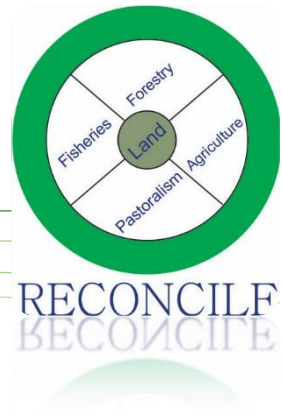


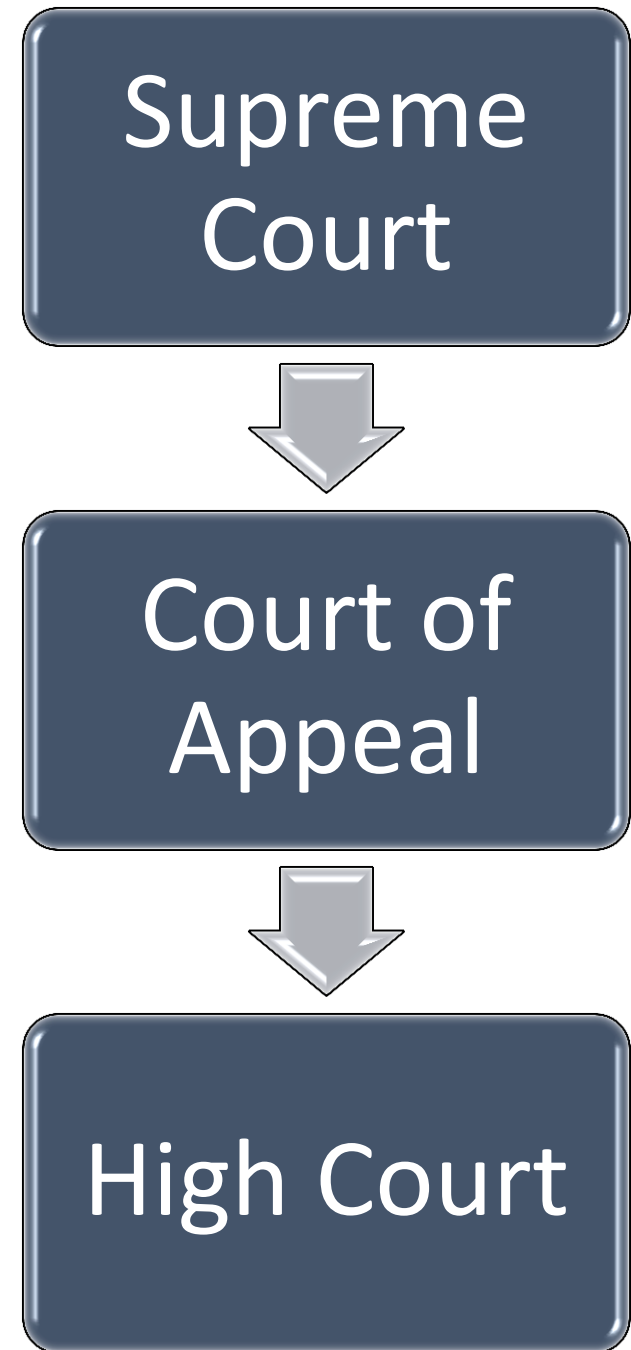
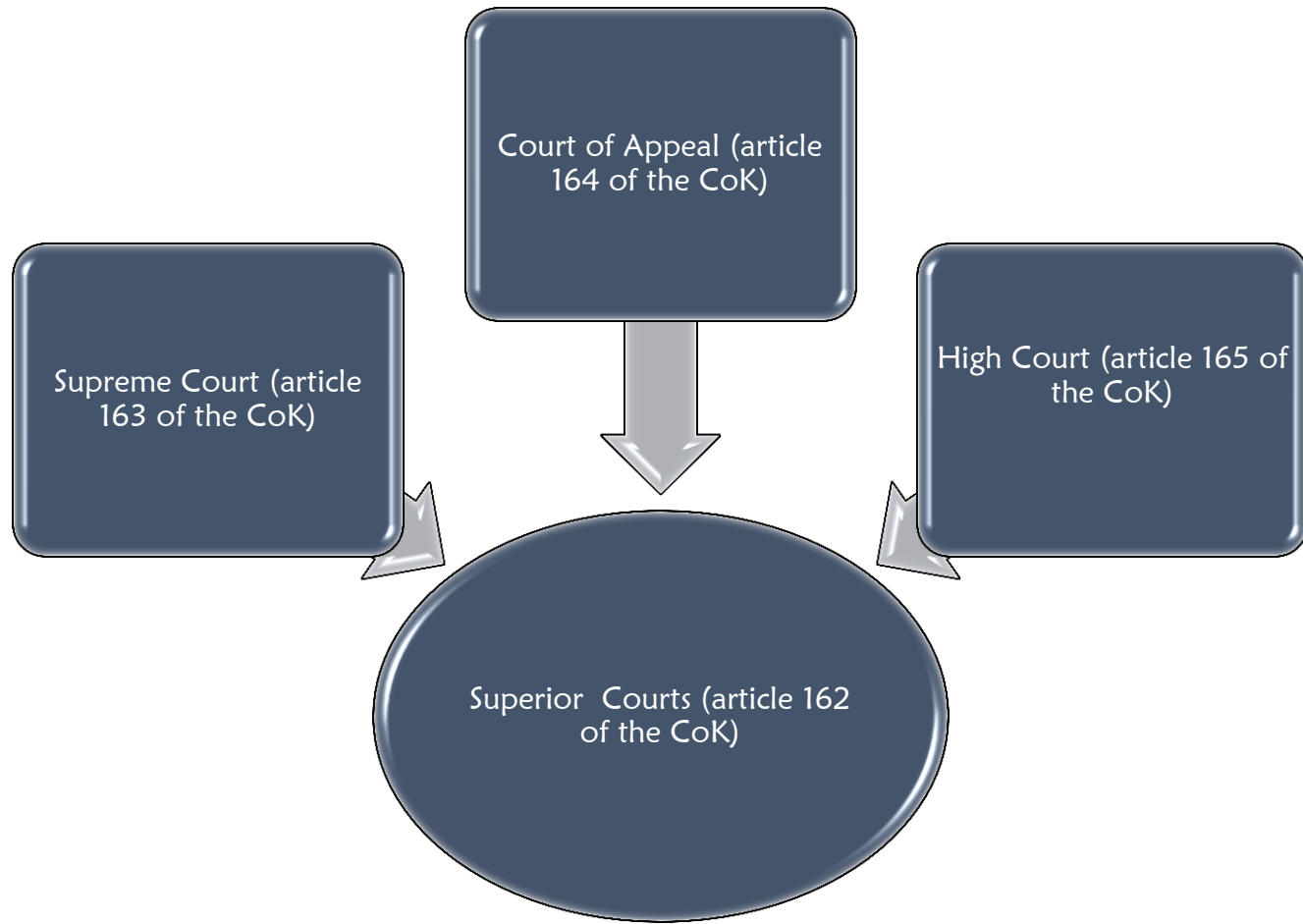
# COURT SYSTEMS

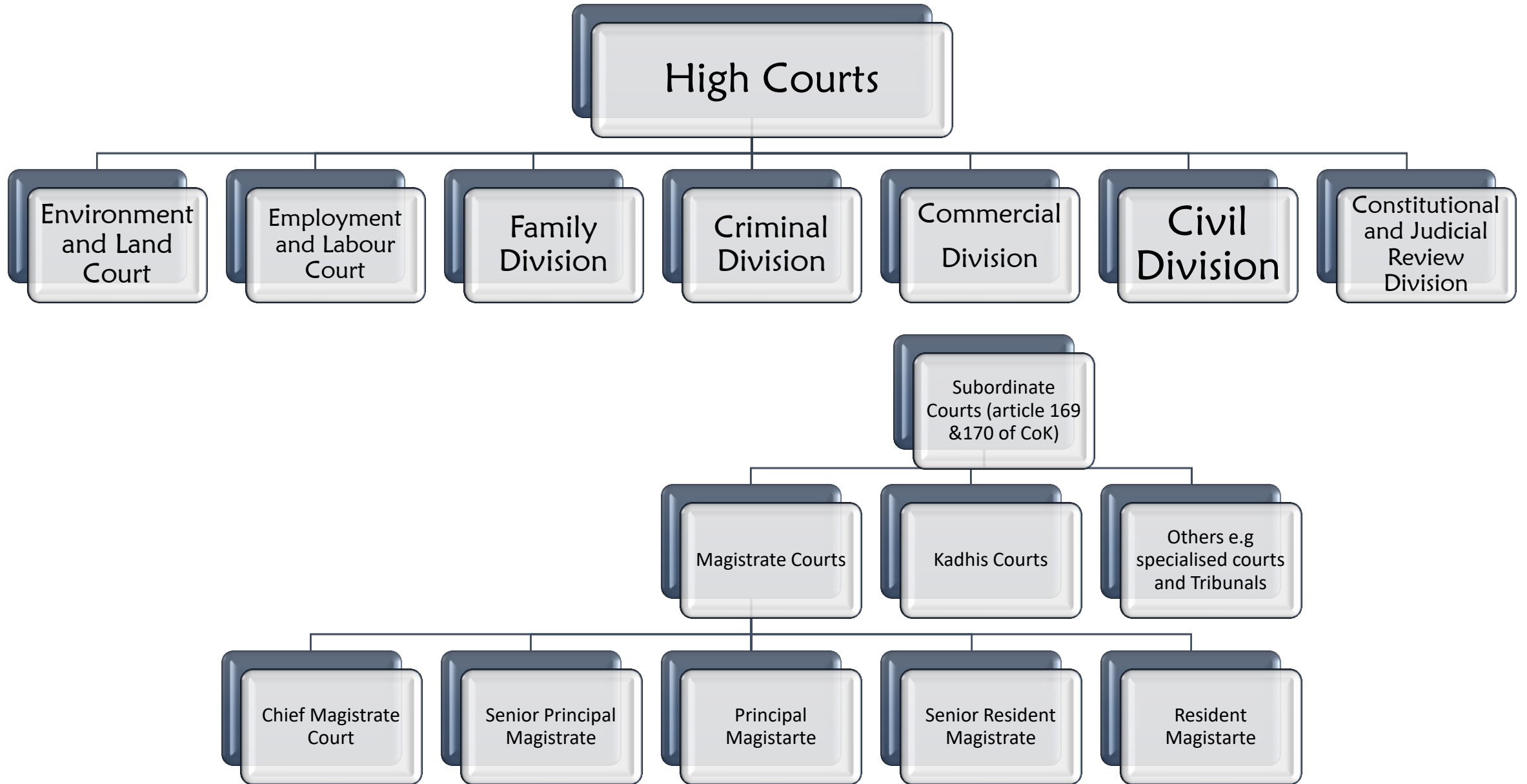


Chapter ten provides for the principles of judicial authority;

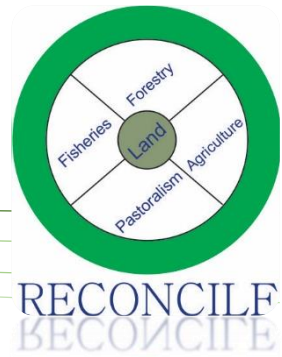
- ❖ Justice to be done to all, irrespective of status;
- ❖ Justice is not to be delayed;
- ❖ Alternative forms of dispute resolution including reconciliation, mediation, arbitration and traditional dispute resolution mechanisms to be promoted;
- ❖ Justice will be administered without undue regard to procedural technicalities;
- ❖ The purpose and principles of this Constitution is to be protected and promoted.
- ❖ Use of traditional dispute resolution mechanisms is not to be used in a way that; or contravenes the bill of rights; is repugnant to justice or morality or is inconsistent with the Constitution or any written law.

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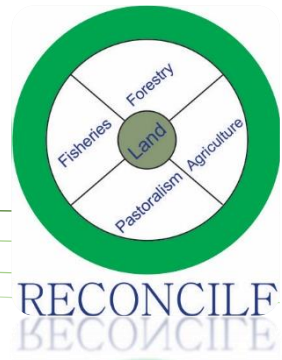
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- The Environment and Land Court is recognized under article 162 of the Constitution which provides that parliament will establish courts with the status of the High Court to hear and determine disputes relating to the environment and the use and occupation of, and title to, land.
- Further into this an act was enacted that is the environment and land court act.
- The Act was enacted for the establishment of a superior court to hear and determine disputes relating to the environment and the use and occupation of, and title to, land and to make provision for its jurisdiction functions and powers, and for connected purposes.
- The act will not preclude the court from hearing and determining applications for redress of denial, violation or infringement of, or threat to, rights or fundamental freedom relating to a clean and healthy environment under article 42, 69 and 70 of the Constitution.

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Section 13 and 14 provide for the jurisdiction authority of the court. The court has the following jurisdiction;

- Original and appellate jurisdiction to hear and determine all dispute.

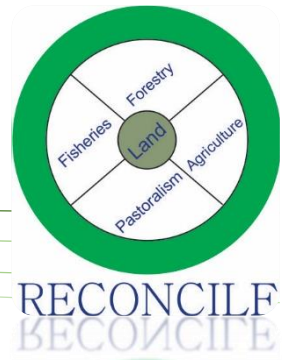
In exercising the jurisdiction, the court has power to hear disputes relating to the following;

- Environmental planning and protection, climate issues, land use planning, title, tenure, boundaries, rates, rents, valuations, mining, minerals and other natural resources.
- Compulsory acquisition of land.
- Land administration and management.
- Public, private and community land and contracts, choses in action or other instruments granting any enforceable interests in land.
- Any other relating to environment and land.

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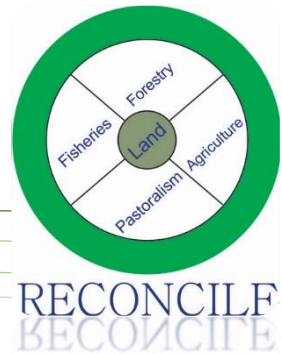


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- Other than having the Environment and land Court, article 22 (3) provides that the Chief Justice may make rules providing for the court proceedings although this article may be said to be retrogressive to article 162 which provides that the Environment and Land Court is the only court that can hear and determine land matter.
- Article 22 thus paves the way for the subordinate courts to hear and determine some land matters and this will be subject to their jurisdiction.
- The Chief Justice made rules that provide that the subordinate courts can hear and determine land matters.

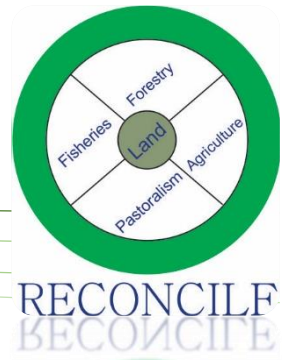
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- Further to the CJ rules, It should be noted that Section 24 of the Environment and Land Court Act bestows powers to the Chief Justice to make rules to regulate the practice on matters relating to land and environment.
- Environment and Land Court Act No.19 of 2011 section 24“ (1) The Chief Justice shall make rules to regulate the practice and procedure of the Court. (2) The Chief Justice shall make rules to regulate the practice and procedure, in tribunals and subordinate courts, on matters relating to land and environment. (3) The Chief Justice shall in consultation with the Court make rules for the determination of admissibility by the Court of proceedings pending before any court or local tribunal.”

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- The Magistrate Court Act has provided for the jurisdictional format of matters to be heard before the subordinate court;
- ❖ This courts will be duly constituted when held by Chief Magistrate, Senior Principal Magistrate, a senior resident magistrate or a resident magistrate and it shall have jurisdiction throughout Kenya.
- ❖ Land matters mainly being of civil nature, the jurisdiction is as provided; Seven million shillings for Chief Magistrate; Five million shillings for Senior Principal Magistrate; Four million shillings for Principal Magistrate; Three million shillings for a Senior Resident Magistrate; and Two million shillings for Resident Magistrate.



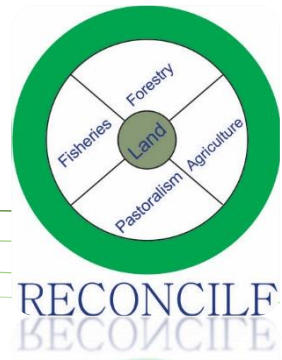
# Judicial reforms



- The transparent appointment of judicial officers.
- The automatic and digitalization of court processes.
- The vetting of judges and magistrates.
- Reconstitution of judicial services commission.
- Ending impunity and disrespect of court orders.
- The establishment of the supreme court.
- Financial autonomy in the judiciary.
- Enhancing mechanisms for a broader access to justice

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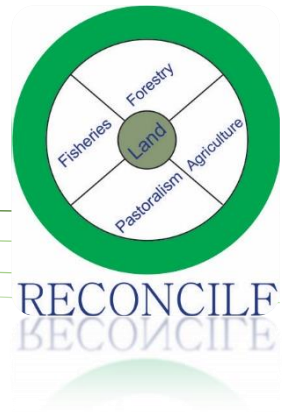
# Challenges



- Efficiency and timelines of court proceedings.
- Ensuring justice is felt across all social divide.
- Declare corruption a common enemy & strive to finish it completely.
- Employ more professional & competent judicial officers.
- Initiating civic education to the general public on legal matters.
- Automate and digitalize all court processes.
- Ensure advocates are affordable & accessible to all.
- Promote ethical standards on the bench and in the bar.
- Adherence to performance contracts.
- Avoid use of police prosecutors
- Ensure the reforms in the judiciary are adhered to.
- Pay the judicial staff well to reduce temptations of bribery.

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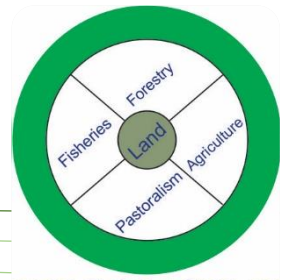
# Recommendations



- Fight corruption to the fullest.
- Install more courts especially in rural areas.
- Initiate civic education to the general public on legal matters.
- Avoid discrimination along any line.
- Make courts easily accessible.
- Hire competent & judicial officers.
- Strengthen bodies that supervises the judicial staff and advocates.
- Ensure the judiciary is independent.
- Good customer care services in courts.
- Ensure advocates are affordable & accessible to all.
- Increase working hours in courts
- Have reward system for competent judicial officers.

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# TRADITIONAL INSTITUTIONS

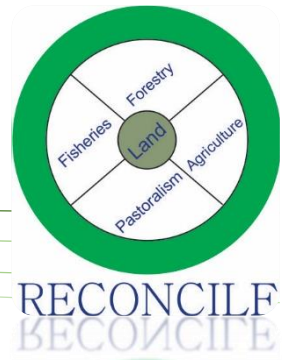


- The Traditional institutions have been effective in managing conflicts. They help in managing land issues via the traditional dispute mechanisms, such as reconciliation, and informal mediation and problem solving workshops among others.
- Article 159 (1) has also maintained this clause by providing that judicial authority is derived from the people and vests in the people and is to be exercised by the courts and tribunals established by or under the Constitution.
- The traditional dispute resolution especially on land matters is exercised by the council of elders, chiefs and elderly people in the society/community. The practices are derived from the customs practiced by different communities. Examples of the chiefs and council of elders who facilitated the solving of disputes are; Digos- kayas, Luos-Ker, Merus- Njuri Ncheke e.t.c.

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- On the principles guiding land, the Constitution article 60 provides that there is need to encourage communities to settle land disputes through recognized local community initiatives consistent with the Constitution.
- NLC under article 67 is also tasked to encourage the application of traditional dispute resolution mechanisms in land conflicts.

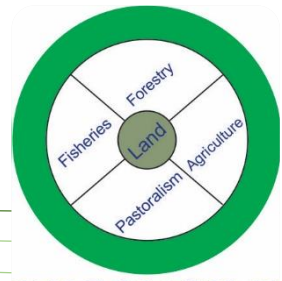
## Advantage of Traditional Dispute Resolution

- It is identified with the communities.
- It allows the parties adequate time to discuss all issues surrounding the disputes.

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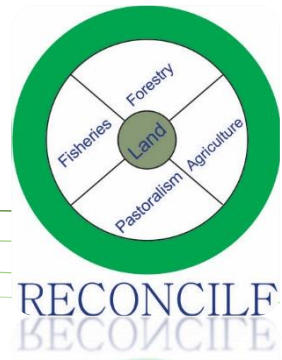
- It involves fewer procedures that are easily accessible by the communities thus fewer expenses.
- Not time consuming as it has fewer complicated procedural requirements.
- It ensures justice to the poor, marginalized and vulnerable therefore closing the glaring gap between the justice systems

## Disadvantages of Traditional Dispute Resolution

- It is based on unwritten laws, rules and procedures. These are at best vague, render the process open to manipulation, unpredictable, unreliable and are subject to the whims of its leaders and can be cumbersome.

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- Some of the laws are contrary to the Constitution, written law, and fundamental principles of governance and human rights and are repugnant to morality.
- Are not structured thus vary from one community to the next.
- Some purport to preside over matters that are out of their jurisdiction like criminal offences.
- The punishments some are impracticable in the modern society e.g punishment like flogging, banishment from community, payment of fines in form of livestock e.t.c.
- Some contain systemic biases and can be discriminatory since they are based on traditional African customs which are largely patriarchal.

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