

SPECIAL ISSUE

Kenya Gazette Supplement No. 152 (Senate Bills No. 11)



**NATIONAL COUNCIL FOR
LAW REPORTING
LIBRARY**

REPUBLIC OF KENYA

KENYA GAZETTE SUPPLEMENT

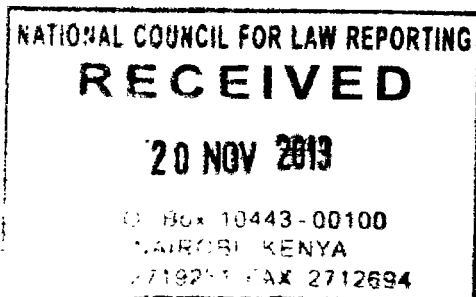
SENATE BILLS, 2013

NAIROBI, 1st November, 2013

CONTENT

Bill for Introduction into the Senate—

	PAGE
The Community Land Bill, 2013.....	175



THE COMMUNITY LAND BILL, 2013

ARRANGEMENT OF CLAUSES

PART I—PRELIMINARY

- 1—Short title
- 2—Interpretation
- 3—Objects and purposes of the Act
- 4—Guiding principles

**PART II—RECOGNITION, PROTECTION AND
REGISTRATION OF COMMUNITY LAND RIGHTS**

- 5—Appointment of the Community land Registrar
- 6—Ownership and tenure system
- 7—Protection of community land rights
- 8—Identification of community land
- 9—Categorization of community land
- 10—Communal land
- 11—Confirmation of validity of customary rights of occupancy
- 12—Procedure for recognition and adjudication of community land
- 13—Registration of community land
- 14—Register of community land

**PART III—INSTITUTIONAL FRAMEWORK FOR THE
MANAGEMENT AND ADMINISTRATION OF COMMUNITY
LAND**

Community Land Management Committees

- 15—Establishment of Community land management committees
- 16—Basic requirements of a Committee
- 17—Composition of Community land management committees
- 18—Incorporation of Committees
- 19—Election of members of the Committee
- 20—Functions and powers

- 21—Removal of members
- 22—Vacation of office
- 23—Filling of vacancy
- 24—Meetings of the Committee
- 25—Terms of office

Community Land Boards

- 26—Establishment of Community Land Boards
- 27—Functions of the Boards
- 28—Powers of the Boards
- 29—Operation of the Boards
- 30—Role of county governments

PART IV—NATURE OF COMMUNITY LAND TITLE

Effect of Registration of Community Land

- 31—Interest conferred by registration
- 32—Rights of a community as proprietors
- 33—Certificate of title to be conclusive evidence of proprietorship
- 34—Overriding interests
- 35—Land use and development planning of community lands
- 36—Conservation and management of resources in community land

PART V—CONVERSION OF LAND

- 37—Conversion of community land generally
- 38—Conversion of community land to public land
- 39—Conversion of community land to private land
- 40—Conversion of public land to community land
- 41—Conversion of private land to community land
- 42—Setting aside community land for public purposes

**PART VI—SPECIAL RIGHTS AND ENTITLEMENTS IN
THE COMMUNITY LAND**

- 43—Individual rights on community land
- 44—Grazing rights
- 45—Designation of other land use rights in community land
- 46—Non-discrimination
- 47—Transactions in community land
- 48—Leases over community land
- 49—Cancellation of rights of leasehold
- 50—Existing rights to use and occupy community land
- 51—Survey of community land

**PART VI—ENVIRONMENT AND NATURAL RESOURCES
MANAGEMENT**

Land Use Planning and Investments in Community Land

- 52—Community land use planning
- 53—Content of agreements relating to investments
- 54—Benefit sharing
- 55—Bye-laws

**PART VII— SETTLEMENT OF DISPUTES RELATING TO
COMMUNITY LAND**

- 56—Dispute resolution mechanisms
- 57—Mediation
- 58—Arbitration
- 59—Awards

PART VIII—GENERAL

- 60—Unlawful occupation of community land
- 61—Restitution of illegally acquired community land
- 62—General penalty
- 63—Repeals
- 64— Saving and transitional provisions
- 65— Group representatives, land-buying companies etc
- 66—Regulations

SCHEDULES

- First Schedule:** Matters to be provided for in the Constitution of every committee
- Second Schedule:** Conduct of business and Affairs of the committees
- Third Schedule:** Parcels of land converted from public to community land
- Fourth Schedule:** Transitional Provisions

THE COMMUNITY LAND BILL, 2013

A Bill for

AN ACT of Parliament to give effect to Article 63 (5) of the Constitution; to provide for the recognition, protection, management and administration of community land; to establish and define the powers of Community Land Boards and management committees, to provide for the powers of county governments in relation to unregistered community land and for connected matters.

ENACTED by the Parliament of Kenya, as follows—

PART I—PRELIMINARY

1. This Act may be cited as the Community Land Act, 2013.

Short title.

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

Interpretation.

“Board” means a Community Land Board established under section 26;

“Cabinet Secretary” means the Cabinet Secretary for the time being responsible for matters relating to land;

“committee” means a community land management committee established under Section 15;

“community” means an homogenous and consciously distinct group of users of community land who share any of the following attributes—

- (a) common ancestry;
- (b) similar culture or unique mode of livelihood;
- (c) ethnic language;
- (d) socio-economic interest;
- (e) geographical space; or
- (f) ecological space;

“community area” means the area comprising the community land inhabited by the members of that community;

“community land” means land referred to in Article 63(2) of the Constitution and includes—

- (a) all land used as community settlement area, farming area, grazing area, rangelands, fish landing sites, common resource area including watering points, salt licks, wildlife habitats, wildlife corridors, livestock passage routes and cattle dips;
- (b) all land traditionally or historically used for communal purposes including sacred or religious sites, *kaya* forests; and
- (c) land converted into community land under any law.

“communal use of land” means holding or using land in undivided shares;

“community of interests” means the possession or enjoyment of common rights, privileges or interests and living in the same place or having some apparent association;

“Commission” means the National Land Commission established by Article 67 of the Constitution;

“Court” means the Environment and Land Court established under the Environment and Land Court Act, No 19 of 2011;

“customary land rights” refer to rights conferred by or derived from African customary law, customs or practices provided that such right is not inconsistent with the Constitution or any written law.

“farming area” means a portion of land allocated for farming purposes and conforming to the size prescribed under any law for such purpose;

“fragile ecosystem” means an ecosystem hosting threatened biodiversity;

“natural resources” includes water, soil, stone, gravel, clay, wildlife, forests, fisheries but does not include minerals and mineral oil as defined in the Mining Act;

“Principal Secretary” means the Principal Secretary for the time being responsible for matters relating to Land; and

“spouse” means husband or wife and includes a partner in a customary union, whether or not such customary union has been registered.

3. The objects and purposes of this Act are to establish a legislative framework and procedures for—

Objects and purposes of the Act.

- (a) recognition, protection and registration of community land rights;
- (b) vesting in and holding of community land by communities identified on the basis of ethnicity, culture or similar community of interests;
- (c) management and administration of community land; and
- (d) holding of unregistered community land in trust by county governments.

4. (1) In the performance of the functions and exercise of powers under this Act, every person dealing with community land shall be guided by the principles—

Guiding principles

- (a) principles of land policy set out under Article 60 of the Constitution;
- (b) vesting community land to the communities;
- (c) affording equal status and recognition of title to community land with any other title;
- (d) empowering members of the community to determine the management and administration of their land;
- (e) affording equal rights to all members of the community; and
- (f) elimination of all forms of discrimination.

(2) Pursuant to Article 66 of the Constitution, the State may regulate use of community land in the interest of public order, public morality, public health or land use planning.

(3) Subject to Article 40 (3) of the Constitution, the State may acquire land for public purpose or in the public interest.

PART II—RECOGNITION, PROTECTION AND REGISTRATION OF COMMUNITY LAND RIGHTS

5. (1) There shall be appointed by the Public Service Commission a Community Land Registrar and such other officers as may be considered necessary for the effective discharge of the functions under this Act.

Appointment of the Community land Registrar.

(2) Any officer appointed under this section shall be competitively recruited and vetted by the Public Service Commission.

Ownership and
tenure system.

6. (1) Community land in Kenya shall be owned by the communities and its usage shall be regulated in accordance with the Constitution, this Act and any other relevant land.

(2) Community land may be held under any of the following tenure systems—

- (a) customary;
- (b) freehold;
- (c) leasehold; and
- (d) any other tenure system recognized by law.

Protection of
community land
rights.

7. (1) Pursuant to Article 40 of the Constitution, every person shall have the right, either individually or in association with others, to acquire and own property—

- (a) of any description; and
- (b) in any part of Kenya.

(2) No right on community land may be expropriated or confiscated save by law in the public interest and consideration of payment in full, of just compensation to the person or persons.

(3) Any person or group of persons holding a customary land right before the commencement of this Act shall continue holding such right subject to the provisions of this Act.

(4) Customary land shall be recognized, demarcated and registered in accordance with this Act or any other law.

(5) Customary land rights including those held in common shall have equal force and effect in law with freehold or leasehold rights acquired through allocation, registration or transaction.

Identification of
community land.

8. (1) Every community with an interest in community shall, as soon as practicable after the commencement of this Act, identify the extent of the land and create a Committee for purposes of having the land registered and managed in accordance with this Act.

(2) Where a community claiming or occupying land identifies the extent and the boundaries of its land and no dispute is raised over such boundaries by any person whose land borders or is contiguous to the land so identified, the Registrar may issue a certificate of title to the community before adjudication of the land.

9. (1) Community land may be comprised of the following—

Categorization of community land.

- (a) communal land;
- (b) individual, family or clan land;
- (c) reserve land; or
- (d) any other category of land approved by the committee.

(2) Communal land shall comprise land occupied and used or available for occupation and use on a community or public basis by all the community and any other persons who are with the agreement of the committee living and working in the community whether those persons are using community land under a derivative right or not and such land shall not be made available for individual occupation or use.

(3) Reserve land shall comprise land which may be made available for communal or individual occupation and use through allocation by the committee.

10. (1) Every committee shall recommend to the county assembly what portions of land shall be set aside as communal land and for what purposes.

Communal land.

(2) The recommendations of the committee may be put forward as—

- (a) a land use plan for the community land or part of it;
- (b) specific recommendations on specific portions of communal land; or
- (c) in any other manner that the committee may determine.

(3) Upon receipt of the recommendations of the committee, the county assembly shall—

- (a) approve;
- (b) amend and approve;
- (c) refer back for further consideration; or
- (d) reject,

the recommendations and where the assembly rejects the recommendations, the committee shall lay before the assembly different recommendations as soon as practicable.

(4) Any land which has been habitually used as communal land for public purpose before the commencement of this Act shall upon commencement of this Act be deemed to be communal land and shall be registered by the committee accordingly.

Confirmation of
validity of
customary rights of
occupancy.

11. (1) It is affirmed that a customary right of occupancy on any community land subsisting before the commencement of this Act shall be a valid and recognisable right of occupancy upon commencement of this Act.

(2) A customary right of occupancy is in every respect equal in status and effect to a granted right of occupancy and shall, subject to this Act, be—

- (a) capable of being allocated by a committee to an individual citizen, family, group of persons, clan, an association, partnership or body corporate wholly owned by one or more citizens;
- (b) be in communal or reserve land;
- (c) capable of being of indefinite duration;
- (d) governed by customary law in respect of any dealings;
- (e) inheritable and transmissible by will; and
- (f) liable to prompt payment in full, of just compensation upon acquisition by the State for public purposes.

(3) A person, a family unit, a group of persons recognized as such under any customary law or who have formed themselves together as an association, co-operative society or any other body recognized by any law, who are

members of a community may apply to the committee for customary right of occupancy.

(4) The committee shall in determining the application have regard to—

- (a) decisions reached by the adjudication team or any subcommittee set up for that purpose.
- (b) guidance from the community land Board;
- (c) equality of all persons including—
 - (i) equal treatment of applications from women and men
 - (ii) non-discrimination of any woman who applies for customary right of occupancy including divorced women;

(5) The committee shall issue a certificate of customary right of occupancy in the prescribed form.

(6) The committee may require payment of an annual rent from any category of occupiers.

12. (1) Pursuant to Article 67 (2) (c) and subject to section 13, the Commission shall develop and gazette a comprehensive programme for the registration of community land throughout Kenya.

Procedure for recognition and adjudication of community land.

(2) The programme referred to under subsection (1) shall provide for measures to document existing forms of communal tenure and map the boundaries of such lands, whether customary or contemporary, rural or urban and shall develop an inventory of all community land in Kenya.

(3) The Commission shall ensure that the process of documenting, mapping and developing an inventory of community land shall be transparent, equitable, cost effective and participatory and shall involve the following steps—

- (a) a public notice of not less than thirty days, declaring an area or areas of land to be a community land registration unit, shall be posted in a prominent place on the land which is to be adjudicated, stating which land is to be adjudicated and requesting all persons with an interest in the land to attend a specified meeting,

- and asking all persons with claims on the land to mark and indicate their boundaries prior to the meeting;
- (b) actual involvement and engagement of the community by creating awareness of the process and taking an inventory of their land and resource rights;
 - (c) recording of the community land claims and governance rules;
 - (d) actual physical demarcation of the land and delineation of boundaries involving the people;
 - (e) all relevant documents are reviewed and agreed upon by the community and the relevant government agencies;
 - (f) validation and adoption of rules and regulations to regulate the governance community land and natural resources;
 - (g) formation of community land management committees; and
 - (h) certificate of title to the community land is conferred to the community land management committee.
- (4) The documentation, mapping and registration process contemplated in this section shall be—
- (a) undertaken through the registration units constituted under the Land Registration Act; and
 - (b) concluded within such time as the Commission may determine.
- (5) A community may apply to the commission to have the whole or part of its land registered in accordance with this section.
- (6) The Commission may set rules for the actual conduct of the adjudication exercise including—
- (a) the manner of ascertaining, verifying, determining and marking of boundaries;
 - (b) involving adjacent land owners and calling of witnesses and certifying the boundaries;

- (c) preparing of sketches for the land;
- (d) reconciling parties in case of conflicts;
- (e) preparation of provisional adjudication records;
- (f) disposing of appeals;
- (g) preparation of final adjudication records;
- (h) approval of records; and
- (i) registration.

13. (1) Upon adjudication, the title relating to community land shall be endorsed by the Registrar in the prescribed form.

Registration of
community land.

- (2) Community land may be registered in the name of—
- (a) a community;
 - (b) a clan or family in accordance with the customary practices applicable;
 - (c) a community association in accordance with the document constituting the association; or
 - (d) a traditional leader in trust for the community with the consent of the members of the community.

14. (1) There shall be maintained for each registration unit, a community land register in which shall be kept—

Register of
community land.

- (a) a cadastral map showing the extent of the community land and identified areas of common interest;
- (b) the name and the constitution of the community;
- (c) a record of the land use for which the land is put;
- (d) such particulars of members of the Committee as the Commission may determine;
- (e) an estimate of the size of the community as at the time of registration; and
- (f) any other requirement under this Act.

(2) The Registrar shall issue a certificate of title in the prescribed form.

(3) The Registrar shall not register any instrument purporting to dispose of rights or interest in community

land except in accordance with this Act or any other written law.

(4) For the avoidance of doubt, until any parcel of community land has been registered in accordance with this Act, such land shall remain unregistered community land and shall be held in trust by the county government on behalf of communities pursuant to under Article 63(3) of the Constitution.

(5) The Commission may in writing delegate any of its functions under this Act to a county government.

PART II—ADMINISTRATION AND MANAGEMENT OF COMMUNITY LAND

Community land management committees

Establishment of
Community land
management
committees.

15. (1) There is established a community land management committee in respect of every parcel of community land.

(2) Before registration of any parcel of community land, the Commission shall facilitate the formation of a community land management committee which shall be comprised of members of the community who live in the land.

Basic requirements
of a Committee.

16. (1) Every committee shall—

- (a) be registered in accordance with this Act or other law;
- (b) adopt a constitution and basic rules acceptable by the community in form and substance and containing at least the requirements set out in the First Schedule;
- (c) be representative of all levels of the community so far as it is appropriate to do so having regard to the geographical and ethnic distribution of the members of the community;
- (d) hold regular and democratic elections;
- (e) uphold transparency and allow participation of the community in its decision making processes;
- (f) identify on a provisional basis, the boundaries of the community land for which it is appointed;

- (g) establish a dispute resolution mechanism; and
- (h) keep proper books of accounts.

(2) A committee shall not act contrary to the provisions of the community's constitution, rules or by-laws made in accordance with this Act.

17. (1) Every committee shall consist of not fewer than nine and not more than twelve members comprising of at least—

Composition of
Community land
management
committees.

- (a) two members, aged thirty five years and above, representing the community elders;
- (b) two women representatives;
- (c) two members, being one man and one woman, representing the youth;
- (d) one person representing special interests in the community; and
- (e) two persons representing the different ethnic, cultural or other community of interest within the community.

(2) There shall be a chairperson of the Committee who shall be elected by the members in their first meeting from among themselves.

(3) The membership of the Committee shall observe the principle that not more than two-thirds of its members shall be of one gender.

18. Upon registration of a Committee by the Registrar, a Committee shall become a body corporate a body corporate with perpetual succession and a common seal and shall be capable in its corporate name of—

Incorporation of
Committees.

- (a) suing and being sued;
- (b) talking, purchasing or otherwise acquiring, holding, charging and or disposing of movable and immovable property;
- (c) entering into contract;
- (d) borrowing and lending money; and
- (e) doing or performing all such other things or acts necessary for the proper performance of its functions under this Act, which may lawfully be done or performed by a body corporate.

Election of members
of the Committee.

19. (1) Whenever a Committee is to be elected, the Commission shall publish a notice of the election date in newspaper national circulation and post a copy in a conspicuous place in the registration unit at least thirty days before the election.

(2) The election of Committee members shall be in accordance with regulations to be prescribed by the Commission and such regulations shall require—

- (a) regular and democratic elections;
- (b) recognition of the right of every member of the community to vote and to stand for election and, if elected to hold office;
- (c) elections shall be representative and shall involve participation of all community members including minorities and marginalized groups;
- (d) any other matter that the Commission deems necessary for purposes of ensuring fair representation of the community.

20. (1) The Community land management committees shall, subject to this Act—

- (a) manage and administer community land on behalf of the community;
- (b) facilitate the recording and issuance of title for the community land by the Commission;
- (c) facilitate land use planning and provision of infrastructure by the government; and
- (d) promote co-operation and participation among community members in dealing with matters pertaining to the land; and
- (e) perform such other functions as are assigned by this Act.

(2) A decision by a Committee which has an effect of disposing of community land or a right in community land to any person, including to a community member, shall not have force and effect until ratified by a resolution of the members of the community in a meeting convened for that purpose.

(3) Every committee shall have all the powers necessary for the execution of its functions under this Act,

Functions and
powers.

and without prejudice to the generality of the foregoing, a committee shall have the power to—

- (a) exercise control over and regulate dealings in community land;
- (b) determine the criteria of acquiring membership of the community;
- (c) determine the land use of the community land;
- (d) subject to the ratification of the members or the Board, approve agreements, transactions and negotiations relating to the community land;
- (e) allocate land rights;
- (f) establish and maintain records of any transactions and dealings in the land;
- (g) assist in the resolution of land disputes; and
- (h) generally safeguard the interests of the community and its members in dealings with the land.

21.(1) A member of the committee may be removed for—

Removal of members

- (a) violation of the constitution or rules of the community;
- (b) gross misconduct, whether in the performance of the member's functions or otherwise;
- (c) physical or mental incapacity to perform the functions of office; or
- (d) incompetence or neglect of duty.

(2) The Board may, upon the recommendation of the committee terminate the appointment of a member of the committee on any of the grounds specified under subsection (1).

22. A person shall cease to be a member of a committee if such person—

Vacation of office.

- (a) resigns in writing, to the Commission;
- (b) is convicted of a criminal offence and sentenced to a term of imprisonment of not less than six months;
- (c) is declared bankrupt;
- (d) is unable to perform the functions of his or her office by reason of mental or physical infirmity; or

(e) dies.

Filling of vacancy.

23. Where a vacancy occurs in the membership of the Committee under, the Commission shall, cause an election of a new member in accordance with the provisions of this Act.

Meetings of the Committee.

24. (1) The business and affairs of the Committee and annual general meetings of the community members shall be conducted in accordance with the Second Schedule.

(2) Without prejudice to subsection (1), the Committee may regulate its own procedure.

(3) The Committee may invite any person to attend any of its meetings and to participate in its deliberations, but such person shall not have a vote in any decision of the Committee.

Terms of office.

25. (1) The chairperson and every member of the Committee elected by the community shall hold office for a term of three years and shall be eligible for re-election for one further term.

(2) The chairperson or a member of the Committee may resign from office by written notification addressed to the Cabinet Secretary.

Community Land Boards

Establishment of Community Land Boards.

26. (1) There is established a Community Land Board in respect of every sub-county.

(2) A Board shall consist of not fewer than three and not more than nine members who shall be nominated by the community land management committees within the sub county and appointed by the Commission.

(3) For purposes of subsection (2) every committee shall nominate such number of persons as the Commission may from time to time determine.

(4) The membership of the Board shall observe the principle that not more than two-thirds of the members shall be of one gender.

(5) The Board shall elect a chairperson from among themselves during their first meeting.

Functions of the Boards.

27.(1) The Boards shall, subject to this Act—

(a) oversee the committees in their management and administrative functions over community land;

- (b) supervise, control and regulate the committees in all their dealings with community land;
- (c) continuously monitor and evaluate compliance by the committees with the provisions of this Act and any other law;
- (d) facilitate the committees in the discharge of their functions; and
- (e) promote the participation of community members in the decision making of the committees; and
- (f) perform such other functions as are assigned by this Act.

28. A Board shall have power to—

Powers of the Boards

- (a) overrule a decision of a committee if it is satisfied that the committee acted in bad faith;
- (b) recommend to the Commission the removal from office of any member of the committee;
- (c) make rules of conduct and procedure for the committees

29. The provisions of Part II relating to the vacation of office, filling of vacancy, meetings and term of office relating to the committees shall apply with necessary modifications to the Boards.

Operation of the Boards.

30. (1) All unregistered community land shall be held in trust by the county governments on behalf of the communities for which it is held.

Role of county governments.

(2) Any transaction in relation to unregistered community land within the county shall be in accordance with the provisions of this Act and any other applicable law.

(3) Once an unregistered community land is registered in accordance with this Act, the role of the county government shall lapse and the committee registered in relation to such land shall assume the management and administrative functions provided in this Act.

PART III—NATURE OF COMMUNITY LAND TITLE

Effect of Registration of Community Land

31. Subject to this Act—

Interest conferred by registration.

- (a) the registration of a community as the proprietor of land shall vest in that community the absolute ownership of that land together with all rights and privileges belonging or appurtenant thereto; and
- (b) the registration of a community or a person as the proprietor of a lease shall vest in that community or person the leasehold interest described in the lease, together with all implied and expressed rights and privileges belonging or appurtenant thereto and subject to all implied or expressed agreements, liabilities or incidents of the lease.

Rights of a community as proprietor.

32. (1) The rights of a proprietor, whether acquired on first registration or subsequently for valuable consideration or by an order of court, shall not be liable to be defeated except as provided in this Act, and shall be held on behalf of the community, together with all privileges and appurtenances belonging thereto, free from all other interests and claims whatsoever, but subject—

- (a) to the leases, charges and other encumbrances and to the conditions and restrictions, if any, shown in the register; and
- (b) to such liabilities, rights and interests as affect the same and are declared by section 34 not to require noting on the register, unless the contrary is expressed in the register.

(2) Nothing in this section shall be taken to relieve a Committee from any duty or obligation to which the Committee is subject to as a trustee.

Certificate of title to be conclusive evidence of proprietorship.

33. (1) The certificate of title issued by the Registrar upon registration, or to a purchaser of community land upon a transfer or transmission by the proprietor shall be taken by all courts as *prima facie* evidence that the person named as proprietor of the land is the absolute and indefeasible owner, subject to the encumbrances, easements, restrictions and conditions contained or endorsed in the certificate, and the title of that proprietor shall not be subject to challenge, except—

- (a) on the ground of fraud or misrepresentation to which the person is proved to be a party; or
- (b) where the certificate of title has been acquired illegally, unprocedurally or through a corrupt scheme.

(2) A certified copy of any registered instrument, signed by the Registrar and sealed with the Seal of the Registrar, shall be received in evidence in the same manner as the original.

34. Unless the contrary is expressed in the register, all registered community land shall be subject to the following overriding interests as may for the time being subsist and affect the same, without their being noted on the register—

Overriding interests.

- (a) spousal rights over matrimonial property;
- (b) trusts including customary trusts ;
- (c) rights of way, rights of water and profits subsisting at the time of first registration under this Act;
- (d) natural rights of light, air, water and support;
- (e) rights of compulsory acquisition, resumption, entry, search and user conferred by any other written law;
- (f) leases or agreements for leases for a term not exceeding two years, periodic tenancies and indeterminate tenancies;
- (g) charges for unpaid rates and other funds which, without reference to registration under this Act, are expressly declared by any written law to be a charge upon land;
- (h) rights acquired or in process of being acquired by virtue of any written law relating to the limitation of actions or by prescription;
- (i) electric supply lines, telephone and telegraph lines or poles, pipelines, aqueducts, canals, weirs and dams erected, constructed or laid in
- (j) pursuance or by virtue of any power conferred by any written law; and
- (k) any other rights provided under any written law.

35. (1) A Committee may, on its own motion or at the request of the Commission, submit to the Commission for approval a plan for the development, management and use of the community land vested in the management of the Committee.

Land use and development planning of community lands.

(2) Before submitting a plan to the Commission under subsection (1) a Committee shall—

- (a) consider any conservation, environmental or heritage issues relevant to the development, management or use of the public land in its managed reserve for the purpose of that managed reserve; and
- (b) incorporate in the plan a statement that it has considered those issues in drawing up the plan;
- (c) an environment impact plan pursuant to existing laws on environment;
- (d) comply with the values and principles of the Constitution.

(3) If a Committee submits a plan to the Commission under subsection (1) and the Commission approves that plan and notifies the Committee of that fact, the Committee may develop, manage and use the land concerned in accordance with the plan as approved or subsequently varied as the case may be.

(4) The Commission shall, in considering a plan submitted to it under this section comply with the relevant law relating to development planning.

36. (1) The Commission may make rules and regulations for the sustainable conservation of land based natural resources within community land.

(2) Without limiting what the Commission may prescribe under subsection (1), the rules and regulations may contain—

- (a) measures to protect critical ecosystems and habitats;
- (b) incentives for communities and individuals to invest in income generating natural resource conservation programmes;
- (c) measures to facilitate the access, use and co-management of forests, water and other resources by communities who have customary rights to these resources;
- (d) procedures for the registration of natural resources in an appropriate register; and

- (e) procedures on the involvement of stakeholders in the management and utilization of land-based natural resources.

PART V—CONVERSION OF LAND

37. (1) Subject to the Constitution and this Act, community land may be converted to either private or public land.

Conversion of community land generally

(2) The Community land register shall, in addition to the particulars set out under section 8 (1) of the Land Registration Act contain the particulars of all conversions involving community land.

(3) Before conversion of community land into any other category of land, approval shall be sought from members of the community in a general meeting.

38. (1) Community land may be converted to public land by—

Conversion of community land to public land

- (a) compulsory acquisition;
- (b) transfer; or
- (c) surrender.

(2) Where community land is compulsorily acquired, it shall only be in the interest of defence, public safety, public order, public morality, public health or land use planning and subject to prompt payment in full of just compensation to the community.

(3) Transfer of community land shall, subject to the approval of the members of the community in a general meeting, be done in accordance with the Land Act.

39.(1) Community land may, subject to the approval of the Committee, be converted to private land by—

Conversion of community land to private land.

- (a) transfer; or
- (b) allocation by the Committee or a county government.

(2) Conversion of land under subsection (1) shall require approval of—

- (a) the county assembly in the case of land held by the county government; and

- (b) members of a community in a general meeting in the case of land managed and administered by a Committee.

Conversion of public land to community land.

40. (1) Public land may be converted to community land by—

- (a) allocation by the Commission in accordance with the Land Act;
- (b) legislation of the national government.

(2) For purposes of subsection (1) (b), the parcels of land contained in the Third Schedule are converted from public to community land.

(3) The Commission may, by an order published in the gazette identify other specific parcels to which subsection (2) shall not apply.

Conversion of private land to community land.

41. Private land may be converted to community land by—

- (a) transfer;
- (b) surrender; or
- (c) operation of the law in relation to illegally acquired community land.

Setting aside community land for public purposes.

42. (1) A community or county government may set aside part of the community land for public purposes.

(2) Where land is set aside for public purposes under subsection (1), the Commission shall gazette such parcel as public land.

PART VI—SPECIAL RIGHTS AND ENTITLEMENTS IN THE COMMUNITY LAND

Individual rights on community land.

43. (1) A Committee may allocate part of the community land to a member or a group of members of the community for exclusive use and occupation but no separate title shall be issued for such parcel.

(2) An individual entitlement under subsection (1) shall not be superior to community title in any way.

(3) A member granted exclusive use of a parcel of land under this section—

- (a) shall pay to the Committee such premium or fees as may be determined by the Committee from time to time;

(b) may develop the land subject to the provisions of any law relating to land;

(c) may not transfer or lease the land to a third party who is not a member of the community;

(d) shall put the land into lawful use;

(4) Any parcel of land granted to a member for exclusive use shall revert to the community if—

(a) the member dies without an heir;

(b) the member fails to put it into any use for a period of five years from the date of grant.

44.(1) Customs and practices related to land used by pastoral communities shall be taken into consideration as long as they comply with the provisions of this Act or other applicable law.

Grazing rights.

(2) Community land in a pastoral community shall be available for use by members of the community for the grazing of their stock, subject to—

(a) such conditions as may be prescribed or as the Committee concerned may impose, including conditions relating to—

(i) the kinds and number of stock that may be grazed;

(ii) the section or sections of the land where stock may be grazed and the grazing in rotation on different sections; and

(iii) a grazing plan.

(b) the right of the Committee to utilize any portion of the land which is required for the allocation of a right under this Act.

(3) Notwithstanding subsection (1), the Committee may withdraw the grazing right of any member who—

(a) fails to observe in a material respect any condition referred to in this Act;

(b) contravenes any provision of subsection (4).

(4) The Committee may upon application by any person who is not a member of the community, 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):

Provided that the Committee may at any time withdraw a grazing right granted under this subsection if, due to drought or any other reasonable cause, the Committee considers such cancellation in the interest of the residents of the traditional community concerned.

(5) Except with the written authority of the Committee and ratification by the community, no person shall—

- (a) erect or occupy any building or other structure on the designated grazing land;
- (b) plough or cultivate any portion of the land;
- (c) take up abode on or occupy any portion of the grazing land; or
- (d) obstruct the access to any watering place on the land, 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; or
- (e) carry on any activity on the land, 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.

(6) A person who contravenes any provision of subsection (5) is guilty of an offence and liable on conviction to a fine not exceeding one hundred thousand or imprisonment for a period not exceeding one year.

45.(1) A committee may reserve special purpose areas including—

- (a) farming areas;
- (b) settlement areas;
- (c) access and rights of way; or
- (d) any other purpose.

(2) Any area designated for special purposes under subsection (1) shall not be used for unrelated non-designated purposes.

46. (1) Every member of the community has the right to equal benefit from community land.

Non-discrimination.

(2) Equality includes full and equal enjoyment of rights of use and access.

(3) Women, men, minority, persons with disabilities and marginalized groups have equal the right to equal treatment in all dealings in community land.

(4) A Committee or county government shall not directly or indirectly discriminate against any member of the community on any ground including race, gender, marital status, ethnic or social origin, colour, age, disability, religion or culture.

47. (1) Subject to such exemptions as may be prescribed, or unless any condition attaching to a community land right or a right of leasehold under this Act provides otherwise, a customary land right may be dealt with only with the written consent of the Committee and ratification by the members in an general meeting.

Transactions in community land

(2) For purposes of this Act—

- (a) contracts over land; and
- (b) transfers;
- (c) charges,

over community land shall be carried out in the same manner as transactions over private land as provided for in the Land Act and registered as provided for in the Land Registration Act.

(3) No part of community land may be transferred to a non-citizen.

48. (1) A lease over community land shall be on the basis of an agreement between the community and the lessee and subject to such conditions as the may be contained in the lease agreement.

Leases over community land.

(2) Despite section 55 (1) of the Land Act, unless the agreement contemplated under subsection (1) otherwise provides, the general provisions on leases contained in Part IV of that Act apply to leases over community land.

Cancellation of
rights of leasehold.

49. In addition to the grounds for cancellation set out in a deed of leasehold, a right of leasehold may be cancelled by a Committee 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.

Existing rights to
use and occupy
community land.

50. Any person who immediately before the commencement of this Act, held a right, not being right under customary law, to use and occupy any community land, whether by virtue of any authority granted under any law or otherwise, may continue to use and occupy such land under that right, subject to the same terms and conditions until—

- (a) such right is recognized and registered in accordance with this Act; or
- (b) a right of leasehold is granted to such person in respect of the land.

Survey of
community land.

51. (1) A community may, subject to subsection (2) cause any area of community land to be surveyed and a plan to be prepared in respect of the surveyed area.

(2) The survey of any area of land and preparation of a plan shall be in accordance with the land use plan for the area.

(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, a Committee may, cause such adjustments to be effected to the layout of such individual pieces of land, as may be necessary.

PART VI—ENVIRONMENT AND NATURAL RESOURCES MANAGEMENT

Land Use Planning and Investments in Community Land

Community land use
planning.

52. (1) Pursuant to Article 66 the Constitution the State shall have the power to regulate the use of any land, or interest in or right over land, in the interest of defence, public safety, public order, public morality, public health or land use planning.

(2) Where any investment is to be put up in a community land, it shall be on the basis of an agreement drawn in accordance with section 53.

53. An agreement relating to investment in community land shall contain provisions on the following aspects—

Content of agreements relating to investments

- (a) requirement for an environmental, social, cultural and economic impact assessment and measures to mitigate any negative effects;
- (b) continuous monitoring and evaluation of the impact of the investment to the community;
- (c) payment of royalties to the community based on the income generated from the investment;
- (d) requirement for the investor to build capacity and transfer technology to the community; and
- (e) any other particular necessary for purposes of determining how local communities benefit from investments in their land.

54. Based on the particulars contained in section 53, every investor in a community land shall spend not less than thirty percent of the net income in any or some of the following—

Benefit sharing

- (a) provision of services to the community;
- (b) laying infrastructure in the community;
- (c) education and capacity building; or
- (d) payment of royalties.

55. A community may adopt bye-laws for regulating the management and administration of their land and such bye-laws may provide for—

Bye-laws

- (a) regulation of investments on the land;
- (b) determination of terms of any leases granted for purposes of investment;
- (c) conservation and rehabilitation of the land;
- (d) land use planning; or
- (e) any other lawful matter.

PART VII—SETTLEMENT OF DISPUTES RELATING TO COMMUNITY LAND

56. (1) A Committee shall set up dispute resolution mechanisms in accordance with a community's

Dispute resolution mechanisms.

constitution for resolving disputes between members and the Committee.

(2) In resolving disputes related to community land, priority shall be given to—

- (a) alternative dispute resolution which includes dispute resolution processes and mechanisms that fall outside the government judicial processes; and
- (b) traditional dispute resolution mechanisms.

(3) Customary law and practice of the locality shall apply to resolve disputes related to community land.

(4) Any person aggrieved by a decision of a Committee may first appeal the area Board and then to the court.

(5) The court may—

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

Mediation.

57. (1) Where a dispute related to community land occurs, the parties may agree to use mediation to resolve the dispute.

(2) The mediator shall be designated upon request by the parties from among members of the community.

(3) The mediation shall take place in a private or in informal setting where the parties participate in the negotiation and design of the format of the settlement agreement.

(4) The mediator shall have the power to bring together persons to a dispute and settle the dispute through the following functions—

- (a) convene meetings for hearing of disputes from parties and keep record of the minutes;
- (b) establish ground rules for the conduct of parties;
- (c) structure and manage the negotiation process and help clarify facts and issues; and
- (d) help the parties to generate options to resolve their dispute.

58.(1) Parties to a dispute may apply for arbitration to the Committee or the Board as the case may be.

Arbitration.

(2) An arbitration committee shall be appointed and given the following powers—

- (a) summon witnesses;
- (b) take evidence upon oath or affirmation; and
- (c) require the production of any document deemed necessary for the arbitration.

59. The parties shall be bound by the award delivered by an arbitration committee subject to their mutual consent.

Awards.

PART VIII—GENERAL PROVISIONS

60.(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.

Unlawful occupation of community land.

(2) A person who contravenes this section commits an offence.

61. Pursuant to Article 67 (2) (e) of the Constitution, the Commission shall investigate historical community land injustices and recommend appropriate redress.

Restitution of illegally acquired community land

62. Where a person commits an offence under this Act where no penalty has been provided, the person shall upon conviction be liable to imprisonment for a term not exceeding three years or to a fine not exceeding five hundred thousand shillings or to both.

General penalty.

63. The following laws are repealed—

Repeals.

- (a) the Land Consolidation Act, (Cap 283);
- (b) the Adjudication Act, (Cap 284);
- (c) the Land (Group Representatives) Act, (Cap 287); and
- (d) the Trust Lands Act, (Cap 288);

64. (1) Unless the contrary is specifically provided in this Act, any right, interest, title, power, or obligation acquired, accrued, established, coming into force or exercisable before the commencement of this Act shall, subject to this Act, continue to be governed by the law applicable to it immediately prior to the commencement of this Act.

Saving and transitional provisions.

(2) Unless the contrary is specifically provided in this Act or the circumstances are such that the contrary must be presumed, if any step has been taken to create, acquire, assign, transfer, or otherwise execute a disposition, any such transaction shall be continued in accordance with the law applicable to it immediately prior to the commencement of this Act.

(3) Any instrument executed before the commencement of this Act whereby any disposition permitted under this Act is completed may be presented for registration in the prescribed register and—

(a) the question whether any instrument so presented is to be registered shall be determined by the Registrar by reference to the law in force at the time of its execution; and

(b) Subject to the provisions of paragraph (a), the provisions of this Act shall apply to that instrument as if it had been executed after the commencement of this Act.

(4) If a lessor or chargor had initiated any steps to forfeit a lease or to foreclose a charge, as the case may be, before the commencement of this Act, a court may on the application of the lessee or the chargee issue an injunction to the lessor or, to the chargor to stop the continuation of any such step.

(5) If a court had issued an injunction under subsection (4), the lessor or chargor to whom the injunction has been issued may commence any action under this Act to terminate that lease or bring that charge to an end.

65. (1) All group representatives incorporated under section 7 of the Land (Group Representatives) Act for purposes of holding land on behalf of members of any group shall within two years from the date of commencement be reconstituted into committees and re-registered in accordance with the provisions of this Act.

(2) No land held by a group representative referred to under subsection (1) shall be sold, leased or converted to private land until it has first been registered under this Act.

(3) Title documents issued to group representatives under the Land (Group Representatives) Act shall continue

to be in force until new titles are issued in the names of the respective communities or other institutions in accordance with this Act.

(4) The transitional provisions set out in the Second Schedule shall apply upon commencement of this Act.

(5) The provisions of this section shall apply with necessary modifications to any institution holding community land on behalf of other persons including—

- (a) land-buying companies, co-operative societies and associations;
- (b) unincorporated rangeland management bodies; and
- (c) any institution or group by whatever name called holding community land on behalf of any group of persons.

(6) The Fourth Schedule shall have effect with regard to any institution registered to hold, manage or administer community land on behalf of any persons.

66. (1) The Commission or the Cabinet Secretary where applicable may make regulations generally for the better carrying into effect of this Act.

Regulations.

(2) Without prejudice to the generality of subsection (1), regulations may prescribe—

- (a) the procedures of recognition and registration of all parcels of community land rights;
- (b) conversion of privately held and illegally acquired community lands to community land;
- (c) conversion of other categories of land into community land;
- (d) the fees payable for any application or the issue of any certificate or other document in terms of this Act;
- (e) 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;
- (f) public education and awareness on the rights of communities over community land;

- (g) the combating and prevention of soil erosion, the protection of the pastoral resources and the limitation and control of the grazing of stock;
- (h) the payment of compensation to persons whose rights to the occupation or use of community land are affected;
- (i) payment of royalties to communities from income generated from resources within community lands.

SCHEDULES

FIRST SCHEDULE (S. 16)

**MATTERS TO BE PROVIDED FOR IN THE
CONSTITUTION OF EVERY COMMITTEE**

1. The name of the community.
2. A description of the area, being the land in or over which the community has, under recognized customary law, exercised rights of use and occupation.
3. The persons who are the original members of the community.
4. The persons to whom membership is open.
5. The personal particulars of the members of the Committee, term of office, the method and frequency of their election, appointment, suspension and dismissal.
6. The authority for and the method of filling vacancies occurring amongst the officers of the Committee.
7. Payment of allowances to Committee members and other officers of the Committee.
8. The frequency of, quorums for, method of calling and dates of the annual general meetings.
9. The custody and investment of the funds and property of the community, and the designation of the persons responsible.
10. The purposes for which the funds and property of the Committee may be used.
11. The maintenance and inspection of books of account, the register of members and the record of interests, by any member or officer of the community, by or on behalf of the registrar.
12. The periodic audit of accounts.
13. The manner of making and amending the name, constitution or rules of the community.
14. The manner of the dissolution of the Committee and the disposal of its property on dissolution.

(S. 24)

SECOND SCHEDULE**CONDUCT OF BUSINESS AND AFFAIRS OF THE COMMITTEES**Meetings of the
Committee.

1. (1) The Committee shall meet not less than four times in every financial year and not more than four months shall elapse between the date of one meeting and the date of the next meeting.

(2) The Chairperson shall convene the ordinary meetings of the Committee at the premises of the Authority.

(3) Despite the provisions of sub-paragraph (1), the Chairperson shall, upon a written request by at least five members of the Committee, convene a special meeting of the Committee at any time where he considers it expedient for the transaction of the business of the Committee.

(4) Unless three quarters of the total number of the members of the Committee otherwise agree, at least fourteen days written notice of every meeting of the Committee shall be given to every member of the Committee by the chief executive officer.

(5) The quorum for the conduct of the business of the Committee shall be two-thirds of the total number of members including the Chairperson or the person presiding.

(6) The Chairperson shall preside at every meeting of the Committee at which he is present and in his absence, the members of the Committee present shall elect one person from their number to preside over the meeting of the Committee and he shall have all the powers of the Chairperson.

(7) Unless a unanimous decision is reached, a decision on any matter before the Committee shall be by a majority of the votes of the members present and voting and in the case of an equality of votes, the Chairperson or person presiding over the meeting shall have a casting vote.

(8) The proceedings of the Committee shall not be invalidated by reason of a vacancy within its membership.

(9) Subject to provisions of this Schedule, the Committee may determine its own procedure and the

procedure for any committee of the Committee and for the attendance of other persons at its meetings thereof.

2. (1) If a member is directly or indirectly interested in any contract, proposed contract or other matter before the Committee and is present at a meeting of the Committee at which the contract, proposed contract or other matter is the subject of consideration, the member shall, at the meeting and as soon as reasonably practicable after the commencement thereof, disclose his or her interest in the matter and shall not take part in the deliberations over, or vote on, the matter.

Disclosure of interest.

(2) A disclosure of interest made under this paragraph shall be recorded in the minutes of the meeting at which it is made.

(3) Any contract or instrument which if entered into or executed by a person not being a body corporate, would not be required to be under seal may be entered into or executed on behalf of the Authority by any person generally or specially authorized by the Committee for that purpose.

THIRD SCHEDULE

(S. 40)

PARCELS OF LAND CONVERTED FROM PUBLIC TO COMMUNITY LAND

1. All public land in Mombasa, Kwale, Kilifi, Tana River, Lamu and Taita Taveta counties except—

- (a) public land lawfully held, used or occupied by any State organ;
- (b) all minerals and mineral oils as defined by law;
- (c) government forests other, government game reserves, water catchment areas, national parks, government animal sanctuaries, and specially protected areas;
- (d) all roads and thoroughfares mentioned by an Act of Parliament;
- (e) all rivers, lakes and other water bodies as defined by an Act of Parliament;

- (f) the territorial sea, the exclusive economic zone and the sea bed;
- (g) the continental shelf;
- (h) all land between the high and low water marks;
- (i) public lands subject to erosion, floods, earth slips or water logging;
- (j) public lands that fall within mangroves, and wetlands or fall within the buffer zones of such reserves or within environmentally sensitive areas;
- (k) public lands along watersheds, river and stream catchments, public water reservoirs, lakes, beaches except fish landing areas;
- (l) public land reserved for security, education, research and other strategic public uses as may be prescribed; and
- (m) natural features of exceptional value falling within public lands;
- (n) reserved land;
- (o) any other land categorized, by the Commission, under an order published in the gazette.

S. 65 (4)

FOURTH SCHEDULE

TRANSITIONAL PROVISIONS

Interpretation.

1. (1) In this Schedule—

“appointed day” means the day this Act comes into operation;

“former institution” means the an institution by whatever name called registered under any law for purposes of managing or administering community land.

Rights and obligations.

2. All rights, obligations and contracts which, immediately before the coming into operation of this Act, were vested in or imposed on a former institution shall by virtue of this section, be deemed to be the rights, obligations and contracts of the Committee.

3. (1) Every person who, immediately before the appointed day was an officer or member of staff of a former institution, not being then under notice of dismissal or resignation shall, on the appointed day and subject to subsection (2), become an officer or staff of the Committee.

Transfer of staff.

(2) A person who does not intend to become an officer or member of staff of the Committee shall, within a period of fourteen days from the appointed day, give a notice in writing to the Committee, and such person shall be deemed to have retired from the service of the former Committee.

4. On the appointed day—

Assets and liabilities.

- (a) all funds, assets, and other property, moveable and immovable which, immediately before the appointed day were vested in a former institution, shall, on the appointed day, vest in the Committee;
- (b) every public officer having the power or duty to effect or amend any entry in a register relating to property, or to issue or amend any certificate or other document effecting or evidencing title to property, shall, without payment of a fee or other charge and upon request made by or on behalf of the Committee, do all such things as are by law necessary to give effect to the transfer of property referred to under paragraph (a); and
- (c) all rights, powers, liabilities and duties whether arising under any written law or otherwise howsoever, which immediately before the appointed day were vested in, imposed on or enforceable by or against a former institution shall, by virtue of this paragraph, be transferred to, vested in, imposed on or enforceable by or against the Committee.

5. On or after the appointed day, all actions, suits or legal proceedings whatsoever pending by or against the former institution shall be carried on or prosecuted by or against the Committee, and no such action, suit or legal proceedings shall in any manner abate or be prejudicially affected by the enactment of this Act.

Legal proceedings.

6. Any reference to a former institution in any written law or in any contract, document or instrument of whatever nature shall, on the commencement of this Act, be read and construed as a reference to the Committee.

Reference to written laws.

7. All directions, orders and authorizations given, or licenses or permits issued, or registrations made by a former institution and subsisting or valid immediately before the appointed day, shall be deemed to have been given, issued or made by the Committee under this Act.

Directions, orders, etc of former Committee.

MEMORANDUM OF OBJECTS AND REASONS

Statement of the objects and reasons of the Bill

The Community Land Bill seeks to give effect to Article 63 of the Constitution which provides that community land shall vest in and be held by communities identified on the basis of ethnicity, culture or similar community of interest. Article 63(5) and the Fifth Schedule to the Constitution require that legislation on community land be enacted by Parliament within five years of the enactment of the Constitution. The Bill seeks to establish a legislative framework and procedure for –

- (a) recognition, protection and registration of community land rights;
- (b) vesting in and holding of community land by communities identified on the basis of ethnicity, culture or similar community of interests;
- (c) management and administration of community land; and
- (d) holding of unregistered community land in trust by county governments.

Statement on the delegation of legislative powers and limitation of fundamental rights and freedoms

Clause 66 of the Bill delegates power to make regulations to the Commission and the Cabinet Secretary. The Bill does not limit fundamental rights and freedoms.

Statement on how the Bill concerns county governments

The Bill concerns county governments in terms of Article 110 (1)(a) of the Constitution in that it contains provisions that affect the functions and powers of county governments as set out in the Fourth Schedule to the Constitution.

Statement as to whether the Bill is a money Bill within the meaning of Article 114 of the Constitution.

This Bill is not a money Bill within the meaning of Article 114 of the Constitution.

Dated the 9th July, 2013.

KITHURE KINDIKI,
Senate Majority Leader.