SUMMARY OF THE COMMUNITY LAND ACT, 2016

I. Introduction

The Community Land Act gives effect to Article 63 (5) of the Constitution on community land, and repeals the Land (Group Representatives) Act, (Cap 287) and the Trust Lands Act, (Cap 288). The Act specifically provides for:

- The recognition, protection and registration of community land rights
- Management and administration of community land
- The role of County governments in relation to unregistered community land

II. Notable provisions of the Act

a. Classes of holding community land and tenure systems: Community land may be held as communal land, family or clan land, reserve land or in any other category of land recognized under the Act or other written law (Section 12). Community land may also be held under land tenure systems such as customary, freehold, leasehold or any other tenure system recognized by law (Section 4, (3)).

b. Individual rights on community land: The Act gives provisions for any registered community to allocate part of their land to a member or a group of members for exclusive use or occupation for a period determined by the community (Section 27). However, an individual entitlement shall not be superior to the community title and a separate title will not be required for this case. Further, a pastoral community may grant grazing rights to a non-member of a community.

c. The role of County government in the management of community lands: Section 6 of the Act provides that County governments shall hold all unregistered community land in trust for the community. Upon registration of community land, the registered community is expected to take over the management and administration of the land. The County is prohibited from selling, disposing, transferring or converting for private purposes unregistered community land. County government are also required to hold monies paid for compulsory acquisition of the unregistered community land, which shall be placed in a special interest earning account and released to the community members upon registration of the community land. County governments shall also approve the community’s plan for the development, management and use of the community land (Section 19, (1)).
d. **Administration and management of community land:** Section 15 of the Act gives provisions for the formation of community assemblies and Community Land Management Committees to manage communally owned land. The community assembly comprises adult members of the community (Section 15). This assembly appoints a land committee of between 7-15 members to run the day-to-day functions of the community. Critical decisions concerning land conversion will require support of at least two thirds of the registered adult members of the community.

e. **Registration of Community land:** The Act requires registration of community land in accordance with the Act and the Land Registration Act, 2012 (Section 11). The community land registrar designated by the Chief Land Registrar is expected to register community land after adjudication by the adjudicating officer appointed by the cabinet secretary and the respective county governments (Section 9). The community land registrar is expected to maintain a community land register for each registration unit (Sections 9 & 10). After final registration, the Registrar issues the community with a Certificate of Title as evidence of ownership (Section 18).

f. **Conversion of Community Land:** The Act provides that at least two-thirds of the community members must approve any conversion of community land (Section 21, (2)). The Act recognizes and permits the following conversion systems of community land:

- Conversions to public land by either compulsory acquisition (upon fair compensation); transfer, or surrender (Section 22).
- Conversion to private land by transfer, the allocation by the registered community-subject to ratification by a two thirds majority vote of the community assembly (Section 23).
- Conversion of public land into community land by allocation by the National Land Commission (NLC) as stipulated in the Land Act, 2012 (Section 24).
- Conversion of private land to community land by transfer, surrender, or the operation of law in relation to illegally acquired community land, and operation of any other written law (Section 25).

g. **Alternative Dispute Resolution:** A registered community may use alternative dispute resolution mechanisms including traditional dispute resolution mechanisms to settle disputes. However, where all efforts of resolving a dispute fail, a party may refer the matter to the Environment and Land court (Part VIII).
III. Provisions relevant to forestry

a) Environmental consideration in development planning: Section 19 states that a registered community intending to develop community land must consider any conservation, environmental or heritage issues relevant to the development, management or use of land. Moreover, the community must consider any environmental impact plan pursuant to existing laws on environment.

b) Conservation and management of natural resources within community land: The communities are required to establish measures to protect critical ecosystems and habitats, measures to facilitate access to the use and co-management of forests, water and other resources by communities who have customary rights (Section 20). The Act also requires the Cabinet Secretary (with public participation) to make regulations for combating of soil erosion and degradation, the protection of the pastoral resources and the limitation and control of the grazing of stock (Section 48, (2) (i)).

c) Adoption of forestry and environmental laws in the management of community lands: Section 38 (2) states that, “Forestry laws and environmental laws shall apply to the management of community lands, in line with the fourth schedule of the Constitution”.

d) Social considerations in the management and development of community land: The Act prohibits obstruction of watering places on community land, preventing any person from accessing water resources, polluting the water or interfering with water fixtures installed at such watering places (Section 28, (5) (d)). The Act also provides that natural resources shall be managed in a sustainable and equitable manner for the benefit of the whole community and future generations (Section 35). Further, investments in community land must undertake environmental, social, cultural and economic impact assessments and rehabilitation of land, stakeholder consultations and community involvement, capacity building and transfer of technology to communities among other provisions (Section 36).

e) Rules and by-laws for the management and administration of community land: Section 37 states that a registered community may make rules or by-laws for regulating the management and administration of their land and such rules and by-laws may provide for the conservation and rehabilitation of the land, investments in the land among other relevant provisions.