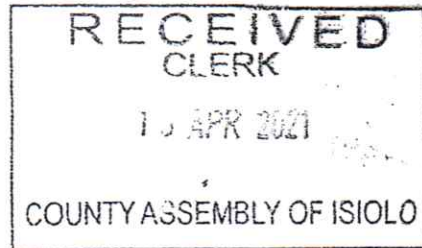


To: County Assembly of Isiolo  
C/O The Clerk,  
Isiolo County Assembly  
Isiolo County.  
P.O Box 36-60300



12<sup>th</sup> April 2021

**RE: PETITION TO THE COUNTY ASSEMBLY TO ADDRESS CONCERNS OVER THE  
ISIOLO COUNTY COMMUNITY CONSERVATION BILL, 2021**

---

**WE, the undersigned**

Residents of Isiolo County representing the Borana Professionals Association, having been tasked with the review of the proposed above-mentioned County Bill present this Petition so that you address the concerns and myriad of issues identified and highlighted in this Bill which if left unaddressed may negatively impact on our Community and its effective use of its Community land.

**WE DRAW the attention of the house on the following:**

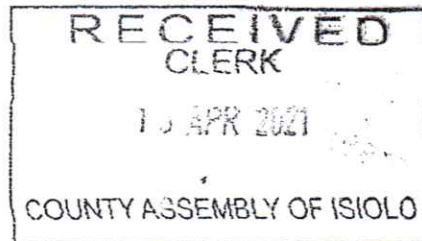
**Background**

The special select committee formed to discuss the contents of the said bill and its likely implications on the Community land, taking into consideration that the Community land is still pending registration. The Committee analyzed the County Bill along with the specific provisions of Constitution of Kenya, 2010, the Community Land Act 2016 as well as Community land Regulations and the Wildlife Conservation and Management act 2013.

The committee made its findings as follows-

**LEGAL ANALYSIS OF THE KENYA GAZETTE SUPPLEMENT NO.1 ( THE ISIOLO  
COUNTY COMMUNITY CONSERVANCIES BILL 2021)**

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COUNTY COMMUNITY CONSERVANCIES BILL 2021)**

### Background of the matter

The Isiolo County Community Conservancies Bill 2021 is currently before the County Assembly. The said Bill seeks to;

- a) Support the establishment of community conservancies by the County;
- b) Provide for the recognition of existing community conservancies by the County;
- c) Provide for the licensing and regulation of conservancies in the County;
- d) Establish a community conservancy in the County;
- e) Provide an opportunity for collaboration with other partners to provide technical support, education awareness, capacity building and promotion of good governance to community conservancies;
- f) Curb overgrazing and general decline of rangeland productivity;
- g) Promote good governance in the management of County Reserves and Community conservancies;

The Bill in its current state does not conform with the letter and spirit of the Community Land Act, The Wildlife Conservation and Management Act and the Constitution of Kenya 2010 as discussed hereunder;

### ANALYSIS

#### The Constitution of Kenya 2010

The Constitution of Kenya 2010 under Article 61 (2) classifies all Land in Kenya into three categories; Public land, Private land and Community Land. The Constitution further provides under Articles 63 (3) that **any unregistered community land shall be held in trust by County governments on behalf of the communities for which it is held.** It was with this in mind that the National Parliament enacted the Community Land act and the Community Land Regulations so as to provide recognition, protection and registration of community land rights as well as enable each community to manage and administer their community land interests.

The role of the County Government insofar as it relates to unregistered Community land is clearly elucidated under Section 6 of the Community Land Act and of importance is Section 6 (8) which states "**A county government shall**

not sell, dispose, transfer, convert for private purposes or in any other way dispose of any unregistered community land that it is holding in trust on behalf of the communities for which it is held". Upon reading this provision and when doing a comparison of what the Bill intends or purports to achieve, then it becomes clear that the Bill contravenes the intent of Community Land Act.

The instant Bill is clearly giving the County Government of Isiolo a right to dispose of by alienation a certain unspecified part of community land without due process. These actions are illegal and unconstitutional since the County Government intends to act in ultra vires of its powers. It is also important to argue in the same line of reasoning that the County Assembly of Isiolo cannot and does not possess powers to amend the provisions of the Constitution or an Act of parliament.

While The Community Land Act, the Community Land Regulations and the Wildlife Conservation and Management Act have given powers to the respective Communities insofar as it relates to the management and administration of their land, the proposed bill intends to claw back these gains through illegal and unprocedural means which is in contravention of Sections 6, 15, 17, 19, 20, 28, 29, 30, 31, 35, 36 and 37 of the Community Land Act. It further contravenes Section 31, 39, 42 and 70 of the Wildlife Conservation and Management Act.

### **The impugned bill**

#### **(Section 2) Interpretation**

The Bill proposes to use the definition of the term "Community" as that provided under Section 3 (1) of The Wildlife Conservation and Management Act, poses a narrow definition of the term unlike that provided under the Community Land Act which definition

#### **(Section 5) Establishment of Community Conservancies**

- The Bill proposes to vest powers to establish community conservancies with the County Government; that the County Government can achieve this through consultation with the County Wildlife Conservation Committee, the Kenya Wildlife Service and other relevant stakeholders.

This is notwithstanding the fact **Section 29 of the Community Land Act** grants powers to the Community to reserve special purpose areas *inter alia*

- a) Farming areas,
- b) Settlement areas
- c) Community conservation areas
- d) Access and rights of way

While there is no definition of the word 'conservation' in the Bill or the Wildlife Conservation and Management Act 2013, the latter makes reference to 'conservation area and defines the same as

***"conservation area" means a tract of land, lake or sea with notable environmental, natural features, biological diversity, cultural heritage, or historical importance that is protected by law against undesirable changes;***

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In addition to being silent on the process that leads to establishment of community conservancies, this particularly Bill contravenes the principle of "community centrality" in matters Community land. The Bill in its entirety has isolated Community and seems to donate powers ordinarily meant for community to the County Government. The essence of Community Land Act is to confer powers to the Community insofar as community land is concerned.

***Moreover, Section 4 of the Community Land Act provides recognition, protection and registration of community land rights and these rights are vested with the Community. This section is further corroborated by Section 13 which states that a registered community may be a resolution of the majority members of that community in a general meeting, reserve a portion of the community land for communal purposes.***

***Section 21 of the Community Land Act provides for conversion of community land to either private or public land hence places the Community at the heart of the process and as such any conversion of community land cannot be achieved without the ratification of Community Assembly as set out in the Act. The County Government then cannot through the instant Bill purport to establish community conservancies on behalf of the communities living in Isiolo without involvement of the Community.***

*The role that County Governments play in community is limited to only holding the unregistered land in trust of the community and offer administrative support in areas such as recognition and adjudication of community land, documenting, mapping and developing of the inventory of community land with the consultation of the Cabinet Secretary responsible for land matters. The Act emphasizes that these administrative processes ought to be transparent, cost effective and participatory.*

Other instances where the Bill grossly undermines Section **15 of Community Land Act which provides critical** role of community in administration of community land (which includes establishment of conservancies) is depicted in the following Sections;

**Section 12 of the Bill** purports to regulate community conservancies without involvement of the members of the Community;

**Section 13 and 16 of the Bill** demonstrate blatant interference of the County government and immense powers the County have with respect to appointment of members of the Isiolo County Community Conservancies Board and the functions and powers of the Board respectively. **Section 13** provides that the Chairperson of the Board is an appointee of the Governor. The other members such as representative of the wildlife conservancies associations in the county, a representative of the youth, representative of women and representative of persons living disability are to be appointed by the CEC responsible for community conservancies in consultation with the Governor.

The appointment of these persons is a craven attempt by the County Government to demonstrate participatory process but the same offends the import of Section 15 of the Community Land which grants the **Community Land and Management Committee** powers to inter alia manage and administer registered community land on behalf of the respective community.



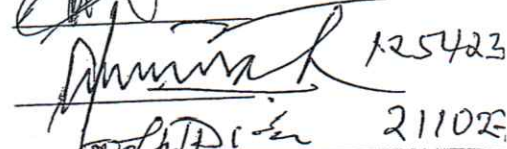
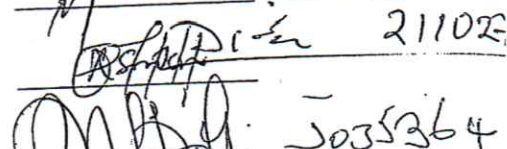
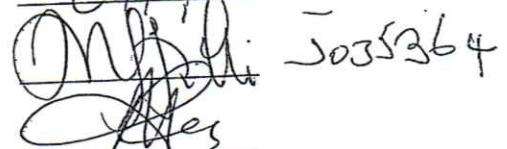
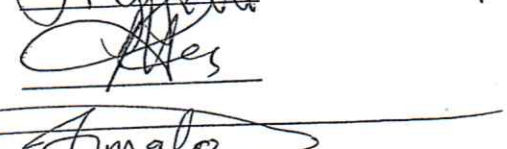

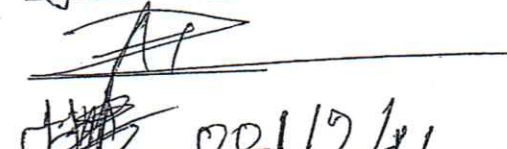
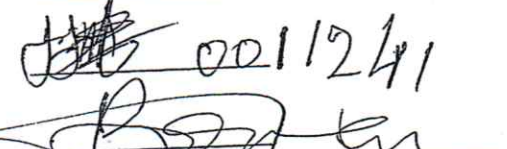

### **Conclusion**

The County Assembly mandate to legislate over this Bill is ousted since they lack jurisdiction to establish community conservancies as that right lies with the community as stipulated under **Section 29 of the Community Land Act**

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<u>NAME</u>	<u>SIGNATURE</u>
1. ABDINOOR DIMA JILLO	 00-007861
2. HALKANO ABDULLAHI HAPICHA	 787389
3. HASSAN GUYO SHANO	 125423
4. HUSSEIN ADAN (CHULU)	 21102
5. ANDIRAHMAN OSMAN DIDA	 5035364
6. MOHAMED TUBI BIDU	
7. ABDULLAHI HAJJ GONJOBE- CHAIRMAN – BCE	
8. JIMALE GOLICHA- SECRETARY – BCE	
9. ADAN IBRAHIM (ADESH TALL)	 0011241
10. OSMAN DIMA DUBA- ELDER	
11. TACHE BONSA GOLLO	