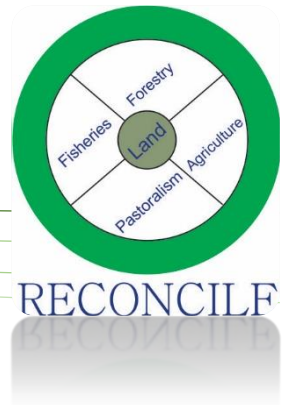


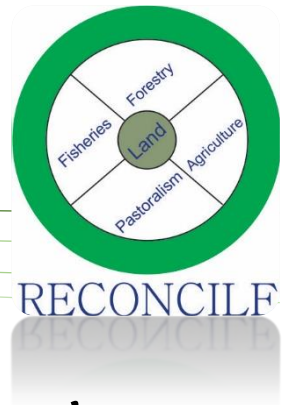
LAND LAWS KENYA



- Interest in land rights are held in two folds;
 - ❖ Interests held through traditional systems that being the customary tenure system bound through traditional rules.
 - ❖ Interests held and derived from the English system introduced and maintained through laws enacted by colonial and the national parliament. This body of law is referred to as statutory tenure secured and expressed through national law.
- There is dyer need to note that women's and youth's security of tenure tends to be relatively weak under both customary and statutory systems.

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- The former legal framework governing land is a disparate collection of colonial and post-colonial statutes;
- ❖ The 1963 Registered Land Act (RLA) governs individual ownership of land. The Registered Land Act applies to registered land formerly held under customary law, trust land, and land known as 'native reserves'. The Act does not apply to land held by the government or local authorities and does not recognize customary rights of use.
- ❖ The 1948 Government Land Act (GLA) gives the president power to make grants or dispositions of any estates, interest or rights in or over unalienated government lands to individuals.

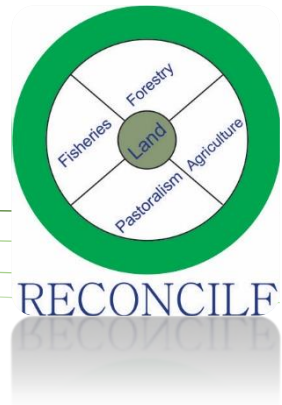
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- ❖ The 1948 Indian Transfer of Property Act (ITPA) that had the substantive law on land matters. Indian Transfer of Property Act also governs individual ownership of land. The Indian Transfer of Property Act governs land in settler and formerly settler-occupied areas, which were designated during the colonial period as the white highlands.
- ❖ The Land Titles Act (LTA) Cap 282 was enacted in 1908. It only applied to land in the Coast Province. It was not an Act of general application. The act was established to adjudicate land claims along the 10 mile coastal strip. The recorder of titles could issue certificates of title as proof of ownership.

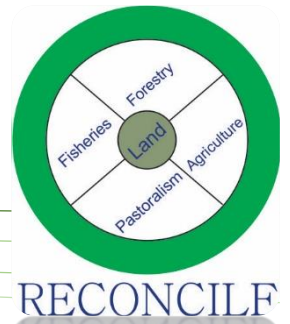
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- ❖ The 1920 Registration of Titles Act (RTA) for Land which was previously registered under GLA and the interest had expired. Section 23 of the Act stated that a title was conclusive evidence of ownership and therefore transacting was easy because of ease of proof of ownership.
- Finally with the Constitution of Kenya, 2010, reforms came in place. The Constitution provides that land in Kenya shall be held, used and managed in a manner that is equitable, efficient, productive and sustainable, and in accordance with the principles under article 60 of the Constitution of Kenya.
- The principles include; equitable access to land resources; security of land rights; sustainable and productive management of land

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resources; transparent and cost effective administration of land; Sound conservation and protection of ecological sensitive areas; Elimination of gender discrimination in law, customs and practices related to land and property in land; and Encourage of communities to settle land disputes through recognized local communities initiatives consistent with the Constitution.

- The land question issues include as follow;
- ❖ Rapid population growth in the small farm sector, the systematic breakdown in land administration and land delivery procedures, and inadequate participation by communities in the governance and management of land and natural resources.

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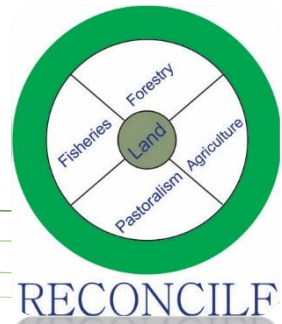
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- ❖ Rapid urbanization, general disregard for land use planning regulations and the multiplicity of legal regimes related to land.
- ❖ Gross disparities in land ownership, gender and trans-generational discrimination in succession, transfer of land and the exclusion of women in land decision making process.
- ❖ Lack of capacity to gain access to clearly defined, enforceable and transferable property rights, general determination in land productivity in the large farm sector.
- ❖ Inadequate environment management and conflicts over land and land based resources.

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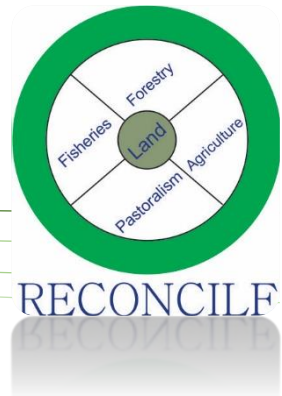
LAND ACT, 2012



- The promulgation of the 2010 Constitution provides for the revision, consolidation and rationalization of land laws leading to the enactment of the Land Act, 2012, the Land Registration Act, 2012, the National Land Commission Act, 2012, and the Environment and Land Court Act, 2011 to replace the various laws that hitherto dealt with the management, administration, registration of land and reducing the confusion arising from use of numerous land laws in the previous Constitution.
- Some of the Key changes are summarized as follows;
 - ❖ Allocation of public land to private persons will now be managed and supervised by the National Land Commission. This will create independence in the allocation process as the executive arm of the

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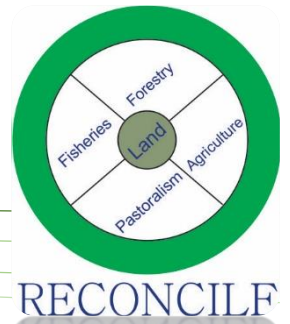


Government will no longer have control of the process. In addition, land available for allocation will now be gazetted and notice published in at least two local dailies, prior to commencement of the allocation process. This will go a long way in creating transparency and public participation in the allocation process.

- ❖ Title deeds issued under RLA and RTA continue to be valid notwithstanding the new laws. In due course, the registrar will issue new title deeds in the new prescribed form. Title deed issued under the GLA and LTA on the other hand, will have to be examined and registered afresh under the new laws.
- ❖ All land held on leasehold titles will revert to the government on

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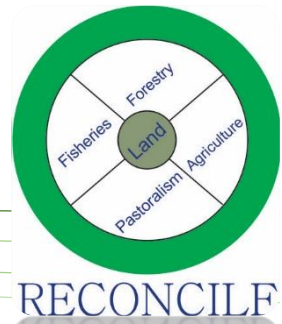
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expiry of the term. However, where the immediate past owner of the land is a Kenyan citizen, the Commission is required to grant them the right to re-acquire the land, so long as the land is not required for public purpose.

❖ Following the promulgation of the Constitution, foreigners who held freehold titles or leasehold titles that were for a term exceeding 99 years, had their titles reduced to 99 year leasehold titles. There has been debate on when the 99 year period is deemed to commence, unfortunately, the new laws do not provide further clarity on when the 99 year commences. The assumption is that the term of 99 years commences in 2010 as when the Constitution was promulgated.

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- ❖ Where a person is registered as the owner of a long term lease over Apartments, flats, maisonettes, townhouses or offices, the registrar will now be required to issue them with a certificate of lease (title deed). The registrar is required to register such long term leases where the property comprised is properly geo referenced and approved by the Government's survey department.
- ❖ Transfer of portions of land will only be complete upon undertaking a subdivision and a new subdivision will have to be obtained prior to completing the transfer of a portion of land.
- ❖ The process of compulsory acquisition of land is now more

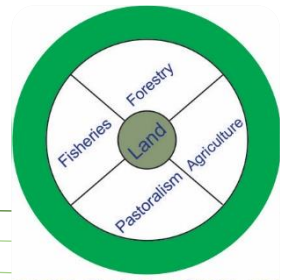
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transparent and will be managed by the Commission. In addition, the process is more just and fair to the owner of land as the award of Compensation (determination of amount payable) will be made prior to the Government taking possession of the land. The Commission is expected to promulgate rules to regulate the assessment of just compensation.

- ❖ A scientific study to determine the economic viability of minimum and maximum land sizes will be commissioned within one year. The findings of the study will be subjected to public comments and thereafter debated and if deemed based solely on the report adopted by Parliament, will then be published by the Cabinet Secretary in charge of matters related to land.

CHALLENGES

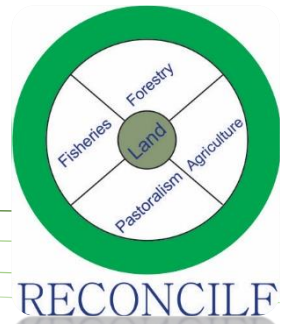


The issues to be amended under the Land Laws (Amendment) Bill, 2015;

- Undermining the independence of NLC especially on their appointment.
- Interpretation of the roles of NLC as per the Constitution and other enacted laws and other land stakeholders. Example Supreme court advisory decision no. 2 of 2014.
- Abolishing of the CLMBs.
- The importance of having clear provisions on the historical injustices issues.
- The importance of having clear provisions on the minimum and maximum acreage.
- The independence of the land registrar on their functions and appointment and devolution.
- Compensation of leaseholders upon expiry of leases on public land.
- The importance of having a law enacted to manage and administer community land.

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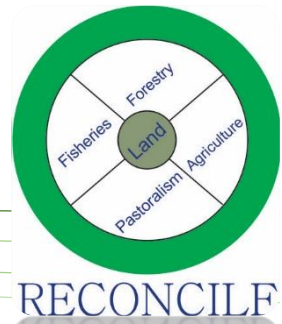
COMMUNITY LAND BILL(S)



- The post-colonial, colonial and pre-colonial laws governing community land were as follows;
- ❖ The 1968 Land (Group Representatives) Act governs group ownership of land. The Act states that land may be held communally and in accordance with applicable customary laws and practices.
- ❖ The 1939 Trust Land Act also governs group ownership of land. The Act states that land in areas that were occupied by indigenous Kenyans during the colonial period and that has not been consolidated, adjudicated and registered in individual or group names, and indigenous land that has not been taken over by the government, is governed by the Trust Lands Act. These lands are vested in local authorities designated as community councils. Trust lands are predominately found in the arid and semiarid lands of northern Kenya.

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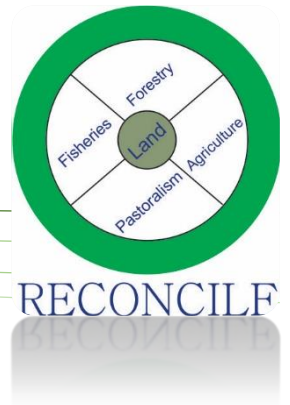


Currently we are working with three bills that have tried to provide for Community land on management and administration and envision to repeal the old statutes.

❖ The February, 2014 Community Land Bill that was consolidated by the taskforce. The bill had very ground-breaking provisions as the task force had collected views from the grassroots level. Some of the provisions include;

- Setting the preamble, objectives and purpose of the Bill to help in interpretation of the Act.
- The structures on management and administration of community land by having the community assembly, community board and

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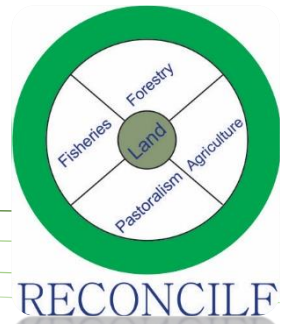


and committees.

- Women and youths should be given a voice in the management and administration of community land.
- Provide for establishment of community Assemblies. These should include: Composition; Meetings; Order of business in their annual general meetings and Functions.
- The proposed registration of communities under the law of societies is limiting and bureaucratic and exposes the community land to the problems group ranches have suffered in the hands of elites and unscrupulous leaders.

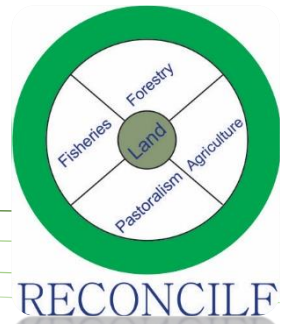
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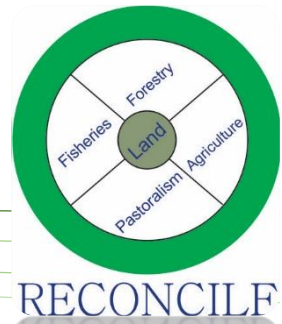
- ❖ The 8th October, 2014 Community Land Bill that is currently before the Senate and the 2015 Community Land Bill that is before the National Assembly.
- The reasons for the rise of the two different bills in the two Houses is based on chapter 8, part 4 on procedures for enacting legislation under the Constitution of Kenya.
- **Article 109.**
 - (1) Parliament shall exercise its legislative power through Bills passed by Parliament and assented to by the President.
 - (2) Any Bill may originate in the National Assembly.

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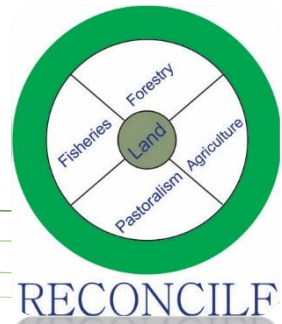
- (3) A Bill not concerning county government is considered only in the National Assembly, and passed in accordance with Article 122 and the Standing Orders of the Assembly.
- (4) A Bill concerning county government may originate in the National Assembly or the Senate, and is passed in accordance with Articles 110 to 113, Articles 122 and 123 and the Standing Orders of the Houses.
- (5) A Bill may be introduced by any member or committee of the relevant House of Parliament, but a money Bill may be introduced only in the National Assembly in accordance with Article 114.

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- Unfortunately with the different versions, the bills keep on summarizing the content to manage and administer community land and complicating the roles of the institutions governing land (the ministry, the NLC and the county government).
- With the lobbying by the public and CSOs hopefully we shall be able to secure with clarity on the legislation protecting community land.
- Due to the fact that Parliament has done away to some extent with the February, 2014 bill, the public is trying to work with what it has in the table that is the 8th October, 2014 and the 2015 bills.
- It ought to be known that the implications of passing the 2015 bill are of great risk rather than of passing the 8th October, 2014 bill.

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- Currently memorandums were done to making amendments and copies of the report although not conclusive has been done by the Departmental Committee on Land.
- The report has to a greater extent adopted some of the amendments proposed such as the structure to manage and administer community land, registration of community ought to be as a body corporate, the bill to have objectives, women and youth to participate on decision making power, the quorum for decision making to be 2/3rd , have a strong law on historical injustice as criminal law is not retrogressive, role of county government(e.g boundary identification), ministry and NLC ought to be brought out with clarity and last but not least the definition of key terms e.g community should be defined more so as per the Constitution.

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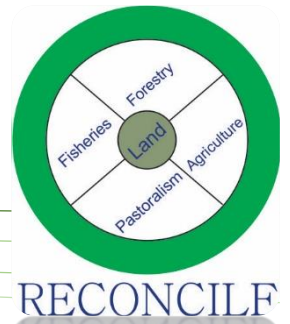
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Implications of the 8th October, 2014 bill being passed are in the Constitution under chapter 8, part 4 on procedures for enacting legislation.

- **Article 112.** (1) If one House passes an ordinary Bill concerning counties, and the second House—
 - (a) rejects the Bill, it shall be referred to a mediation committee appointed under Article 113; or
 - (b) passes the Bill in an amended form, it shall be referred back to the originating House for reconsideration.

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- (2) If, after the originating House has reconsidered a Bill referred back to it under clause (1) (b), that House—
- (a) passes the Bill as amended, the Speaker of that House shall refer the Bill to the President within seven days for assent; or
 - (b) rejects the Bill as amended, the Bill shall be referred to a mediation committee under Article 113.
- **Article 113.** (1) If a Bill is referred to a mediation committee under Article 112, the Speakers of both Houses shall appoint a mediation committee consisting of equal numbers of members of each House to attempt to develop a version of the Bill that both Houses will pass.
- (2) If the mediation committee agrees on a version of the Bill, each House shall vote to approve or reject that version of the Bill.

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- (3) If both Houses approve the version of the Bill proposed by the mediation committee, the Speaker of the National Assembly shall refer the Bill to the President within seven days for assent.
- (4) If the mediation committee fails to agree on a version of the Bill within thirty days, or if a version proposed by the committee is rejected by either House, the Bill is defeated.