

# GROUP RANCHES AND THE COMMUNITY LAND ACT:

**Will We Correct The Mistakes Of The  
Past Or Repeat Them?**



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# EXECUTIVE SUMMARY

**The Community Land Act (2016) repealed the Group (Land Representative) Act (1968).** In its implementation of the Community Land Act, the Ministry of Lands is currently at risk of perpetuating exclusionary and undemocratic practices that have plagued group ranches to date if deliberate steps are not taken to address past failures. The decision to correct past mistakes or repeat them is at the heart of the implementation of the Community Land Act.

In many cases, group ranches in Kenya were ran by men and powerful local elites at the expense of group ranch members. Allegations of corruption among group ranch officials, unequal distribution of group ranch resources to all members, and the lack of transparency in the management of group ranches doomed the vision of secure tenure rights among communities. Women, youth and minority groups were excluded from key decision-making, and land was given to household heads – primary men and some widows. This meant that aspirations of women as primary users of land and land-based resources were rarely factored into decision-making process.

**This policy brief argues that a people-driven, legally empowering implementation of the Community Land Act (CLA) is necessary to avoid the previous pitfalls of the Land (Group Representatives) Act.** This type of implementation strengthens local land governance by supporting communities to create stronger community bylaws, building the capacity of Community Land Management Committees, and strives to be as inclusive, transparent, and participatory as possible. **The brief emphasizes that the process is as important as the end goal** of granting legal rights to communities. Evidence demonstrates that focusing on titling alone—whether individually or at the household level—may not necessarily lead to greater tenure security for women.<sup>1</sup> The focus on the process yields a stronger governance system, an inclusive and participatory decision-making process which is key in secure tenure rights. Furthermore, this policy brief calls for a shift from past practices in governance and management of undissolved group ranches, and focuses on a holistic view of protection of rights and interests in community land - for both women and men.

<sup>1</sup> Salcedo-La Viña C, Beyond Title: How to Secure Land Tenure for Women, 2020.



# BACKGROUND AND CONTEXT

The **Community Land Act** is not the first law in Kenya to enable local communities gain legal rights over their land and natural resources. Group ranches were formed under the **Land (Group Representatives) Act of 1968** when lands were legally issued to groups, each with its freehold title deed. According to the Act, officials of group ranches were to hold and manage land and other resources on behalf of the entire group for their collective benefit. The objective of the Act was to increase productivity and earning capacity of pastoralists, secure tenure rights, and reduce environmental degradation from overgrazing on communal lands.

However, despite the Act providing clarity on governance structures, in practice, officials of group ranches often abused power for their own benefits. Group Ranch committees that were formed under the Act were not truly representative of communities, as they excluded women and minorities, were often corrupt, and made decisions that were not in the best interest of their community members. In addition, group ranch committees often operated with no checks and balances, giving community members no way to appeal bad decisions. Moreover, by allowing personal gain to supersede common group interests, group ranch management undermined the trust bestowed on them by the group and allowed the appropriation of communal lands by individuals<sup>2</sup>. This led to a number of negative impacts such as dispossession of communal land, subdivision of grazing areas, and investment

deals that benefitted the group ranch committee members, rather than the community as a whole.

Partly to address weaknesses in the implementation of the **Land (Group Representatives) Act**, the Government of Kenya enacted the **Community Land Act (CLA)** in 2016. As a result of this new legal framework, group ranches ceased to legally exist and are required to re-register their land claims and comply with requirements stipulated in the CLA. The requirements include revising existing community membership registers that excluded women to ensure inclusivity of all adult members. Additionally, the undissolved group ranches are required to elect 7 to 15 Community Land Management Committees (CLMC) members. Contrary to the repealed **Land (Group Representatives) Act** that was silent on gender representation, under the new Act, CLMCs must observe the two-thirds gender rule as enshrined in the 2010 Constitution. Other requirements include harmonization of boundaries, developing or revising the community by laws, and completing forms as an expression of interest to register their lands. A fundamental difference between the group ranch model and community land is that property title in the former is vested in a few community members: the group representatives. The title in the latter is vested in all members of the community in undivided shares.



<sup>2</sup> Moiko S, *The Vanishing Commons: Tenure Reform, Individuation and Dispossession of Land in the Pastoral Rangelands of Kajiado District, Kenya, 2004.*

# FAILINGS OF THE PREVIOUS LEGAL DISPENSATION: A REFLECTION OF THE MANAGEMENT OF GROUP RANCHES

Registration of group ranches was viewed as a compromise between individual ownership and the need for collective access to wider resources in communal drylands.<sup>3</sup> Group ranches had two levels of governance: group representatives and the officers of the group ranch. Group representatives were elected by members of the group ranch in the presence of the registrar of group representatives. The law was gender neutral and did not spell out the need for gender representation. Men were thus the face of leadership in most group ranches, exacerbating existing inequalities.

at least 60 percent of the registered members. A resolution had to be supported by not less than 60 percent of the members present.<sup>5</sup> However, in practice, many group ranches went for years or even decades without annual general meetings or election of new officials. Decisions were made at the group representative's levels and in many cases never subjected to the group members as required by the law. Critical decisions that involved the livelihoods of the community members such as sale of their land or subdivision often caught community members by surprise.

A survey at Shompole group ranch in Kajiado District showed that male elders tend to dominate the discussions, while women and the youth contribute only when asked to do so. At Olderkesi group ranch in Narok District, female members mostly refused to answer questions fearing, as they put it, 'answering men's issues'. The survey established minimal female role in decision making and extreme male dominance.<sup>1</sup>

<sup>1</sup> (Adopted from Kibugi R (undated): Legal and Planning Methodology for African Commons: Reviewing Rangeland Governance in Kenya

The officers of the group ranches who were elected by members constituted the management committee that included a chairperson, vice-chair person, secretary, treasure and three other members, two of whom had to be group representatives. The intention of the two structures: Group Representatives and the Officers of the Group Ranch was to encourage checks and balances, but in many cases, this led to conflict as the law created two centers of power.<sup>4</sup> Decisions made by the two structures were in some cases inconsistent and clashing. The law also required the officers of the group ranch to assist and encourage members to manage the land or graze stock in a sustainable way. On the contrary, most group ranches were sub-divided into individual holdings within two decades, thereby undermining the intent of the Act to provide secure tenure while improving the productivity of pastoral herds. To make decisions, the Act required group ranches to convene annual general meetings with a quorum of

Members of Imbirikani group ranch in Kajiado district argued their attendance really made no difference as the committee was indifferent to their contributions. They accused the committee of patronizing the members, misuse of group ranch funds, lacking solidarity and being divided by political and clan interests, being unresponsive to the needs of the members and being biased in the registration of members. In the same district, Kuri Kuri group members gave reasons for meetings apathy: no confidence in fraudulent chairperson; too many incomplete projects; contempt for committee; unnecessary meetings; no-information flow at all; and exclusion in decision making.<sup>1</sup>

<sup>1</sup> Extracted from Kibugi R (undated): Legal and Planning Methodology for African Commons: Reviewing Rangeland Governance in Kenya.

<sup>3</sup> Ogolla B & Mugabe J, Environmental Governance and the Law in Calestous Juma and J.B Ojwang In the Land we Trust: Private property and Constitutional Change, 1996.

<sup>4</sup> Kibugi R, A Legal and Planning Methodology for African Commons: Reviewing Rangelands Governance in Kenya, Undated.

<sup>5</sup> Republic of Kenya, Land (Group Representatives) Act, 1963

# GETTING IT RIGHT: WHAT MUST THE GOVERNMENT DO TO ADDRESS THE CHALLENGES OF GROUP RANCHES

The **Community Land Act** provides a timely opportunity to address the mistakes made in the governance of group ranches. If this opportunity is missed, the same challenges that were experienced in group ranches will likely be replicated in newly registered community lands. Namati Kenya draws experience from supporting eleven communities to fulfil the set requirements for registration. Only one community, Musul, an undissolved group ranch in Laikipia County, has been registered and issued with a title of their land. The communities were supported through a partnership between Namati Kenya, IMPACT, Il'laramatak Community Concerns, and Samburu Women's Trust. Paralegals from the communities were trained on the law and deployed to support community members through the journey of registering their land.

The Ministry of Lands is mandated to steer the implementation of the registration process and has a critical responsibility in upholding the spirit of this law and the Constitution. Specifically, the Ministry must ensure that the following areas are strengthened:

## BYLAWS DEVELOPMENT AND ADOPTION

The CLA empowers communities to make rules for regulating the management and administration of their land and natural resources as a prerequisite for registration. Community bylaws are also a critical moment for defining rules, including setting out specific mechanisms for ensuring participation, transparency, and accountability of the Community Land Management Committees (CLMCs) and collective decisions about community land. The bylaws must uphold the Constitution as the supreme law of the land by ensuring that there are no contradictions between community bylaws and national laws. CLMCs are mandated to draft bylaws and subject them to the community assembly for adoption. The community adopts bylaws by a vote of at least two-thirds of the community assembly.

For the CLA to avoid the challenges experienced during the implementation of the **Land (Group Representatives) Act**, full community participation is critically important. County and National government should support convening of initial meetings with community members before the drafting process to get their input. This can be done through a village representative model to ensure maximum participation from community members. The village representative model acknowledges the vastness of many communities and ensures that in every critical step of drafting and adopting the bylaws, every village is represented in the meetings. The representatives then have a role to scale down the information to community members of their villages. This is critical in ensuring that the bylaws capture the vision of the full community - including those previously excluded from land governance in the undissolved group ranches.

The bylaw development process is also an opportunity to address issues around weak governance systems experienced in most group ranches. The bylaws should set out clear mechanisms for approving decisions proposed by the CLMC on membership, natural resource governance among other key decisions. Additionally, the bylaws should stipulate the mandatory quorum of both women and men needed while approving decisions. In case of violation of set rules, the bylaws must stipulate mechanisms for enforcement and where necessary punishment of those that act contrary to the set rules. Bylaws must affirm the role of the community assembly in ratifying all decisions to ensure that no decision is left at the discretion of the CLMC. Additionally, the bylaws must not be gender neutral, instead, they should clearly state that women and men have equal opportunity to be members and lead in the governance of community lands.

Community land registrars must decline the submission of bylaws that are discriminatory or promote exclusion of certain social groups, and advise the community on specific areas that need to be corrected to ensure consistency with the constitution. The turnaround of such feedback should be timely to allow communities to address themselves to the feedback given and resubmit the applications to minimize any further delays in the registration process.

## INCLUSIVE AND ACCOUNTABLE GOVERNANCE OF COMMUNITY LANDS

The CLA provides for two levels of governance structures at the community-level: CLMCs and Community Assemblies. CLMCs have responsibility over the running of the day-to-day functions of the community, including managing and administering registered community land on behalf of the respective community, and coordinating the development of community land use plans in collaboration with the relevant authorities. The Community Assembly consists of all adult members of the community. The assembly approves any allocation or conversion of community land, validates claims of existing customary rights of occupancy and elected CLMC members.

Community land registrars oversee the elections of the CLMCs. Registrars must ensure that elections are done in a transparent manner, giving equal opportunity to women and men to be elected. This will rectify the problem experienced in group ranches where leadership was a preserve of men only. Where the composition of CLMCs elected do not comply with the two-thirds gender rule, registrars must call for a repeat election.



## A case of Musul in Laikipia County

Musul group ranch had existing governance structures before transitioning to community land. However, the previous leadership only consisted of men. In compliance with the Constitution and the CLA, the community elected 15 new members consisting of eight men, five women, one youth, and one disabled community member. Only three of them were also part of the previous committee. The Chairman of the community stated that “they had to ensure that they complied with the two-thirds gender rule in electing members of the CLMC”.<sup>1</sup>

<sup>1</sup> Adhiambo, S. and Vogelsang, J. Namati. *The Second Community in Kenya to Secure Their Land Rights, The First To Do So Using Legal Empowerment*. Unpublished, 2021.

## ADOPT A PARALEGAL OR COMMUNITY FACILITATORS MODEL

The County and National governments have a role to play in sensitizing communities on the **Community Land Act** and further support them to fulfil the requirements set out in the law. Community paralegals or facilitators provide a bridge between the law and real life, walking with communities to ensure fulfilment of all the set requirements for registration of their community land. Paralegals combine their knowledge of law, range of skills and understanding of local contexts to help resolve justice problems by empowering the affected community in the use of law. Trained in basic law and in skills like mediation, organizing, education, and advocacy, paralegals are able to engage formal and traditional institutions alike. Namati’s work with paralegals has proven to be a relatively low-cost and effective method of creating a bridge between formal land tenure systems and customary governance.

County governments can engage local trained local community members as paralegals to support communities as they draft their bylaws, update their registers, and guide them in filling in the application forms for registration. The paralegals can be stationed at the county lands department to serve as the first point of contact for communities who are seeking to register their land. The paralegals can review community applications, provide quick guidance on missing documents, and guide the community through the application process. This will ease the burden of communities in engaging in the bureaucratic process of registration and ensure timely guidance is provided. Additionally, the process will be inclusive, people-

centered, and legally empowering to women and men. Legal empowerment focuses on reversing the trend by giving people the power to understand, use, and shape the law to respond to their needs and aspirations. Adopt a Paralegal or Community Facilitators Model

## CAPACITY BUILDING OF COMMUNITY LAND MANAGEMENT COMMITTEES

Once elected, registrars must invest in training the members of the CLMCs to understand their roles and responsibilities for strengthened governance. Community assemblies, which consist of all adult members of the community, must understand their responsibility in holding CLMCs accountable. To avoid the mistakes of the **Land (Group Representatives) Act**, emphasis must be on strengthening the local land governance within communities - not just on titling. This should include regular review and updating of bylaws and community register with the community assembly, and ensuring they are enforced in practice. As part of this training, CLMC’s capacity should be strengthened on the day-to-day management of the community land on behalf of the community. CLMCs are expected to promote cooperation and participation among community members in matters relating to community land, while acting as a representative or voice of the registered community to outsiders. The training should therefore focus on continuously supporting the CLMCs better deliver on their mandate to the community. Additionally, capacity in resolving community disputes, liaising with relevant institutions, gender responsiveness among other key skills and capacities should be built on CLMCs.

## INCLUSION AND PARTICIPATION OF WOMEN AND MEN

Participation is a key principle in the **Constitution of Kenya** and in successive land laws including the **Community Land Act**. Group ranches were notorious for excluding women in their membership, with only widows and a few elite women finding their way into the community register. The CLA is clear that all members of the community must be in the register regardless of their gender. Community land registrars must therefore scan through the submitted community registers to ensure that no woman is left out. This could be done through looking at the percentage of women in the register against the national population of women. Registrars should encourage women to report any cases of their exclusion throughout the registration process. Where a community register excludes women and other minority groups, the registrar must decline to process the application for registration, and instead provide guidance that will ensure inclusivity of all before re-submitting the application forms.



## FINANCING THE REGISTRATION PROCESS

Community lands are mostly found among pastoral communities in arid and semi-arid areas of the country. Despite being endowed with natural resources, most communities have not yet financially benefited from their resources. To this end, the cost of registration - convening of communities to elect the CLMCs, facilitating the attendance of the community land registrars for meetings, putting up a notice of the meeting to elect the CLMCs in the leading daily newspapers, among other costs - are unrealistic for communities. The Ministry of Lands together with County Governments must secure resources to finance the registration process and move the burden from communities. To date, each of the few communities that have successfully registered their land has had external support from development partners. Communities should not be left to rely fully on development partners in the registration process, as this is unscalable and unsustainable. The high costs of registration will keep communities from registering their land and enjoying the full benefits of the law.

“As required under Section 7(2) of the CLA, the community through the office of the Registrar of community land had to publish a notice to call for elections of members of the CLMC. The notice was duly published in the Daily Nation newspaper and cost the community Ksh78,080.”<sup>1</sup>

<sup>1</sup> Adhiambo, S. and Vogelsang, J. Namati. The Second Community in Kenya to Secure Their Land Rights, The First To Do So Using Legal Empowerment. Unpublished, 2021.





# CONCLUSION AND RECOMMENDATIONS

In conclusion, if implemented in an inclusive, participatory manner, the Community Land Act offers an opportunity to avoid replicating the pitfalls of the previous group ranches regime. **The need for timely registration of community land should not overshadow the importance of strengthening local land governance while ensuring tenure security as the core of the process.** We therefore recommend the following:

1. A thorough audit of the five registered community lands is done to ensure that no cases of exclusion of **any** women and minority groups exist. This should involve reviewing the submitted member registers, interviews with women groups and opinion leaders among others. In case of any exclusion, the register should require CLMCs to update the register.
2. Throughout the registration process, the Registrars should keenly review the submitted bylaws to ensure that the spirit of the law on inclusion of women and men is embraced. Registrars should probe for women's participation in the development and adoption of the bylaws. Registrars should decline to register communities whose bylaws have discriminatory provisions that exclude women; married, unmarried, widowed, with or without children and go against the **Constitution and the Community Land Act.**
3. Registrars must ensure that elections of CLMCs are conducted in a transparent manner, regularly as prescribed in the law, and give an equal opportunity for all. Where possible, local organisations and/or paralegals should be present as observers of the elections. This is important in rebuilding confidence of the processes of electing CLMC's.
4. The Ministry of Lands must secure adequate resources to facilitate community land registrars in steering the registration process. Costs such as facilitating the registrars to meetings, posting a notice of the meeting in the leading daily newspapers should be covered by the Ministry. The Ministry must also develop and share estimated costs for the registration process to minimise corruption. When communities have a guide on what costs they must meet, then scrupulous dealings are less likely to occur.
5. County Governments should secure resources to engage community paralegals to support and guide communities that are keen to register their land. The paralegals should be from the community to ensure that they understand the local context, and should be trained adequately on the law, institutions, and processes relevant for the registration process.





