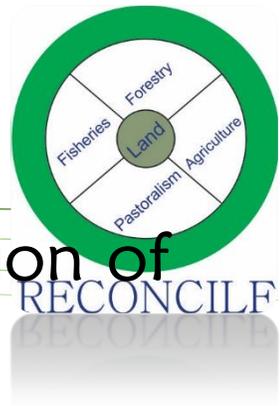


LAND REFORM



The need for reforms in post independence Kenya was a culmination of a number of factors:

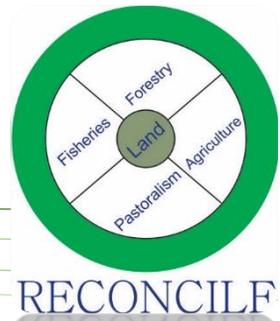
- Land grabbing [Njonjo Commission].
- Irregular/Illegal allocations [Ndung'u Commission].
- Tribal clashes/Ethnic violence [Akiwumi Commissions].
- Post election/ethnic violence (PEV) 2007-2008 [Waki Commissions].

Agenda 4 items reaffirms the parties' commitment to address

- Land reform;**
- Poverty, inequity and regional imbalances;
- Unemployment and particularly among the youth;
- Consolidation of national cohesion and unity; and
- Transparency and accountability and impunity

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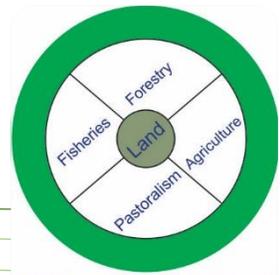


It identifies the following issues on land reform:

- **Constitutional review** to address fundamental issues of land tenure and land issues;
- Development and implementation of land policies, taking into account the **linkages** between land use, environmental conservation, forestry and water resources;
- Finalization of the draft **National Land Policy** and enactment of attendant legislation;
- Establishment of transparent, decentralized, affordable and efficient **GIS-based Land Information Management System** and GIS land registry at the Ministry of Lands and at local authorities;

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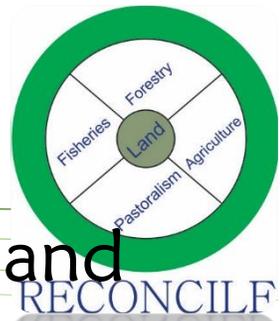


RECONCILE
FOUNDATION

- Replacement of land ownership documents for owners of affected by post-election violence;
- Development of a **National Land Use Master Plan**, taking into account environmental consideration;
- Establishing a land use transformation unit in the Ministry to facilitate the implementation of the land reform programs as outlined in the National Land Policy;
- Strengthening local level mechanisms for sustainable land rights administration and management; and
- Finalizing the Land Dispute Tribunal Act.

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National Land Policy reforms



- The vision is to guide the country towards a sustainable and equitable use of land.
- It calls for immediate actions to addressing environmental problems that affect land such as degradation, soil erosion and pollution.
- For instance, it stipulates the principle of conservation and management of land based natural resources, the principle of protection and management of fragile and critical ecosystems including wetlands and arid lands.
- It addresses the critical issues of land administration, access to land, land use planning, restitution of historical injustices, environmental degradation, conflicts, unplanned proliferation of informal urban settlements, outdated legal framework, institutional framework and information management.

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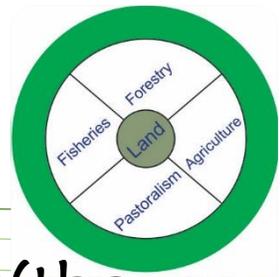
RECONCILE

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- It calls for extensive overhauls to current policies and institutions in an attempt to address chronic land tenure insecurity and inequity.
- The National Land Policy addresses the following important issues: Constitutional issues; Land tenure issues; Land use management issues; Land administration issues; Land issues requiring special intervention; Institutional framework; and Implementation framework.
- Land tenure refers to the terms and conditions under which rights to land and land-based resources are acquired, retained, used, disposed of, or transmitted.
- It appreciates that currently land is designated as government land, land in Kenya as Public Land, Community Land and Private Land. trust land and private land and goes ahead to designates all
- It stipulates that the Government shall enact a “Land Act” to govern all categories of land.

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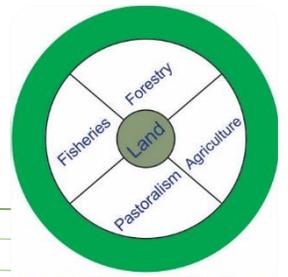
CONSTITUTIONAL REFORMS



- Devolution of power initially held by single individuals (the President or Commissioner of Lands).
- Providing the guiding values and Principles of Land Management; transparent, cost effective administration of land and judiciary guidelines (environment and land court).
- Providing 3 categories of land and how they are to be managed and administered.
- Provision on consolidation and enactment of laws that shall provide for management of the land categories.
- **Article 61** provides that all land in Kenya belongs to the people collectively as a Nation (Public), as communities (Community) and as individuals (Private).

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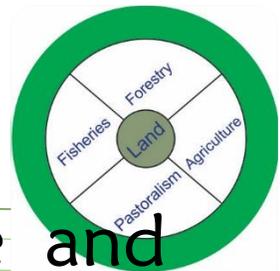
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- **Article 60** provides the principles guiding Land in Kenya which are to be implemented through the National Land Policy to be reviewed regularly;
 - Equitable access to land.
 - Security of land rights.
 - Sustainable and productive management of land resources;
 - Transparent and cost effective administration of land.
 - Conservation and protection of ecologically sensitive areas;
 - Elimination of gender discrimination in law;
 - Encourage alternative mechanisms of settling land disputes

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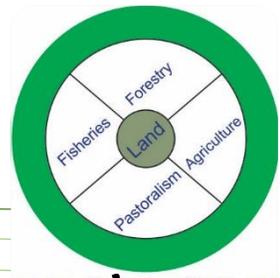
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• **Article 68** mandates the parliament to **Revise, consolidate and rationalize** existing land laws thus the following were enacted:

- The Land Registration Act No. 3 of 2012
- National Land Commission Act, 2012
- Community Land Act, 2016
- Land Act, 2012
- Amendments in 2016
- Environment and Land Court, Article 162

Other than the above, article 68 mandated parliament to enact laws on: Matrimonial property, Conversion, Protection of dependants of deceased (Law of Succession), protection of Environment Management and Co-ordination Act.(EMCA).

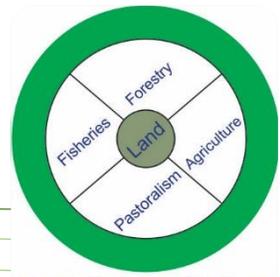


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- **Article 66** provides that the State may regulate use of any land or interest or right over land in the interest of defense, public safety, public health, land use planning, public order and public morality.
- **Article 69** outlines the obligations of the State in respect of the environment as follows;
 - Ensure sustainable exploitation, utilization, management and conservation of the environment and natural resources, and ensure the equitable sharing of the accruing benefits.
 - Work to achieve and maintain a tree cover of at least ten percent of the land area of Kenya.

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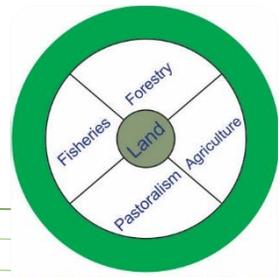
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- Protect and enhance intellectual property in, and indigenous knowledge of biodiversity and the genetic resources of the communities
- Encourage public participation in the management protection and conservation of the environment.
- Protect genetic resources and biological diversity;
- Establish a system of environment impact assessment, environmental audit and monitoring of the environment.
- Eliminate processes and activities that are likely to endanger the environment; and
- Utilize the environment and natural resources for the benefit of the people.

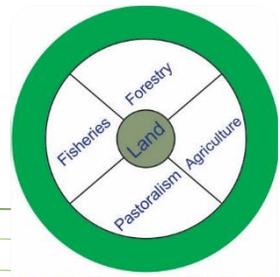
“Promote policies, laws and partnerships that empower resource dependent communities”

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- **Article 70** subject to article 42 which provides for the right to clean and healthy environment provides that in case of the infringement, denial, violation, or threat to this right, a person may apply to court for redress in addition to any other legal remedy available.
- Other remedies have been highlighted under article 23 such as; declaratory, injunction and conservatory orders and under article 24; compensation and judicial review orders.
- Courts may review the application above and give directions, it considers appropriate-
-To prevent, stop or discontinue any act or omission that is harmful to the environment.

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-To compel any public officer to take measures to prevent or discontinue any act or omission that is harmful to the environment

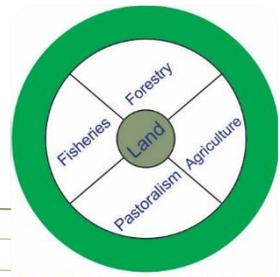
-To provide compensation for any victim of a violation of the right to clean and healthy environment.

-No evidence of loss or injury is required for such an application to be filed.

- **Article 71** agreements relating to natural resources may be ratified by parliament if;

It involves the grant of a right or concession by or on behalf of any person, including the national government to another person for the exploitation of any natural resource of Kenya; and it is entered into on or after the effective date.

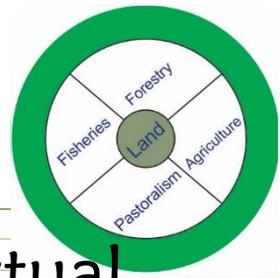
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- **Article 72** parliament enacted the Environmental Management Co-ordination Act to give effect to the provisions for environment and natural resources.
- **Article 40** every person has the right, either individually or in association with others acquire and own property of any description anywhere in Kenya.
 - Parliament shall not enact a law that permits the State or any person: Deprive or limit a person of property on the basis of any of the grounds specified or contemplated in Article 27 (4) unless it is in accordance with this Constitution and any Act of Parliament such as for public interest.
 - Such requires prompt payment in full, of just compensation to the person; and allows any person who has an interest in, or right over, that property a right of access to a court of law.

“Promote policies, laws and partnerships that empower resource dependent communities”

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-The State shall support, promote and protect the intellectual property rights of the people of Kenya.

-The rights under this Article do not extend to any property that has been found to have been unlawfully acquired.

- **Article 67** establishes the National Land Commission whose functions include;

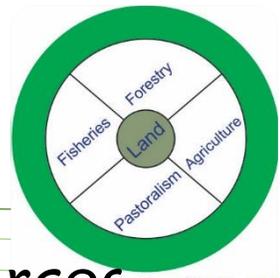
- Management of the public land on behalf of national and county governments.

- Recommend a national land policy to the national government.

- Advice the government on a comprehensive program for the registration of title in land throughout Kenya.

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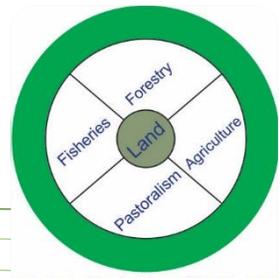
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- Conduct research related to land and use and natural resources and make recommendations to appropriate authorities.
- Initiate investigations, on it's own initiative or complaint into present or historical land injustices and recommend appropriate redress.
- Encourage the application of traditional dispute resolution mechanisms in land conflicts.
- Asses tax on land and premiums on immovable property in any area designated by law.
- Monitor and have oversight over land use planning throughout the country.
- The National Land Act was enacted to operationalize this article.

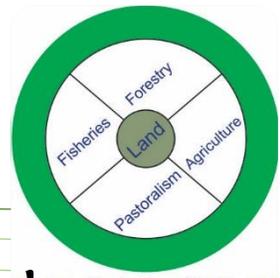
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CATEGORIES



- **Article 62 outlines classifications of public land;**
 - Unalienated government land as defined by an Act of parliament (Land Act section .
 - Land lawfully held, used or occupied by a state organ except a lease.
 - Land transferred to the state by way of sale, reversion or surrender.
 - All minerals and oils as defined by law (Mining Act).
 - Government forests, water reserves, catchment areas, national parks, game reserves, other government protected areas.
 - All roads or thoroughfares provided by an act of parliament.
 - All rivers, lakes and other water bodies as defined by an act of parliament.

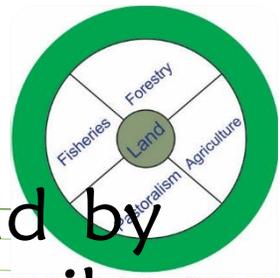
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- The territorial sea, the exclusive economic zone and the sea bed.
- The continental shelf;
- All land between the high and low water marks.
- Any other land declared to be public land by an act of parliament and any land not classified as private or community land.
 - Public land shall be held by a county government in trust for the people resident in the county, and shall be administered by the National Land Commission on their behalf.
 - Article 62(3) land classified under clause (f) to (m) shall vest in and be held by the national government in trust for the people of Kenya and will be administered by the National Land Commission.

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- **Article 63 provides on Community Land** which shall be held by communities identified on the basis of ethnicity, culture or similar community of interest. It consists of;

- Land lawfully registered in the name of group representatives under the provisions of any law (Group Representative Act)

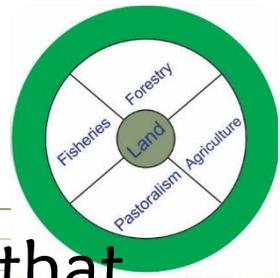
- Land lawfully transferred to a specific community by any process of law.

- Land declared to be community land by an Act of parliament (Community Land Act).

- Lawfully held, managed or used by specific communities as community forests, grazing areas or shrines, Ancestral lands and lands traditionally occupied by hunter-gatherer communities; or

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-Land held as trust land by the county governments, except that held as public land.

-Unregistered community land shall be held in trust by county governments on behalf of the communities which it is held.

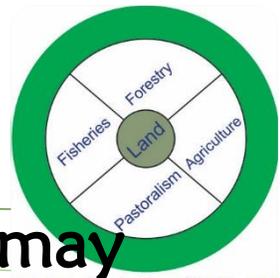
-Community land shall not be disposed or otherwise used except in terms of legislation specifying the nature and extent of the rights of members of each community individually and collectively.

• **Article 64** uphold private land which consists of-

-Registered land held by any person under any freehold tenure;

-Land held by any person under leasehold tenure;

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- **Article 65 provides on Land holding by Non-citizens and they may hold land on the basis of leasehold tenure only, and the lease shall not exceed ninety-nine years. Any instrument (deed, agreements) that provides for more than 99 years will be regarded as conferring a lease of not more than ninety-nine years.**
 - A **corporate body** shall be regarded as a citizen only if it is wholly owned by one or more citizens.
 - Property held in trust shall be regarded as being held by a citizen only if all of the beneficial interest of the trust is held by a citizen.
 - Parliament may enact legislation to operationalize this provisions thus (The Companies Act was enacted)
- **Others include:** Land Act section 37 and Land Registration Act section 8.