

THE COMMUNITY LAND BILL, 2011

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BE IT ENACTED by the Parliament of the Republic of Kenya as follows:

FIRST SCHEDULE — PROVISIONS AS TO THE CONDUCT OF BUSINESS AND AFFAIRS OF THE BOARD

THE COMMUNITY LAND BILL, 2011

A Bill for

AN ACT of Parliament to give effect to Article 63 of the Constitution; to provide for the allocation, management and administration of community land; to establish Community Land Boards, to define functions and powers of Community Land Boards; to provide for the powers of County governments in relation to unregistered community land; and to make provision for incidental matters.

ENACTED by the Parliament of Kenya, as follows—

PART I—PRELIMINARY

Short title.

This Act may be cited as the Community Land Act, 2011.

Interpretation.

2. In this Act, unless the context otherwise requires—

“**board’s area**” means the area described in a notice under section 4(5) in respect of a board;

“**Board**” means any board established by Section 4 of this act.

“**commonage**” means that portion of the community area of a traditional community which is traditionally used for the common grazing of stock;

“**community**” refers to a clearly defined group of users of land, which may, but need not be, a clan or ethnic community. These groups of users hold a set of clearly defined rights and obligations over land and land-based resources.

“**community area**”, in relation to a traditional community, means the area comprising the community land inhabited by the members of that community;

“**committee**” means the land administrative committee as established by section 4 of this Act

“**community land**” means land referred to in Article 63 (2) of the Constitution of Kenya;

“**Customary Land Rights**” refer to rights conferred by or derived

from African customary law whether formally recognized by legislation or not.

“**farming unit**” means a portion of land allocated for farming purposes and conforming to the size prescribed under this Act for such purpose;

“**Fragile ecosystems**” means those ecosystems that are key to the survival and sustainability of flora and fauna and include forests, arid and semi-arid lands, water bodies, wetlands and all areas hosting threatened biodiversity

“**leaseholder**” means a person to whom a right of leasehold has been granted under this Act;

“**Cabinet Secretary**” means the Cabinet Secretary for the time being in Charge of Lands,

“**Principal Secretary**” means the Principal Secretary: Lands,

“**hunter and gatherer**” refer to forest dwelling communities whose primary livelihood is derived from hunting wild game and gathering forest products such as fruits and honey.

“**right of leasehold**” means a right of leasehold granted under this Act;

“**spouse**” includes the spouse or partner in a customary union, whether or not such customary union has been registered, and

“**this Act**” includes regulations made there under;

Objects and purposes of the Act.

3. The objects and purposes of this Act are to establish a legislative framework for-
- (a) The vesting of community land to communities identified on the basis of ethnicity, culture or similar community of interests
 - (b) The registration, management and administration of community land
 - (c) The holding of unregistered community land by county governments in trust for communities.

PART II —LAND ADMINISTRATION COMMITTEES

Establishment of land administrative committees

4. (1). There shall be established Land Administration Committees for each land administration area.

Composition

- (2) The cabinet secretary shall by notice in the Gazette
 - (a) Establish one or more land administration areas in a community land area as he or she may determine; and
 - (b) Disestablish a land administrative area or amend its area of jurisdiction

- 5. (1). A land administration committee shall be composed of persons not holding any traditional leadership position and must be elected by the Community as provided by the regulations.
- (2). At least one third of the total membership of the land administration Committee shall be women.
- (3) One member of a land administration committee shall represent the interests of vulnerable community members, including women, children, the youth, the elderly and the disabled.
- (4) The following entities may designate a person to sit in the land administration committee provided that the persons so designated under this sub-section shall be a non- voting member.
 - a) Cabinet secretary responsible for land matters
 - b) The governor in whose jurisdiction a land administration committee functions
 - c) Every municipality in whose area of jurisdiction a land administration committee functions.

(5) In the first sitting of the committee, the committee shall elect a chairperson

(6) The Land Administration Committee shall have 11 elected members

Terms of office

- 6. The terms of office of the members of the Land Administration Committee shall not exceed five years

Powers and duties

- 7. (1) To the extent provided by this Act and subject to any other applicable law, a land administration committee represents a community owning community land and has the powers and duties conferred on it by this Act.
- (2) A decision by a land administration committee which has an effect of

disposing of community land or a right in community land to any person, including a community member, does not have force and effect until ratified in writing by the Community Land Board having jurisdiction within that area

(3) In the exercise of its powers and the performance of its duties a land administration committee shall;-

- a) Have powers to allocate customary land rights
- b) establish and maintain registers and records of all new order rights and transactions affecting such rights as may be prescribed or as may be required by the rules; promote and safeguard the interests of the community and its members land;
- c) endeavour to promote co-operation among community members and with any other person in dealing with matters pertaining to land;
- d) assist in the resolution of land disputes;
- e) continuously liaise with the relevant municipality, Board and any other
- f) institution concerning the provision of services and the planning and development of the community land;
- g) perform any other duty prescribed by or under this Act or any other law; and generally deal with all matters necessary for or incidental to the exercise of its powers and the performance of its duties.

Power to Regulations

8. The Cabinet Secretary shall make regulations governing the election of members to and removal of members from the land administration committees

PART III—COMMUNITY LAND BOARDS

Establishment
Community Land
Boards

- of
- 9.** 1) Subject to subsection (4), the Cabinet Secretary shall establish Community Land Boards to perform the functions conferred on a board by this Act within the area for which each board is established in accordance with subsection (2)
- 2) A board may under subsection (1) be established in respect of
- a) the whole of any region in which community land is situated;
 - b) a defined part of such a region; or
 - c) an area comprising defined parts of two or more of such regions
- 3) Subject to subsection (4) the Cabinet Secretary may;-
- a) alter the boundaries of any area determined in respect of a board under subsection (1).
 - b) disestablish a board
- 4) The powers conferred by subsections (1) and (3) may be exercised by the Cabinet Secretary only after consultation with the Community Land Board Within that area which will be affected thereby.
- 5) The Cabinet Secretary shall give notice in the *Gazette*
- (a) of every board established under subsection (1), with a description of the area for which the board is established;
 - (b) of any alteration of the boundaries of the area of any board under subsection (3)

Functions of boards.

- 10.** Subject to the provisions of this Act, the functions of a board are;
- (a) to exercise control over the allocation and the cancellation of customary land rights by the land administration committees under this Act;
 - (b) to consider and decide on applications for a right of leasehold under this Act;
 - (c) to establish and maintain a register and a system of registration for recording the allocation, transfer and cancellation of customary land rights and rights of leasehold under this Act;
 - (d) to hold and manage community land on behalf of those communities

Composition of Boards

- (e) to regulate all transactions relating to community land and to facilitate the recording and issuance of title in community land.
- (f) to advise the Cabinet Secretary, either of its own motion or at the request of the Cabinet Secretary, in connection with the making of regulations or any other matter pertaining to the objectives of this Act; and
- (g) to perform such other functions as are assigned to a board by this Act.

- 11.** 1) Subject to section 12, a board consists of the following members to be appointed by the Cabinet Secretary
- a) one person to represent the organised farming or pastoral community within the board's area;
 - b) the county governor of the county concerned, and, if the board's area extends over the boundaries of two or more counties, the governor of each such county;
 - c) four women, of whom
 - (i) two are women engaged in farming operations in the board's area; and
 - (ii) two are women who have expertise relevant to the functions of a board;
 - d) four staff members in the Public Service, of whom
 - (i) one shall be nominated by the Cabinet Secretary responsible for local governments;
 - (ii) one shall be nominated by the Cabinet Secretary responsible for land matters;
 - (iii) one shall be nominated by the Cabinet Secretary responsible for environmental matters
 - (iv) one shall be nominated by the Cabinet Secretary responsible for agriculture; and
 - (f) one person nominated by a council of elders of a community within that

community area

- 2) For the purpose of seeking nominations as contemplated in paragraphs, (d) and (f) of subsection (1), the Cabinet Secretary shall in writing request
 - (a) the Cabinet Secretaries referred to in paragraph (e) of that subsection; and
 - (b) the relevant council of elders
- 3) The Cabinet Secretary may, for the purpose of appointing a member
 - a) referred to in paragraph (a) of subsection (1), consult with anybody or organization engaged in activities for furthering the interests of the farming or pastoral community in the board's area and which the Cabinet Secretary recognises as being representative of that farming community; or
 - b) referred to in paragraph (c) of subsection (1), consult with the local community or any other person whom the Cabinet Secretary may consider expedient.
- 4) The Cabinet Secretary may, in respect of any member being a county governor referred to in subsection (1)(b), and after consultation with the county governor concerned, appoint any other person to attend on behalf of the county governor a meeting of the board or any committee thereof during the absence of the county governor, and a person so appointed, when so attending a meeting, shall be deemed to be a member of the board concerned.
- 5) The members of a board shall elect the chairperson of the board from amongst their number.

Disqualification

- 12.** 1) A person does not qualify to be appointed to, or to remain a member of, a board if he or she
 - (a) is a state officer;
 - (b) is an unrehabilitated insolvent, whether his or her estate was sequestrated in Kenya or elsewhere; or
 - (c) has been sentenced to imprisonment without the option of a fine for any offence, whether in Kenya or elsewhere.

Terms of office

- 13.** 1) The members of a board hold office for a period of three years and are eligible

for re-appointment.

- 2) The office of a member, other than a member referred to in section 11(1)(d), becomes vacant if –
 - (a) he or she ceases to be qualified to hold office in terms of section 12;
 - (b) he or she resigns as a member by notice in writing delivered to the Cabinet Secretary;
 - (c) the person or authority by whom he or she was nominated for appointment as member, withdraws such nomination by written notice to the Cabinet Secretary; or
 - (d) is removed from office under subsection (3).
- 3) The Cabinet Secretary may by notice in writing remove a member from office if the Cabinet Secretary, after giving the member a reasonable opportunity to be heard, is satisfied that such member –
 - a) has been absent from three consecutive meetings of the board without the prior permission of the board and without good cause; or
 - b) is incapacitated by physical or mental illness or for any other cause is unable or unfit to efficiently discharge the functions of a member.
- 4) The chairperson of a board holds office in that capacity for the period of his or her term of office as a member of the board, but shall vacate the office of chairperson if at least two-thirds of the members of the board adopt a resolution whereby he or she is removed from that office.
- 5) A board shall elect one of its members, other than the chairperson, to preside at a meeting of the board when a motion for a resolution contemplated in subsection (4) is discussed and voted on.
- 6) If the office of a member of a board becomes vacant, the vacancy shall be filled by the appointment of another person, with due regard to the provisions of section 11(1), for the unexpired term of office of the person who ceased to be a member.

Meetings of the Board

- 14.** 1) The first meeting of a board shall be convened by the Cabinet Secretary, and thereafter a board shall meet once every month at such time and place as the board determines.
- 2) A special meeting of the board;
- a) May be convened by the chairperson if the prior approval in writing of the Cabinet Secretary is obtained for such meeting;
- b) Shall be convened by the chairperson if he or she is in writing requested by the Cabinet Secretary to do so for the purpose of the transacting of any business stipulated by the Cabinet Secretary.
- 3) A majority of the members of a board shall constitute a quorum for a meeting of the board.
- 4) Subject to section 13 (4), the chairperson of a board, or in the absence of the chairperson, the person elected by the members present from amongst their number, shall preside at a meeting of the board.
- 5) A board may, with the approval of the Cabinet Secretary, invite not more than two persons with appropriate expert knowledge or experience to assist the board, or any committee of the board, in the discharge of any of its functions, but no such person is qualified to exercise a vote at a meeting attended by him or her.
- 6) Subject to section 13 (4), questions at a meeting of a board shall be decided by a majority of votes of the members present and voting, and in the event of an equality of votes, the person presiding at the meeting has a casting vote.
- 7) A decision of the board or an act performed under the authority of the board shall not be rendered invalid merely by reason of a vacancy in the membership of the board or the fact that a person not entitled to sit as a member of the board was present at a meeting thereof when such decision was taken or such act was authorized, if the decision was taken or the act was authorised by a majority of the members present and entitled to vote at the meeting.
- 8) A board shall cause minutes to be kept of the proceedings at its meetings.

Committees

- 15.** 1) A board may establish any committee consisting of members of the board for the purpose of advising the board on any matter which the board refers to the committee for investigation and advice.
- 2) A committee established under section 15 (1) may regulate its own procedure.

Disclosure of interest

- 16.** 1) If at any stage during the course of proceedings at any meeting of a board or a committee thereof it appears that a member has or may have an interest in a matter relating to the functions of the board or such committee which may cause a conflict of interests in the performance of his or her duties as a member of the board or such committee –
- a) that member shall forthwith and fully disclose the nature of his or her interest and leave the meeting so as to enable the remaining members to discuss the matter and determine whether the member is precluded from participating in such meeting by reason of a conflict of interests; and
 - b) such disclosure and the decision taken by the remaining members shall be recorded in the minutes of the relevant meeting.
- 2) If a member fails to disclose a conflict of interest as required by subsection (1) and is present at a meeting of the board or a committee, or in any manner participates in the proceedings, such proceedings in relation to the relevant matter shall, as soon as such non-disclosure is discovered, be rendered invalid and thereafter be reviewed by the board or the committee, as the case may be, in the absence of the member concerned.
- 3) A member of the board who knowingly fails to comply with subsection (1) is guilty of an offence and liable on conviction to a fine not exceeding Ksh.100,000 or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

Remuneration

- 17** 1) The members of a board and persons referred to in section 14 (5) who are not in the full-time employment of the Public Service shall be paid such allowances in respect of their services as the Cabinet Secretary may determine with the concurrence of the Cabinet Secretary of Finance.
- 2) Allowances referred to in subsection (1) may differ according to the different offices held by members, the different functions performed by them and different location of the community land boards.

Financing Boards

- 18** 1) All expenditure in connection with the performance of the functions of a board shall be defrayed from moneys appropriated by Parliament for the purpose.

Performance administrative work

- of **19** 1) The administrative work, including the payment and receipt of money, in connection with the performance of the functions of a board shall be performed –
- a) by staff members in the Public Service made available by the Principal Secretary for the purpose; or
 - b) by staff members of a county government designated by such county government upon agreement between the Cabinet Secretary and the county government.
- 2) The Principal Secretary or the County Government, as the case may be, shall appoint, in respect of each board, a staff member referred to in subsection (1) to act as the secretary of the board, who shall perform such functions as may be prescribed or as may be assigned to him or her by the chairperson of the board.

Annual Reports.

- 20** 1) Every board shall submit to the Cabinet Secretary, not later than 31 January of each year, a report on the functions performed by the board during the preceding year.
- 2) The Cabinet Secretary shall lay a copy of every report received in terms of subsection (1) on the table of the National Assembly within 28 days after receipt thereof if the National Assembly is in ordinary session, or if the National Assembly is not in ordinary session, within 28 days after the commencement of its first ensuing session.

Limitation of Liability

- 21** 1) A member of a board or a person referred to in section 19 is not personally liable for anything done in good faith in the performance of any function under this Act.

PART III – COMMUNITY LAND AREA

Extent of community land

- 22** 1) Subject to subsection (2), community land consists of
- a) All the land described by Article. 63 (2) (a- d) of the Constitution of Kenya, 2010
 - b) Any area which is declared to be community land under section 23(1)(a); and
 - c) Any land which is incorporated under section 23 (1) (b) into a community land area referred to in paragraph (a) or (b).
 - d) Any land that was acquired illegally and or irregularly that reverts back to

communities after the effective date.

2) Where community land is unregistered the same shall be held in trust by the county government in trust for the community resident therein.

Community land areas,
addition and subtraction.

23. 1) The Cabinet secretary, with the approval of the National Assembly, may by proclamation in the *Gazette*, -

(a) declare any defined portion of unalienated State land to be a community land area;

(b) incorporate as part of any existing community land area any defined portion of unalienated State land; or

(c) withdraw from any community land area, subject to the provisions of subsection (2), any defined portion thereof which is required for any purpose in the public interest,

and in such proclamation make appropriate amendments to Schedule 1 to this Act so as to include the description of any new community land area declared under paragraph (a) or to redefine any community land area affected by any change under paragraph (b) or (c).

2) Land may not be withdrawn from any community land area under subsection (1)(c), unless all rights held by persons under this Act in respect of such land or any portion thereof have first been acquired by the State and just compensation for the acquisition of such rights is paid to the persons concerned.

3) The compensation payable to a person in terms of subsection (2) shall be determined –

1) by agreement between the Cabinet Secretary and the persons concerned;
or

2) failing such agreement, by arbitration in accordance with the provisions of the Arbitration Act, 1995

4) Any portion of a community land area withdrawn under subsection (1)(c) ceases to be community land and becomes available for disposal as State-owned land.

5) Nothing in this Act shall prevent the affected persons from challenging such acquisition in the high court.

Vesting of community
land

24 1) Subject to the provisions of this Act, all community land shall vest in and be

held by communities identified on the basis of ethnicity, culture or similar community interests.

2) No right conferring freehold ownership is capable of being granted or acquired by any person in respect of any portion of community land.

Prohibition of fences

- 25** 1) Subject to such exemptions as may be prescribed, no fence of any nature
- (a) shall, after the commencement of this Act, be erected or caused to be erected by any person on any portion of land situated within a community land area; or
 - (b) which, upon the commencement of this Act, exists on any portion of such land, by whomsoever erected, shall after such date as may be notified by the Cabinet Secretary by notice in the *Gazette*, be retained on such land,

PART IV – ALLOCATION OF RIGHTS IN RESPECT OF COMMUNITY LAND

Rights may be allocated

- 26** 1) The rights that may be allocated in respect of community land under this Act are divided into
- a) customary land rights; and
 - b) rights of leasehold.

Power to allocate and cancel customary rights

- 27** Subject to the provisions of this Act, the primary power to allocate or cancel any customary land right in respect of any portion of land in the community area of a traditional community vests in the Land Administration Committees;

Customary land rights that may be allocated

- 28** 1) The following customary land rights may be allocated in respect of community land –
- a) a right to a farming unit;
 - b) a right to a residential unit;
 - c) a right to any other form of customary tenure that may be recognised and described by the Cabinet Secretary by notice in *Gazette* for the purpose of this Act.

Application of customary land rights

- 29**
- 1) An application for the allocation of a customary land right in respect of community land shall
 - (a) be made in writing in the prescribed form; and
 - (b) be submitted to the Land Administration Committee within whose Community area the land in question is situated.
 - 2) An applicant referred to in subsection (1) shall furnish such information and submit such documents as the Land Administration Committee may require for purpose of consideration of the application.
 - 3) When considering an application made in terms of subsection (1), a land administration committee shall;
 - a) make investigations and consult persons in connection with the application;
 - b) if any member of the traditional community objects to the allocation of the right, conduct a hearing to afford the applicant and objector the opportunity to make representations in connection with the application, and may refuse or, subject to subsection (4) and section 30, grant the application.
 - 4) In granting an application for a right to a farming unit or a residential unit the land administration committee may allocate the right in respect of the specific portion of land being applied for or, by agreement with the applicant, any other portion of land; and subject to section 30, determine the size and the boundaries of the portion of land in respect of which the right is allocated.

Limitation on size of land that may be held under customary land rights

- 30**
- 1) After the commencement of this Act, no person shall, without the written approval of the Cabinet Secretary, be entitled to be allocated and to acquire any customary land right in respect of community land which exceeds the maximum size which the Cabinet Secretary, in consultation with the Cabinet Secretary responsible for agricultural affairs, may prescribe for the purposes of this subsection.
- (2). In prescribing a maximum size under subsection (1), the Cabinet Secretary

may differentiate -

- (i) according to the area where land is situated;
- (ii) according to the purpose for which land is to be used; or
- (iii) between persons according to the total extent of other land, whether community land or otherwise, held by them under any right which permits the beneficial use of such land for a purpose similar to which land held under a customary land right may be used.

Ratification of allocation
of customary land right

- 31** 1) Any allocation of a customary land right made by a land administration committee under section 29 has no legal effect unless the allocation is ratified by the relevant board in accordance with the provisions of this section.
- (2). Upon the allocation of a customary land right the land administration committee by whom it is allocated shall forthwith notify the relevant board thereof and furnish to the board the prescribed particulars pertaining to the allocation.
- (3). Upon receipt of a notification and the particulars referred to in subsection (2) the board shall determine whether the allocation of the right in the particular case was properly made in accordance with the provisions of this Act.
- 4). In exercising its function under subsection (3), a board may make such enquiries and consult such persons as it may consider necessary or expedient for that purpose and –
- (a) shall ratify the allocation of the right if it is satisfied that such allocation.
 - (b) may refer the matter back to the land administration committee concerned for reconsideration in the light of any comments which the board may make; or
 - (c) shall veto the allocation of the right, if
 - (i) the right has been allocated in respect of land in which another person has a right;
 - (ii) . the size of the land concerned exceeds the maximum prescribed size; or
 - (iii). the right has been allocated in respect of land which is reserved for common usage or any other purpose in the public interest.

5) If a board vetoes the allocation of a right under subsection (4) (c) it shall inform the land administration committee and the applicant concerned in writing of the reasons for its decision.

Registration of customary land right..

- 32**
- 1) If a board ratifies the allocation of a customary land right under section 31 (4) (a) it shall
 - a) cause such right to be registered in the prescribed register in the name of the person to whom it was allocated; and
 - b) issue to that person a certificate of registration in the prescribed form and manner.
 - 2) The board shall keep a duplicate copy of every certificate of registration issued under subsection (1).
 - 3) The Cabinet Secretary shall establish a registry in respect of all the registered land in the country.

Duration of customary land right.

- 33**
- 1) Subject to section 34, and unless the right is relinquished by the holder thereof, a customary land right allocated under this Act endures for the natural life of the person to whom it is allocated. Upon the death of the holder of a right referred to in subsection (1) such right reverts to land administration committee for re-allocation forthwith –
 - 2)
 - a) to the surviving spouse of the deceased person, if such spouse consents to such allocation; or
 - b) in the absence of a surviving spouse, or should he or she not consent as contemplated in paragraph (a), to such child of the deceased person as the Land administration committee determines to be entitled to the allocation of the right in accordance with customary law.
 - 3) If, after the allocation of a customary land right to a surviving spouse referred to in subsection (2), such spouse enters into a second or subsequent marriage, then, upon the death of such surviving spouse, the right in question reverts to the Land administration committee for re-allocation of such right forthwith –
 - a) to the surviving spouse, if any, of such second or subsequent marriage, if he or she consents to such allocation; or
 - b) in the absence of a surviving spouse from such second or subsequent

- 4) marriage, or should he or she not consent as contemplated in paragraph (a), to such child, either from the first or such second marriage or any such subsequent marriage, as the Land administration committee determines to be entitled to the allocation of the right in accordance with customary law.
- 5) Upon the death of a surviving spouse of a second or subsequent marriage contemplated in subsection (3) to whom a customary land right has been allocated in terms of that subsection, such right reverts to the Land Administration Committee, who then, subject to subsection (5), shall determine the person to whom the right shall be allocated, who may include –
 - a) a surviving spouse of a further marriage which the deceased person referred to in this subsection has entered into subsequent to the allocation of the right to him or her in terms of subsection (3);
 - b) any child from any of the marriages contemplated in the provisions of this section; or
 - c) any other person.
- 6) For the purpose of determining the person to whom a customary land right shall be allocated in the circumstances contemplated in subsection (4), the Land administration committee concerned shall first consult with such members of the family or families concerned as the Land administration committee considers necessary or expedient to consult in accordance with customary law.
- 7) Any reference in this section to a child shall be construed as including an adopted child. If, in any of the circumstances provided for in the preceding provisions of this section, no surviving spouse or any children can be found to whom a customary land right can be allocated, or should the surviving spouse and such children decline to accept such allocation of a right, the Land administration committee may allocate the right in question to any person as the Land administration committee thinks fit.

Cancellation of customary
land rights

- 34** 1) Subject to subsection (2), a Land administration committee may, in accordance with customary law, cancel a customary land right, including a right referred to in section 35(1) -
- a. if the holder of the right fails to observe in a material respect any condition or restriction attached to the right under this Act;
 - b. if the land is being used predominantly for a purpose not recognised under customary law; or
 - c. on any other ground as may be prescribed.

Recognition of existing
customary land rights

- 2) Any cancellation of a customary land right by a land administration committee under subsection (1) has no legal effect unless the cancellation is ratified by the relevant board.
 - 3) Upon the cancellation of a customary land right under subsection (1), the Land administration committee by whom it was cancelled shall forthwith notify the relevant board thereof and furnish to the board the prescribed particulars pertaining to the cancellation.
 - 4) A board shall ratify the cancellation of a customary land right in terms of subsection (1) if it is satisfied that such cancellation was properly effected in accordance with the provisions of this Act
 - (5) The board shall cause to be entered in the prescribed register any cancellation of a customary land right in terms of this section.
- 35**
- 1) Subject to subsection (2), any person who immediately before the commencement of this Act held a right in respect of the occupation or use of community land, being a right of a nature referred to in section 39, and which was granted to or acquired by such person in terms of any law or otherwise, shall continue to hold that right, unless –
 - a) such person's claim to the right to such land is rejected upon an application contemplated in subsection (2); or
 - b) such land reverts to the State by virtue of the provisions of subsection (13).
 - 2) With effect from a date to be publicly notified by the Cabinet Secretary, either generally or with respect to an area specified in the notice, every person who claims to hold a right referred to in subsection (1) in respect of land situated in the area to which the notice relates, shall be required, subject to subsection (3), to apply in the prescribed form and manner to the relevant board –
 - a) for the recognition and registration of such right under this Act; and
 - b) where applicable, for authorisation for the retention of any fence or fences existing on the land, if the applicant wishes to retain such fence or fences.
 - 3) Subject to section 40, an application in terms of subsection (2) shall be made within a period of three years of the date notified under that subsection, but the Cabinet Secretary may by public notification extend that period by such further period or periods as the Cabinet Secretary may determine.

- 4). A notification under subsection (2) or (3) shall be published in the *Gazette* and be given in any other manner which the Cabinet Secretary considers expedient.
- (5). An application in terms of subsection (2) shall be accompanied by
- (i) any documentary evidence, if available, which the applicant can submit in support of his or her claim;
 - (ii) a letter from the Land administration committee within whose community area the land in question is situated, furnishing the prescribed information;
 - (iii) any further information or documents as the board may require.
- (6). In considering an application in terms of subsection (2), and notwithstanding a report by an investigating committee in terms of section 44 in a particular case, a board may make such investigations or inquiries and consult such persons as it may consider necessary or expedient to establish any fact relevant to the applicant's claim, including –
- (a) the date when and manner in which the applicant acquired the right in question;
 - (b) whether any other person claims to possess any right in relation to the land in question;
 - (c) whether the area of the land conforms to the prescribed size;
 - (d) the position of the boundaries or any beacons of the land.
- (7). If the board is satisfied as to the validity of the applicant's claim to the right, it shall
- (a) recognise the applicant's right to the land concerned and cause particulars of that right to be entered in the prescribed register; and
 - (b) issue to the applicant a certificate of registration.
- (8). If the applicant has, in terms of subsection (2)(b), applied for authorisation to retain any fence or fences which exist on the land in question and the board is satisfied that -
- (a) the fence or fences were erected in accordance with customary law or the provisions of any statutory law;
 - (b) the fence will not unreasonably interfere with or curtail the use and

enjoyment of the commonage by members of the traditional community;
and

- (c) in the circumstances of the particular case, reasonable grounds exist to allow the applicant to retain the fence or fences concerned,

the board shall grant to the applicant authorisation for the retention thereof, subject to any conditions which it may consider expedient to impose.

- (9). If, in respect of any application in terms of subsection (2), the board is of the opinion –

- a) that there are conflicting claims in relation to the land; or
- b) that reasonable grounds exist to doubt the validity of the applicant's claim,

it shall cause a hearing to be conducted in the prescribed manner to resolve the matter, and may make such decision in relation to the claim as it thinks just.

- (10). Without prejudice to the generality of the power conferred by subsection a decision under that subsection may include –

- (a) affirmation of the claim;
- (b) subject to subsection (11), rejection of the claim;
- (c) affirmation of the claim subject to any variations as the board may determine, including variation in respect of the area or the position of the boundaries of the land if the board determines that the area of the land exceeds the prescribed size or that the position of the boundaries are not in accordance with customary law; or
- (d) the allocation of a right in respect of an alternative portion of land if the land to which the applicant's claim relates encroaches on the commonage.

- (11). If a board is not satisfied as to the validity of an applicant's claim to the right in question, it is not obliged to reject such claim but may instead refer the matter to the Land administration committee concerned for consideration whether the applicant should be allocated a customary land right under this Act, whether in respect of the land to which the applicant's claim relates or to an alternative portion of land.

- (12). Upon referral of a claim in terms of subsection (11), the Land administration

committee shall consider and determine the claim as if it were a new application for the allocation of the right in question.

(13). Except if the Cabinet Secretary on good cause shown directs otherwise, no person shall on expiry of the period allowed for applications in terms of subsection (3) be entitled to apply for the recognition and registration of any right referred to in subsection (1), in which event

- (a) the person holding the land shall be deemed to have relinquished his or her claim to that land; and
- (b) such land shall revert to the State and become available for the allocation of any right under this Act.

(14). If the person who holds a right referred to in subsection (1) dies

- (a) before the expiry of the period referred to in subsection (3) and without such person having made the application contemplated in subsection (2), the surviving spouse or, in the absence of such a spouse, such child of that person as the board, in consultation with the Land administration committee concerned may approve, may make that application as if the right held by the deceased person vested in such spouse or such child, as the case may be; or
- (b) after he or she has duly made the application contemplated in subsection (2), but before the determination of the application, that application shall be deemed to have been made by the surviving spouse or, in the absence of such a spouse, by a child referred to in paragraph (a), unless such spouse or such child, as the case may be, indicates otherwise.

- 36** 1) Subject to the provisions of this section, the commonage in the community area of a traditional community is available for use by the lawful residents of such area for the grazing of their stock, subject to -
- (a) such conditions as may be prescribed or as the Land administration committee concerned may impose, including conditions relating to
 - (i) the kinds and number of stock that may be grazed; and
 - (ii) the section or sections of the commonage where stock may be grazed and the grazing in rotation on different sections.
 - (b). the right of the Land administration committee or the relevant board to utilise any portion of the commonage which is required for the allocation of a right under this Act; and
 - (c). the right of the cabinet Secretary under section 23(1)(c) to withdraw and reserve any portion of the commonage for any purpose in the public interest.
- (2). Notwithstanding subsection (1), the Land administration committee may withdraw the grazing right of any resident who -
- (a) fails to observe in a material respect any condition referred to in subsection
 - (b) contravenes any provision of subsection (4); or
 - (c) has access to other land, whether community land or otherwise, held by such resident under any right the total extent of which is equal to or more than the maximum size prescribed by the Cabinet Secretary under section 30 and which the Land administration committee considers to offer sufficient grazing for the stock of such resident.
- (3). Notwithstanding subsection (1), the Land administration committee may upon application of any person who is not a resident referred to in that subsection, grant a grazing right to such person, either for a specified or an indefinite period, and any such person shall exercise such right subject to the conditions referred to in subsection (1)(a): Provided that the Land administration committee may at any time withdraw a grazing right granted under this subsection if, due to drought or any other reasonable cause, the Land administration committee considers such cancellation in the interest of the residents of the traditional community concerned.
- (4). Except with the written authority of the land administration committee, and ratification by the board concerned, no person shall -

- (a) erect or occupy any building or other structure on the commonage;
 - (b) plough or cultivate any portion of the commonage;
 - (c) take up his or her abode on or occupy any portion of the commonage; or
 - (d) obstruct the approaches to any watering place on the commonage, or prevent or attempt to prevent any person from drawing water from, or watering stock at, such a watering place, or pollute the water at such watering place or interfere with the operation of any windmill, water-pump, water-pipe, dam or storage tank or other appurtenance installed or constructed at such a watering place;
 - (e) carry on any activity on the commonage, other than the lawful grazing of stock, which may prevent or restrict the residents of the traditional community concerned from a reasonable exercise of their grazing rights.
- (5). A person who contravenes any provision of subsection (4) is guilty of an offence and liable on conviction to a fine not exceeding 50, 000 or imprisonment for a period not exceeding one year.

Part 2. Right of leasehold

Power to grant right of leasehold.

- 37** 1) Subject to subsections (3) and (4) and section 38, a board may, upon application, grant to a person a right of leasehold in respect of a portion of community land, but a right of leasehold for agricultural purposes may be granted only in respect of land which is situated within a designated area referred to in subsection (2).
- 2) The Cabinet Secretary, after consultation with the land administration committee and the board concerned, shall designate by notice in the *Gazette*, in respect of the community area of each traditional community, an area within which that board may grant rights of leasehold for agricultural purposes.
- 3) Notwithstanding subsection (1) a person may apply to the Cabinet Secretary for approval for the grant of a right of leasehold in respect of land which is wholly or partly situated outside a designated area, and the Cabinet Secretary may grant the application if the Cabinet Secretary, after consultation with the land administration committee and the board concerned, is satisfied that –
- a) the grant of the right of leasehold will not unreasonably interfere with or curtail the use and enjoyment of the commonage by members of the traditional community; and

b) in the circumstances of the particular case, reasonable grounds exist for the grant of approval.

4) Subject to subsection (5), a board may grant a right of leasehold only if the Land administration committee of the traditional community in whose community area the land is situated consents to the grant of the right.

(5). If a land administration committee refuses to grant consent in terms of subsection (4) when in the opinion of the board consent ought to be given, the board may submit the matter to an arbitrator referred to in subsection (6) for decision, who may grant consent in the place of the Land administration committee if he or she is satisfied that the land administration committee is withholding consent unreasonably.

(6). The Cabinet Secretary shall appoint as arbitrator under subsection (5) a person approved by the board and by the land administration committee concerned and, if either the board or the land administration or both –

a) fail to communicate its or their decision to the Cabinet Secretary with respect to a person proposed for appointment within 30 days of being notified by the Cabinet Secretary of the person's name, address and qualifications; or

b) on a third occasion communicate disapproval of a person proposed for the particular appointment; the Cabinet Secretary may disregard the requirement of approval stipulated by this subsection in so far as it concerns the board or the land administration committee or both, as the case may be.

Application for right of leasehold

38 1) An application for a right of leasehold in respect of community land shall be made in the prescribed manner to the board in whose area the land in question is situated.

2) A right of leasehold may not be granted in respect of a portion of land which another person holds under a customary land right, unless such person agrees to relinquish his or her right in respect of the land, subject to the payment of compensation as agreed to by such person and suitable arrangements for his or her resettlement on alternative land.

3) A board may not, without the prior written approval of the Cabinet Secretary, grant a right of leasehold in respect of any land –

- a) which exceeds the maximum size prescribed for the particular use for which the right is required; or
- b) if the applicant is a leaseholder in respect of another portion of land granted under this Act or occupies any community land under a right referred to in section 39(1), unless recognition of such right is refused in accordance with that section.

4) Before granting a right of leasehold in terms of subsection (1) in respect of land which is wholly or partly situated in an area which has been declared a fragile ecosystem, a board shall have due regard to any management and utilization plan framed by a conservancy committee concerned in relation to that conservancy, and such board may not grant the right of leasehold if the purpose for which the land in question is proposed to be used under such right would defeat the objects of such management and utilization plan.

Conditions applicable to right of leasehold.

- 39**
- 1) A right of leasehold may be granted by a board only
 - a) if an amount in respect of that right and any improvements on the land in question is paid to that board;
 - b) if security is furnished to the satisfaction of the board for the payment of the said amount upon registration of the right of leasehold; or
 - c) if the board allows such amount to be paid by way of instalments in a manner agreed upon between the board and the person to whom the right is granted.
 - 2) The amount referred to in subsection (1) shall be determined in the manner prescribed.
 - 3) A right of leasehold is subject to such further conditions as may be prescribed by the Cabinet Secretary generally or as may be approved by the Cabinet Secretary in a particular case.
 - 4) Conditions referred to in subsection (3) may include conditions prescribing the circumstances in which the grantee of the right of leasehold
 - a) may be required to cause the land in question to be surveyed, at his or her own expense, before the registration of such right in his or her name is effected; or

b) may be granted permission to cause the land in question to be surveyed at his or her own expense.

5) Moneys paid in respect of the amount referred to in subsection (1) shall be deposited in the fund established by or under any law for the purpose of regional development.

Registration of right of leasehold

- 40**
- 1) Subject to subsection (2), if an application for a right of leasehold is granted by a board, the board shall cause such right to be registered in the prescribed register in the name of the applicant; and issue to the applicant a certificate of leasehold in the prescribed form and manner.
 - 2) If the land in respect of which the right of leasehold is granted is surveyed land which is shown on a diagram as defined under the Survey Act, (Cap 299) and the term of lease is for a period of 10 years or more, the leasehold shall be registered in accordance with the provisions of the Land Registration Act

Duration of right of leasehold

- 41**
- 1) Subject to subsection (2), a right of leasehold may be granted for such period, not exceeding 99 years, as the board and the grantee of the right may agree.
 - 2) A right of leasehold granted for a period exceeding ten years is not valid unless it is approved by the Cabinet Secretary.
 - 3) A right of leasehold may be renewed by agreement between the board and the leaseholder, but subject to the approval of the Cabinet Secretary in a case referred to in subsection (2).

Existing rights to occupy community land

- 42**
- 1) Subject to subsection (2), any person who immediately before the commencement of this Act held a right, not being right under customary law, to occupy any community land, whether by virtue of any authority granted under any law or otherwise, may continue to occupy such land under that right, subject to the same terms and conditions on which the land was occupied immediately before the commencement of this Act, until –
 - a) such right is recognised and a right of leasehold is granted to such person in respect of the land upon acceptance of an offer made in terms of subsection(7);
 - b) such person’s claim to the right to such land is rejected upon an application contemplated in subsection (2);

- c) such person declines or fails to accept an offer of a right of leasehold made in terms of subsection (7); or
 - d) Such land reverts to the State by virtue of the provisions of subsection (13).
- 2) With effect from a date to be publicly notified by the Cabinet Secretary, either generally or with respect to an area specified in the notice, every person who claims to hold a right referred to in subsection (1) in respect of land situated in the area to which the notice relates, shall be required to apply in the prescribed form and manner to the relevant board –
- (a) for the recognition of such right and the grant of a right of leasehold under this Act; and
 - (b) where applicable, for authorisation for the retention of any fence or fences existing on the land, if the applicant wishes to retain such fence or fences.
- 3) Subject to section 44 an application in terms of subsection (2) shall be made within a period of three years of the date notified under that subsection, but the Cabinet Secretary may by public notification extend that period by such further period or periods as the Cabinet Secretary may determine.
- 4) A notification under subsection (2) or (3) shall be published in the *Gazette* and be given in any other manner which the Cabinet Secretary considers expedient.
- 5) An application in terms of subsection (2) shall be accompanied by (a)
- (a) any documentary evidence, if available, which the applicant can submit in support of his or her claim;
 - (b) a letter from the Land administration committee of the traditional community within whose community area the land in question is situated, furnishing the prescribed information;
 - (c) any further information or documents as the board may require.
- 6) In considering an application in terms of subsection (2), and notwithstanding a report by an investigating committee in terms of section 37 in a particular case, a board may make such investigations or inquiries and consult such persons as it may consider necessary or expedient to establish any fact

relevant to the applicant's claim, including -

- (a) the date when and manner in which the applicant acquired the right in question;
 - (b) whether any other person claims to possess any right in relation to the land in question;
 - (c) whether the land to which the claim relates conforms to the prescribed size for the particular use for which the land is held;
 - (d) the position of the boundaries or any beacons on the land;
 - (e) whether the land is fenced-off and the nature, extent and date of erection of the fence.
- 7) If the board is satisfied as to the validity of the applicant's claim, the board shall in writing
- (a) offer to grant to the applicant a right of leasehold in respect of the land;
 - (b) state the conditions subject to which the leasehold is offered;
 - (c) specify the time, not being less than 90 days after the date on which the offer is made, within which the offer may be accepted; and
 - (d) inform such person that if he or she declines the offer or fails to accept it within the specified time, he or she shall cease to have any claim to the land in question.
- (8). A person who refuses or fails to accept an offer made in accordance with subsection (7) shall cease to have any claim to the land in question, in which event the land shall revert to the State for the allocation of any right under this Act.
- 9) If the applicant has, in terms of subsection (2)(b), applied for authorisation to retain any fence or fences which exist on the land in question and the board is satisfied that –
- a) the fence or fences were erected in accordance with the provisions of any law or with the consent of a competent authority;
 - b) the fence will not unreasonably interfere with or curtail the use and enjoyment of the commonage by members of the traditional community; and

- c) in the circumstances of the particular case reasonable grounds exist for allowing the applicant to retain the fence or fences concerned,

the board shall grant to the applicant authorisation for the retention thereof, subject to such conditions as it may consider expedient to impose.

10). If, in respect of any application in terms of subsection (2), the board is of the opinion -

- a. that there are conflicting claims in relation to the land; or
- b. that reasonable grounds exist to doubt the validity of the applicant's claim,

It shall cause a hearing to be conducted in the prescribed manner to resolve the matter, and may make such decision in relation to the claim as it thinks just.

(11). Without prejudice to the generality of the power conferred by subsection a decision under that subsection may include

- a) affirmation of the claim;
- b) subject to subsection (12), rejection of the claim; or
- c) affirmation of the claim subject to any variations as determined by the board, including variation in respect of the area or the position of the boundaries of the land if the board determines that the area of the land exceeds the prescribed size or that the position of the boundaries are not valid.

12). Where a board is not satisfied as to the validity of an applicant's claim to the right in question, it is not obliged to reject such claim but may instead offer to the claimant the grant of a right of leasehold under this Act, either in respect of the piece of land to which the claimant's claim relates or a portion thereof or in respect of any other piece of land as the board may determine.

(13) Except if the Cabinet Secretary on good cause shown directs otherwise, no person shall, on expiry of the period allowed for applications in terms of subsection (3), be entitled to apply for the recognition of any right referred to in subsection (1) and the grant of a right of leasehold under this Act, in which event

- (a) the person holding the land shall be deemed to have relinquished his or her claim to that land; and

(b) such land shall revert to the State and become available for the allocation of a right under this Act.

Cancellation of rights of leasehold

- 43** 1) In addition to the grounds for cancellation set out in a deed of leasehold, a right of leasehold may be cancelled by a board if the leaseholder fails to comply with the requirements or to adhere to any restrictions imposed by or under any other law pertaining to the utilisation of the land to which the right relates.

PART IV – GENERAL

Preliminary investigation of claim to existing right

- 44** 1) The Cabinet Secretary, in consultation with a board, may establish for that board an investigating committee, comprising such members as the Cabinet Secretary may appoint, to –
- a. conduct a preliminary investigation referred to in subsection (2); and
 - b. report to the board thereon.
- 2) Notwithstanding sections 32 and 39 and the period allowed for applications referred to in subsection (2) of both those sections, if a board has not yet determined an application in respect of land occupied, used or otherwise controlled by a person and enclosed with a fence, irrespective whether an application has been made, the board may at any time direct an investigating committee referred to in subsection (1) to conduct a preliminary investigation to establish the circumstances concerning –
- a. the occupation, use or control of the land by that person;
 - b. the existence of the fence on the land; and
 - c. any other matter which the board itself may investigate in terms of either of those sections or which may be indicated by the board.
- 3) The person designated by the Cabinet Secretary as chairperson of the investigating committee shall give at least 30 days' notice to the person in respect of whom the preliminary investigation is to be held, informing him or her –
- a) of the time and place of the preliminary investigation;
 - b) that he or she is required to attend the preliminary investigation to be

- c) questioned on the matters mentioned in subsection (2); and that any book or document relevant to the subject of the preliminary investigation which he or she may wish to submit to the investigating committee shall be produced at his or her appearance before that committee.

- 4) For the purposes of a preliminary investigation
 - a) the chairperson of the investigating committee may summon the community leader or any other traditional leader of the traditional community concerned and any other person who is believed to be able to furnish information on the subject of the preliminary investigation or to have in his or her possession or under his or her control a book or document which relates to that subject, to appear before the investigating committee at the time and place specified in the summons to be questioned or to produce that book or document;
 - b) the committee may question a person appearing before it under oath or affirmation ad Cabinet Secretary led by the chairperson, and examine or retain for further examination or safe custody any such book or document, provided a receipt therefor is issued to the person and he or she is allowed to make and retain a copy of the book or document.
- 5) The notice referred to in subsection (3) and a summons referred to in subsection (4) shall be signed by the chairperson of the investigating committee and be served in the manner prescribed.
- 6) A person summoned in terms of subsection (4) is guilty of an offence if he or she –
 - a) without sufficient cause fails to appear before the investigating committee at the time and place specified in the summons or to remain in attendance until excused by the chairperson from further attendance;
 - b) at his or her appearance before the investigating committee refuses to be sworn in or to make an affirmation when requested to do so by the chairperson;
 - c) having taken the oath or having made affirmation
 - (i) fails to answer fully and satisfactorily any question lawfully put to him or her;
 - (ii) fails to produce a book, document or other object in his or her

possession or under his or her control which he or she has been summoned to produce;

(iii). gives false evidence knowing it to be false or not knowing or believing it to be true, and a person convicted of any such offence is liable on conviction to a fine not exceeding Ksh.10,000 or imprisonment for a period not exceeding 3 months.

- 7) If at the conclusion of the preliminary investigation the investigating committee thinks it expedient that the board should forthwith consider the person's claim to the land in question or to his or her entitlement to the fence on the land, the investigating committee shall instruct that person to prepare and submit to the chairperson of the committee, within the time stipulated by the committee, his or her application in terms of section 32(2) or 39(2), as the case may be, in respect of the land and the fence for referral to the board.
- 8) If the person in respect of whom a preliminary investigation is held
 - a) fails to attend the preliminary investigation; or
 - b) fails to comply with an instruction of the investigating committee in terms of subsection (7), the investigating committee shall state that fact in its report to the board.
- 9) If the investigating committee reports to the board any failure on the part of the person as contemplated in subsection (8), the board may, by notice in writing served on that person in the prescribed manner –
 - a) inform him or her of the report of the investigating committee concerning his or her failure;
 - b) direct him or her to comply, within the time specified in the notice, with such requirements as the board may stipulate in the notice in connection with that failure; and
 - c) inform him or her of the provisions of subsection (10).
- 10) If the person without reasonable cause fails to comply with a requirement stipulated in the notice referred to in subsection (9), the board may declare

the person to be divested of any claim in respect of the land in question

- 11) A person declared to be divested of a claim under subsection (10)
- (a) is not entitled to make an application in terms of section 32(2) or 39(2) in respect of the land concerned; and
 - (b) ceases to have any claim to or in respect of that land or anything erected or installed on the land,

notwithstanding that the period for applications in terms of either of those sections have not expired.

Transfer of rights

- 45** 1) Subject to such exemptions as may be prescribed, or unless any condition attaching to a customary land right or a right of leasehold under this Act provides otherwise –
- a) a customary land right may be transferred only with the written consent of the Land administration committee concerned;
 - b) a right of leasehold may be transferred only with the written consent of the board concerned.

Appeals

- 46** 1) Any person aggrieved by a decision of a land administration committee or any board under this Act, may appeal in the prescribed manner against that decision to an appeal tribunal appointed by the Cabinet Secretary for the purpose of the appeal concerned.
- 2) An appeal tribunal consists of such person or number of persons as the Cabinet Secretary may appoint, who shall be a person or persons with adequate skills and expertise to determine the appeal concerned,
- 3). If two or more persons are appointed under subsection (2) the Cabinet Secretary shall designate one of them to act as chairperson of the appeal tribunal
- (4). All the members of an appeal tribunal constitute a quorum for a meeting of that tribunal.
- (5). If the tribunal consists of more than one member
- (a) the decision of the majority of the members thereof shall be the decision of the appeal tribunal; and
 - (b) the chairperson of the appeal tribunal has a casting vote in addition to a

deliberative vote in the case of an equality of votes.

(6). An appeal tribunal may

- (a) confirm, set aside or amend the decision which is the subject of the appeal;
- (b) make any order in connection therewith as it may think fit.

(7). A member of the appeal tribunal who is not a staff member in the Public Service shall be paid from money appropriated by Parliament for the purpose such remuneration and allowances as the Cabinet Secretary determines with the concurrence of the Cabinet Secretary of Finance.

Compensation for
improvements

- 47** 1) No person
- a) has any claim against a the land administration committee or the State for compensation in respect of any improvement effected by him or her or any other person on land in respect of which such person holds or held a customary land right or a right of leasehold under this Act, including a right referred to in section 32 (1) or 39 (1); or
 - b) may remove or cause to be removed from such land, or destroy or damage or cause to be destroyed or damaged on such land, any improvement when he or she vacates or intends to vacate the land, whether such improvement was effected by such person or any other person, but the board concerned, after consultation with the Cabinet Secretary, may grant consent for the removal of any such improvement.
- 2) Subsection (1) is not to be construed as precluding the holder of a customary land right or a right of leasehold who proposes to transfer his or her customary land right or right of leasehold to another person in accordance with the provisions of this Act from accepting, in accordance with an agreement entered into between such holder and that person, payment of compensation for any improvement on the land in respect of which the right is to be transferred.
- 3) Notwithstanding subsection (1), and except if compensation is paid in the circumstances referred to in subsection (2) or in terms of subsection (4), the Cabinet Secretary, after consultation with the board concerned, may, upon the termination of a customary land right or a right of leasehold, pay to the person whose right has terminated compensation in respect of any necessary improvement effected by that person on the land concerned.

- 4) If
 - (a) a right of leasehold has terminated in respect of land on which any improvement exists which was effected by the leaseholder during the currency of the lease; and
 - (c) upon a subsequent grant of a further right of leasehold in respect of that land to another person, that person is required by the board in terms section 36(1) to pay any consideration in respect of that improvement, the board shall, from the moneys so recovered in respect of that improvement, pay compensation to the former leaseholder in such amount as may be determined in terms of subsection (5), except to the extent that any compensation has been paid to that leaseholder in terms of subsection (3).
- 5) The amount of compensation payable to a person in terms of subsection (3) or (4) shall be determined by agreement between the board concerned and such person, subject to the approval of the Cabinet Secretary, and failing such agreement or approval, by arbitration in accordance with the provisions of the Arbitration Act, 1995
- 6) Compensation payable to a person in terms of subsection (3) shall be paid from moneys appropriated by Parliament for the purpose.
- 7) If compensation in respect of any improvement has been paid from the State Revenue Fund in terms of subsection (3), and on a subsequent allocation of a customary land right or a right of leasehold in respect of the land concerned, the grantee is required to pay, and pays, to the board any consideration in respect of that improvement, the board shall, from the moneys so received by it, make a refund to the State Revenue Fund equal to the amount of the compensation paid therefrom, or, if the consideration received by the board is insufficient, such lesser amount as the Cabinet Secretary, with the consent of the Cabinet Secretary of Finance, may approve.

Survey of community
land

- 48**
- 1) A board may, with the prior approval of the Cabinet Secretary, but subject to subsection (2), cause any area of community land within its region to be surveyed and a diagram and plan to be prepared in respect of the surveyed area.
 - 2) The survey of any area of land and preparation of a diagram and general plan in accordance with subsection (1), shall be carried out in accordance with a lay-out plan which the board shall cause to be prepared with the co-operation of the Land Administration committee concerned.
 - 3) Where the area to be surveyed comprises individual portions of land occupied

or used by persons under a customary land right or a right of leasehold granted under this Act, including a right referred to in section 32(1) or 39(1), a board may, with the consent of the Land Administration Committee concerned and of any other person who will be affected thereby, and subject to the payment of just compensation by the State to such person, cause such adjustments to be effected to the layout of such individual pieces of land, as may be necessary for the purpose of preparing the lay-out plan in an effective manner.

No consideration payable for customary land right.

- 49** 1) Except where, and to the extent to which, compensation for any improvement is payable in any of the circumstances contemplated in section 44, no consideration of any nature, whether money or goods or any other benefit of an economic value, may be paid or delivered or given, or may be claimed or received, by any person as compensation for the allocation of any customary land right under this Act.
- 2) Subsection (1) does not apply to any fees, charges or other moneys which are prescribed to be paid in respect of any application or the issue of any certificate or document or for any other purpose in terms of this Act.

Unlawful occupation of community land.

- 50** 1) No person may occupy or use for any purpose any community land other than under a right acquired in accordance with the provisions of this Act, including.

Fences.

- 51** 1) Any person who, without the required authorisation granted under this Act, and subject to such exemptions as may be prescribed
- (a) erects or causes to be erected on any community land any fence of whatever nature; or being a person referred to in section 32(1) or 39(1), retains any fence on any community land after the expiry of a period of 30 days after his or her application for such authorisation in terms of section 32(2)(b) or 39(2)
- (b) has been refused, is guilty of an offence and on conviction liable to a fine not exceeding Kshs. 100,000 or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment.
- 2) If the offence for which a person is convicted in terms of subsection (1) is continued after the conviction, such person is guilty of a further offence and on conviction liable to a fine not exceeding Kshs. 2,000 for every day on which the offence is continued.
- 3) If any fence is found to be on any community land in contravention of subsection (1), the Land administration committee or the board concerned may, in accordance with the prescribed procedure, cause such fence to be removed and may dispose of the material used for the erection of the fence in

such manner as may be prescribed.

- 4) Any costs incurred in connection with the removal of a fence in terms of subsection (3) may be recovered from the person who erected or retained such fence in contravention of subsection (1).

Regulations.

- 52** 1) The Cabinet Secretary may make regulations in relation to
- a) any matter which in terms of this Act is required or permitted to be prescribed;
 - b) the procedure for investigations to be conducted by a board for the purpose of considering an application under this Act, including the summoning of witnesses;
 - c) the fees payable for any application or the issue of any certificate or other document in terms of this Act;
 - d) the procedure for referral of a matter to an arbitrator in terms of section 34(5);
 - e) the procedure for applications for authorisation for the erection of a fence on community land and the circumstances in which such authorisation is not required;
 - f) the procedure and period for the lodging of appeals in terms of section 43 and the fee payable in respect thereof;
 - g) matters relating to roads, fences, pounds, watercourses, woods and the use of water, wood, clay and stone on community land
 - h) the conditions, in addition to conditions imposed by or under any other law, under which prospecting or mining operations may be carried out on community land;
 - i) the combating and prevention of soil erosion, the protection of the pastoral resources and the limitation and control of the grazing of stock;

- j) the payment of compensation to persons whose rights to the occupation or use of community land, granted or acquired under this Act, including a right referred to in section 32(1) or 39(1), are terminated on account of the withdrawal of any land from a community land area for a purpose in the public interest under this Act: and
- k) any other matter as the Cabinet Secretary may consider necessary or expedient for giving effect to this Act and for its administration.

2) Regulations made under subsection (1) may

(a) be declared to be applicable only in a specified area or areas or in respect of a specified category or categories of persons and different regulations may be made for different areas or different categories of persons;

(b) prescribe penalties for a contravention of or failure to comply with any provision thereof, but not exceeding a fine of Kshs 100,000 or imprisonment for a period exceeding one year, or to both such fine and such imprisonment.

Repeal of laws

53 The laws mentioned in Schedule 2 to this Act are repealed to the extent set out in the third column of that Schedule

Short title
Commencement

and **54** This Act is called the Community Land Act, 2011 and comes into operation on a date determined by the Cabinet Secretary by notice in the *Gazette*

The laws mentioned in Schedule 2 to this Act are repealed to the extent set out in the third schedule

This Act shall come into operation on the date determined by the Cabinet Secretary by notice in gazette

MEMORANDUM OF OBJECTS AND REASONS

The objective of this Bill is to provide a legislative framework to give effect to the provisions of Article 63 of the Constitution. In so doing, it seeks to make provision for the identification, management and administration of community land as contemplated in the Constitution. It similarly seeks vest community land in communities and unregistered community land in county governments

Part I contains preliminary provisions.

Part II deals with establishment of land administration committees. The cabinet Secretary is required by way of a gazette notice to establish land administration areas for purposes of election of committee's members to serve in the land administration committee. The land administration committees allocate customary land rights but are subject to the community land boards. The part has composition and terms of service of the members of the committee

Part III contains provisions on the establishment of Community Land Boards, functions and composition of the Boards. It also stipulates on the terms of office of the board, meetings and financing of the Board.

Part IV contains provisions on the community land areas, extent of communal land areas, additional to and subtraction of community land areas

Part V contains provisions on the allocation of rights in respect of community land, Section 1 deals with customary land rights while Section 2 deals with rights of leasehold.

Part VI- General - contains provisions on transfer of rights, appeals, repeal of laws and regulations among others.

The enactment of this Bill will occasion additional expenditure of public funds to be provided for in the estimates.

Dated the, 2011.

Schedule 1 to list for avoidance of doubt community land areas

Schedule 2 – the **Trust Land Act, Cap 288** and the **Land (Group representative) Act, Cap 287** are repealed.

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