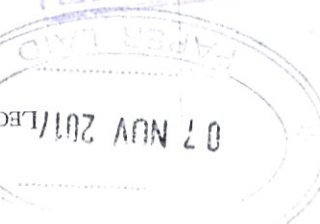


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IN EXERCISE of the powers conferred by section 36 of the National Land Commission Act, 2012, the National Land Commission makes the following Regulations—

THE NATIONAL LAND COMMISSION (INVESTIGATION OF HISTORICAL LAND INJUSTICES) REGULATIONS, 2017

PART I—PRELIMINARY

1. These Rules may be cited as the National Land Commission (Investigation of Historical Land Injustices) Regulations, 2017.

2. These Regulations shall apply to historical land injustices that occurred between the 15th June, 1895 and the 27th August, 2010.

3. In these Regulations, unless the context otherwise requires—
"claim" means a grievance lodged with the Commission as contemplated in section 15(3) of the National Land Commission Act, 2012;

"claimant" means a person or group of persons who have lodged a claim pursuant to section 15(3) of the Act;

"Commission office" means the headquarters of the Commission located in Nairobi or any other office that the Commission may designate as its office generally or for a particular purpose;

"Commission staff" means member of staff of the Commission appointed under section 22 of the Act or any other persons who are authorised by the Commission to perform functions of the Commission;

"Committee" means the Committee established under regulation 11 to investigate claims arising out of historical land injustices and recommend appropriate redress;

"community" has the meaning assigned to it under section 2 of the Community Land Act, 2016;

"Court" means the Environment and Land Court established under the Environment and Land Court Act, 2011 and includes other courts having jurisdiction on matters relating to land;

"document" means any record made or stored in physical or electronic form and includes written, electronic, audiotape, videotape, digital reproductions, photography, maps, graphs, microfilm or any other data and information recorded or shared by means of any device;

"interested person" means a person who is affected by a claim or remedy arising out of historical land injustices;

No. 19 of 2011

No. 27 of 2016

Interpretation.

Application.

Citation.

"person of interest" means a person who may be in possession of useful information relating to an investigation into historical land injustice;

"present land injustices" means a grievance which occurred after 27th August, 2010; and

"remedy" means a remedy that the Commission may recommend after investigating any case of historical land injustice under section 15 (9) of the Act.

PART II—THE PROCEDURE FOR THE INVESTIGATION AND RESOLUTION OF CLAIMS ARISING OUT OF HISTORICAL LAND INJUSTICES

4. Pursuant to Article 67 (2) (e) of the Constitution and section 15 (1) of the National Land Commission Act, 2012, the Commission may initiate investigations on its own initiative or upon a complaint into historical land injustices and recommend appropriate redress.

Power of the Commission to commence investigations.

5. (1) The Commission may on its own initiative request the public to submit claims arising out of historical land Injustices.

Commencement of investigation and resolution of claims

(2) The Commission shall make the request in sub-regulation (1) by—

- (a) a notice in at least one daily newspaper with national circulation;
- (b) notice in the website of the Commission; and
- (c) an announcement on local radio stations.

6. The Commission may request from any person including any government department or state organ such particulars, documents and information regarding any investigation, as may be necessary.

Requisition for Information.

7. (1) A person may lodge a claim in Form NLC /HLI/01 set out in the Schedule or through a letter, a Memorandum or oral submission of the venue of making claim at any place that the Commission may designate as Commission offices.

Lodging a claim.

(2) The claim lodged shall contain—

- (a) the name, address and location of the claimant;
- (b) a description of the property including parcel number or other appropriate description where a parcel number is not available;
- (c) the date of the claim;
- (d) the grounds on which the claim is based and description of the injustice;
- (e) the period when the injustice occurred;
- (f) the resultant effect;
- (g) the particulars of the respondent if any;

- (h) the number and particulars of witnesses they wish to call;
- (i) any previous attempts made to resolve the injustice; and
- (j) the suggested remedy.

(3) A claim shall be accompanied by any document necessary to support the claim.

(4) Where the claim is made at the initiative of the Commission or where it is made in writing, orally or otherwise by a claimant, the claim shall be reduced, by a designated officer of the Commission, into a claim in Form NLC/HLI/01 set out in the Schedule.

(5) The Commission shall acknowledge every claim lodged in Form NLC/HLI/02 set out in the Schedule.

(6) Upon receiving a complaint, the Commission shall vet the claim, against the admissibility checklist in Form NLC/HLI/03 set out in the Schedule and on the confirmation that the complaint has been made in accordance with these Regulations the Commission may—

- (a) admit the claim;
- (b) reject the claim stating the reasons for the rejection;
- (c) refer claimants to other relevant institutions or mechanisms for the resolution of the claim; or
- (d) consolidate the claim with other claims of similar nature.

(7) Upon vetting a claim, the Commission shall notify the complainant of its decision to reject the claim, refer the claim to relevant institutions or consolidate the claim, in writing stating, the reasons for the decision.

(8) Upon admission of a claim, the Commission shall, within ninety days, notify the claimant of the admission in Form NLC/HLI/04 set out in the Schedule and issue a notice to appear in Form NLC/HLI/05 set out in the Schedule to the claimant.

8. The Commission shall keep a register of claims in which all claims shall, upon receipt, be entered and given a reference number.

Register of claims.

9. The Commission may place a restriction on any land that is subject to a historical land injustice claim that has been admitted under regulation 7(6)(a) pending investigation and determination of the claim.

Power to place a restriction.

PART III—CONDUCT OF HEARINGS

11. (1) The Commission may establish a Committee consisting of at least three members of the Commission to hear and recommend appropriate remedies for claims arising out of historical land injustices.

Establishment of Committee.

(2) The Committee may co-opt into its membership, persons whose knowledge and skills are necessary to assist the Committee carry out its mandate.

(3) A person co-opted to the Committee—

- (a) is entitled to attend the Committee's meetings and

participate in its deliberations but shall not vote in any matter before it,

(b) shall take before the Commission's chairperson the oath or affirmation of office, and

(c) shall be paid such fees as the Commission shall determine

(4) A decision of the Committee shall be deemed to be a decision of the Commission

12 A Committee shall in the course of an investigations into historical land injustices undertake—

Investigations of a claim

(a) background checks including official searches, where appropriate,

(b) site visits,

(c) review and verification of documents,

(d) interviews,

(e) public hearings, where appropriate,

(f) consultative meetings with interested parties and persons of interest, or

(g) research

13 (1) Subject to section 6(2)(b) of the National Land Commission Act, 2012, the conduct of hearings and the procedure to be followed at hearings shall under regulation rules be as directed by the Commission

Conduct of hearings

(2) The Committee shall sit at such times and such places as the Commission may determine

(3) The Committee shall not be bound by strict rules of evidence

14 (1) The Commission shall, at least thirty days prior to the hearing date or within such other period as the Committee may determine is fair in the circumstances, send a notice of hearing to all parties to a claim by mail or electronically

Hearing Notice

(2) A notice of hearing shall include --

(a) a statement of the purpose of the hearing,

(b) a statement that the Commission may proceed in the absence of a party notified twice but has failed to attend to or participate in a hearing and the party shall not be entitled to any further notice in the proceedings, and

(c) any other information or direction that the Commission considers necessary for the proper conduct of the hearing

(3) The Commission may, if it is of the opinion that the parties to any proceeding before it are so numerous or for any other reason it is impracticable to give notice of the hearing individually to the parties or persons entitled to receive notice, cause reasonable notice of the hearing to be given to such parties or persons by advertisement in at

least one newspaper with national circulation or in such other means as determined by the Commission.

(4) The Commission shall issue summons in Form NLC /HLI/06 set out in the schedule, against a party a party who repeatedly fails to appear as notified.

15. (1) The Commission may give notice to any person to appear before it in relation to any investigation or proceedings under these Regulations in Form NLC/HLI/05 set out in the Schedule.

Notice to appear.

(2) The notice shall be in writing and shall be addressed and delivered by a staff of the Commission or an appointed agent and shall direct such person, in relation to any investigation, to appear before the Commission at such time and place as may be specified in the notice.

(3) The Commission shall ensure that it preserves the dignity of every person during its investigations and hearings.

(4) The Commission may request a witness or any other participant to advise the Commission on the name and particulars of any other person whom they consider to have relevant information relating to the proceedings before it.

16. A party shall notify the Commission, as early as possible, of any disability, the need for a translator or any other special needs which the party or their witnesses might have.

Notification of special needs.

17. (1) An interested person may, at least seven days prior to a hearing, request a member of the Committee to disqualify themselves from the hearing.

Disqualification of a member of the Committee.

(2) The interested person referred to in sub-regulation (1) shall provide their reasons for the request and where applicable, provide supporting evidence.

(3) Upon receipt of a request for disqualification, the chairperson of the Committee shall make a ruling on the request.

(4) Where the request is for the disqualification of the chairperson of the Committee, the Commission's Chairperson shall make the determination and replace the chairperson of the Committee in respect of that matter only.

18. (1) A party to a proceeding may act in person or through a representative.

Appearance at a hearing.

(2) A party or the representative shall promptly notify the Commission, in writing, wherever a person ceases to represent a party.

19. (1) The hearings shall be open to the public unless otherwise ordered by the Committee.

Hearings.

(2) Where a hearing is closed to the public, it may only be attended by—

- (a) the parties and their representatives;
- (b) the witnesses;
- (c) members of staff of the Commission; and

(d) such other persons as the Committee may consider necessary.

(2) An exhibit, document, submissions or Committee orders relating to a hearing may be marked confidential and kept separate from the public record.

(3) Access to the material referred to in regulation (2) shall be availed by order of the Committee.

20. (1) The languages to be used during a hearing shall be Kiswahili, English and Kenyan sign language or where appropriate other languages understood by claimants and witnesses. Language.

(2) The Commission shall provide competent interpreters for spoken or sign language, as the case may be, for parties or witnesses appearing before it.

21. A witness shall give evidence after taking an oath or affirmation. Oath or affirmation.

22. The Commission may issue summons to any person in Form NLC/HLI/06 in the Schedule, to— Summons to appear.

(a) appear before it on an appointed date, time, venue and make representations on a matter as required; or

(b) submit such documents or evidence on the claim as the Commission may require.

23. The Committee may, at any stage of the proceeding and before completion of a hearing, make orders for— Disclosure of documents.

(a) the exchange of certified documents which are not subject to a claim of privilege;

(b) the oral or written examination of a party;

(c) the exchange of witness statements;

(d) the reports of expert witnesses;

(e) the provision of particulars; or

(f) any other form of disclosure.

24. (1) The Commission shall on its own initiative or on an application by a person, in writing, arrange with the relevant government agencies for the protection of persons placed in danger by reason of their evidence or other interaction with the Commission relating to the investigation of a claim. Protection of a witness.

(2) The evidence referred to in sub-regulation (1) includes that which has not been given before the Commission.

(3) Any person may make an application, in writing, to the Commission for protection.

25. A hearing may be adjourned, from time to time, by the Committee of its own motion or where it is shown, to the satisfaction of the Committee, that the adjournment is required to permit a hearing to be held. Adjournment.

26. (1) After concluding investigations of the matter, the Commission shall render a decision within twenty-one days. Decision of the Commission.

(2) A decision under sub-regulation (1) shall be in writing and shall contain—

- (a) the nature of the claim;
- (b) a summary of the relevant facts and evidence adduced before the Commission;
- (c) the determination and reasons supporting the Committee's decision; and
- (d) a recommendation on the remedy, if any, to which a party is entitled.

27. (1) A determination made by the Commission shall be— Decision.

- (a) extracted and authenticated as a decision of the Commission; and
- (b) signed by the Chairman under the seal of the Commission.

(2) A certified copy of the recommendation shall be made available to the parties within sixty working days from the date of determination.

(3) Upon making a determination, the Commission shall within twenty one days furnish the authorities responsible for redress recommended with a copy of the determination for appropriate action.

28. The Commission shall publish its decisions and recommendations— Publication of decisions.

- (a) in the Kenya Gazette;
- (b) in at least one newspaper with national circulation; or
- (c) on the website of the Commission.

29. A person aggrieved by the decision of the Commission may, within twenty eight days of the publication of the decisions, appeal to the Court. Appeals.

PART IV—MISCELLANEOUS PROVISIONS

30. A party who has a representative shall communicate with the Commission through the representative. Communication with the Commission.

31. The Commission may seek the assistance of the National Police Service or any other office of the national or county governments to facilitate its work and enforce its decisions under these rules. Power to seek assistance.

32. (1) A claim made to the Commission by a claimant before the commencement of these Regulations shall be investigated in accordance with these Regulations.

(2) Despite sub-regulation (2), nothing in these Regulations shall nullify any action taken by the Commission before the coming into effect of these Rules.

2256

Kenya Subsidiary Legislation, 2017

SCHEDULE

FORM N.I.C./H.I.I./01

(r 7(1) (4))

The Historical Land Injustices Rules, 2016

LODGING A HISTORICAL LAND INJUSTICE CLAIM

Ref No

Date

(To be filled in duplicate)

Part I – Personal Details of Claimant(s)

1 Name of Claimant

2 Address

(a) ID/Passport Number

(b) Registration No/Incorporation No (Where applicable)

3 Date of the Claim

4 Grounds on which the claim is made

5 Number and particulars of witnesses

6 Period when the injustice occurred

7 Resultant effect

8 Previous attempts to resolve the injustice

-

 9. Contact Person (in case the claimant is not an individual):

 Telephone.....
 Email
 Postal Address

Part II – Particulars and description of the Property

Please complete the following particulars of the property you wish to make a claim on:

1. Land Reference Number/Parcel Number/other physical description:

2. Acreage (if applicable):
3. County
4. Sub-County
5. Location
6. Sub-Location
7. Village
8. Physical features
9. Settlement/Development Characteristics
10. Boundaries.....
11. Any other information the claimant wishes to provide
-

Part III – Suggested remedy

Kindly suggest your preferred resolution to your claim

.....

Signature/Thumb Print of the Claimant or the Duly Authorised Representative of the Claimant

Date.....

TO BE SUBMITTED TO:
 The Secretary/CEO
 National Land Commission
 P.O. Box 44417-00100
 Ardhi House, 12th floor, wing B

FORM NLC /HLI/02

The Historical Land Injustices Rules, 2016

(r. 7(5))

ACKNOWLEDGEMENT FORM

Claim Ref Number:
 To:
 Date:

The Commission hereby acknowledges receipt of your Historical Land Injustice claim dated the day of 20 which is under consideration. You will be notified of the progress in due course.

Name.....

Signed.....

CEO/ SECRETARY TO THE COMMISSION

FORM NLC /HLI/03

The Historical Land Injustices Rules, 2016

(r. 7(3))

ADMISSIBILITY CHECKLIST FORM

This form shall be used to assess all Historical land injustices claims

NO	ADMISSIBILITY CRITERIA	YES	NO	REMARKS
1.	Did the historical land injustice occur between 15 th June 1895 and 27 th August 2010?			
2.	Was violation of right in land based on--			
	(a) law			
	(b) policy			
	(c) treaty			
3.	Was the historical land injustice--			
	(a) colonial occupation			

	(b) independence struggle			
	(c) treaty or agreement			
	(d) development induced			
	(e) inequitable land adjudication			
	(f) politically motivated or conflict based eviction			
	(g) corruption or other form of illegality			
	(h) natural disaster			
	(i) any other cause approved by the Commission including—			
	(i) illegal acquisitions			
	(ii) multiple allocations			
	(iii) exclusion of source of livelihoods			
4	Does the claim contradict the law that was in force at the time when the injustice began? If yes, explain			
5	Was the claimant an occupier or proprietor of land on which the claim is based?			
6	Does action or omission on the part of claimant amount to surrender or renouncement to the right on land?			
7	Is the claim brought within a period of five years from the date of commencement of this Act?			
8	Has the historical land injustice not been sufficiently resolved. If yes, indicate previous attempts at resolution			

2260

Kenya Subsidiary Legislation, 2017

FORM NLC /HLI/04

(r 7(8))

The Historical Land Injustices Rules, 2016

NOTICE OF ADMISSION OF CLAIM

Claim Ref Number.

To

Date

The Commission has assessed your Historical Land Injustice claim and finds it Admissible for further investigation by the Commission. You will be contacted in due course.

Not admissible for the following reasons

Name

Signed

CEO/SECRETARY TO THE COMMISSION

FORM NLC /HLI/05

(r 7(8), 15(1))

The Historical Land Injustices Rules, 2016

NOTICE TO APPEAR

Claim Ref Number

Date

To

Summary of Claim

You are hereby requested to appear before the Historical Land Injustices Committee sitting at _____ of _____ 20____ at _____ on the _____ day _____ am/pm to give information in reference

to the above claim. You are also requested to bring any supporting documents or any witnesses you may consider relevant.

Acknowledgement of receipt

Name of Claimant Signature

Date.....

Return to CEO/ Secretary

FORM NL

C /HLI/06 (r. 14(4) 22)

The Historical Land Injustices Rules, 2016

SUMMONS

Claim Ref Number:

To:

.....

.....

Date:

Claim

.....

.....

.....

.....

Pursuant to Article 67(2)(e), 252(3) of the Constitution of Kenya and Section 6 of the

National Land Commission Act, you are hereby summoned to appear before the

Historical Land Injustices Committee sitting aton.....day of

.....20..... at..... am/pm. to give evidence in reference to

the above claim. You are also required to bring any supporting documents.

Name.....

Signed.....

CEO/SECRETARY TO THE COMMISSION

Served upon Signature

Date

Place

Time

Served by..... Signature

MOHAMED SWAZURI,
Chairperson,
National Land Commission.

① D/Committee/Ag-Disp.

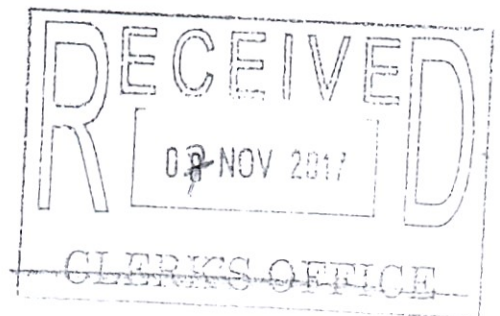
8/11/17



② SUSAN
pls disp
FA
08/11/17

**EXPLANATORY MEMORANDUM ON THE
PROPOSED NATIONAL LAND
COMMISSION INVESTIGATION OF
HISTORICAL LAND INJUSTICES
REGULATIONS.**

NOVEMBER: 2017



EXPLANATORY MEMORANDUM TO THE NATIONAL LAND COMMISSION (INVESTIGATION OF HISTORICAL LAND INJUSTICES) REGULATIONS 2017.

1. The purpose of the National Commission (investigation of Historical Land injustices) Regulations, 2017.

The purpose of these Regulations is to operationalize Article 67(2) (e) of the Constitution and section 15(1) of the National Land Commission Act, 2012. The objectives of the regulations are to allow the Commission to initiate investigations on its own initiative or upon a complaint into historical land injustices and recommend appropriate redress.

2. Legislative Context.

The Constitution under Article 67(2) (e) outlines one of the functions of the Commission as to initiate investigations, on its own initiative or on complaint, into present or historical land injustices, and recommend appropriate redress. The National Land Commission (investigations of historical land Injustices) regulations, 2017 is to be administered by the Committee of the Commission and applied for investigative purposes of historical land injustices and other purposes as may be necessary to discharge the functions of the Commission.

In order to give effect to the above constitutional provision in terms of Article 67(2) (e) of the Constitution, Parliament enacted the National Land Commission Act, 2012. This Act under Section 15 empowers the Commission to make regulations that provide for investigation and adjudication of claims arising out of historical land injustices. The National land Commission (Investigations of historical land Injustices) Regulations, 2017 are therefore issued to provide for the investigation of historical land injustices. This paves way for the operationalization of the Regulations as contemplated by the constitution and the enabling legislation.

3. Policy Background.

Since time immemorial land in Kenya is one of the most important assets held dear by a majority Kenyans. Land was at the core of resistance to British rule in the struggle for independence and today,

it remains the principal source of livelihood and material wealth and invariably carries cultural significance for many Kenyans. It provides the physical substratum for social and economic life.

Sadly, land remains a sensitive and rather complex issue for Kenya. Our history with regard to the land question is not only evidenced by weak land administration processes but also disparities in land ownership and conflict. It is against this historical context that land reform was acknowledged as a vital component of Kenya's National Dialogue and Reconciliation (KNDR) process.

Under Agenda 4 of the KNDR process, pertinent processes have been undertaken and proved essential towards resolving Kenya's historical land injustices;

The adoption of the National Land Policy as Sessional Paper No. 3 of 2009 In particular, Clause 179 requires Government to undertake the following;

- a. establish mechanisms to resolve historical land claims;
- b. establish a suitable legal and administrative framework to investigate; document and determine historical land injustices and recommend mechanisms for their resolution;
- c review all laws and policies adopted by post-independence Governments that exacerbate the historical land injustices; and
- d. establish suitable mechanisms for restitution of historical land injustices and claims.

4. Consultations outcome.

The National Land Commission (Investigation of Historical Land Injustices) Regulations 2017 have taken into account the views of the key personnel in the Commission, the Ministry of Lands and Physical Planning as well as other relevant stakeholders who are versed with the issue of Historical Land Injustices in the Country.

The regulations are expected to streamline and give clarity to the operation of the National Land Commission in adjudication of claims arising out of present or historical land injustices.

5. Guidance.

The Commission will sensitize its officers on how to receive and treat all complaints in the nature of historical injustice. The Commission will also engage key stakeholders such as Parliament, the Ministry in charge of matters relating to land as well as the National Treasury whose participation and cooperation remains instrumental in the successful implementation of the key aspects of the National Land Commission Act and these regulations.

6. Impact Assessment.

As impact assessment has not been prepared for this Instrument. The instrument is made pursuant to a constitutional objective as operationalized by the National Land Commission Act.

7. Review of the regulations.

The Secretary/CEO to the Commission shall monitor the application of the National Land Commission (Investigation of Historical Land Injustices) Regulations. This will be done through the reports prepared at regular intervals. In addition, the implementers of the regulations will carry out regular monitoring and evaluation of the specific provisions of these Regulations with the aim of initiating any legislative amendments as may be necessary on an annual basis.

8. Contact Person

The contact person at the National Land Commission is Prof. Mohammad A. Swazuri, Chairman of the National Land Commission and ~~Chavangi Aziz, Tom~~ the Secretary/CEO to the National Land Commission.



Chavangi Aziz Tom
SECRETARY / CEO