

**A COMPARATIVE ANALYSIS OF PROVISIONS OF THE SENATE AND
NATIONAL ASSEMBLY BILLS ON COMMUNITY LAND
BY DR. KEN NYAUNDI**

SECTION	SENATE BILL	NATIONAL ASSEMBLY BILL	NATIONAL ASSEMBLY BILL NO. 45 of 2015
Interpretation Section 2			
Adjudication Officer	No definition of an Adjudication Officer	Defines an Adjudication Officer	Means an officer appointed by the cabinet secretary under section 10(2)
Board	Defines a Board to be the Community Land Board	No definition of a Board	No Board
Cabinet Secretary			Means the cabinet secretary for the time being responsible for matters relating to land
Cadastral Map	No definition for a cadastral map but refers to a cadastral map in section 14 of the Bill	Defines a cadastral map to adopt the meaning assigned to it by the Land Registration Act	Defines a cadastral map to adopt the meaning assigned to it by the Land Registration Act 2012
Committee	Defines a Committee to be the Land Management committee established under section 15 of the Act		To be found only under the provisions of section 15
Community	Defines ‘community’ to be a group of people that share a common origin	Defines ‘community’ to be an organized group of users of community land who are citizens of Kenya	Defines ‘community’ to mean a consciously distinct and organized group of user of community land who are citizens of Kenya and share any of the attributes

	<p>In the attributes that a group must share to be termed as a community;</p> <ul style="list-style-type: none"> • this Bill has an alternative of having a unique mode of livelihood in addition to the similar culture • this Bill has an additional attribute that requires a group to share the same ethnic language • a group should have the same socio economic interest • Has an additional attribute of having a community of interests. 	<p>In the attributes that a group must share to be termed as a community;</p> <ul style="list-style-type: none"> • this Bill gives provision for sharing a similar culture • No requirement for a group to share the same ethnic language • Gives an alternative of other economic interest to the attribute of having the same socio economic interest • Community of interests is not contained as an attribute of a community in the Bill 	<ul style="list-style-type: none"> • Common ancestry • Similar culture or unique mode of livelihood • Socio-economic or other similar common interest • Geographical space • Ecological space or ethnicity
Community Area	Defines a 'community area'	No definition of a community area	No definition of a community area
Community use of Land.	No definition for Community use of land	Defines Community use of land	Means, holding or using land in undivided shares by a community
Community Land	Defines 'community land' to have the meaning assigned to it in article 63(2) of the Constitution	Has an additional definition of community land that includes land converted into community land by any other law	Means, (a) land declared as such under article 63(2) of the constitution (b) land converted into community land under any law.
Community Interests	Includes in the definition of 'common interests' that it may include the possession of common interests and living in the same place, not specifically describing what the word 'place' points to <ul style="list-style-type: none"> • Having some apparent association may impose any other apparent association that is not described in the Bill's definition of "common interests" 	Specifies that the common interests may include are interests in land and widens scope as it includes living in the same geographical area <ul style="list-style-type: none"> • The alternative of having such apparent association seems to infer to the types of association that is described while defining the meaning of "community interests" in the Bill 	Means the possession or enjoyment of common rights privileges or interests in land, living in the same geographical area or having such apparent association;
Community Land Register	No definition of 'community land register' but refers to "community land register in section 14	Defines 'community land register' to adopt the meaning in section 8 of the Land Registration Act	Defines 'community land register' to adopt the meaning in section 8 of the Land Registration

	and 39 of the Bill		Act 2012
Community land Registration Unit	No definition of community land Registration Unit	Defines community Land Registration Unit'	Means, an area declared as such under section 10 of the Land Registration Act.
community reserve land	No definition for 'community reserve land' in the interpretation section but defines the same in section 9(3) Reserve land shall comprise land which may be made available for communal or individual occupation and use through allocation by the committee	Defines 'community reserve land' to mean any land set aside for communal or land allocated by the registered community for individual occupation and use	Defines 'community reserve land' to mean any land set aside for communal or land allocated by the registered community for individual occupation and use
Community tenure system	No definition for 'community tenure system'	Defines 'community tenure system' to be unwritten land ownership practices in certain communities in which land is owned or controlled by a family, clan or a designated community leader	Defines 'community tenure system' to be unwritten land ownership practices in certain communities in which land is owned or controlled by a family, clan or a designated community leader
Customary land rights			Refers to right conferred by or derived from African customary law, customs or practices provided that such rights are not inconsistent with the constitution or any other law.
Farming Area	Defines 'farming area' to be; a portion of land allocated for farming purposes and conforming to the size prescribed under any law for such purpose;	No definition of 'farming area' but refers to farming areas in section 30 (a) of the Bill	Does not define farming area
Organised groups			Includes any or both formal and informal kinds of organization in the community setup
Natural Resources	Definition of Natural Resources 'natural resources' includes water, soil, stone, gravel, clay, wildlife, forests, fisheries but does not include	Definition of Natural Resources adopts the meaning assigned to it in Article 260 of the Constitution; giving a broader definition; including minerals that are excluded in the Senate Bill	Refers to the definition as is provided for by article 260 of the constitution

	minerals and mineral oil as defined in the Mining Act		
Principal Secretary	No definition of ‘principal secretary’ as the Bill creates new institutions such as community land management committees and community land boards to deals with matters touching on community land	Defines ‘principal secretary’ to be the Principal Secretary for the time being responsible for matters relating to land;	Defines ‘principal secretary’ to be the Principal Secretary for the time being responsible for matters relating to land;
Registrar	Defines ‘ Registrar’ to be the Chief land Registrar as appointed under section 12 of the Land Registration Act	Defines ‘ Registrar’ to be the registrar of community land as appointed by the Chief Land Registrar in accordance with section 9 of the Bill	Defines ‘Registrar’ to be the registrar of community land as appointed by the Chief Land Registrar in accordance with section 9 of this Act
Spouse			Has the meaning as is under the Marriage Act 2014.
	Enlists the purposes of the Act in the interpretation section	Does not enlist the purposes of the Act in the interpretation section	Its an Act to give effect to article 63(5) of the Constitution 2010, provide for recognition, protection and registration of community land provide for the role of the county government in relation to unregistered community land
Section 3 Guiding Principles	More elaborate listing 5 additional principles to those provided in the National Assembly Bill	Provides 2 guiding principles when dealing with community land matters	Provides 2 guiding principles when dealing with community land matters
Recognition, Protection and Registration of Community land			Gives the state power to regulate the use of community land in accordance with article 66 of the constitution. Community land can be held under (a) customary tenure (b)freehold(c)leasehold
Protection of community land rights	Section 5 Compulsory acquisition of community land is subject to article 40(3) of the Constitution and the Land	Compulsory acquisition of community land is subject to the provisions of article 40(3) of the Constitution	Limits compulsory acquisition of land to the Act and for public purposes and upon payments of prompt and

	Act		just compensation after negotiations.
Officers in charge of registration of community land	Section 6 provides for appointment of officers to discharge the functions of the Act	Section 9 tasks the Chief Land Registrar with the function of appointing a qualified registrar to deal with registration of community land	Section 9. The chief land registrar is mandated to designate a qualified registrar to be the community land registrar.
Role of county government			Section 6 Gives the county government mandate to hold in trust all unregistered community land on behalf of the communities for which it is held.
Register of Community land	No mention of a register of community land	Section 10 requires to be maintained a register of community land	Section 10 requires to be maintained a register of community land
Community land rights	This Bill deals with protection of community land rights as a whole in Part II as opposed to having a whole section enlisting the community land rights	Protection of Community land Rights in section 5 according to the provisions of article 40 of the Constitution <ul style="list-style-type: none"> • Customary land rights shall be documented and adjudicated for Section 5(5) Subject to the provisions of section 46, any person who immediately before the commencement of this Act had a subsisting customary right to hold or occupy land shall upon commencement of this Act continue to hold such right.	Section 17. provides for rights of the community over the registered land
Identification of community land, Application for registration	Section 8: Community claiming an interest in land shall within 2 years identify the extent of land, establish a committee to manage the land and facilitate registration of the community land	Section 7: This Bill does not give a time limit for identifying the extent of land and the boundaries like the Senate Bill	There's no time limits but gives a broad procedure for identifying the boundaries.

Threshold for issuing a certificate of title	The threshold for determining if a certificate of title to the land is to be issued is by identifying that no dispute is raised over the boundaries by any person whose land borders' or is contiguous to the land so identified	The threshold for determining the issue of an interim certificate of reservation of the community land is by ensuring that the extent and boundaries of the land is to the satisfaction of the Cabinet Secretary	The Cabinet Secretary is mandated to ensure that the process of documenting, mapping and developing of the inventory of the community land is transparent, cost effective and participatory.
Issue of certificate of title	The Registrar may issue a certificate of title to the community before adjudication of the land.	The Registrar may issue an interim certificate of reservation for the community land to the community. The certificate of title is issued after adjudication of the land	Section 10(2) prohibits the registrar from registering any instrument purporting to dispose of interest in community land except in accordance with this Act. Section 11(3) Upon adjudication, the registrar has to issue title in a prescribed form.
Who is the Registrar of Community Land	The Registrar in this Bill refers to the Chief Land Registrar as appointed under section 12 of the Land Registration Act	The Registrar in this Bill refers to the Registrar as appointed in section 9 of the Bill	Shall be a person designated qualified to be a community land registrar by Chief Land Registrar. Section 9
Programme for registration of community land	Section 11: National Land Commission tasked with developing and publishing in the Gazette a comprehensive programme for registration of community land.	Section 8 : the Cabinet Secretary is tasked with this responsibility	Section 11. the community land is to be registered in accordance with the provisions of this Act and the Land Registration Act 2012
The programme for adjudication	Section 11(2)(a): Mentions of such lands in reference to the community land to be adjudicated	Section 8 (2)(a): Expounds on the type of lands to be adjudicated and includes; customary or contemporary, rural or urban	The cabinet Secretary is mandated to ensure that the process of documenting, mapping and developing of the inventory of the community land is transparent, cost effective and participatory.

<p>The procedure for adjudication</p>	<p>Section 12: Adjudication is to be undertaken by the National Land Commission</p>	<p>Section 8 (3): Adjudication is to be undertaken by the Cabinet Secretary</p>	<p>Section 8 (3): The cabinet secretary shall publish a notice of intention to survey, demarcate and register community land.</p>
<p>Public participation in the adjudication process</p>	<p>Section 12 (2)(a) only mentions the mode of public participation in the adjudication procedure to be a public notice but it does not expound on how the public notice is to be delivered to the public.</p>	<p>Section 8 (3) (a) prescribes the mode of delivering the public notice to be through a radio station broadcasting in the area and posted in public centers and in a conspicuous place on the land to be adjudicated. This public notice is required to: (i) specify an area or areas of land to be a community land registration unit; (ii) state which land is to be adjudicated; (iii) request all persons with an interest in the land to attend a specified meeting; and (iv) invite all persons with claims on the land to mark and indicate their boundaries prior to the meeting;</p>	<p>Section 8(4)(c). The notice published is supposed to invite all interested persons with overriding interests or any other claim on the land, to lodge their claims.</p>
<p>Actual involvement of the community by creative awareness</p>	<p>Section 12 (2) (b) provides a responsibility for the Commission to ensure actual involvement of the community by creating awareness but does not provide how the creative awareness may be achieved</p>	<p>Section 8 (3) (b) expounds on the modes of creating awareness on the adjudication process</p>	<p>Section 11(2a). The CS is to appoint an officer who shall facilitate consultations during adjudication process.</p>
<p>Additional tasks in adjudication process</p>	<p>Has an additional task in reference to adjudication: Tasks the Commission with the function of overseeing the formation of community land and management of committees with respect to adjudication oversee the</p>	<p>Has an additional task in reference to adjudication: Tasks the Cabinet Secretary with the role of recording community land claims and governance rules</p>	<p>Has an additional task in reference to adjudication: Tasks the Cabinet Secretary with the role of recording community land claims and governance rules</p>

	formation of community land management committees; and ensure that certificate of title to the community land is conferred to the community land management committee.		
Documentation, Mapping and registration	This shall be concluded within such time as the Commission may determine	This shall be concluded in the time stipulated in the Gazette Notice as published by the Cabinet secretary	After the process in section 8 which includes publishing and consultations the result is a cadastral map of the land produced for registration.
Role of the County Government	This Bill touches on the role of county government to hold in trust unregistered community land in section 14(4) and further provides that the Commission may delegate its functions to the County governments in section 14(5)	This Bill expounds on the role of county governments to hold unregistered land in details as per section 6 of the Bill	This Bill expounds on the role of county governments to hold unregistered land in details as per section 6 of the Bill
Adjudication Officer	No mention of an adjudication officer, matters on registration are referred to the Chief land Registrar who is the Registrar for purposes of this Bill	The Cabinet Secretary shall by notice in the Gazette appoint an adjudication officer with respect to every community registration unit	The Cabinet Secretary shall by notice in the Gazette appoint an adjudication officer with respect to every community registration unit
Reserve Land	Provides that communal and reserve land is accorded communal right of occupancy in section 10(2)(b)	Has a whole section on communal and reserve land in section 13 and still mentions reserve land as the land to which communal right of occupancy is granted	Has a whole section on communal and reserve land in section 13 and still mentions reserve land as the land to which communal right of occupancy is granted
Annual Rent	The committee as established under section 15 may require payment of annual rent from any category of occupants	No provision allowing for payment of rent	No provisions

Registration of Community land	Section 13(2) provides that community land may be registered in the name of: community, a clan or family in accordance with the customary practices applicable; a community association in accordance with the document constituting the association; or a traditional leader in trust for the community with the consent of the members of the community.	No provision prescribing the name to appear in the certificate of title for the community land	No provisions
Administration and management of community land			
Establishment of the Community land management committees	Section 15 establishes these committees that are to be formed before registration of any parcel of community land These committees are in charge with every parcel of community land The committees are to be incorporated by the Registrar where after they assume a legal personality Section 15-26 of the Bill	Section 15-16 of the Bill: The Cabinet secretary is tasked with the responsibility of registering community land	Section 15. Gives power to a community assembly to elect between seven and fifteen member to constitute the land committee and assigns them with functions
Community Land Boards	The Bill establishes Community Land Boards in section 27 to oversee the overall functions of the committees as per section 20 and 21 of the Bill	The Cabinet Secretary is responsible for the community land, the Bill does not create a separate institution to perform its functions	There's no creation of a Board. All functions are in the committee