



Challenges and Opportunities of Community Land Dispensation in Kenya


A Webinar Report



Food and Agriculture
Organization of the
United Nations



www.landportal.org



The Community Land Act of 2016 provides a legal basis for protection, recognition and registration of community lands and has provisions for management and administration of the land by the communities themselves. However, implementation of the act has been slower than anticipated. This is despite the current heightened investment interests in community lands for mega development projects.

Due to the scale of community land rights Kenya, there is a need to find a path forward to overcome the challenges and realize the benefits of community land dispensation under the Community Land Act.

The webinar on Challenges and Opportunities of Community Land Dispensation in Kenya took place on 2 May, 2019. This webinar featured key experts on community land rights in Kenya. This webinar was co-hosted by the European Union, the Government of Kenya, the Food and Agriculture Organization of the United Nations and the Land Portal Foundation.

Moderator: Hussein Wario, Food and Agriculture Organization of the United Nations (FAO)

Panelists:

- Shadrack Omondi, Executive Director, Reconcile
- Husna A. Mbarak, Food and Agriculture Organization of the United Nations (FAO)
- Samuel Odari, Assistant Director for Land Adjudication at the National Land Commission

A complete recording of the webinar is available on YouTube:
<https://youtu.be/twyQc0s0PqI>



Key Takeaways

- While private tenure has typically been seen as promoting investment, communal tenure is widespread in Kenya. Approximately 67 % of land in Kenya is under communal tenure and supports more than 10 million people.
- Through the 2010 Constitution, customary tenure has been elevated to the same level as freehold or leasehold tenure.
- For the Community Land Act to be properly implemented, civic education and awareness are necessary.
- The government is the primary duty-bearer to enforce this act. The political will to put in place the proper systems to make the Community Land Act successful is necessary.

Webinar Summary

1) CAN YOU DESCRIBE THE STATUS OF COMMUNAL TENURE IN KENYA IN TERMS OF ACTUAL POLICY AND PRACTICE?

- In terms of actual existence of communal tenure in Kenya, it is a type of tenure that is widely practiced across the country. The way of living stipulates that community comes first before public and private, and that this is a way of life for Kenyans.
- In terms of policy, Kenya has made some impressive policy steps towards the implementation of communal tenure. It is ingrained in the Constitution and now through this Communal Land Act, which remains to be actualized.
- In terms of practice, pastoralists have been using communal lands for traditional practices, and this is where the law came in to protect this kind of land use. There is no better policy for management of land than the people of that community.
- Group ranches have been formed across the country, which regard livestock production as an enterprise where a group of people jointly hold freehold title, maintain agreed stock levels and herd individually, but use the pasture and water resources communally.

2) WHAT IS THE INTENT OF THE CONSTITUTION AND THE COMMUNITY LAND ACT?

- The Constitution of Kenya 2010 has devoted Article 63 to community land. However, what is fundamental is that the constitution has vested ownership of community land in the communities, thus elevating customary tenure to same level as freehold or leasehold tenure.
- The Community Land Act provides for the recognition, protection and registration of community land rights, management and administration of community land and the role of county government.

3) WHAT STRIDES ARE NECESSARY TO ENSURE THE IMPLEMENTATION OF THE COMMUNITY LAND ACT?

- For the Community Land Act to be properly implemented, civic education and awareness on identification of the act itself, and its implementation, is urgently required. This type of responsibility should fall under the Ministry of Lands, as well as civil society organizations and development partners, taking a multi-stakeholder approach to conduct awareness raising.
- Community land registrars should be appointed in order to facilitate the registration of community land and community land management committees should be elected.
- Funds also need to be set aside to finance these processes by the duty-bearer, the government.

4) IS THE COMMUNITY LAND ACT VIABLE?

- The Communal Land Act is indeed viable and brings security to communities. The design of this law and its content is sound, as it was developed from the bottom up. In its development it was very participatory.
- If the Act is implemented according to the way it is stipulated, it will usher in a productive phase for the country. Before this happens, however, we need to help communities internalize what is required.
- The challenge is to balance different interests, as some people think it is still not feasible to have collective tenure in the country.
- The implementation should be customized to the issues and challenges of each communities and counties. Land use and perception of communal spaces might be different.

5) WHO IS RESPONSIBLE FOR THE IMPLEMENTATION OF THE COMMUNITY LAND ACT?

- The government is the primary duty-bearer. More specifically, the Cabinet Secretary Ministry of Lands and Physical Planning is responsible for implementation of the Community Land Act.
- Other players also have distinct roles. Civil society organizations in particular have a role to play in education and awareness raising.

Notable Quotes from the Panelists



“AS A SHIFT FROM THE PREVIOUS LEGAL DISPENSATION, THERE IS CONSTITUTIONAL RECOGNITION OF COMMUNITY LAND OWNERSHIP AS AN EQUAL LAND OWNERSHIP RIGHTS TO THAT OF PRIVATE AND PUBLIC, WHICH WAS A REMARKABLE MILESTONE.”

- HUSSEIN WARIO, FOOD AND AGRICULTURE ORGANIZATION OF THE UNITED NATIONS (FAO)



“THERE IS NO BETTER POLICE IN TERMS OF THE MANAGEMENT OF LAND THAN THE PEOPLE OF THAT COMMUNITY.”

- HUSNA A. MBARAK, FOOD AND AGRICULTURE ORGANIZATION OF THE UNITED NATIONS (FAO)



“CIVIC EDUCATION AND AWARENESS CREATION IS URGENTLY REQUIRED ON CONTENTS OF COMMUNITY LAND AND ITS APPLICATION AND IDENTIFICATION AND FORMATION OF COMMUNITIES THAT FIT THE DESCRIPTION OF COMMUNITY AS PER THE CONSTITUTION AND THE COMMUNITY LAND ACT.”

- SAMUEL ODARI, ASSISTANT DIRECTOR FOR LAND ADJUDICATION AT THE NATIONAL LAND COMMISSION



“CLAIMS THAT MANY COMMUNITIES IN THE COMMUNAL LAND AREAS WANTS PRIVATE TITLES IS A DISTORTION AND MISREPRESENTATION OF THE DEMANDS BY THE COMMUNITIES. ELITES ARE DELIBERATELY ORCHESTRATING THIS DISCOURSE FOR SELFISH INTERESTS.”

- SHADRACK OMONDI, EXECUTIVE DIRECTOR, RECONCILE



LAND PORTAL FOUNDATION
Postbus 716, 9700 AS Groningen, the Netherlands
www.landportal.org | hello@landportal.org