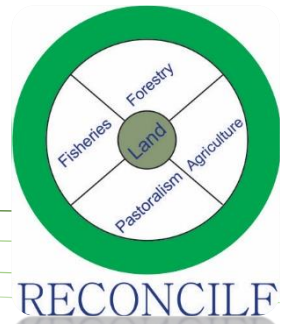


# LAND MANAGEMENT



- Article 1 Constitution of Kenya provides that all sovereign power belongs to the people of Kenya while Article 61 provides that all land in Kenya belongs to the people of Kenya collectively as a nation, as communities and as individuals.
- Land in Kenya is classified as public, community or private.
- Chapter four provides for the bill of rights.
- Thus the purpose of recognizing and protecting human rights and fundamental freedoms is to preserve the dignity of individuals and communities and to promote social justice and the realization of the potential of all human beings.
- It is a fundamental duty of the State and every State organ to observe, respect, protect, promote and fulfil the rights and fundamental freedoms in the bill of rights.

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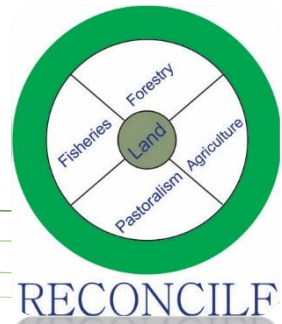
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- Every person has the right to institute court proceedings claiming that a right or fundamental freedom in the bill of Rights has been denied, violated or infringed or threatened.
- The State has powers to regulate the use of land, interest and rights over any land, in the interest of defence, public safety, public order, morality, public health, or land use planning and all this has to be in accordance with the principles under article 60 and the bill of rights chapter four.
- Further into regulations parliament is to enact legislation ensuring that investments in property benefit local communities and their economies.
- In enacting the law several institutions were brought into the context: the Ministry, the National Land Commission, the County Land Management Board and Traditional Institutions

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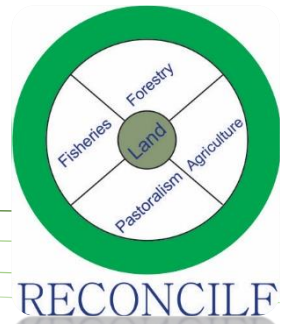
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- Article 27 provides for equality and freedom from discrimination both for women and men and have the right to equal treatment, including the right to equal opportunities in political, economic, cultural and social spheres.
- Article 60 provides for principles of land policy:
  - ❖ Equitable access to land;
  - ❖ Security of land rights;
  - ❖ Sustainable and productive management of land resource;
  - ❖ 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;
  - ❖ Encourage of communities to settle land disputes through recognized local communities initiatives consistent with the Constitution.

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# MINISTRY

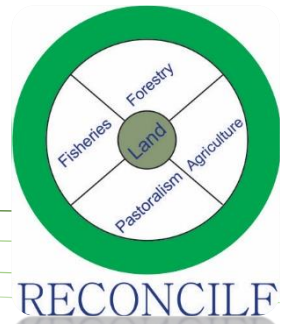


- The Ministry is under the National level that is the executive under chapter nine of the Constitution.
- The Land Act, 2012 provides for the functions of the Cabinet Secretary in managing and administering Land under section 6;
  - ❖ develop policies on land, upon the recommendation of the Commission;
  - ❖ facilitate the implementation of land policy and reforms;
  - ❖ co-ordinate the management of the National Spatial Data Infrastructure;
  - ❖ co-ordinate the formulation of standards of service in the land sector;
  - ❖ regulate service providers and professionals, including physical planners, surveyors, valuers, estate agents, and other land related professionals, to ensure quality control; and
  - ❖ monitor and evaluate land sector performance.

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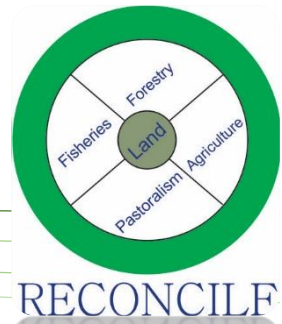
# COUNTY LEVEL



- As per article 6 of the Constitution, State organs are to ensure reasonable access to its services.
- Devolution is one of the concepts in the Constitution that has brought about a complete overhaul in Kenya's system of governance system.
- The objectives of devolution in Kenya are stated under article 174 of the Constitution and they include;
  - ❖ To promote democratic and accountable exercise of power;
  - ❖ To foster national unity by recognizing diversity;
  - ❖ To give powers of self-governance to the people and enhance the participation of the people in the exercise of the powers of the State and in making decisions affecting them

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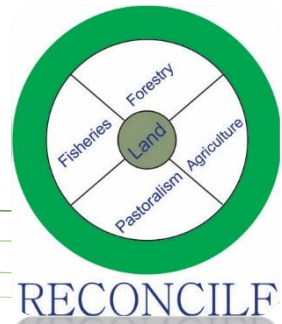
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- ❖ To recognize the right of communities to manage their own affairs and to further their development;
- ❖ To protect and promote the interests and rights of minorities and marginalized communities;
- ❖ To promote social and economic development and the provision of proximate, easily accessible services throughout Kenya;
- ❖ To ensure equitable sharing of national and local resources throughout Kenya;
- ❖ To facilitate the decentralized of State organs, their functions and services, from the capital of Kenya; and
- ❖ To enhance checks and balances and the separation of powers.

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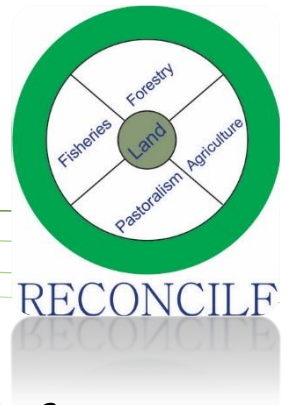
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- Thus towards realizing devolution, County Land Management Boards were established.
- CLMB has been established under section 18 of the National Land Commission Act and it is meant to be a devolved organ of NLC.
- As per the same Act yet to be amended, the section provides the composition, qualifications and the functions of the CLMB.
- Composition;
  - ❖ Not less than three and not more than seven members appointed by the Commission; and
  - ❖ a physical planner or a surveyor who shall be nominated by the county executive member and appointed by the governor.

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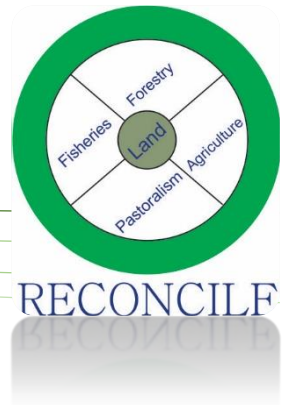
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- A member of the board, unless ex-officio, shall be appointed for a single term of five years and shall not be eligible for re-appointment.
- The chairperson of the board shall be elected by the members in their first sitting.
- The secretary to the board shall be appointed by the Commission.
- In the discharge of their functions, the boards shall be comply with the regulations made by the Commission under this Act.



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Functions as per the act include;

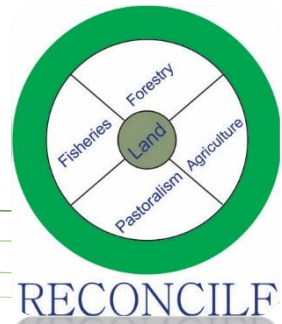
- ❖ subject to the physical planning and survey requirements, process applications for allocation of land, change and extension of user, subdivision of public land and renewal of leases; and
- ❖ perform any other functions assigned by the Commission or by any other written law.
- It ought to be noted that the ultimate function of the CLMB is to manage and administer public land at the County level. (Section 18(1) NLC Act) thus it can not be stated that they are taking over functions for the Land Control Board or dealing with private land.

# Cont'd



- **Land Control Board** established under the Land Control Act and they are to be in each district/county (District Land Control Board).
- The Board is empowered to vet all transactions touching land agricultural areas. The transactions are listed under section 6 of the Land Control Act. They include:
  - ❖ the sale, transfer, lease, mortgage, exchange, partition or other disposal of or dealing with any agricultural land which is situated within a land control area;
  - ❖ the division of any such agricultural land into two or more parcels to be held under separate titles; and
  - ❖ trust agricultural land.

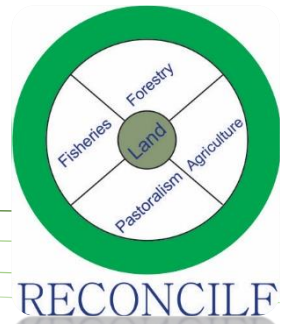
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- Dealings in controlled areas without consent from the Land Control Board are deemed as void. If any valuable/consideration is paid during such a void transaction, it may be recoverable by the person who paid it from the person who it was paid to. Any person found guilty of the offence of dealing in agricultural land without a consent is liable to a fine not exceeding three thousand shillings or to imprisonment for a term not exceeding three months, or to both.
- It ought to be noted that the Land Control Act is still under discussions as to whether it is to be repealed or reviewed especially on how it is to be devolved as it has been divided into districts and its functions to be clearly stated

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# NATIONAL LAND COMMISSION

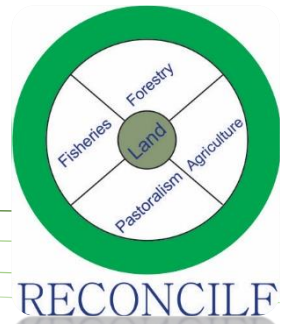


- Chapter fifteen of the Constitution provides the establishment of the Commission.
- The aim of the Commission which may basically imply that it acts as a check and balance organ which implies that it works for justice;
  - ❖ Protect the sovereignty of the people;
  - ❖ Secure the observance by all State organs of democratic values and principles; and
  - ❖ Promote constitutionalism.
- The Commission is an independent office and are subjected to the Constitution and the law and are not to be subjected to direction or control by any person or authority.

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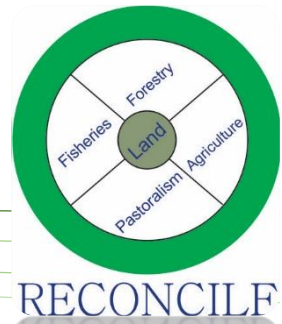
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- Article 67 of the Constitution provides for the establishment of the National Land Commission.
- The functions under article 67 are;
  - ❖ To manage public land on behalf of the national and county governments;
  - ❖ To recommend a national land policy to the national government;
  - ❖ To advise the national government on a comprehensive programme for the registration of title in land throughout Kenya;
  - ❖ To conduct research related to land and the use of natural resources, and make recommendations to appropriate authorities;
  - ❖ To initiate investigations, on its own initiative or on a complaint, into present or historical land injustices, and recommend appropriate redress;
  - ❖ To encourage the application of traditional disputes resolution mechanisms in land conflicts;

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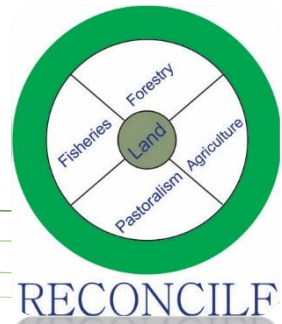
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- ❖ To assess tax on land and premiums on immovable property on any area designated by law; and
- ❖ To monitor and have oversight responsibilities over land use planning throughout the county.
- The Constitution further provides that parliament may enact a national legislation to prescribe other functions for the NLC. The NLC Act, 2012 under functions of NLC include;
  - ❖ to manage public land on behalf of the national and county governments;
  - ❖ to recommend a national land policy to the national government;
  - ❖ to advise the national government on a comprehensive programme for the registration of title in land throughout Kenya;
  - ❖ to conduct research related to land and the use of natural resources, and make recommendations to appropriate authorities;

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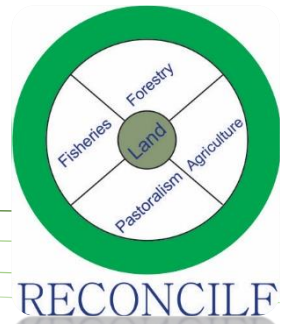
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- ❖ ensure that public land and land under the management of designated state agencies are sustainably managed for their intended purpose and for future generations;
- ❖ to initiate investigations, on its own initiative or on a complaint, into present or historical land injustices, and recommend appropriate redress;
- ❖ to encourage the application of traditional dispute resolution mechanisms in land conflicts;
- ❖ to assess tax on land and premiums on immovable property in any area designated by law; and
- ❖ to monitor and have oversight responsibilities over land use planning throughout the country.
- ❖ on behalf of, and with the consent of the national and county governments, alienate public land;
- ❖ monitor the registration of all rights and interests in land;

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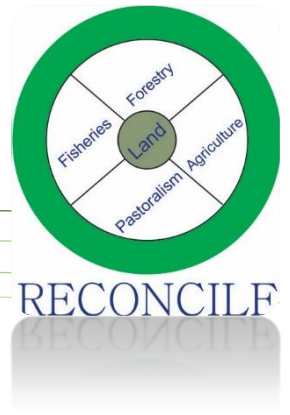


- ❖ manage and administer all unregistered trust land and unregistered community land on behalf of the county government;
- ❖ develop and encourage alternative dispute resolution mechanisms in land dispute handling and management.
- ❖ to ensure that all unregistered land is registered within ten years from the commencement of this Act. Commission may extend the period set.
- ❖ develop and maintain an effective land information management system at national and county levels;
- Other than the NLC Act providing various functions, the Land Act and Land Registration Act also provides the functions of the NLC. They include:
  - Under the Land Act;
    - ❖ Identify, prepare and keep a database of all public land.
    - ❖ Recommend policies on land to the Cabinet Secretary who will develop them.

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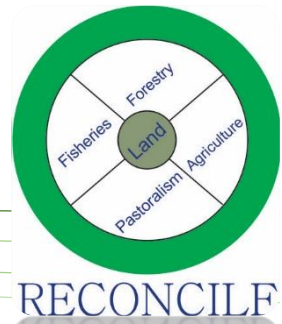
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- ❖ Cause a register on public land to be kept.
- ❖ Make rules on conversion of land, and these rules to be tables in Parliament.
- ❖ Make rules on conversion of land and these rules to be Parliament.
- ❖ Regulate and control the conversion of land from one category to another.
- ❖ Prescribe guidelines for the management of public land by all public agencies, statutory bodies and state corporations in actual occupation or use of public land.
- ❖ Maintain public land that has endangered or endemic species of flora and fauna, critical habitats or protected areas.
- ❖ Allocate public land on behalf of the National and county governments.

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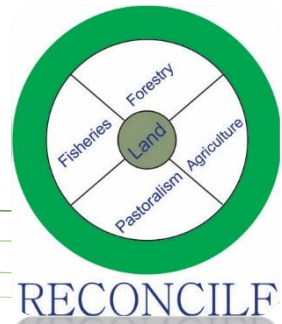
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- ❖ Identify and demarcate ecologically sensitive areas that are within public lands and prevent environmental degradation and climate change in consultation with existing institutions on conservation.
- ❖ Set aside land for investment purposes ensuring that investments in the land benefit local communities and their economies.
- ❖ In consultation with the National and county governments, allocate land to foreign governments.
- ❖ Make regulations prescribing the criteria for allocation of land and for connected matters.
- ❖ Make rules for extension of leases.
- ❖ Issue public notices before allocation of public land.
- ❖ In consultation with the national and county governments, reserve public land.
- ❖ Make rules and regulations for the sustainable conservation of land based natural resources.

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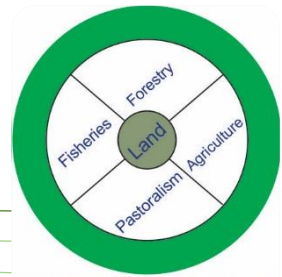
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- ❖ Undertake an inventory of all land based natural resources.
- ❖ Approve plans for the development, management and use of reserved public land vested in a management body but in compliance with relevant law on development control.
- ❖ Receive requests from national or county government to compulsorily acquire land on their behalf in public interest or public use.
- ❖ Prescribe criteria and guidelines to be adhered to by the acquiring authorities in the acquisition of land.
- ❖ Make rules to regulate the assessment of just compensation in regard to compulsory acquisition.
- ❖ Hold inquiry, award and promptly pay a just compensation before taking possession of acquired land.
- ❖ Implement settlement programmes on behalf of the national and county governments.
- ❖ Reserve public land for the establishment of approved settlement programmes.

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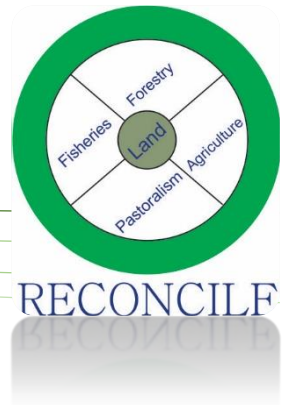
RECONCILE

- ❖ Grant licences for temporary use of public land.
- ❖ Receive rents, royalties in respect to leases or licences.
- ❖ Assist the national and county governments in the administration of settlement programmes.
- ❖ Reserve public land or Purchase private land for settlement.
- ❖ Determine sum of money to be paid by settlement beneficiaries.
- ❖ Administer Land Settlement Fund.
- ❖ Power to create a right of way which shall be known as public right of way.
- ❖ Duty to order unlawful occupiers of public land to vacate them.
- ❖ Duty to order persons who wrongfully obstruct public rights of way and those who encroach on public rights of way to either vacate and/or remove the obstructions.

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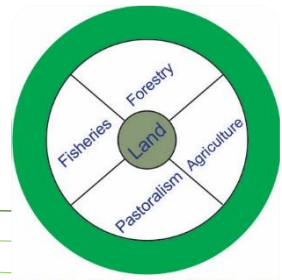


- Under the Land Registration Act;

- ❖ Constitute registration units in consultation with national and county governments.
- ❖ Determine the form of a land register that shall be maintained, in each registration unit.
- ❖ Appoint a date for geo-referencing plans to be kept in a land registry.
- ❖ Be a depository for maps: the office or authority responsible for the survey of land shall submit to the Commission a copy of the cadastral maps for depositing.
- ❖ Prescribe (through regulations) guidelines that the Registrar shall follow before rectifying or directing rectification of a register or document where the document in question has been obtained by fraud.
- ❖ Advise Cabinet Secretary in making regulations, rules or prescribing any matters required under this act and such regulations or rules shall be tabled before parliament for approval.

# Reforms

- Having an oversight organ to act as a check and balance in management and administration of land.
- Functions of the NLC are reforms in itself.
- The NLC will also have power to review grants that were issued previously (section 14) thus historical injustices is addressed.
- The transparent appointment of Commissioners.
- The composition and establishment of the County Land Management Boards. The provision has been well established and the objective is ensuring the achievement of article 174 on devolution.
- The establishment of the committees and county offices at the county level. This will acquire collection of reflections of the wishes and priorities of people resident in the counties.



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# Challenges



- The interpretation variation of the NLC and ministry's functions as per the Constitution and the enacted legislation. Example the supreme court advisory opinion reference No. 2 of 2014
- The appointments of the NLC by the PSC as per the proposed amendments.
- Changing the establishment of the County Land Management Boards and/or phasing them out as proposed by the amendments.
- Lack of enacting the regulations that are to guide land.