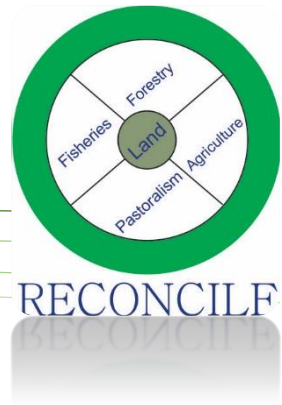
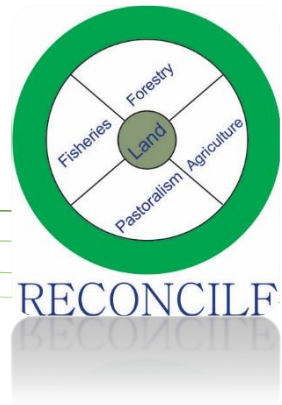


FUNDAMENTAL PROVISIONS COMMUNITY LAND BILL, 2015



- **Role of county government** enhanced in the new bill such as;
 - Hold in trust all unregistered community land.
 - Hold in trust for a community any monies payable as compensation for compulsory acquisition of any unregistered community land.
 - Monies to be deposited in a special interest earning account.
 - Upon registration of the land, release to the community all such monies.
 - Is not to sell, dispose, transfer, convert for private purposes or in any other way dispose of any unregistered community land.

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- On registration of land, the registered community is to assume the management and administrative functions and role of county government ceases.
- **Procedure for registration of communities** is as follows;
 - Communities to be registered in accordance with provisions of this act and not the societies act.
 - Notice in at least one newspaper of nationwide circulation, invite all members with same communal interest to a public meeting so as to elect the members of the community land management committee. (seven to fifteen members)

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-Notice also be given to the deputy county commissioner in charge of the area or the relevant sub-county administrator.

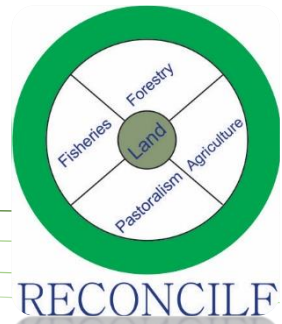
-The community land management committee are to come up with a comprehensive register of communal interest holders and name of the community.

-Submit the name, register of members, minutes of the meeting and the rules and regulations of the committee to the Registrar for registration.

• **Procedure for recognition and adjudication of community land is that Cabinet Secretary is;**

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- In consultation with the respective county governments, develop and publish in the Gazette a comprehensive adjudication programme.
- Issue a public notice of intention to survey, demarcate and register community land but such survey exclude parcels already in use for public purposes and private land.
- A cadastral map of the land is then to be produced and presented to the Registrar for registration.
- Registration of community land is in accordance with the Land Registration Act, 2012 and this Act. Cabinet Secretary is to appoint an adjudication officer by notice in the gazette in

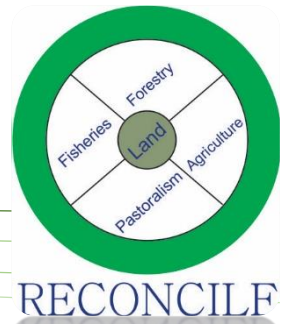
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every community registration unit who is to facilitate the adjudication.

- On **communal and reserve land** the following are the guidelines;
 - A registered community may by a resolution of the majority members of that community in the general meeting, reserve a portion of the community land for communal or special purposes.
 - Special purposes include; farming; settlement; community conservation; cultural and heritage sites; urban development e.t.c
 - Land used communally, for public purpose, is upon commencement of this Act be deemed to be public land

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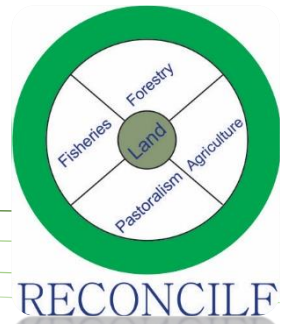


vested in the national or county government according to the use it was put for.

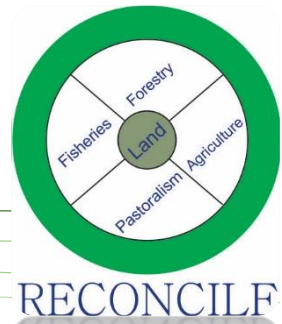
- A customary right of occupancy;
 - May be applied to the registered community for customary right of occupancy.
 - Capable of being allocated by the community to an individual person, family, group of persons, clan, an association, partnership or body corporate wholly owned by citizens of Kenya.
 - Capable of being of indefinite duration and governed by customary law in respect of any dealings.

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- Factors to be considered on the application; proposals made by the adjudication team or any subcommittee of the registered community as well as non-discrimination. On approval, a certificate of customary right of use and occupancy is issued.
- **Management and administration** of community land to be done through a community assembly and community land management committee.
 - Community assembly is to consist of all members of the community.
 - Decision to dispose of or otherwise alienate community land is binding if it is supported by at least two thirds of the registered



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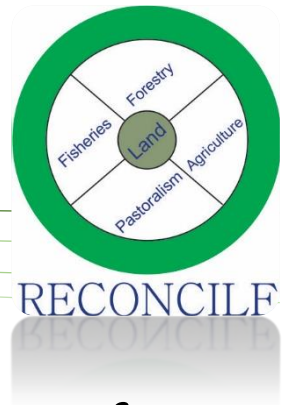
members of the community, while any other minor decisions of the registered community is to be by a simple majority of the members present in a meeting.

- **On nature of community land title** the following are just a few provisions;

- Certificate of title issued upon registration, transfer or transmission is to be prima facie evidence that the person named as proprietor of the land is the absolute and indefeasible owner.

- Title may be challenged in cases of fraud or misrepresentation or illegality e.t.c (Land Registration Act, 2012)

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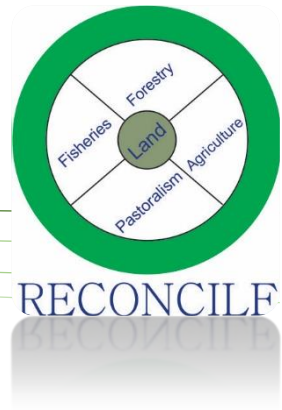


-A registered community may on its own motion or at the request of the county government, submit to the county government a plan for the development, management and use of the community land administered by the registered community for approval.

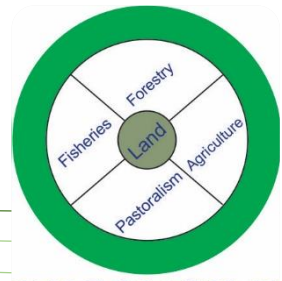
-The plan must comply with several factors such as the values and principles of the Constitution and on approval the registered community is to be notified. The registered community is to put in place several measures necessary to conserve resources in the community land. But at the same time ensure that the principles are not inconsistent to the laws in Kenya.

- CS cannot act unilaterally but in consultation with county govt.

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- **On conversion of Community land guidelines;**
 - First seek and obtain approval from two thirds of the assembly in a special meeting convened for that purpose.
 - Community land to public land by compulsory acquisition, transfer or surrender. (Land Act, 2012 applies)
 - Public land to community land by allocation by the Commission (Land Act, 2012 applies) based on a case to case basis. Commission by an order published in the gazette identify other specific parcels.
 - A community may set aside registered community land for public purposes and the Commission is to gazette such parcel of land as public land.



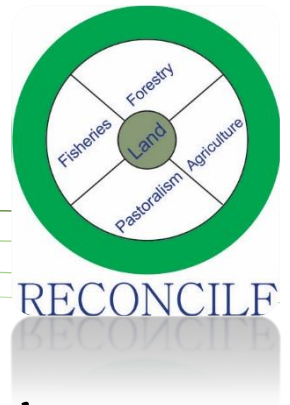
RECONCILE

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- Reversionary interest is to lie with community in the first instances upon expiry of such public use interest.
- Conversion of registered community land to private land can be through transfer and allocation subject to approval of registered community. (Land Act, 2012 applies)
- Private land may be converted to community land by transfer, surrender or operation of the law in relation to illegally acquired community land.
- **On special rights and entitlement in the community land;**
 - Upon application and approval of members of the registered

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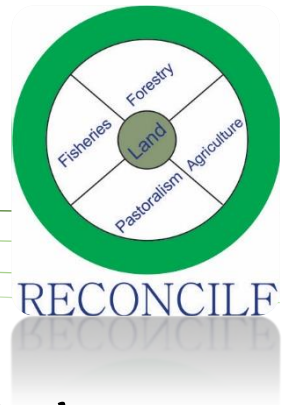
community, allocate part of its registered community land to a member or group of members of the community exclusive use and occupation or such period as the registered community will determine.

-No separate titles and the entitlement is not to be superior to community title in any way. The exclusive use is guided by several principles. This right may cease and revert to the community.

-Grazing rights are to be subjected to the customs and practices of pastoral Communities as long as they are consistent with the provisions of the act but the right is subjected to several conditions include; conditions as the respective registered community may impose such as

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kind and number of livestock, sections of land & grazing plan and the right of the community to utilize the portions of land.

-A registered community may upon application by any person who is not a member of the registered community grant grazing rights and upon such grant, that person is to exercise the rights subject to the Act. The members of the registered community are to approve in a meeting the withdrawal of grazing rights either due to drought or reasonable cause consider the cancellation is for the interest of the residents.

-Grazing rights may be withdrawn if the member; fails to observe in a material respect any condition referred to in the act and contravenes the guiding principles.

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-The bill provides for limitation under this part unless one has been provided with written authority of the registered community. The limitation are such as; a person is not to; erect or occupy any building or other structure on the designated grazing land; plough or cultivate any portion of the land; take up abode on or occupy any portion of the grazing land; and obstruct water access.

-Contravention of the limitations results to an offence liable to conviction, fine not exceeding one hundred thousand shillings or imprisonment for period not exceeding six months.

-The Bill appreciates non-discrimination as per what has been envisioned in the Constitution.



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- Every man or woman married to a member of the community is to gain automatic membership of the community and such membership will subsist until the spouses legally divorce and the woman remarries or the woman remarries after death of a spouse.
- In case of any transactions in community land and unless there is an exemption, condition or a lease that provides otherwise, a customary land right is to be dealt with the approval of the registered community in a meeting convened for such purposes.
- Contracts and transfers over community land is to be carried out as per private land as provided under the Land Act, 2012(Part IV) and Land Registration Act, 2012. Leases are to be agreements between the community and lessee.

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-A lease being cancelled by a registered community will be based on approval of the members of the registered community. This is when compliance both with requirement and law is failed.

-Conversion of community land into public land which commenced before the commencement of this Act will be deemed to have been commenced under this Act and will be completed in accordance with this Act, while any conversion commenced after the promulgation of the Constitution will be null and void.

- **On environment and natural resources management.**

-Natural resources on community land are to be used and managed; sustainably and productively; for the benefit of the whole community including future generations; with transparency and accountability; and on the basis of equitable sharing of accruing benefits.

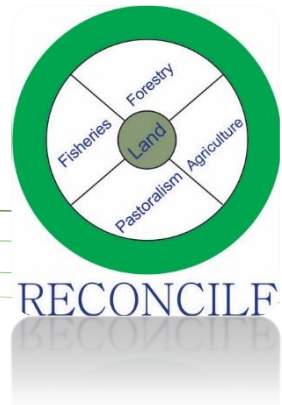
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- Agreements relating to investment in community land will be made after a free, open consultative process and are to be between the investor and community, approved by two thirds of members at a community assembly meeting.
- Guidance may be requested by a Community from relevant stakeholders including County government.
- Rules or by-laws may be made by registered community for regulating the management and administration of their land.
- The Bill appreciates article 66 of the Constitution.

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- On **settlement of disputes relating to community land.**

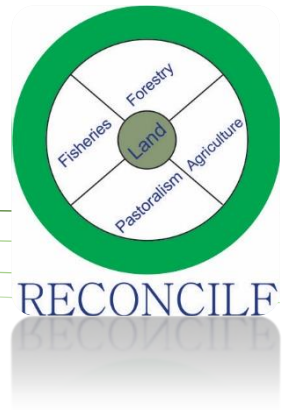
-The Act appreciates the need to use alternative dispute resolution mechanisms including traditional disputes mechanisms and conflict resolution mechanisms.

-That at first instance is to be resolved using any of the internal dispute resolution mechanisms set out in the respective community by-laws.

-The bill further appreciates the usage of customary law but as per article 2 of Constitution.

-The Act recognizes in a chronological manner; mediation, arbitration based on agreement failure to which the Arbitration Act and Court.

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- **General provisions;**

- No person is to occupy or use any registered community land other than under a right acquired in accordance with the act. Contravention of this is an offence.

- Penalty for general offences is a fine not exceeding five hundred thousand shilling (Ksh.500, 000), or imprisonment for a term not exceeding three years or both.

- Repealed laws; the Land (Group Representatives) Act (cap 287) and the Trust Lands Act (Cap 288).

- Upon registration the respective group representatives ceases to hold office.

Cont'd



-Land held by group representative under the Land (Group Representatives) Act are not to be sold, leased or converted to private land before it has been registered under this Act.

-Title documents issued under Land (Group Representatives) Act will continue be in force until new titles are issued under this Act. CS make regulations for better implementation of this section.

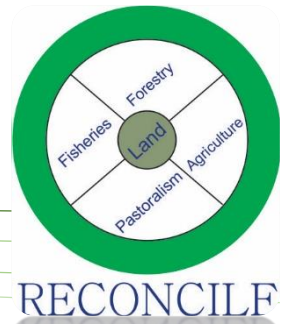
-The Cabinet Secretary ensuring public participation may make regulations generally for the better carrying into effect of this Act under section 48.

- There is the transitional clause as per sec 47(5) that touches on rights and obligations, assets and funds, action and suits of former institutions e.t.c

Recommendation

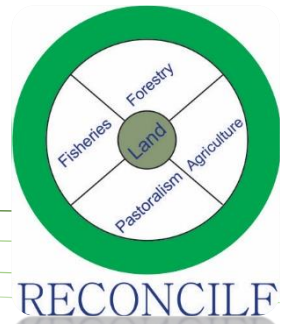
- The definition of ‘vest in’ and ‘owned’ still not clear but based on article 63 and the definition, both mean absolute ownership but the one in article 63 follows with ‘on behalf’ thus lacks the absolute ownership. Same as section 6 of the Community Land Bill insinuates that there is no absolute ownership.
- There is need to safeguard on who will put the advert notice in the newspaper calling for the first meeting of the community to elect the management committee as at now it is vague. May be have a task force to ensure that in the next 5 to 10 years registration takes place.
- The consultation with County Government with the CS is okay this is because the County Government already holds the land in trust thus the CS working together brings coordination and checks and balance institution on management by the County Government.

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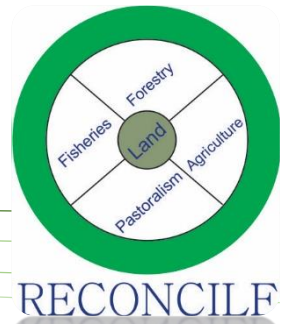
- The County Government holding the compensation for compulsory acquisition in trust for the community, once the community is registered and the land, then the monies are to be released to the community including the interest accrued. The interest has been left out.
- It ought to be clear that the procedures for the compulsory acquisition of land shall be followed as stipulated in the Land Act, 2012 for the avoidance of doubt the community that is known to identify with the land in question shall be consulted and fully be engaged in the entire process.
- The roles of the County Government, NLC and CS are very clear bring out coordination and cooperation n especially on the consultation. For the NLC, it is clear even via the advisory opinion that they have no role to play on community land.

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- Sec 13(3)(f) insinuates that the County and National Government has powers to reserve community land for public purposes. Need for clarity on roles of County and National Government on reserve land.
- In as much as Part V on Conversion has begun by appreciating that the conversion is to be based on the obtaining of approval from two thirds of the assembly in a special meeting, there is need to be caution on that provision as the rest of the provision on this part is not clear on the threshold and who exactly is to be present. It just mentions the term 'registered community'. (sec 22(4), 23, 33)
- Part III has exempted basic requirements of the Community Land Management Committees such as removal, vacancies, terms of reference e.t.c hopefully it will be included in the regulations.

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- There is need clarify the meaning of ‘registered community’ as the current perception is that it has left an open door for a small group of people to register and claim community land.
- Clarify the levels of acceptable registration of community land as the bill stands now, you can register and own community as family, clan, ethnic group, a person and as a group of common interest. The levels of registration for all these groups to own community land should be defined. Clarify where clan ownership is the norm, then family and other group ownership of community land should be derived under or below the clan title.
- The Act still has no objectives that are to guide the usage of the application of the Act.