To build the capacity of the community to complete forms required by the government and submit their application for registration.
- To help the community engage with the county and national government to ensure that the application is processed quickly and at a low cost to the community.

- **Step 4:** Discuss and agree on the facilitator's roles and responsibilities in the land registration process, then proceed to agree on the community's roles and responsibilities. Some communities might choose to select village representatives lead the process, while others might choose to have the entire community attend meetings with the facilitator.

- **Step 5:** Discuss and agree on how community members will be mobilized, how often the community will meet, how meetings will be convened, and where meetings will be held.

## REPRESENTATIVES OR FULL COMMUNITY PARTICIPATION?

One of the most important things for the community to decide at this meeting is whether the facilitator will work with a group of village representatives (that includes women and other marginalized groups) or with the whole community. In large pastoralist communities, it is often very difficult and costly to mobilize full community meetings. In these communities, a village representative model of supporting the community to meet the requirements of the law might make most sense. Communities must be involved in selecting their representatives and deciding how the representatives will keep the larger community informed. The facilitator can meet with the same small group of representatives, who are

then tasked with consulting with people in their villages, then representing their views in meetings with the facilitator. When possible, the facilitator can attend village-level meetings to observe and advise community representatives.

In smaller communities where large community meetings are easy to mobilize, the community might choose to mobilize the entire community for all meetings with the facilitator. This decision is up to the community, but facilitators should support them to come up with a strategy that will ensure that as many people as possible are involved in the process of using the CLA to secure the community's land rights.

■ **Step 6:** Describe the agenda for the next meeting and agree on a day and time for the meeting that allows women, men, elders, youth, and members of minority groups to all attend.

■ **Step 7:** Support the community to complete CLA Form 1. The first legal step to register community land is notifying the government that the community intends to register its land. CLA Form 1 is required by the government to begin the process of registering a community. The facilitator should support community members to complete and submit CLA Form 1 (included in Annex II) to begin the process of registering community land. CLA Form 1 is easy to complete and requires the following information:

- Name of the community
- Location of the Community
- A basic sketch map of the community (or official map if the community is a Group Ranch). This map does not need to be detailed, but should include boundaries and major natural resources like lakes, rivers, and mountains.
- Approximate size (in hectares) of the community's land
- Signature and contact information of community leader(s)

After the meeting, community leaders should go to the county government office and submit CLA Form 1 to the Community Land Registrar. If the county does not have a Community Land Registrar at the county government office, government officials in the land office can advise the leaders who to submit the paperwork to. The leaders should ask the Registrar to provide written receipt that the initial paperwork has been submitted and received.



# DRAFTING COMMUNITY BYLAWS AND ELECTING A COMMUNITY LAND MANAGEMENT COMMITTEE OVERVIEW

The Community Land Act requires that communities create **bylaws** (rules) for using, managing, and making decisions about their community lands and natural resources. The Act also requires communities to elect a **Community Land Management Committee (CLMC)** that will manage the day-to-day affairs of the community's land.

The next few activities are designed to support communities to draft and adopt bylaws for natural resource management, community membership and rights, and governance. These activities will also support communities in electing and training a Community Land Management Committee that includes men, women, elders, and youth. After the Community Land Management Committee is elected, its members then begin the process of creating a register of all community members and submit initial paperwork to the government to begin the community land registration process.

The Community Land Act states that communities should first elect their CLMCs, who will then create bylaws for the community. **This Guide strongly recommends that facilitators first support the entire community (or village representatives) to create bylaws together as a group, and then use the rules they have agreed on in the bylaws to elect their Community Land Management Committee.**

Almost every community has customary rules to govern and manage their land. The Community Land Act requires communities to write down these rules, add new rules to help prepare the community for the future, and make sure that their rules comply with Kenyan law. It is important that as many people as possible participate in the process of making the community's bylaws. Depending on the size of the community, it may be necessary to have meetings in every village and then select representatives who will share their villages' rules and together agree on the rules for the whole community. The key steps of drafting bylaws are listed below, which are then described in more detail in the next few pages.

## ■ **Activity 3: Bylaws Introduction and Sketch Mapping:**

Facilitators give an overview of the bylaws drafting process and support the community to draw a sketch map of their land and natural resources. The sketch mapping activity helps community members to think about their land and the natural resources, and to begin to think about rules to manage their land.

## ■ **Activities 4-6: Bylaws Drafting:**

Facilitators begin by asking community members to share their current rules related to three different topics: 1) natural resource management, 2) membership and rights, and 3) governance. After community members document their current rules, the facilitator provides legal education on the Community Land Act and Constitution, then asks a series of guiding questions to help the community draft a detailed set of bylaws that is compliant with Kenyan law.

## ■ **Activity 7: Bylaws Adoption and Community Land Management Committee Election:**

The entire community votes to adopt (or reject) the bylaws.

Facilitators might support the community to arrange a celebration to adopt the bylaws, an event that should be attended by all community members and county government officials. After the community has adopted its bylaws, it should elect its Community Land Management Committee according to the process laid out in their bylaws and the Community Land Act.

## ■ **Activity 8: Community Land Management Committee (CLMC) Training:**

CLMCs have very important roles and responsibilities, and its members should be given detailed training for their roles. As part of this training, facilitators and CLMC members will develop a plan to create a community register and complete initial paperwork that must be submitted to the government to begin the registration process.

## ■ **Activity 9: Creation of the Community Register:**

The Community Land Act requires that communities create a list of all community members that are 18 years and older. Facilitators should work closely with the CLMC to create a strategy to ensure that all community members are included in the register.

## ■ **Activity 10: Completion and Submission of Initial Registration Paperwork:**

After communities have created and adopted their bylaws, elected and trained their CLMC, and created a community registry, they are now ready to submit paperwork to the government to begin the registration process. Facilitators will support CLMCs to complete and submit CLA Form 3. After the government reviews and approves CLA Form 3 (see Annex II), the community will be issued a certificate of registration (CLA Form 4, in Annex III)—the first legal step towards acquiring a title to their community land.

## ACTIVITY 3: BYLAWS INTRODUCTION AND SKETCH MAPPING

(3-4 hours)



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During this meeting, facilitators will give an overview of the bylaws drafting process and community members will create a sketch map of their land and natural resources. This activity helps community members think about their land and natural resources – and supports them to begin thinking about the rules (bylaws) that they might want to create to govern and manage their community land.

### ■ **Step 1: Introduce the bylaws drafting process.**

The process of drafting community bylaws is one of the most important steps of using the Community Land Act to register community land. Bylaws give communities the opportunity to discuss and agree on how they want to govern and manage their land and natural resources. During the introduction, you should describe that the purpose of drafting community bylaws is to document customary rules, ensure that those rules do not go against Kenyan law, and to add new rules that would help the community manage its land and natural resources.

- ### ■ **Step 2: Introduce the sketch mapping activity.** In this activity, community members will add to the basic sketch map that they created earlier in the process. Before the meeting, explain the mapping activity to leaders and ask them to help explain the activity at the beginning of the meeting in a way that will address any potential concerns. Allow community members to ask any questions they have about the activity.

- ### ■ **Step 3: Brainstorm a list of resources and landmarks to include on the sketch map.** Support the community to shout out a list of natural resources and other landmarks to include on their sketch map. Write down the brainstormed list on flip chart paper to reference during the activity and make sure all suggested resources are mapped. These can include physical features like roads, mountains, rivers, and other natural resources; infrastructure like schools, markets, boreholes, and clinics; sacred areas; places of historical significance; and boundaries with neighboring communities. It may help to bring a good example from another community to show people what to aim for.

- ### ■ **Step 4: Divide the meeting into small groups (by women, men, and youth) to draw sketch maps.** Provide each group with several sheets of blank flip chart paper and colored markers. Ask the members of each group to revise or draw a representation of the landscape of their community, using the map drawn during bylaws drafting and including the new list of brainstormed resources. Ask them to include potential boundary conflicts or “hot spots” on these maps. Remind the groups to make a legend (a list of what have been mapped, with a corresponding symbol or color that indicates each item on the list). Have each group assign a drawer and presenter.

### ■ **Step 5: Presentation of the sketch maps.**

When the groups have finished drawing their maps, bring everyone back together and invite each group to present its map. Encourage members to describe their group’s discussions (including any disagreements that arose) and legend. After each group has made its presentation, the community should discuss all the maps, especially the boundaries, locations of natural resources, and amenities that all community members access. Community members may have difficulty agreeing on the location of a certain boundary, or they may disagree about which map is most correct about a certain feature of the landscape. If a disagreement cannot be resolved, support the community to mark both ideas on the final map, and give people time to revisit the disagreement in future meetings.

### ■ **Step 6: Combine the maps into one sketch map.**

Support the community to draw a single combined map (on a fresh piece of paper) that includes details from each group’s map. After the maps have been combined into one map, the community may want to continue to add details until all important features and natural resources are accurately represented. Combining the maps and agreeing on them can take time. If the time for the meeting runs out before the community agrees that the map is finished, ask the CLMC and community leaders to hold additional community meetings to finalize the map.

### ■ **Step 7: Plan for how the map will be kept safe.**

Take photographs for your records and leave the sketch map with the community. Support the community to create a plan for keeping the map private and safe. Consider leaving extra supplies so that community members can revise their sketch map as necessary.

## ACTIVITY 4: BYLAWS DRAFTING – NATURAL RESOURCE MANAGEMENT

### ACTIVITY 5: BYLAWS DRAFTING – MEMBERSHIP AND RIGHTS

### ACTIVITY 6: BYLAWS DRAFTING – GOVERNANCE

(1 meeting for each topic. Each meeting will likely take 4-5 hours.)

Supporting the community to develop bylaws is a process of going topic by topic through the major issues related to community land governance, administration, and management over the course of several meetings. At the start of each meeting, ask community members what they know about Kenya’s laws on the topic of the meeting, then add to community members’ knowledge by educating people about national laws on the subject. Then, the community looks at the piece of paper with the existing rules on the topic and begins to discuss and debate what rules they want to keep as they

are, what rules need to be changed, what rules they want to get rid of, and what rules they want to add. The meeting ends once the community has fully agreed on the rules they want to have on that subject. Topics that should be covered as part of the second-draft meetings include (1) natural resource management, (2) membership and rights, and (3) governance. Note: Repeat the steps laid out below for each topic. Reference guides for each topic that include relevant laws and helpful questions can be found starting on the next page.

- **Step 1: Support the community to document its current customary rules for the topic being discussed.** To help the brainstorming process go smoothly, break the community into three groups: women, men, and youth. Have each group elect a secretary who will write down the rules and a presenter who will present the rules to the larger group.
- **Step 2: Ask each group to present their rules to the larger group.** Write all existing customary rules on a large piece of paper.
- **Step 3: Educate the community members about national laws relevant to the topic.** Ask community members to shout out what they know about laws related to the subject being discussed. Once the community has said everything they know, fill in their knowledge.

- **Step 5: Bring all the groups back together and ask each small group to present their rules.** Post the three groups of rules next to each other at the front of the meeting. Put up a blank sheet of paper and ask the community to agree on what rules will become part of the second draft. Once community members agree on a rule, write it on a large piece of paper. Let the community debate and discuss each rule until they have combined the three groups' rules into one list agreed upon by all participants.

- **Step 6: Ask the community a series of guiding questions to make sure that their bylaws on the topic are comprehensive.** See the topic guides below. It is often helpful to ask guiding questions to make sure that the community's draft bylaws fully address important issues that may come up. Keep adding any new rules to the piece of paper with all agreed rules until the community says it is finished creating rule related to the topic.

Facilitators can help communities refer back to their sketch map to enrich the discussion on by laws

- **Step 7: Create agenda for the next topical meeting,** and agree on a mobilization plan and day and time for the meeting. Take photos of the draft bylaws so you can type them up later. Leave the large paper with the community.

#### FOR UNREGISTERED COMMUNITY LANDS HELD IN TRUST BY COUNTY GOVERNMENTS

**Step 4: Break the community into groups of men, women, and youth to discuss the existing rules and create a full list of rules they think should be in their new bylaws.** This may involve keeping some existing rules, changing some rules, adding rules, and deleting rules. Ask each group to assign a secretary to write everything down and a presenter to present the group's work to the larger meeting.

#### FOR GROUP RANCHES TRANSITIONING INTO COMMUNITY LAND

**Step 4: Ask a community member to read sections of the former Group Ranch Constitution specific to the topic of the meeting.** Break the community into groups of men, women, and youth to discuss the topic of the meeting, citing the CLA and their former Group Ranch constitution. Identify community members who will lead each group and present in the large group discussions. In the small groups, the group leaders should:

- Lead the members to critique their former constitution and first-draft bylaws specific to topic of the meeting;
- Lead discussions about national laws relevant to the topic as highlighted in reference guides; and
- Lead members to agree on a fresh list of bylaws, by keeping some existing rules, changing some rules, adding rules, and deleting others. Ask each group to assign a secretary to write everything down and a presenter to present the group's work to the larger meeting.

## GUIDES FOR TOPICAL BYLAWS MEEWTINGS

### NATURAL RESOURCE MANAGEMENT: LEGAL FRAMEWORK AND GUIDING QUESTIONS

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#### LEGAL FRAMEWORK

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##### COMMUNITY LAND ACT, SECTION 35: MANAGEMENT OF NATURAL RESOURCES ON COMMUNITY LAND

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- Natural resources should be used in a productive and sustainable way for the benefit of the whole community, including future generations. Benefits from the use of natural resources must be shared equitably among community members.
- Information about any money generated from natural resources on the community land should be presented to the Community Assembly on a regular basis. The Community Assembly has the right to decide how money shall be used to benefit all community members.

##### COMMUNITY LAND ACT, SECTION 37: COMMUNITY RULES AND BYLAWS

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- A registered community may make rules or bylaws for regulating the management and administration of their land, and such rules or bylaws may provide for the 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.

##### COMMUNITY LAND ACT, SECTION 38: REGULATION OF COMMUNITY LAND USE PLANNING

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- Natural resources, including those listed below, must be managed according to national and county government laws and regulations.
  - Fishing, hunting and gathering, protection of animals and wildlife, water protection, securing sufficient residual water, hydraulic engineering and safety of dams, forestry, environmental, oil and gas, and exploitation of minerals and natural resources.

##### COMMUNITY LAND ACT, SECTION 38: GRAZING RIGHTS

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- While drafting bylaws, the customs and practices of pastoralists should be taken into consideration.
- Land in pastoral communities shall be available for use by members of the community for the grazing of their livestock. Agreements over the land may include:
  - The kind and number of livestock that may be grazed.
  - Grazing plans and the zones for other land uses.
  - How the community will use the rest of the land that isn't being used for grazing.
- Non-community members may be granted grazing rights. They must seek approval from the community, and their practices shall not contradict the community's bylaws.
  - These rights can be withdrawn by the community in a community assembly meeting due to drought or any other reasonable cause as long as it is in the interest of the community members.
  - The community can withdraw grazing rights from people who, without the written authority of the community:
    - Fail to observe the terms of the agreement under which the rights were granted.
    - Erect or occupy any building or other structure on the grazing land.
    - Plough or cultivate any portion of the grazing land.
    - Take up as residence or occupy any portion of the grazing land.
    - Block access to any watering place on the land, prevent or attempt to prevent any person



from drawing water or watering stock at a watering place, pollute the water at a watering place, or interfere with the operation of any windmill, water pump, water pipe, dam, storage tank, or other structure installed or constructed within the grazing land.

- A person who commits the above offenses can be fined up to one hundred thousand shillings or imprisoned for up to six months.

### **COMMUNITY LAND ACT, SECTION 39: DESIGNATION OF OTHER LAND USE RIGHTS IN COMMUNITY LAND**

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- A registered community may reserve “special purpose areas,” which must be used exclusively for the designated purpose, including:
  - Farming areas
  - Settlement areas
  - Community conservation areas
  - Access and rights of way
  - Cultural and religious sites
  - Urban development
  - Any other purpose as may be determined by the community, county government, or national government for the promotion of public interest.

### **GUIDING QUESTIONS**

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- What are the resources on the community land? Please list all of them (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 the 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?

### LEGAL FRAMEWORK

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#### COMMUNITY LAND ACT, SECTION 2: MEMBERSHIP

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The CLA defines “a community” as: a distinct and organized group that share any of the following attributes:

- Common ancestry
- Similar culture or unique mode of livelihood
- Socioeconomic or other similar common interest
- Geographical space (people that live near each other)
- Ecological space (people that use the same resources)
- Ethnicity

Other than this definition, the CLA gives communities the right to define themselves, as long as the community’s self-definition does not exclude people that have lived on the land and depended on it for their livelihoods (Constitution of Kenya, Section 39.3). This means communities must define themselves in a way that includes everyone who has been living on and using the land, including men, women, youth, minority tribes, members of all religions, people with disabilities, and people who have historically used and shared natural resources located within the community.

#### COMMUNITY LAND ACT, SECTION 30: NONDISCRIMINATION

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- Every member of the community has the right to equal benefit (use and access) of community land.
- Women, men, youth (including morans), minority tribes, persons with disabilities, and marginalized groups have the right to equal treatment in all dealings in community land.
- A community/community member shall not directly or indirectly discriminate against any member of the community on any ground, including race, gender, marital status, ethnic or social origin, color, age, disability, religion, or culture.
- Every man or woman married to a member of the community shall gain automatic membership of the community. They remain members of the community until they remarry outside of the community after a divorce or the death of their spouse.
- The culture of each community shall be recognized in the exercise of community land rights (subject to Article 159 of the Constitution, in accordance with Article 11(1) of the Constitution)

#### COMMUNITY LAND ACT, SECTION 27: INDIVIDUAL RIGHTS ON COMMUNITY LAND

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- A registered community can allocate part of its registered land to an individual or group of individuals for exclusive use and occupation for a defined period; such a decision has to be approved by the Community Assembly.
- A member granted exclusive use of a parcel of land under will:
  - Pay to the registered community any fees from the use as determined by the Community Assembly
  - Use or develop the land based on the agreement with the community.
  - Not allocate or lease the land to a third party who is not a member of the community.

Give the land back to the community at the end of agreement period or if the Community Assembly decides to reverse the agreement based on breach or emergencies.

#### GUIDING QUESTIONS ON MEMBERSHIP AND RIGHTS

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- 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? General roles of men?

## LEGAL FRAMEWORK

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### **COMMUNITY LAND ACT, SECTION 15: FUNCTIONS AND POWERS OF THE COMMUNITY LAND MANAGEMENT COMMITTEE**

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- All community members (18 years and above), including men, women, elders, youth, and ethnic minorities, make up the Community Assembly.
- The quorum for decision-making by the community shall not be less than two-thirds of the Community Assembly.
- The Community Land Act requires that communities identify and elect a seven- to fifteen-person Community Land Management Committee (CLMC), who will be responsible for:
  - The day-to-day management of the community land on behalf of the community;
  - Promoting cooperation and participation among community members in matters relating to community land;
  - Acting as a representative or voice of the registered community while communicating with outsiders;
  - Working closely with other institutions such as the county and national governments;
  - Proposing rules and regulations to govern the community land and natural resources, which must then be checked and approved by the Community Assembly; and
  - Coordinating the development of community land use plans in collaboration with relevant government authorities.
- The Community Land Management Committee cannot make any decisions to sell, lease, or transfer community land unless two-thirds of the entire Community Assembly (all adult community members) have approved it.
- Any decision of a registered community to dispose of or otherwise alienate community land shall be binding if it is supported by at least two-thirds of the Community Assembly, while all other decisions of the registered community shall be by a simple majority of the members present in a meeting.
- The Community Land Management Committee must be at least one-thirds women if the majority are male, or at least one-thirds men if the majority are female. Article 27 of the Constitution provides that not more than two-thirds of the members of any elective body can be of the same gender.

### **COMMUNITY LAND ACT, SECTION 4: OWNERSHIP AND TENURE SYSTEM**

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- Community land in Kenya shall be owned by the respective communities.
  - Community lands can only be transferred as stipulated in the Kenya Law for a public purpose, and upon prompt payment of just compensation to the community, in full or by negotiated settlement (also mentioned in Article 66 of the Constitution and Section 113 of the Land Act).
- Communities can register and acquire certificates/titles under Customary, Freehold, Leasehold or any other form of land tenure recognized under Kenya law. All current community lands are held under customary tenure. Under customary tenure, communities are free to use their customs and tradition to manage their lands and natural resources.

### **COMMUNITY LAND ACT, SECTION 5: PROTECTION OF COMMUNITY LAND RIGHTS**

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- Every member that fits within the community definition shall have right over the community land.
- Community customary land rights are of indefinite duration and governed by customary law.
  - Customary land rights shall have equal force as those under freehold or leasehold tenure.
- Any person who before the passing of the Act had an existing customary right or was granted right by any legal institution or had a lease shall continue to hold such right.

- Any lease granted over community land after the passing of the 2010 Constitution is null and void.

## **COMMUNITY LAND ACT, SECTION 36: BENEFIT SHARING**

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- Any investment plan should be agreed upon by the community and any outsider coming to invest through a free and open process that involves all communities and all relevant stakeholders. The following should be ensured while making such a plan:
  - An environmental, social, cultural, and economic impact assessment
  - Stakeholder consultations (with the knowledge of the county government and the National Environment Management Authority (NEMA) as well as two-thirds of the Community Assembly agreeing on the plan
  - Continuous monitoring and evaluation of the impact of the investment to the community
  - Payment of compensation and royalties to the community
  - Requirement to rehabilitate the land upon completion or abandonment of investment projects
  - Measures to be put in place to alleviate any negative effects of the investment
  - Capacity-building of the community and transfer of technology to the community
- Any agreement relating to investment in community land shall only be made between the investor and the community.
- No agreement between an investor and the community shall be valid unless it is approved by two-thirds of the adult members of the community (Community Assembly) at a meeting called to consider the offer and at which a quorum of two-thirds of the adult members of that community is represented.
- The community may request the guidance and assistance of the county government or any other relevant stakeholders in considering the offer of investment.

## **GUIDING QUESTIONS ON GOVERNANCE**

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### 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/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 (in 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?

## ACTIVITY 7: FINAL BYLAWS AND PLANNING FOR BYLAWS ADOPTION

(4-5 hours)

After combining the different sections of the bylaws into a single document, bring the bylaws back to the community and organize a large meeting to go over the communities completed bylaws. Before the meeting, the facilitator should review the bylaws and highlight any rules that might need to be changed because they violate Kenyan law or are not specific enough. Allow the community as much time as they need to discuss the necessary changes and agree on new rules. By the end of this meeting, the community should have a complete third (and now-final) draft of their bylaws and planned for how they will formally adopt their bylaws.

■ **Step 1: Ask community members who have been consistently involved to describe the entire bylaws drafting process from start to finish for community members who have not attended previous meetings.**

Make sure that community members understand how the bylaws drafting process will conclude. Answer any questions community members may have.

■ **Step 2: Review the draft bylaws and point out any rules that violate Kenyan law or otherwise have problems that need to be addressed.** Ask community members why they think the law violates Kenyan law.

If you have provided enough legal education, they should be able to answer. If they cannot, be ready to explain why and how each rule violates the law.

■ **Step 3: Support the community to revise rules that violate the law.** After explaining which rules violate the law and why, ask the community how they can revise the rule to bring it in line with Kenyan laws. Do not propose any revisions; support the community to propose better rules themselves.

■ **Step 4: Finalize the bylaws.** After the community has finished revising rules to eliminate any violations of Kenyan law and agreed on the needed changes, the third and final draft of the bylaws is finished.

■ **Step 5: Make a plan for a bylaws adoption and Community Land Management Committee election.**

The Community Land Act requires communities to formally adopt their bylaws. It is helpful to formally adopt bylaws and elect Community Land Management Committees (CLMC) during a single meeting. Support the community to decide the process by which it will adopt its bylaws and elect its CLMC. The community should make a plan that includes:

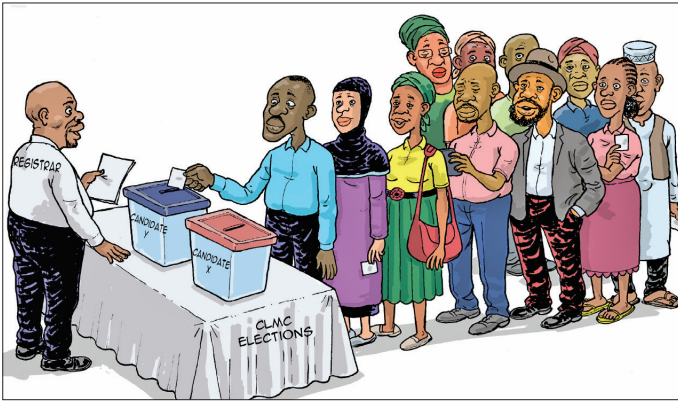
- The date, time, and location of the bylaws adoption and CLMC election.**
- An agreed process for how they will adopt the bylaws.** Will they vote by raising their hands? By paper ballot? By majority (51%), supermajority (66%), or consensus (100%)? What will happen if the necessary approval does not happen? Will people debate the rules that cause the whole bylaws to be rejected? Or will they just drop rules that people do not like to get the necessary vote?
- An agreed process for how CLMC members will be nominated and elected.** The bylaws should have set out an agreed election process. Review the process and make sure that the community is ready to carry it out by the time of the adoption and election ceremony.
- A mobilization strategy** to get as many community members as possible to attend and be part of the bylaws adoption. It is important to ensure that the adoption and election ceremony is widely known and to get buy-in from as many community members as possible. Aim to ensure that representatives of all households in the community are present and take part in the adoption vote.
- Invitations to relevant government officials.** The Community Land Act mandates that chiefs, administrators, Members of County Assembly (MCAs) and county officers in charge of land attend and moderate the adoption of bylaws and the election process.



FAO/ RICHARD BETT

## ACTIVITY 8: BYLAWS ADOPTION AND ELECTION OF COMMUNITY LAND MANAGEMENT COMMITTEE

(4-5 hours)



Haki Jamii/ FAO

To adopt the bylaws and conduct the elections, the community should hold a large, well-attended community meeting. Whatever process a community chooses, representatives of all households in the community should attend. The community may need to think creatively about how to ensure full community participation.

Key roles of Community Land Management Committees include:

- The day-to-day management of the community land on behalf of the community.
- Promoting cooperation and participation among community members in matters related to community land.
- Acting as a representative of a registered community while communicating with outsiders.
- Working closely with other institutions such as the county and national governments.
- Coordinating the development of long-term community land use plans in collaboration with relevant government authorities.
- **Step 1: Ask the Chief or other community leaders to open the meeting** and explain the process that the community followed to be able to reach the stage of adopting their bylaws and electing their CLMC.
- **Step 2: Read the agreed final draft of the bylaws.** Invite the leader who the community has chosen to officiate over the adoption ceremony to begin the ceremony according to

It is very important that chiefs, a member of county assembly, and the county officer in charge of land attends this meeting as required by law. The meeting is convened by the Land Registrar. If these officials are not present during the election of the CLMC, the election is not legally valid.

the agreed process. He or she should read the complete set of bylaws aloud. Attendees should then have an opportunity to make any final objections. If a community member raises an objection, the issue should be addressed and a solution found. If people cannot agree on a rule, it may be easiest to simply remove the rule from the bylaws rather than stopping the entire bylaws adoption process. Take careful notes of this process to keep a good record of the meeting and to remember any rules that were eliminated at the last moment – these rules might need to be discussed again during revisions of the bylaws in the future.

- **Step 3. Vote to adopt the bylaws.** After all final objections have been resolved, the community should prepare to vote to adopt their bylaws according to the voting process they have decided. Create a good record of the vote by taking photographs and videos of people voting, sending around an attendance list, and dating the adopted bylaws with the date and location of the meeting.
- **Step 5: Election of the Community Land Management Committee. The Community Land Registrar will initiate and oversee the election of the CLMC.** The government officials and community leaders should officiate the election process laid out in the community bylaws. After being elected, the CLMC should take an oath to fully carry out their roles and responsibilities as laid out in the adopted bylaws. Take photos and videos of the election to fully document the process. Take care to monitor the CLMC election proceedings to make sure that the election process is clear, fair, open, and that everyone in the community – including women, youth, and members of minority groups – get to vote.
- **Step 6: Community declaration that it will seek registration of its land using the Community Land Act.** As part of the community land registration process, the Community Land Management Committee must submit meeting minutes that state that the community wants to register its land. Ensure that this declaration is formally made in front of everyone present, and accurately written down, typed, and given the Community Land Management Committee to submit.

## ACTIVITY 9: CREATION OF THE COMMUNITY REGISTER

As soon as the Community Land Management Committee has been trained, the members should start their duties by creating a register of all community members over the age of 18. Depending on the size of the community, it might take some time to create the register. It is very important that all community members over the age of 18 are included in the registry. The register must include the following details for all adult community members:

- Full Name
- Date of birth
- Gender
- ID Number
- Phone Number
- Village Name (if the community has multiple villages)
- Signature or fingerprint

A community register template is included in Annex I of the Guide. Facilitators can give copies of this template to the Community Land Management Committee. Although the process of creating the register in each community will be different, some common strategies for creating registries include:

- CLMC members going to every village or sub-unit and going house to house to have all people 18 years and older sign the register.
- CLMC members mobilizing large community meetings in each village or sub-unit and have all people sign the registry at the meetings.
- CLMC member give a registry to the leader of each village or sub-unit and ask them to get all people to sign the registry.

## ACTIVITY 10: COMPLETION OF INITIAL REGISTRATION PAPERWORK

(4-5 hours)

The first step to register a community land is applying for registration of the community itself. The Community Land Management Committee should complete and submit CLA Form 3 (included in Annex IV) to begin the process of registering the community. In addition to the completed form, the CLMC must also submit the following as part of their application (CLA Regulations, Part II, Section 8.3):

- Name of the community
- Register of members of the community
- A signed copy of the minutes of the meeting in which the CLMC resolved to file application for registration
- Rules and regulations of the community (bylaws)
- Description of the interest in the land being claimed by the community, including a sketch map

**NOTE:** This does not need to be a final sketch map, but rather a very basic map and written description of the land being claimed by the community. A detailed map will be created later in the process.

**Once the CLMC has finalized the register and completed CLA Form III, they should go the county government office and submit these documents to the Community Land Registrar.** If the county does not have a Community Land Registrar at the county government office, government officials in the land office can advise the CLMC who to submit the paperwork to. The CLMC should ask the Registrar to provide written receipt that the initial paperwork has been submitted and received.

After the paperwork is submitted, the registrar will review the application to ensure the following (**CLA Regulations, Part II, Section 8.4**):

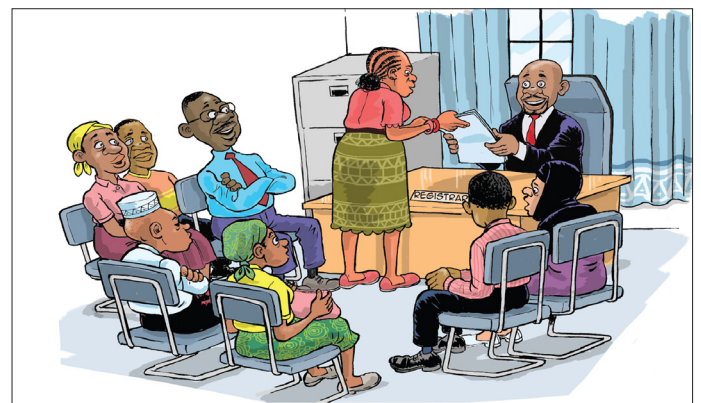
- The name to be registered has not been used by any other community;
- The applicant has complied with the act; and
- The rules and regulations of the community are satisfactory in substance and in form.

Once the registrar is satisfied with the application, he/she will issue the community with a certificate of registration in the name of the community (CLA Form 4 – see Annex III). This is a very important certificate. Once a community is issued a CLA Form 4 certificate, they have certain rights and responsibilities, similar to those of any company or corporation, including being capable of the following (CLA Regulations, Part II, Section 8.5):

- Suing and being sued;
- Acquiring, holding, selling land and other property;
- Having and managing its own funds, including borrowing and lending money; and
- Doing or performing such other things or acts necessary for the proper performance of its functions, which may lawfully be done by a body corporate.

This certificate does not mean that the community owns the land that they are claiming. It only means that the community is now a legally recognized community and has the right to own their land.

The paperwork required for the community to be issued with a title or deed should be completed after the community documents its community land and harmonizes its boundaries with neighboring communities.



Haki Jamii/ FAO



# DOCUMENTING COMMUNITY LANDS OVERVIEW

The Community Land Act requires that all community land claims must be formally mapped by a government surveyor. However, to ensure that communities drive the mapping process, this Guide strongly recommends that communities resolve land conflicts with their neighbors and document the boundaries of their lands before inviting in a government surveyor to start mapping. Facilitator should support communities to carry out the following activities to document their land:

- **Conflict resolution and boundary agreement.** Boundary agreement is the process through which neighboring communities resolve land conflicts and come to an agreement on where their community's lands stop and their neighbors' lands begin. For many communities, boundary agreements may be the most challenging part of the community land registration process: it can bring up unresolved land conflicts and may create new boundary disputes as people try to claim as much land as possible before the boundaries are officially surveyed. Agreed boundaries should be documented in writing and signed by representatives from both communities.
- **Community-led participatory mapping.** Once a community has resolved its land conflicts and documented its boundaries, they should revise the sketch map that they created earlier to make it more detailed. Some communities might want to create a new sketch map if they are not happy with the one they made earlier in the process. Sketch mapping involves community members drawing pictures of their lands and natural resources on a large piece of paper. The exercise can help to create a general understanding of the community's geographical layout and promote discussion of land and natural resources management. The maps will not be not technically accurate, but they will empower the community to lead the formal government surveying process, since they will be able to accurately direct the surveyor.
- **Submitting an official request to survey and demarcate community land.** Communities will need to submit additional paperwork to the government to request that their land is formally surveyed, mapped, and demarcated.
- **Participating in government surveying process.** Community members should ensure that they participate in the surveying process since they worked to harmonize boundaries; they should also be involved in drawing a detailed sketch map and resolving land conflicts. Government surveyors likely do not know the boundaries of the community, so it is very important that community members drive the surveying process.

## ACTIVITY 11: PLANNING FOR BOUNDARY AGREEMENT AND CONFLICT RESOLUTION

(3-4 hours)

The Community Land Act mandates that communities have a clear idea of the boundaries of their land. Although community lands will be mapped by a government surveyor, it is important that community members know the boundaries of their community's land and resolve conflicts with other communities before they request an official survey of their land.

Boundary agreement is the process through which neighboring communities agree on where their community's lands stop and their neighbors' lands begin. When successful, boundary agreement

efforts have the power to peacefully resolve long-standing conflicts and make communities' land rights more secure. However, if a community stops boundary agreements efforts partway through, it may face more land conflict than before it began the process.

As a facilitator, make sure you are prepared to support the community to resolve conflicts during the boundary agreement process. You may also want to find respected chiefs, local leaders, and government officials with conflict resolution skills who can be called to a conflict if a situation becomes heated and there is a potential for violence.

- **Step 1: Revisit the community's sketch map and talk in detail about each of the boundaries and hot spots.** Ask the community members to look at their map and discuss what they believe are the exact boundaries of their lands. Ask people to explain why the boundaries are where they are and write down their answers to create a paper record. Then discuss all the "hot spots" (sites of boundary disputes or possible tensions with neighbors) marked on their map. To do this, go through each hot spot one by one and ask the community to calmly and clearly tell the story of the conflict, including what efforts they made in the past to resolve the conflict. Support the community to come up with possible solutions and compromises to resolve the conflicts.
- **Step 2: Support the community to create a boundary agreement team** that includes youth, men, and women who will work with the CLMC to meet with neighbors at disputed boundaries to resolve the conflicts, and document the agreed boundary. The boundary team should be composed of well-respected, cool-headed, thoughtful, and capable community members. The community must trust the boundary team and have confidence in its ability to negotiate calmly with neighbors.
- **Step 3: Draft a boundary agreement and conflict resolution plan.** Support the community to create a strategy for how the team will attempt to resolve disputes with neighboring communities. Ask the community to discuss and decide:
  - What decisions the team can make on its own and what decisions should be brought back to the community for their input.
  - How the team will document their agreements with neighboring communities.
  - What circumstances will require the team to contact the facilitator or trusted leaders for support if a conflict threatens to become violent.

## ACTIVITY 12: LAND CONFLICT RESOLUTION AND DOCUMENTING BOUNDARY AGREEMENTS

(Length of time depends on size of land, number of boundary conflicts, and pace of the community)

The actual process of agreeing boundaries and resolving conflicts can take a long time, especially if the community's land shares boundaries with many neighboring communities or if there are land conflicts with neighbors. Although much of the work will be completed by the communities themselves without direct support from the facilitator, you should actively support conflict resolution efforts and immediately contact trusted leaders and/or government officials to mediate any conflicts that might become violent. After the community has agreed on its boundary harmonization and conflict resolution plan and created its boundary harmonization team, meet with the boundary harmonization team and plan for how they will accomplish the following:

- **Step 1: Visit each "hot spot."** The boundary agreement team should physically go to all the hot spots to talk with leaders from neighboring communities to resolve any land conflicts and agree on boundaries. If there is no conflict or only minor disagreements, negotiations may take only one meeting. If there is a serious conflict, it may take more time. If the boundary team and a neighboring community cannot agree during the first meeting, they should leave the discussion for the day and give everyone time to think.
- **Step 2: Document agreed boundaries.** Once a community has agreed on a boundary with their neighbors, it is best to mark boundaries in at least four ways, including:
  - Take photos and videos of members shaking hands while standing in the spot of the agreed boundary to create proof that all community leaders agreed.
  - Have both neighbors sign a written boundary agreement that describes the boundary in words and pictures to create a paper record of the boundary agreement. Such a document can also help to make sure people follow the agreement and create evidence that can be used if anyone challenges the boundary during the government surveying process. A sample boundary agreement can be found in Annex VI.
- **Step 3: Share the progress with the community.** Support the boundary harmonization team to organize a community meeting to share their progress, discuss it as a community, and finalize their sketch map. First, ask the boundary harmonization team to share their experiences, including what they accomplished, the evidence of boundary agreements they created, and the boundaries they were unable to harmonize. Next, support community members to review, revise, and finalize their sketch map based on the negotiated agreements. Any areas that were not harmonized should be clearly marked on the final map. The community might need to contact local government official or respected local leaders to help them harmonize the remaining boundaries.
- **Step 4: Organize meeting on detailed sketch mapping.** Work with the community to organize the next meeting on detailed sketch mapping. Agree on the date, time, and location.

## ACTIVITY 13: DETAILED PARTICIPATORY MAPPING



FAO/ Brian Kazungu

During this meeting, community members will add details to the sketch map of their land and natural resources. Some communities might decide to update the map that they created during the bylaws drafting process and others will decide to create a new map. Detailed sketch maps provide more evidence of a community's claims to their land and natural resources. Sketch maps are also useful for land use planning – when communities have a map of their land and natural resource, they can make better decisions about how to sustainably manage their lands and natural resources.

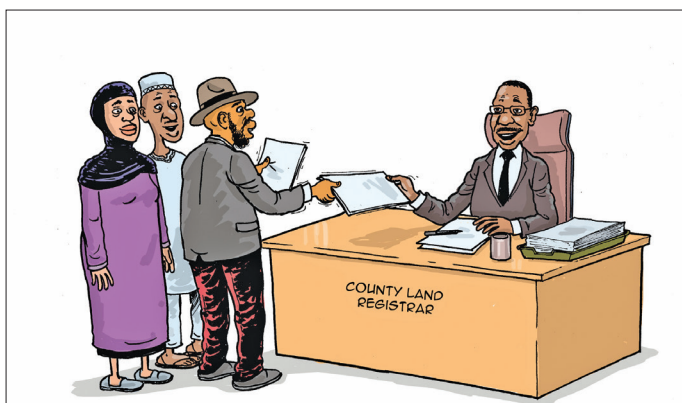
- **Step 1: Hold a community-wide meeting.** Before the meeting, explain the mapping activity to leaders and the CLMC and ask them to help explain the activity at the beginning of the meeting in a way that will address any potential concerns. Describe the full process of mapping the community from start to finish. Allow community members to ask any questions they have about the activity. Address all concerns and do not begin sketch mapping until everyone feels comfortable.
- **Step 2: Clearly mark all agreed upon boundaries on the map.** By the time the community is ready to add details to their sketch map, they should have agreed on most of their boundaries. Since the community will submit their detailed map to the government, it must include all boundaries. If the community was not able to agree on one or more of its boundaries, they should still include the boundary, but should indicate that there is an ongoing conflict that still needs to be resolved.
- **Step 3: Brainstorm a list of resources and landmarks to include on the sketch map.** Support the community to shout out a list of natural resources and other landmarks to include on their sketch map. Write down the brainstormed list on flip chart paper to reference during the activity and make sure all suggested resources are mapped. Be sure that the community includes any resources that they discussed as part of their bylaws. These can include physical features like roads, mountains, rivers, and other natural resources; infrastructure like schools, markets, boreholes, and clinics; sacred areas; places of historical significance; and boundaries with neighboring communities.
- **Step 4: Divide the meeting into small groups (by women, men, and youth) to draw sketch maps.** Provide each group with several sheets of blank flip chart paper and colored markers. Ask the members of each group to revise or draw a representation of the landscape of their community, using the map drawn during earlier in the process and including the new list of brainstormed resources. Remind the groups to make a legend (a list of what have been mapped, with a

corresponding symbol or color that indicates each item on the list). Have each group assign a drawer and presenter.

- Step 5: Presentation of the sketch maps. When the groups have finished drawing their maps, bring everyone back together and invite each group to present its map. Encourage members to describe their group's discussions (including any disagreements that arose) and legend. After each group has made its presentation, the community should discuss all the maps, especially the boundaries, locations of natural resources, and amenities that all community members access.
- Step 6: Combine the maps into one sketch map. Support the community to draw a single combined map (on a fresh piece of paper) that includes details from each group's map. After the maps have been combined into one map, the community may want to continue to add details until all important features and natural resources are accurately represented. Combining the maps and agreeing on them can take time. If the time for the meeting runs out before the community agrees that the map is finished, ask the CLMC and community leaders to hold additional community meetings to finalize the map.
- Step 7: Plan for how the map will be kept safe. Take photographs for your records and leave the sketch map with the community. Support the community to create a plan for keeping the map private and safe. Consider leaving extra supplies so that community members can revise their sketch map as necessary.

## ACTIVITY 14: SUBMITTING AN OFFICIAL REQUEST FOR RECOGNITION AND ADJUDICATION OF COMMUNITY LAND

(3-4 hours)



Haki Jamii/ FAO

After community members submitted CLA Form 1 and 3 and been recognized as a registered community, adopted bylaws, and elected a Community Land Management Committee, the Community Land Act requires them to submit an Application for Recognition and Adjudication of Claim in Community Land using CLA Form 8 (see Annex VI). Once this is submitted, communities will follow through to ensure that no claim over the land is put by other communities of interested parties as will be advertised by the community land registrar.

**IMPORTANT NOTE:** Only registered communities that have received a government-endorsed CLA Form 4 can submit this application. Do not submit the form until the community has been recognized by the government.

Communities must include the following information on CLA Form 8:

- Name of community
- Registration number
- PIN number
- Postal and email address
- Telephone number (ideally of the CLMC chairperson) and an alternative phone number

In addition, the community must indicate the county where the community land is located and include a narrative description of the land claim. The completed form should be submitted to the county land registrar. If the county where the community is located does not have a land registrar, the CLMC can attempt to submit the form to a land registrar at the national level. After the form is processed by the registrar, the Community Land Act requires that the government uses local media (newspaper and radio) to announce that the community has applied for adjudication and recognition of its land claims. The announcement will give a specific time period for any person and/or company to submit evidence of any competing land claims on the community land. Depending on the county, the community may also be required to pay a fee for government surveying. The community can raise this money however it sees fit—it can have a harambee, ask for support from local government officials, or do other activities to raise the funds.

## ACTIVITY 15: PARTICIPATING IN GOVERNMENT SURVEYING PROCESS

(Time depends on pace of government surveyor and size of community land)

Community Land Management Committees have an important role to play in the official government surveying process. Members of the CLMC should go with the government surveyor, show them the boundaries of the community and evidence of boundary agreements, and help resolve any conflicts that might come up during the surveying process. CLMC members should also provide evidence of its community's land claims to government officials that are vetting any competing claims that were submitted after the newspaper or radio announcement.

## ACTIVITY 16: FOLLOWING UP AND MONITORING GOVERNMENT REGISTRATION PROCESS

Government processes, especially new ones like those required by the Community Land Act, do not always go as planned. The government needs to hire and train new people to support communities to implement the Act, and some government officials might even try to intentionally delay the process because they do not want to give up power to communities. It is important that communities keep track of all forms that they submit to the government and the dates that they were submitted, and closely track any responses and correspondence that they have with government officials. The community should also keep copies of all forms that it submits.

A CLA Application Tracking Worksheet is included in Annex VII to help communities keep track of the application and document any challenges or delays that it faces during the application process.

If the government does not process the application in good time, the community should follow up with the relevant government officials in writing and in person. Once the community's land is adjudicated and demarcated, it will receive an official government title of its land claims!

The Process of Community land registration in a nutshell.....

# RECOGNITION AND REGISTRATION OF COMMUNITY LAND RIGHTS



**1** Community shows interest to register the community to the land registrar



**2** Notice from Community Land registrar for election CLMC



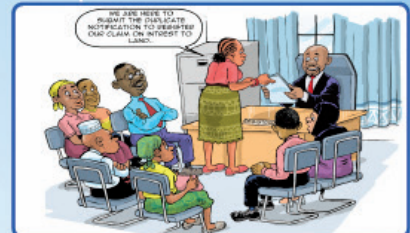
**3** Community land registrar convenes public meeting on pending election of CLMC



**4** CLMC elections prescribed by the registrar



**5** CLMC applies to community land registrar for registration of the community



**6** Application for registration of interest on community land



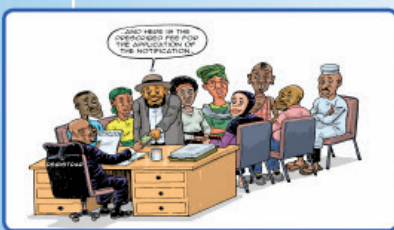
**7** Description of the boundary



**8** Current use of community land before registration



**9** Application for registration of community land should be signed by at least 15 members of community



**10** Interest for application of community land should be accompanied by a prescribed fee



**11** Application for registration of community land should have sketch maps and plans attached



**12** Appointment of adjudication officer by CS through Gazette Notice



**13** Recording claims



**14** Demarcation and delineation of the land



**15** Title deed

*All land in Kenya belongs to the people of Kenya collectively as a nation, as communities and as individuals.*

Constitution of Kenya, 2010

# LEGAL DOCUMENTS AND TOOLS

NAME	DATE OF BIRTH	GENDER	ID NUMBER	PHONE NUMBER	VILLAGE	SIGNATURE (OR FINGERPRINT)



REPUBLIC OF KENYA  
MINISTRY OF LANDS AND PHYSICAL PLANNING

APPLICATION FOR RECOGNITION OF INTEREST/ CLAIM ON COMMUNITY LAND

To: The Registrar of .....

We the ..... community, hereby apply for recognition of our interest/claim in the community land referred to herein.

Our interest/ claim are as shown in the attached sketch diagrams /maps/plans and described in the Schedule.

Schedule

S/No.	Locality	Approx. Area (Ha)	Current Use of the land

Details of the Applicant(s)

Name of Persons/Group/Community:.....

Registration No.:.....

Postal/Email Address:.....

Tel. No.:.....

Dated at..... this..... day of .....20.....

.....  
Signature of Chairperson

For Official Use Only:-

.....  
.....  
.....

Signed .....

Registrar.....



REPUBLIC OF KENYA

MINISTRY OF LANDS AND PHYSICAL PLANNING

Application for Registration of a Community

To: The Community Land Registrar
P.O. Box ..... - .....
Nairobi.

We the undersigned community land management committee hereby inform you that at a community assembly held at ..... on the ..... day of ..... 20... in accordance with section 7 of the Community Land Act, 2016 rules and by-laws were adopted. The draft rules and by-laws of the Community are attached to this application together with a register of the proposed members and a certified true copy of the minutes of the said meeting. We hereby apply under section 7(6) of the Community Land Act, 2016, for registration of the ..... Community.

The following are particulars of the community:—

- (a) The name of the community .....
(b) Description of the area determined in accordance with the Community Land Act, 2016 .....
(c) Registered office of the community (if any) .....
(d) Postal address of the community .....
(e) Object and purpose of the community .....
(f) Names, addresses, occupations and dates of birth of the community land management committee

Table with 5 columns: Name, Address, Occupation, Age, Signature. Each cell contains a dotted line for text entry.

Provision is made in the draft rules and by-laws of the community for all other matters connected with the community and its functions.

Date .....

\*To be signed by all the members of community land management committee



**REPUBLIC OF KENYA  
MINISTRY OF LANDS AND PHYSICAL PLANNING**

**Certificate of Registration**

Registration No. ....

I hereby certify that the Community under the name of ..... community and its rules and by- laws have this day been registered by me in the Community Register in pursuance to the provisions of the Act and the Regulations made thereunder.

Given under my hand at ..... this ..... day of ....., 20.....

Community Land Registrar

.....





FORM CLA 2

(r. 7(2))

REPUBLIC OF KENYA  
MINISTRY OF LANDS AND PHYSICAL PLANNING

Notification of Change in Composition of community Land Management Committee

To: The Community Land Registrar

We, the undersigned Community Land Management Committee do hereby give notice that by reason of death/retirement/removal/resignation/other .....of:

- (a) .....
- (b) .....
- (c) .....

the community assembly vide a resolution passed on the ..... day of..... 20.... elected the following to be a member(s) of the community land management committee in replacement thereof:

Name	Addresses	Occupation	Age	Signature
.....	.....	.....	.....	.....
.....	.....	.....	.....	.....
.....	.....	.....	.....	.....
.....	.....	.....	.....	.....
.....	.....	.....	.....	.....
.....	.....	.....	.....	.....

A certified true copy of the resolution passed at the said assembly is hereby attached to this notice.

Dated this.....day of .....20.....

Signed by the following five members of the committee

Name	Signature
.....	.....
.....	.....
.....	.....
.....	.....
.....	.....

**SAMPLE BOUNDARY AGREEMENT**

---

Boundary Agreement between

The community of \_\_\_\_\_

and

The community of \_\_\_\_\_

Signed on \_\_\_\_\_.

WHEREAS we, residents of \_\_\_\_\_ community and \_\_\_\_\_ community, seek to secure our existing land rights by documenting and registering our land under the Community Land Act (2016).

WHEREAS Our local leaders, including \_\_\_\_\_, have endorsed these efforts and expressed support for our actions;

NOW, THEREFORE we together agree to establish the boundaries between our communities, and to avoid any further boundary conflicts concerning this area. To this end, we hereby declare:

1. This MOU is documenting the boundary between \_\_\_\_\_ community, and \_\_\_\_\_ community.
2. The boundary is described by the following evidence and markers: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
3. A map of the boundaries (sketch map below or attach a copy of the community map):

4. The community of \_\_\_\_\_ and \_\_\_\_\_ agree to share access to grazing land and or other natural resources described below under the following circumstances:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_

5. Decisions to share grazing land and/or other natural resource will be decided and communicated by the following process:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

6. These boundaries will be permanent and undisputed. Should a boundary disagreement arise, this agreement will be referenced to resolve the dispute. The communities signing this agreement pledge to peacefully and quickly settle all boundary disputes related to this agreement, using mediation and other nonviolent methods of dispute resolution.

7. The communities that are signatories to this agreement will use these boundaries when applying for legal documentation of their land rights. Furthermore, when either community applies for its lands to be surveyed, these boundaries will be the ones recorded and measured.

8. The parties have agreed that copies of this MOU shall be deposited with all relevant government agencies and officials, including:\_\_\_\_\_.

9. This boundary agreement was witnessed and signed by the following leaders, government officials, and community members on this \_\_\_\_\_ day of \_\_\_\_\_ :

	NAME	TITLE AND COMMUNITY AFFILIATION	SIGNATURE
1.			
2.			
3.			
4.			
5.			
6.			
7.			
8.			
9.			
10.			



REPUBLIC OF KENYA  
MINISTRY OF LANDS AND PHYSICAL PLANNING

APPLICATION FOR RECOGNITION AND ADJUDICATION OF CLAIM ON COMMUNITY  
LAND

To: The Registrar of .....

**Details of the Applicant(s)**

Name of Community: .....  
Registration No.: .....  
PIN No: .....  
Postal/Email Address: .....  
Tel. No.: .....

We, the above named Community situated within .....(locality) in  
.....County hereby apply for recognition and adjudication of community land rights over the  
parcels of land shown in the attached sketch diagrams/maps/plans. The description of the parcels is as  
follows

- (i) .....
- (ii) .....
- (iii) .....

Current use of the land.....

Dated at..... this..... day of .....20.....

.....  
Signature of Applicant

For *Official Use Only*:-

.....  
.....  
.....

Signed .....  
For: Chairman,  
Community Land Management Committee

### CLA APPLICATION TRACKING WORKSHEET

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FORM	DATE SUBMITTED	SUBMITTED TO (NAME OF GOVERNMENT AGENCY OR OFFICIAL)	DATE OF RESPONSE FROM GOVERNMENT	TYPE OF RESPONSE FROM GOVERNMENT	FOLLOW- UP FROM COMMUNITY	DATE OF FORM APPROVAL





**FACILITATOR GUIDE: KENYAN COMMUNITY LAND ACT**