

Land Tenure Classifications in Kenya

REDD+ Law Project - Briefing Paper

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The **REDD+ Law Project** is led by Baker & McKenzie and the Cambridge Centre for Climate Change Mitigation Research (University of Cambridge), working with international and local advisers/institutions to assist countries in the development and implementation of their national REDD+ legal frameworks.

More information regarding this initiative is available at <http://www.4cmr.group.cam.ac.uk/research/projects/reddpluslawproject>

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ABOUT THIS BRIEF

The UNFCCC framework asks countries to include a national REDD+ institutional framework with certain key elements, many of which will draw on existing legal frameworks. For example, as part of their **national strategies and action plans** (discussed above), countries are requested to address land tenure issues:¹ The importance of land tenure for regulating land use and assigning benefits from REDD+ has been widely noted. Nonetheless, clarifying and then administering land tenure is a complicated issue that presents a challenge for many countries. Tenure systems can contain many different kinds of rights (for example, rights to ownership, right to use, right to access, right to control and right to transfer),² and land rights can be a source of conflict and political debate. REDD+ presents a new opportunity to consider this challenge, in addition to creating what could be new resource rights (eg. to carbon).

The issue of land rights is highly contested in Kenyan politics.³ Land ownership, use and management was one of the issues addressed by Kenya's new Constitution. Chapter 5 of the Constitution of 2010 Article 62 states that "all land in Kenya belongs to the people of Kenya collectively as a nation, as communities and as individuals."⁴ Thus, land is classified as public land, private land and community land.⁵

At present, different pieces of legislation (laws) apply to the different categories of land. The purposes of this Brief is to summarise these laws in an accessible format.

¹ Cancun Decisions (Decision 1/CP.16/2010 - "The Cancun Agreements"), paragraph 72.

² Different kinds of *rights* can be found within a land tenure system, such as:

- Right to ownership: the owner is entitled to use, control and dispose of the property.
- Right to use:
 - Right to access: for example, an easement confers the right to use the real property of another for a specific purpose (for example, access to another property).
 - Usufructuary right: Refers to the right of one individual to use and enjoy the property of another, provided its substance is neither impaired nor altered (for example, rights to use water from a stream for household use).
 - Right to exploit: For example, a *profit a prendre* is the right of persons to share in the land owned by another, enabling a person to take part of the soil or produce of land that someone else owns (for example, a logging concession).
- Right to control, ie. entitled to make decisions about how land should be used.
- Right to transfer, ie. entitled to sell, inherit and/or reallocate property rights.

³ For a discussion of land rights as a possible driver of the election violence in 2008, see generally Patricia Kameri-Mbote and Kithure Kindiki, 'Trouble in Eden: How and Why Unresolved Land issues Landed 'Peaceful Kenya' in Trouble in 2008' 2 *Forum for Development Studies* (2008), pp.167-193.

⁴ Constitution of Kenya 2010, Article 61(2).

⁵ Constitution of Kenya 2010, Article 60(2).

1 SUMMARIES OF LAND TENURE CATEGORIES AND GOVERNING LAWS IN KENYA

1.1 SNAPSHOT OF LAND TENURE CATEGORIES AND GOVERNING LAWS IN KENYA

	PRIVATE LAND	PUBLIC LAND	COMMUNITY LAND
KEY LAWS APPLICABLE TO EACH CATEGORY OF LAND	<p>Land Act (Act No.6 of 2012)</p> <p>Land Registration Act (Act No.3 of 2012)</p> <p>Land Control Act 1967</p> <p>National Land Commission Act (Act No. 5 of 2012) 2012</p> <p>Environmental Management and Coordination Act (Act No.8 of 1999)/Revised 2012</p> <p>Forests Act (Act No. 7 of 2005)/Revised 2012: Section 2 of the Act provides that the Act shall apply to all forests and woodlands on private land.</p>	<p>Land Act (Act No.6 of 2012)</p> <p>Land Registration Act (Act No.3 of 2012)</p> <p>Land Control Act 1967/Revised 2010</p> <p>National Land Commission Act (Act No. 5 of 2012)</p> <p>Environmental Management and Coordination Act (Act No.8 of 1999)/Revised 2012</p> <p>Forests Act (No. 7 of 2005)/Revised 2012: Section 2 provides that this Act shall apply to all forests and woodlands on State and local authority land.</p> <p>Wildlife (Conservation and Management) Act 2013</p>	<p>New Community Land Act (TBC). In lieu of this new Act, existing law applies:</p> <ul style="list-style-type: none"> • Land Act 2012 • Land Registration Act 2012 • Land Control Act 1967 • National Land Commission Act 2012 • Trust Lands Act, Chapter 288/Revised 2009 • Land (Group Representatives) Act, Chapter 287/Revised 2012. • Land Adjudication Act, Chapter 284/Revised 2010 • Land Consolidation Act, Chapter 283/Revised 2012 • Environmental Management and Coordination Act (Act No.8 of 1999)/Revised 2012.
	<p>FOREST LAND</p> <p>Forests Act (No. 7 of 2005)/Revised 2012</p> <p>Environmental Management and Coordination Act (No.8 of 1999)/Revised 2012</p> <p>Wildlife (Conservation and Management) Act 2013</p>		

1.2 SUMMARY OF APPLICABLE LAW FOR EACH LAND TENURE CATEGORY

	Private land	Public land	Community land	Forest land
Key laws applicable to each category	<p>Land Act (Act No.6 of 2012)</p> <p>Land Registration Act (Act No.3 of 2012)</p> <p>Land Control Act 1967</p> <p>National Land Commission Act (Act No.5 of 2012)</p> <p>Environmental Management and Coordination Act (Act No.8 of 1999) Revised 2012</p> <p>Forests Act (No. 7 of 2005)/Revised 2012. Section 2 of the Act provides that the Act shall apply to all forests and woodlands on private land.</p>	<p>Land Act (Act No.6 of 2012)</p> <p>Land Registration Act (Act No.3 of 2012)</p> <p>Land Control Act 1967/revised 2010</p> <p>National Land Commission Act (Act No. 5 of 2012)</p> <p>Environmental Management and Coordination Act 1999/Revised 2012.</p> <p>Forests Act (No 7 of 2005)/revised 2012. Section 2 provides that this Act shall apply to all forests and woodlands on State and local authority land.</p> <p>Wildlife (Conservation and Management) Act (Cap 376)</p>	<p>New Community Land Act – TBC</p> <p>In the absence of new law, existing law fills the void:</p> <ul style="list-style-type: none"> • Land Act 2012 • Land Registration Act 2012 • Land Control Act 1967 • National Land Commission Act 2012 • Trust Lands Act, Chapter 288/revised 2009. • Land (Group Representatives) Act, Chapter 287/revised 2012. • Land Adjudication Act, Chapter 284/revised 2010. • Land Consolidation Act, Chapter 283/revised 2012. • Environmental Management and Coordination Act, Act No.8 of 1999/revised 2012. 	<p>Forests Act No. 7 of 2005/revised 2012.</p> <p>Environmental Management and Coordination Act No.8 of 1999/revised 2012.</p> <p>Wildlife (Conservation and Management) Act 2013</p>

	Private land	Public land	Community land	Forest land
Administrative process for securing land rights	Land Act Land Registration Act Forests Act	Land Act Land Registration Act Forests Act Wildlife (Conservation and Management) Act (Cap 376)	The relevant legislation to govern Community land is yet to be enacted and in the meantime, the following laws shall be applicable: <ul style="list-style-type: none"> • National Land Commission Act • Trust Lands Act • Land (Group Representatives) Act • Land Adjudication Act (for Trust Land) • Land Consolidation Act (for Trust Land) 	Government forests are part of public land pursuant to Article 62(1)(g) of the Constitution. Under Article 62(3) of the Constitution, public land shall vest in and be held by the national government in trust for the people of Kenya and shall be administered on their behalf by the National Land Commission. Forests Act 2005/revised 2012 Wildlife (Conservation and Management) Act
Governing Institutions / authorities	Ministry of Land, Housing and Urban Development Ministry of Environment, Water and Natural Resources <ul style="list-style-type: none"> • National Environmental Management Authority • Kenya Forest Service 	National Land Commission Kenya Forest Service Kenya Wildlife Service		Ministry of Environment, Water and Natural Resources <ul style="list-style-type: none"> • Kenya Forest Service • Kenya Wildlife Service Ministry of Land, Housing and Urban Development <ul style="list-style-type: none"> • National Land Commission
Dispute resolution	Environment and Land Court The Magistrates Court still have jurisdiction to entertain land matters subject to their pecuniary jurisdiction. This was set out in the Kenya Gazette (Notice Number 16268).	Environment and Land Court	Environment and Land Court: For land held by Group Representatives, the Magistrates Courts have jurisdiction by virtue of the Land (Group Representatives) Act.	Environment and Land Court

	Private land	Public land	Community land	Forest land
Options for tenure arrangements (and their applicable laws/governing arrangements)	<p>Freehold: Section 5(a) of the Land Act provides for a freehold tenure</p> <p>Further section 24(a) of the Land Registration Act provides that the registration of a person as the proprietor of land shall vest in that person the absolute ownership of that land.</p>	<p>The National Land Commission will decide the mode of land holding whether it shall be freehold or leasehold because the National Land Commission is mandated to administer public land</p>	<p>National Land Commission shall manage and administer all unregistered trust land and unregistered community land on behalf of the county government.</p>	<p>Forest conservancy: Section 13 of the Forests Act provides that the Board of the Kenya Forest Service shall establish forest conservancy areas</p> <p>Leasehold/Freehold: Conversion of land from one form of land tenure to another is determined by of the National Land Commission pursuant to section 9(5)(c) of the Land Act.</p>
	<p>Leasehold (by Kenyan citizen) Section 5(b) of the Land Act provides for a leasehold tenure</p> <p>Further section 24(b) of the Land Registration Act provides that the registration of a person as the proprietor of a lease shall vest in that person the leasehold interest described in the lease</p>			
	<p>Leasehold (by foreigner) Article 65(1) of the Constitution provides that a person who is not a citizen may hold land on the basis of leasehold tenure only and for a term not exceeding ninety-nine years.</p>			

2 PRIVATE LAND

	PRIVATE LAND (per Article 64 of the Constitution of Kenya, 2010)
Key laws applicable	<p>Land Act (Act No.6 of 2012) This is an Act of Parliament enacted to revise, consolidate and rationalize land laws, to provide for the sustainable administration and management of land and land-based resources, and for connected purposes.</p> <p>Land Registration Act (Act No.3 of 2012) This is an Act of Parliament enacted to revise, consolidate and rationalize the registration of titles to land, to give effect to the principles and objects of devolved government in land registration, and for connected purposes.</p> <p>Land Control Act 1967 (revised 2010) This is an Act of Parliament enacted to provide for controlling transactions in agricultural land.</p> <p>National Land Commission Act (Act No.5 of 2012) This is an Act of Parliament to make further provision as to the functions and powers of the National Land Commission, qualifications and procedures for appointments to the Commission, to give effect to the objects and principles of devolved government in land management and administration and for connected purposes. Note: the National Land Commission can determine changes to land ownership and rights over land.</p> <p>Environmental Management and Coordination Act (Act No.8 of 1999/revised 2012)</p> <ul style="list-style-type: none"> Section 44: The [National Environment Management Authority] shall, in consultation with the relevant lead agencies, develop, issue and implement regulations, procedures, guidelines and measures for the sustainable use of hill sides, hill tops, mountain areas and forests and such regulations, guidelines, procedures and measures shall control the harvesting of forests and any natural resources located in or on a hill side, hill top or mountain area so as to protect water catchment areas, prevent soil erosion and regulate human settlement. All private land situated on hill sides and hill tops shall by virtue of this section be governed by the Environmental Management and Coordination Act. <p>Forests Act 2005/revised 2012. Section 2 of the Act provides that the Act shall apply to all forests and woodlands on private land.</p>
Administrative process for securing land rights	<p>Land Act (Act No.6 of 2012) Land Registration Act (Act No.3 of 2012) Forests Act (No. 7 of 2005; Revised 2012)</p>
Governing Institutions / authorities (and their governing law/regulations)	<p>Ministry of Land, Housing and Urban Development</p> <ul style="list-style-type: none"> National Land Commission: This is an independent Government Commission established under Article 67 of the Constitution <p>Ministry of Environment, Water and Natural Resources</p> <ul style="list-style-type: none"> National Environmental Management Authority: This is a government agency established under section 7 of the Environmental Management and Coordination Act Kenya Forest Service (established under section 4 of the <i>Forests Act</i>): manages all types of forests in Kenya as provided in section 5(a) of the Act

Dispute resolution	<p>Environment and Land Court</p> <ul style="list-style-type: none"> • Provided for under Art 162(2)(b) of the Constitution which provides that Parliament shall establish courts with the status of the High Court to hear and determine disputes relating to the environment and the use and occupation of, and title to, land. • The Court is established under section 4 of <i>Environment and Land Court Act, 2011</i>. This is an Act of Parliament to establish a superior court to hear and determine disputes relating to the environment and the use and occupation of, and title to, land, and to make provision for its jurisdiction functions and powers, and for connected purposes <p>Section 13(2) of the <i>Environment and Land Court Act</i> provides that the Court</p> <ul style="list-style-type: none"> • shall have jurisdiction to deal with disputes relating to environmental planning and protection, land use planning, title, tenure, boundaries, rates, rents, valuations, mining, minerals and other natural resources, compulsory acquisition of land, land administration and management, • public, private and community land and contracts or other instruments granting any enforceable interests in land; and • any other dispute relating to environment and land. • Section 19(2) of the Environment and Land Court Act provides that the Court shall be bound by the procedure laid down by the <i>Civil Procedure Act</i> of Kenya. This means that disputes are commenced by way of a Plaint or a Petition if the dispute relates to infringement of the right to a clean and healthy environment as provide for in Article 42 of the Constitution. A plaint is a document filed in court setting out the grounds of a complaint made to the court and asking for redress of the grievance. <p>It is important to note that the Magistrates Courts still have jurisdiction to entertain land matters subject to their pecuniary jurisdiction. This was set out in Kenya Gazette (Notice Number 16268).</p> <ul style="list-style-type: none"> • If the dispute affects a community, then a representative of the community appointed by members of that community can file the relevant claim on behalf of the other members of the community. This is provided for under Order 4 rule 4 of the Civil Procedure Rules 2010 which relates to representative suits. • Complainants can have access to legal aid. In Kenya, Kituo Cha Sheria, FIDA and MUHURI are examples of organizations that offer legal aid. • It is not possible to predict how long the Court will take to make a determination on a dispute as this will depend on the complexity of the matter, the number of witnesses involved amongst other things. • Generally, the following procedure applies: <ol style="list-style-type: none"> i. the claimant files his/her claim and serves the other party; ii. the other party files their defence within fourteen (14) days of service of the claim and then they serve the defence on the claimant; iii. the claimant has an opportunity to file a reply to the defence within fourteen (14) days of service of the defence; iv. parties then conduct a pre-trial conference to confirm that all procedures have been complied with; v. the matter then proceeds for hearing and this is subject to adjournments whenever necessary; vi. once the hearing of the matter is completed, parties file their submissions which can be oral or written; and vii. the Court will then make a determination and render its judgment accordingly. <p>Article 159(2)(c) provides that in exercising judicial authority, the courts and tribunals shall be guided by alternative forms of dispute</p>
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	resolution including traditional dispute resolution mechanisms which shall subject to Article 159(3) not contravene the Bill of Rights, not be repugnant to justice and morality or results in outcomes that are repugnant to justice or morality and not inconsistent with the Constitution or any written law.
Options for tenure arrangements (and their applicable laws/governing arrangements)	Freehold: Section 5(a) of the <i>Land Act</i> provides for a freehold tenure Further section 24(a) of the <i>Land Registration Act</i> provides that the registration of a person as the proprietor of land shall vest in that person the absolute ownership of that land.
	Leasehold (by Kenyan citizen): Section 5(b) of the <i>Land Act</i> provides for a leasehold tenure Also, section 24(b) of the <i>Land Registration Act</i> provides that the registration of a person as the proprietor of a lease shall vest in that person the leasehold interest described in the lease
	Leasehold (by foreigner): Article 65(1) of the Constitution provides that a person who is not a citizen may hold land on the basis of leasehold tenure only and for a term not exceeding ninety-nine years.

Procedure for Acquisition of Private Land in Kenya

In practice, the procedure for acquiring an interest in private land is to enter into a contract for the sale and purchase of the land with a defined completion period. The process is subject to freedom of contract but there are also guidelines from the Law Society of Kenya (LSK), set out in the *Law Society of Kenya Conditions of Sale*, to guide the legal practitioners facilitating land transactions. The key stages are as follows:

- (i) Payment of the deposit and signing of the sale agreement;
- (ii) Preparation to complete;
- (iii) Completion; and
- (iv) Registration.

(i) Deposit

A deposit is usually ten per cent (10%) of the purchase price, and is paid by the purchaser as a commitment to the transaction.

Before paying the deposit, it is imperative to carry out a search of the Register and obtain a Certificate of Official Search, to ascertain the true owner of the land, Section 29 of the Land Registration Act provides that every proprietor at the time of acquiring a land, lease, or charge shall be deemed to have had notice of every entry in the register relating to the land, lease, or charge.

The deposit will often be held by the vendor's lawyer prior to completion of the transaction. Although the vendor may want the money released to them, this is not considered good practice: in the event that the transaction fails, the purchaser would be left only with the option of suing for the return of the deposit. However, if the deposit is held by a lawyer, it will be available for return to the purchaser.

Once the deposit is paid, both parties sign the sale agreement. A period of time is also allowed for the transaction to complete.

(ii) Preparation to Complete

The sale agreement will provide for a completion period, usually of 90 days. The agreement should specify how completion will take place - whether by:

- exchange of title, the instrument of transfer and completion documents with the funds in respect of the balance of purchase price; or
- by exchange of the documents with an undertaking.

In the period between signing of the agreement and the completion date, the Vendor pays the outgoings on the property, such as land rent for leaseholds and rates for properties in municipalities. The Vendor also procures the clearances and consents necessary to register the title in favour of the purchaser.

(iii) Completion

On or before the date set for completion, the Vendor's lawyer procures the transfer executed by the Vendor in favour of the Purchaser, and sends a copy of this to the Purchaser's lawyer as an indication of the Vendor's readiness to complete. The Purchaser will then pay the balance of purchase price to the Vendor's lawyers. In exchange, the Vendor's lawyer sends to the Purchaser's lawyers all the documents that are necessary for the Purchaser to register the title in the Purchaser's name. In the event that completion is by undertaking, the documents will be sent in exchange of the undertaking. Ideally, the Vendor's lawyer should hold the balance of the purchase price and the balance until the Title is in the name of the Purchaser and then thereafter release it to the Vendor.

(iv) Registration

Upon receipt of the documents from the Vendor's lawyers. The Purchaser's lawyer then proceeds to pay stamp duty on the transaction. This is usually assessed at 4% of the purchase price for land in municipalities and towns, and 2% for land in rural areas.⁶ Before the transfer is registered, a government valuer will assess the property to confirm that sufficient stamp duty was paid against the value of the property. After valuation, the Purchaser's lawyer goes ahead to present all the documents to the Registrar of Lands, then the transfer is registered and the title issued, reflecting the changed ownership of the land.

The Certificate of Title issued by the Registrar upon registration or issued to a purchaser of land upon a transfer or transmission by the proprietor is *prima facie* evidence that the proprietor is the absolute indefeasible owner of the land subject to any encumbrances noted on the register.⁷ Under Section 81 of the *Land Registration Act*, any person suffering damage by reason of an error in a copy of or extract from the register is entitled to indemnity from the Government.

⁶ Stamp Duty Act.

⁷ S. 26(1) Land Registration Act.

3 PUBLIC LAND

	PUBLIC LAND (per Article 62 of the Constitution)
Key laws applicable	<p>Land Act (Act No.6 of 2012) This is an Act of Parliament enacted to revise, consolidate and rationalize land laws, to provide for the sustainable administration and management of land and land-based resources, and for connected purposes.</p> <p>Land Registration Act (Act No.3 of 2012) This is an Act of Parliament enacted to revise, consolidate and rationalize the registration of titles to land, to give effect to the principles and objects of devolved government in land registration, and for connected purposes.</p> <p>Land Control Act 1967 (revised 2010) This is an Act of Parliament enacted to provide for controlling transactions in agricultural land.</p> <p>National Land Commission Act (Act No.5 of 2012) This is an Act of Parliament to make further provision as to the functions and powers of the National Land Commission, qualifications and procedures for appointments to the Commission, to give effect to the objects and principles of devolved government in land management and administration and for connected purposes. Note: the National Land Commission can determine changes to land ownership and rights over land.</p> <p>Environmental Management and Coordination Act 1999/Revised 2012. This is an Act of Parliament to provide for the establishment of an appropriate legal an institutional framework for the management of the environment and for matters connected therewith. By virtue of Section 44 "The Authority shall, in consultation with the relevant lead agencies, develop, issue and implement regulations, procedures, guidelines and measures for the sustainable use of hill sides, hill tops, mountain areas and forests and such regulations, guidelines, procedures and measures shall control the harvesting of forests and any natural resources located in or on a hill side, hill top or mountain area so as to protect water catchment areas, prevent soil erosion and regulate human settlement. All public land situated on hill sides, hill tops, forests, mountains shall by virtue of this section be governed by the <i>Environmental Management and Coordination Act</i>.</p> <p>Forests Act 2005/Revised 2012. Section 2 provides that this Act shall apply to all forests and woodlands on State and local authority land.</p> <p>Wildlife (Conservation and Management) Act (Cap 376). This is an Act of Parliament to consolidate and amend the law relating to the protection, conservation and management of wildlife in Kenya and for purposes connected therewith and incidental thereto.</p>
Administrative process for securing land rights	<p>Land Act Land Registration Act Forests Act Wildlife (Conservation and Management) Act</p>

Governing Institutions / authorities	<p><i>National Land Commission (National Land Commission Act)</i></p> <ul style="list-style-type: none"> - Can allocate public land to private persons - Manages compulsory acquisition <p><i>Kenya Forest Service (Forests Act)</i> - manage all State forests under section 5(b) of the Act</p> <p><i>Kenya Wildlife Service</i> - manage National Parks and National Reserves under section 3A(c) of the <i>Wildlife (Conservation and Management) Act (Cap 376)</i></p>
Dispute resolution	Environment and Land Court
Options for tenure arrangements (and their applicable laws/governing arrangements)	<p>The National Land Commission will decide the mode of land holding (whether it shall be freehold or leasehold).</p> <ul style="list-style-type: none"> • The National Land Commission is must administer public land. • Article 67(2)(a) of the Constitution establishes that the National Land Commission is to manage public land on behalf of the national and county governments. • This is corroborated by section 5(1)(a) of the <i>National Land Commission Act.</i>

4 COMMUNITY LAND

	COMMUNITY LAND (per Article 63 of the Constitution 2010)
Key laws applicable	<p>Under Article 63(5) of the Constitution (2010), Parliament is required to enact legislation to govern Community Land within five (5) years of promulgation of the Constitution (being 2015). The relevant legislation to govern Community land is yet to be enacted and in the meantime, the following laws shall be applicable:</p> <ul style="list-style-type: none"> • <i>Land Act (Act No.6 of 2012)</i> • <i>Land Registration Act (Act No.3 of 2012)</i> • <i>Land Control Act 1967 revised 2010</i> • <i>National Land Commission Act (Act No. 5 of 2012)</i> • <i>Trust Lands Act (Chapter 288/Revised 2009)</i> This is an Act of Parliament to make provision for Trust land • <i>Land (Group Representatives) Act (Chapter 28/Revised 2012)</i>. This is an Act of Parliament to provide for the incorporation of representatives of groups who have been recorded as owners of land under the Land Adjudication Act, and for connected purposes. • <i>Land Adjudication Act (Chapter 284/revised 2010)</i>. This is an Act of Parliament to provide for the ascertainment and recording of rights and interests in Trust land, and for purposes connected therewith. It governs Trust Land • <i>Land Consolidation Act (Chapter 283/revised 2012)</i>. This is an Act of Parliament to provide for the ascertainment of rights and interests in, and for the consolidation of, land in the special areas, for the registration of title to, and of transactions and devolutions affecting, such land and other land in the special areas and for purposes connected therewith. It governs Trust Land. • <i>Environmental Management and Coordination Act (Act No.8 of 1999/Revised 2012)</i>. Under Section 43 “The Minister may, by notice in the Gazette, declare the traditional interests of local communities customarily resident within or around a forest to be protected interests.”
Administrative process for securing land rights	<p>Under Article 63(5) of the Constitution (2010), Parliament is required to enact legislation to govern Community Land within five (5) years of promulgation of the Constitution (being 2015). The relevant legislation to govern Community land is yet to be enacted and in the meantime, the following laws shall be applicable:</p> <ul style="list-style-type: none"> • <i>National Land Commission Act</i> • <i>Trust Lands Act</i> • <i>Land (Group Representatives) Act</i> • <i>Land Adjudication Act (for Trust Land)</i> • <i>Land Consolidation Act (for Trust Land)</i>

Governing Institutions / authorities (and their governing law/regulations)	National Land Commission
Dispute resolution	<p>Environment and Land Court</p> <p>For land held by Group Representatives, Magistrates Courts have jurisdiction by virtue of the <i>Land (Group Representatives) Act</i></p> <ul style="list-style-type: none"> • Section 10(1) provides that if it appears to the Registrar of Group Representatives that there has been a dispute among the officers or members of a group so that he is not satisfied as to who are the officers of the group, he may in writing require the officers of the group to produce to him evidence of either <ul style="list-style-type: none"> (a) the settlement of the dispute and the proper appointment of officers of the group; or (b) the institution of proceedings for the settlement of the dispute and for a declaration as to who are the officers of the group, and where he does so the officers shall provide evidence accordingly within the time specified and it shall be signed by at least three of the officers. • Section 10(2) A District Magistrate's Court shall have jurisdiction to settle disputes and make declarations for the purposes of proceedings instituted under subsection (1) (b) of this section.
Options for tenure arrangements (and their applicable laws/governing arrangements)	Under Section 5(2)(e) of the <i>National Land Commission Act</i> , the National Land Commission shall manage and administer all unregistered trust land and unregistered community land on behalf of the county government.

5 FOREST LAND

	FOREST LAND
Key laws applicable	<p><i>Forests Act No. 7 of 2005/Revised 2012</i></p> <ul style="list-style-type: none"> • This is an Act of Parliament to provide for the establishment, development and sustainable management, including conservation and rational utilization of forest resources for the socio-economic development of the country. • Section 2 of the Act provides that the Act shall apply to all forests and woodlands on State, local authority and private land. <p><i>Environmental Management and Coordination Act No.8 of 1999/Revised 2012</i></p> <ul style="list-style-type: none"> • Section 43: “The Minister may, by notice in the Gazette, declare the traditional interests of local communities customarily resident within or around a forest to be protected interests.” • Section 44: provides that the National Environment Management Authority shall, in consultation with the relevant lead agencies, develop, issue and implement regulations, procedures, guidelines and measures for the sustainable use of forests and such regulations, guidelines, procedures and measures shall control the harvesting of forests and any natural resources located in or on a forest so as to protect water catchment areas, prevent soil erosion and regulate human settlement. <p><i>Wildlife (Conservation and Management) Act 2013/Revised 2009</i> This is an Act of Parliament to consolidate and amend the law relating to the protection, conservation and management of wildlife in Kenya. Section 3(1) of the Act establishes the Kenya Wildlife Service whose function is to manage national parks and national reserves, formulate policies regarding the conservation, management and utilization of all types of flora.</p>
Administrative process for securing land rights	<p>Government forests are part of public land pursuant to Article 62(1)(g) of the Constitution. Under Article 62(3) of the Constitution, public land shall vest in and be held by the national government in trust for the people of Kenya and shall be administered on their behalf by the National Land Commission.</p> <p>Article 67 of the Constitution establishes the National Land Commission and one of its functions under Article 67(2)(a) of the Constitution is to manage public land on behalf of the national and county governments. Further, under section 5(1)(a) of the National Land Commission Act one of the functions of the National Land Commission is to manage public land on behalf of the national and county governments</p> <p>Section 4 of the <i>Forests Act</i> establishes the Kenya Forest Service whose function under section 5(a) is to manage all State forests</p> <p><i>Wildlife (Conservation and Management) Act:</i> Section 3(1) of the Act establishes the Kenya Wildlife Service whose function under section 3A (c) is to manage National Parks and National Reserves.</p>

Governing Institutions / authorities (and their governing law/regulations)	<p>Ministry of Environment, Water and Natural Resources</p> <ul style="list-style-type: none"> • Kenya Forest Service this is a State Corporation established under section 4 of the <i>Forests Act</i> • Kenya Wildlife Service (manage National Parks and National Reserves) • formulate policies regarding the conservation, management and utilisation of all types of flora <p>Ministry of Land, Housing and Urban Development</p> <ul style="list-style-type: none"> • National Land Commission
Dispute resolution	Environment and Land Court
Options for tenure arrangements (and their applicable laws/governing arrangements)	<p>Forest conservancy: Section 13 of the <i>Forests Act</i> provides that the Board of the Kenya Forest Service shall establish forest conservancy areas for the proper and efficient management of forests and may divide such conservancy areas into forest divisions and stations. Section 13(2) of the Act provides for the establishment of a forest conservation committee in respect of each conservancy area and the committee shall work with the Board of the Kenya Forest Service in managing forest conservancy areas.</p> <p>Leasehold/Freehold: Conversion of land from one form of land tenure to another is the preserve of the National Land Commission pursuant to section 9(5)(c) of the <i>Land Act</i>.</p>