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THE NATIONAL ASSEMBLY

TWELFTH PARLIAMENT-SECOND SESSION

## COMMITTEE ON DELEGATED LEGISLATION

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

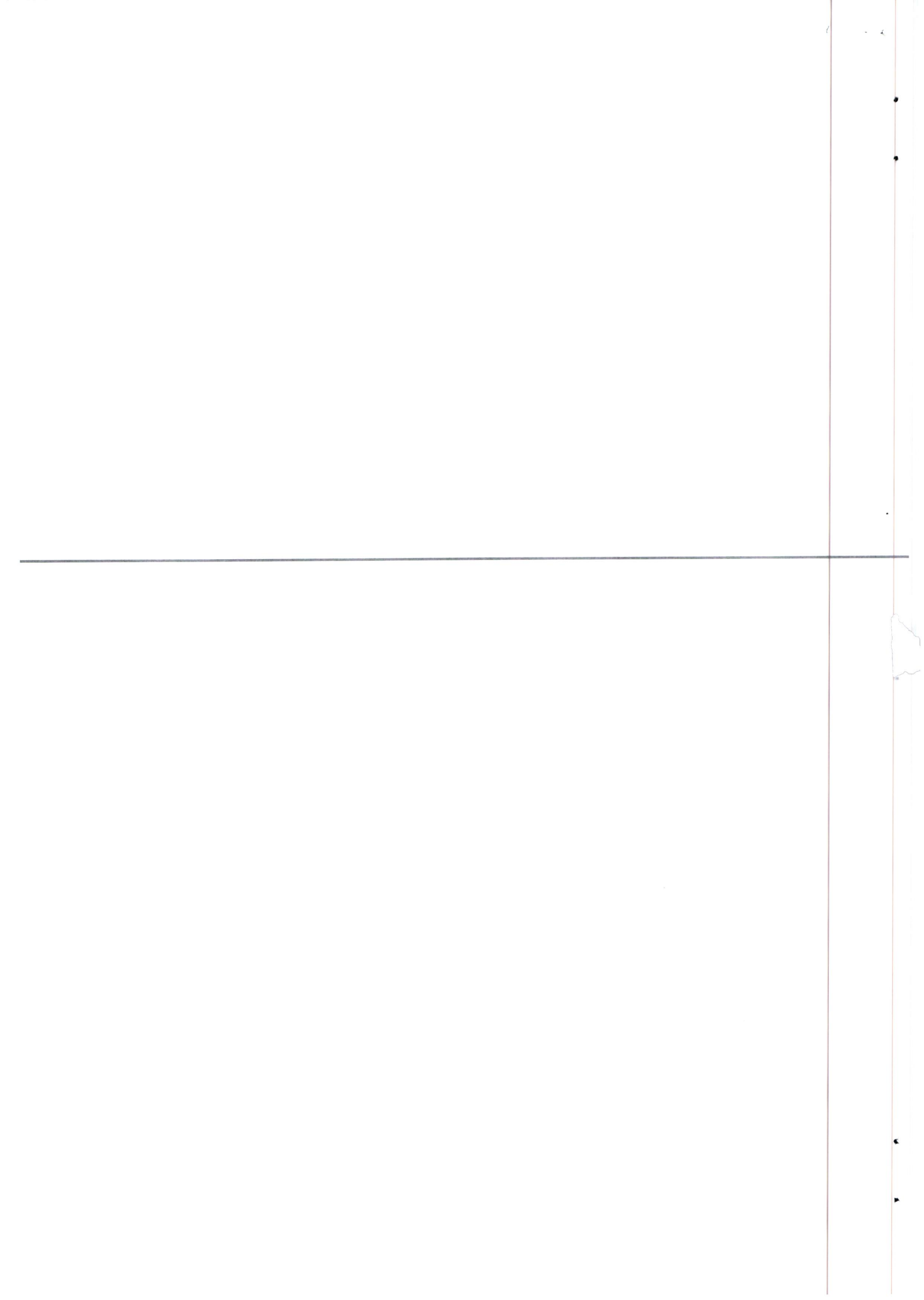
MARCH 2018

*Directorate of Committee Services*  
*The National Assembly,*  
*Parliament Buildings, Continental House, Room 402*  
**NAIROBI.**

11

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## ABBREVIATIONS

EM Explanatory Memorandum

NLC National Land Commission

SI Statutory Instruments

SO Standing Order

## CHAIRPERSON'S FOREWORD

In exercise of powers conferred by section 36 of the National Land Commission Act of 2012, the Chairperson of the National Land Commission published the National Land Commission (Investigation of Historical Injustices) Regulations, 2017 on 6<sup>th</sup> October, 2017 vide LN No.258/2017.

Following publication, the Regulations were tabled in the House on 7<sup>th</sup> November, 2017 and immediately committed to the Select Committee on Delegated Legislation for review and scrutiny in line with section 12 of the Statutory Instruments Act, 2013 and Standing Order 210 of the National Assembly Standing Orders.

The Committee conferred with the Regulatory Making Authority in a meeting held on Thursday, 15<sup>th</sup> February 2017. Further, the Committee considered the Regulations in its sitting held on Thursday, 15<sup>th</sup> March, 2018 and made the decision to annul the Regulations for reasons advanced herein.

The Committee wishes to express its gratitude to the Speaker for the support accorded to the Committee in the discharge of its mandate. The Committee also wishes to record its appreciation to the Office of the Clerk of the National Assembly and the supporting Directorates for providing technical support which was vital in the consideration of this instrument.

On behalf of the Members of the Select Committee on Delegated Legislation and pursuant to Standing Order 210 (4), it is my pleasure and duty to present to the House the Committee's Report on the National Land Commission (Investigation Of Historical Injustices) Regulations, 2017.

Signed.....

*Gladys Boss Shollei*

Date.....

*27th March 2018*

**HON. GLADYS BOSS SHOLLEI, CBS, MP**  
**CHAIRPERSON, COMMITTEE ON DELEGATED LEGISLATION**

## EXECUTIVE SUMMARY

The National Land Commission (Investigation of Historical Injustices) Regulations, 2017 was tabled in the House on 7<sup>th</sup> November, 2017 and immediately committed to the Select Committee on Delegated Legislation for review and scrutiny in line with section 12 of the Statutory Instruments Act, 2013 and Standing Order 210 of the National Assembly Standing Orders.

Having conferred with Regulatory Making Authority and considered the Regulations, the Committee observed that they were published on 6<sup>th</sup> October, 2017 and submitted to the National Assembly on 16<sup>th</sup> October 2017. This was considered to be within the statutory timeline contemplated under section 11(1) of the Statutory Instruments Act.

The Committee also observed that pursuant to section 13 (j) of the SI Act, the Commission appears to have had **unjustifiable delay in the publication** and laying before Parliament of the Regulations. The Commission also published the Regulations before the approval of Parliament, contrary to section 36 of the NLC Act which provides that the Regulations shall be tabled before Parliament for approval.

It was further observed that the Explanatory Memorandum did not meet the requirements of the Schedule to the SI Act on public participation. The Schedule stipulates that the Memorandum should contain a brief explanation of who was consulted, over what period and with what responses. It further adds that there ought to be some analysis of the outcome and the Department's policy response to the opinions expressed (e.g. "60% supported the proposal, of the rest, the main objections were on the proposed fee structure and the Department has responded to this by agreeing to phase in the increase over 3 years").

**In view of the foregoing, the Committee recommends that the National Land Commission (Investigation of Historical Land Injustices) Regulations, 2017 be annulled *in toto* pursuant to SO 210 (4) (b) for contravening –**

- i. **Art.118 of the Constitution of Kenya and section 11 (2) of Statutory Instruments Act on public participation;**
- ii. **section 36 of the National Land Commission Act, 2012 on tabling of the Regulations before Parliament for approval; and**
- iii. **section 13 (j) of the SI Act on unjustifiable delay in the publication and laying before Parliament of the Regulations.**

## 1.0 PREFACE

The Select Committee on Delegated Legislation is established pursuant to *Standing Order No. 210* and is mandated to consider statutory instruments submitted to Parliament for consideration. The Committee is expected to consider in respect of any statutory instrument, whether it is in accordance with the provisions of the Constitution, the Act pursuant to which it is made or other relevant written laws.

### 1.1 Mandate of the Committee

The Committee is mandated to consider in respect of any statutory instrument, whether it: -

- (i) is in accordance with the provision of the Constitution, the Act pursuant to which it is made or other relevant written laws;
- (ii) infringes on fundamental rights and freedoms of the public;
- (iii) contains a matter which in the option of the Committee should more properly be dealt with in an Act of the Parliament;
- (iv) contains imposition of taxation;
- (v) directly or indirectly bars the jurisdiction of the court;
- (vi) gives retrospective effect to any of the provision in respect to which the Constitution does not expressly give any such power;

The Committee is equally tasked with the responsibility of scrutinizing statutory instruments, whether: -

- (i) it involves expenditure from the consolidated fund or other public revenues;
- (ii) is defective in its drafting or for any reason form or part of the statutory instrument calls for any elucidation;
- (iii) appears to make some unusual or unexpected use of the power conferred by the Constitution or the Act pursuant to which it is made;
- (iv) appears to have had unjustifiable delay in its publication or laying before Parliament;
- (v) makes rights, liberties or obligations unduly dependent upon non-renewable decisions;
- (vi) makes rights, liberties or obligations unduly dependent insufficiently defined administrative powers;
- (vii) inappropriately delegates legislative powers;



- (viii) imposes a fine, imprisonment or other penalty without express authority having been provided for in the enabling legislation;
- (ix) appears for any reason to infringe on the rule of law;
- (x) inadequately subjects the exercise of legislative power to Parliamentary scrutiny; and,
- (xi) accords to any other reason that the Committee considers fit to examine.

## 1.2 Committee Membership

The Committee on Delegated Legislation as constituted by the House in December 2017 comprises of the following Members: -

**Hon. Gladys Boss Shollei, MP - Chairperson**

**Hon. Fatuma Gedi, MP - Vice- Chairperson**

Hon. Alice Wahome, MP

Hon. Robert Mbui, MP

Hon. Daniel Maanzo, MP

Hon. Muriuki Njagagua, M.P

Hon. Isaac Waihenya Ndirangu, MP

Hon. Alfred Bernard Wekesa Sambu, MP

Hon. William Kamket Kassait, MP

Hon. Ronald Kiprotich Tonui, MP

Hon. Munene Wambugu, MP

Hon. Charles Gimose, MP

Hon. Abdi Koropu Tepo, MP

Hon. George Gitonga Murugara, MP

Hon. Jennifer Shamalla, MP

Hon. Muturi Kigano, MP

Hon. Martha Wangari, MP

Hon. Patrick Kariuki Mariru, MP

Hon. Timothy Wanyonyi, MP

Hon. William Kamoti, MP

Hon. Wilberforce Oundo, MP

Hon. Sammy Seroney, MP

### 1.3 Committee Secretariat

The secretariat comprises of the following members of staff;

Mr. Susan Maritim	<b>Clerk Assistant I (Team Leader)</b>
Mr. Jimale Mohamed	<b>Clerk Assistant</b>
Mr. Wilson Dima	<b>Senior Legal Counsel</b>
Ms. Mugure Gituto	<b>Legal Counsel</b>
Ms. Anne Kigoro	<b>Research &amp; Policy Analyst</b>
Mr. Stanley Lagat	<b>Serjeant-at-Arms</b>

## **2.0 CONSIDERATION OF THE INSTRUMENTS**

### **2.1 Introduction and Background Information**

The National Land Commission is established by section 67 of the Constitution of Kenya to among other things; manage public land on behalf of the National and County Governments.

Because of the weak administration process and disparities in land ownership and conflict, land remains a sensitive and complex issue for Kenyans. Resolution of historical injustices, therefore, will lower political temperature and enhance national cohesion and peace.

The **purpose of the Regulations** is to;

- (i) give effect to Article 67(2) (e) of the Constitution and section 15(1) of the National Land Commission Act, 2012 as amended by section 38 of the Land Laws (Amendment) Act, 2016;
- (ii) allow the Commission to initiate investigations on its own initiative or upon a complaint into historical land injustices and recommend appropriate redress.
- (iii) outline the procedure for investigation and resolution of claims and procedure for conduct of hearings; and
- (iv) provide for the manner in which the Commission shall receive, admit investigative and recommend redress.

### **2.2 Making of the Rules and Committal to the Committee on Delegated Legislation**

In exercise of powers conferred by section 36 of the National Land Commission Act of 2012, the Chairperson of the National Land Commission published the National Land Commission (Investigation of Historical Injustices) Regulations, 2017 on 6<sup>th</sup> October, 2017 vide LN No.258/2017.

The Regulations were prepared pursuant to the requirements of the Constitution (Article 67(2) (e), the National Land Commission 2012, Land Laws Amendment Act 2016 and the Statutory Instruments Act, 2013.

Following publication, the Regulations were tabled in the House on 7<sup>th</sup> November, 2017 and immediately committed to the Select Committee on Delegated Legislation for review and

scrutiny in line with section 12 of the Statutory Instruments Act, 2013 and Standing Order 210 of the National Assembly Standing Orders.

### 2.3 Consideration of the Instruments

The Committee considered the Regulations pursuant to the provisions of Article 67(2)(e) and Article 94(6) of the Constitution, the National Land Commission Act (No. 5 of 2012) and the Land Laws (Amendment) Act of 2016 which empowers the Commission to make the Regulations, the Statutory Instruments Act, (No. 23 of 2013) and the Interpretation and General Provisions Act, (Chapter 2) which regulate the making, scrutiny and publication of the Regulations.

The Committee scrutinized the Regulations in its sittings held on 17<sup>th</sup> January, 2018 and Tuesday, 13<sup>th</sup> February, 2018 in which the regulatory making authority, the National Land Commission, was in attendance pursuant to section 16 of the Statutory Instruments Act on conferment before tabling the Report. Further, the Committee considered the Regulations in its sitting held on Thursday, 15<sup>th</sup> March, 2018 and made the decision to annul the Regulations for reasons advanced herein.

### 3.0 COMMITTEE OBSERVATIONS

Having considered the said Regulations, the Committee observed THAT –

- (1) the Regulations conform to the provisions of the Constitution;
- (2) the enabling provision being section 36 of the National Land Commission Act is indicated in the Regulations;
- (3) the Regulations are unlikely to impose significant costs on the community or a part of the community and hence the regulatory impact assessment was not prepared for this Regulation pursuant to section 6;
- (4) pursuant to section 11 of the SI Act, the Regulations were also transmitted to the National Assembly within seven sitting days after the publication of the Regulations together with the explanatory memorandum;
- (5) **the Explanatory Memorandum did not meet the requirements of the Schedule to the SI Act on public participation. The Schedule stipulates that the Memorandum should contain a brief explanation of who was consulted, over what period and with**

what responses. It further adds that there ought to be some analysis of the outcome and the Department's policy response to the opinions expressed (e.g. "60% supported the proposal, of the rest, the main objections were on the proposed fee structure and the Department has responded to this by agreeing to phase in the increase over 3 years"); and

- (6) pursuant to section 13 (j) of the SI Act, the Commission appears to have had unjustifiable delay in the publication and laying before Parliament of the Regulations; and
- (7) the Commission published the Regulations before the approval of Parliament, contrary to section 36 of the NLC Act which provides that the Regulations shall be tabled before Parliament for approval.
- (8) Section 15(3)(e) provides that a historical land claim may only be admitted, registered and processed by the Commission if it is brought within five years from the date of commencement of the National Land Commission Act. The aforesaid Act commenced on 2<sup>nd</sup> May, 2012. The period referred to in section 15(3) (e) is therefore deemed to have lapsed on 2<sup>nd</sup> May, 2017; and

The Commission in its citation makes reference to "Rules" as opposed to "Regulations" as they are generally referred;

#### **4.0 RECOMMENDATION**

Having considered the National Land Commission (Investigation of Historical Land Injustices) Regulations, 2017 against the provisions of Article 67(2)(e) and Article 94(6) of the Constitution, the National Land Commission Act (No. 5 of 2012) and the Land Laws (Amendment Act of 2016, the Statutory Instruments Act, 2013 and the Interpretation and General Provisions Act, (Chapter 2) which regulates the making, scrutiny and publication of the Regulations, the Committee **recommends that pursuant to SO 210 (4) (b) and section 15 (1) of the SI Act, the Regulations be annulled *in toto* for contravening –**

- i. **Art.118 of the Constitution of Kenya and section 11 (2) of Statutory Instruments Act on public participation;**
- ii. **section 36 of the National Land Commission Act, 2012 on tabling of the Regulations before Parliament for approval; and**

**iii. section 13 (j) of the SI Act on unjustifiable delay in the publication and laying before Parliament of the Regulations.**

## ANNEXURES

- (i) Minutes of Committee
- (ii) Sitings
- (iii) Adoption List
- (iv) Copy of the National Land Commission (Investigation of Historical Injustices) Regulations, 2017

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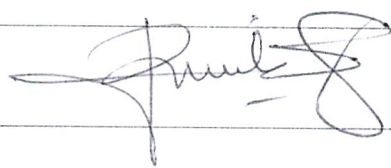
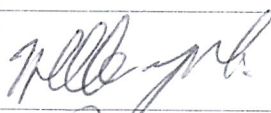
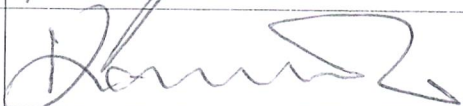
COMMITTEE ON DELEGATED LEGISLATION

ADOPTION LIST


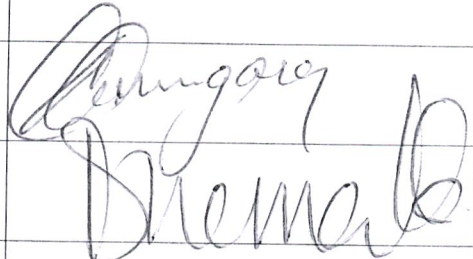
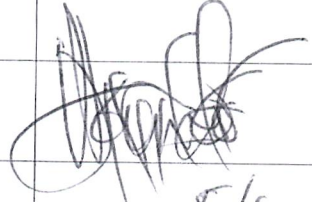

REPORT ON THE NATIONAL LAND COMMISSION  
(INVESTIGATION OF HISTORICAL INJUSTICES) REGULATIONS, 2017

We, the undersigned, hereby affix our signatures to this Report to affirm our approval:

DATE: 24<sup>th</sup> March 2018

	HON. MEMBER	SIGNATURE
1.	Hon. Gladys Boss-Shollei, MP(Chairperson)	
2.	Hon. Fatuma Ali Gedi, MP (Vice Chairperson)	
3.	Hon. Alfred Sambu, MP	
4.	Hon. Isaac Waihenya Ndirangu, MP	
5.	Hon. Robert Mbui, MP	
6.	Hon. Alice Wahome, MP	
7.	Hon. Daniel Maanzo, MP	
8.	Hon. Muriuki Njagagua, MP	
9.	Hon. Martha Wangari, MP	
10.	Hon. Timothy Wanyonyi, MP	
11.	Hon. William Kamoti, MP	

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	HON. MEMBER	SIGNATURE
12.	Hon. Patrick Kariuki Mariru, MP	
13.	Hon. Ronald Kiprotich Tonui, MP	
14.	Hon. William Kamket Kassait, MP	
15.	Hon. Munene Wambugu, MP	
16.	Hon. Charles Gimose, MP	
17.	Hon. Abdi Tepo, MP	
18.	Hon. George Gitonga Murugara, MP	
19.	Hon. Jennifer Shamalla, MP	
20.	Hon. Muturi Kigano, MP	
21.	Hon. (Dr.) Wilberforce Oundo, MP	
22.	Hon. Sammy Seroney, MP	

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**MINUTES OF THE 13<sup>TH</sup> SITTING OF THE COMMITTEE ON DELEGATED LEGISLATION HELD ON THURSDAY, 15<sup>TH</sup> MARCH, 2018, AT 11.00 A.M. IN THE SMALL DINING ROOM, NEW WING, MAIN PARLIAMENT BUILDINGS**

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**PRESENT**

1. **Hon. Fatuma Gedi, MP** - **Vice Chairperson**
2. Hon. Jennifer Shamalla, MP - (Chaired Meeting)
3. Hon. Daniel Maanzo, MP
4. Hon. George Gitonga Murugara, MP
5. Hon. William Kamoti, MP
6. Hon. Martha Wangari, MP
7. Hon. Ronald Kiprotich Tonui, MP
8. Hon. (Dr.) Wilberforce Oundo, MP
9. Hon. Abdi Koropu Tepo, MP
10. Hon. William Kamket Kassait, MP
11. Hon. Munene Wambugu, MP
12. Hon. Sammy Seroney, MP

**ABSENT WITH APOLOGY**

1. **Hon. Gladys Boss Shollei, CBS, MP** - **Chairperson**
2. Hon. Muriuki Njagagua, MP
3. Hon. Timothy Wanyonyi, MP
4. Hon. Charles Gimose, MP
5. Hon. Alice Wahome, MP
6. Hon. Robert Mbui, MP
7. Hon. Alfred Sambu, MP
8. Hon. Patrick Kariuki Mariru, MP
9. Hon. Isaac Waihenya Ndirangu, MP
10. Hon. Muturi Kigano, MP

**IN-ATTENDANCE**

**National Assembly Secretariat**

1. Ms. Susan Maritim - First Clerk Assistant
2. Mr. Jimale Mohamed - Third Clerk Assistant
3. Mr. Dima Dima - Senior Legal Counsel
4. Mr. Charles Ayari - Audio Officer
5. Ms. Mansura Ahmed - Secretary

**MIN.NO. CDL/086/2018: PRELIMINARIES**

Pursuant to Standing Order 188, the Members present elected Hon. Jennifer Shamalla, MP to chair the meeting, as proposed by Hon. George Murugara, MP and seconded by Hon. William Kamoti, MP.

Hon. Shamalla thereafter assumed the Chair and called the meeting to order at 11.25 a.m. Hon. George Gitonga Murugara, MP read the Prayer.

**MIN.NO. CDL/087/2018: ADOPTION OF THE PROGRAMME/AGENDA**

The Committee unanimously adopted the agenda as presented without amendments.

**MIN.NO. CDL/088/2018: CONFIRMATION OF MINUTES OF PREVIOUS MEETING**

The Minutes of the 12<sup>th</sup> sitting held on Tuesday 13<sup>th</sup> March, 2018 were confirmed as true record of the deliberations after being proposed and seconded by Hon. Sammy Seroney, MP and Hon. William Kamoti, MP respectively.

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**MIN.NO. CDL/089/2018: MATTERS ARISING**

**Under MIN.NO. CDL /084/2018**

**a) Validation Workshop for Intergovernmental Alternative Dispute Resolution Regulations (Ministry of Devolution and Planning)**

Members were requested to confirm their travel schedules for the validation workshop in Mombasa.

**b) Proposed Workshop on Lands Regulations ( Ministry of Lands and Physical Planning)**

The Committee reconfirmed participation for the retreat and resolved to undertake the activity between Wednesday 11<sup>th</sup> and Sunday 15<sup>th</sup> April, 2018. The Chairperson will request the Speaker's approval to sit outside Parliament on Thursday, 12<sup>th</sup> April, 2018.

**c) Meeting with Kenya Defence Forces**

The Committee was informed that the meeting with Cabinet Secretary was rescheduled to Tuesday, 20<sup>th</sup> March, 2018 at 11.00 a.m. on their request.

**MIN.NO. CDL/090/2018: CONSIDERATION OF CIVIL AVIATION (REMOTE PILOTED AIRCRAFT SYSTEMS) REGULATIONS, 2017**

The Committee deferred consideration of Civil Aviation (Remote Piloted Aircraft Systems) Regulations, 2017 to a later date to allow the secretariat to review the documents submitted by the

Ministry of Transport, Housing, Infrastructure & Urban Development including a more detailed Explanatory Memorandum and evidence of adequate public participation.

The Committee observed that Remotely Piloted Aircraft Systems (RPAS) are not defined in the parent Act (the Civil Aviation Act) and therefore in contravention of section 13 of the SI Act. The Committee's Legal Counsel will advise the Committee on the matter in the next meeting.

**MIN.NO. CDL/091/2018:                      CONSIDERATION OF TRAFFIC (AMENDMENT)  
NO. 3 REGULATIONS, 2017**

The Committee was informed the Committee THAT –

The Traffic Rules, 1953 were published pursuant to the provisions of the Traffic Act Cap 403 (the Act). Section 17 (3) of the Act provides that the owner of any vehicle or trailer is required to have it examined by an inspector and the owner shall pay such fee as may be prescribed. The prescribed fees were last reviewed in 1994 and the applicable inspection fee was set at Kshs. 1,000 for all vehicles regardless of the size.

The present amendment to the Traffic Rules, 1959 seeks to:

- (a) review the inspection fee charged from a constant figure of Kshs. 1,000 for every vehicle to a differentiated fee that takes into account the engine capacity and weight of the relevant vehicles;
- (b) support the modernization, rehabilitation and maintenance of motor vehicle inspection centres; and
- (c) support the ultimate goal of ensuring that the vehicles on the road are road worthy; and

On public participation, the National Transport and Safety Authority (NTSA) issued a public notice of the intended amendments to three newspapers with national circulation seeking public comments. They also indicate that they held public forums in undisclosed counties.

**Committee Observations**

The Committee observed THAT –

- (i) the Traffic (Amendment) Rules were published on 19<sup>th</sup> December, 2017 and laid before the National Assembly on 27<sup>th</sup> February, 2018. This was within the statutory timeline contemplated under section 11(1) of the Statutory Instruments Act;
- (ii) the Regulations are unlikely to impose significant costs on the community or a part of the community and hence the regulatory impact assessment was not prepared for these Regulations pursuant to section 6 of the SI Act;

- (iii) annexed to the Rules was an explanatory memorandum prepared by the National Transport and Safety Authority demonstrating the extent to which consultations were undertaken in the making of the Regulations;
- (iv) the rules comply with all the relevant considerations contained in section 13 of the Statutory Instruments Act; and
- (v) the fees may impose liabilities to the citizens; and

The Committee noted with concern that the regulatory-making authority did not undertake adequate stakeholder consultation and engagement before publishing the Regulations. In this regard, the Committee observed that by inviting members of the public for comments through the print media only, some sections of the public were disadvantaged, particularly those with limited or no access to newspapers.

The Committee also noted that the Regulations lack clarity and are ambiguous.

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**Resolution**

The Committee therefore resolved to annul the Traffic (Amendment) (No. 3) Rules, 2017 *in toto*, pursuant to SO 210 (4) (b) for lack of clarity, ambiguity and inadequate public participation.

**MIN.NO. CDL/092/2018:                      CONSIDERATION OF COMPANIES (GENERAL) (AMENDMENT) REGULATIONS, 2018 AND THE INSOLVENCY (AMENDMENT) REGULATIONS, 2018**

The committee considered the two Regulations and observed THAT –

- a) they were published within the statutory timeline contemplated under section 11(1) of the Statutory Instruments Act;
- b) The Regulations are unlikely to impose significant costs on the community or a part of the community and hence the regulatory impact assessment was not prepared for this Regulation pursuant to section 6 of the SI Act;
- c) an explanatory memorandum prepared by the Attorney General was annexed to both Regulations. However, it is not clear how stakeholders outside the Business Registration Service Department were involved in the preparation of the aforesaid amendments to the existing Regulations and if their submissions were included or considered in the published Regulations.
- d) the Regulations comply with all the relevant considerations contained in section 13 of the Statutory Instruments Act save that the number of the amendment needs to be included in the title for proper sequencing in the Companies (General) Regulations. The Committee has also previously considered amendments to the Companies (General) Regulations.



The Committee also observed that the Regulations are friendly to investors because they seek to simplify the process of company registration.

**Resolution**

The Committee resolved to urgently confer with the regulatory-making authority, the Attorney General (Registrar General of Companies) pursuant to section 16 of the Statutory Instruments Act, before reporting to the House on its consideration of the Regulations. The meeting is scheduled for Thursday, 22 March, 2018 at 11.00 a.m. in Parliament Buildings.

**MIN.NO. CDL /093/2018: NATIONAL LAND COMMISSION  
(INVESTIGATION OF HISTORICAL INJUSTICES)  
REGULATIONS, 2017**

The Committee resolved to annul the Regulations for the following reasons:


- (i) inadequate public participation; and
- (ii) failure to submit the Regulations **before Parliament for approval** contrary to section 36 of the NLC Act and section 13 (j) of the Statutory Instruments Act.
- (iii) The Committee was informed that the CEO, National Lands Commission wrote to the Committee to confirm that further to the meeting with the Committee on 15<sup>th</sup> February, 2018, the Commission, through paid advertisement, on 27<sup>th</sup> February, 2018 sought public and stakeholder views on the said Regulations. The Commission will thereafter resubmit the Regulations to Parliament pursuant to section 36 of the NLC Act and section 13 (j) of the Statutory Instruments Act.

**MIN.NO. CDL /094/2018: ANY OTHER BUSINESS**

The Committee resolved to discuss the matter offoreign travel and venues for retreats in the Mombasa meeting of 24<sup>th</sup> March, 2018.

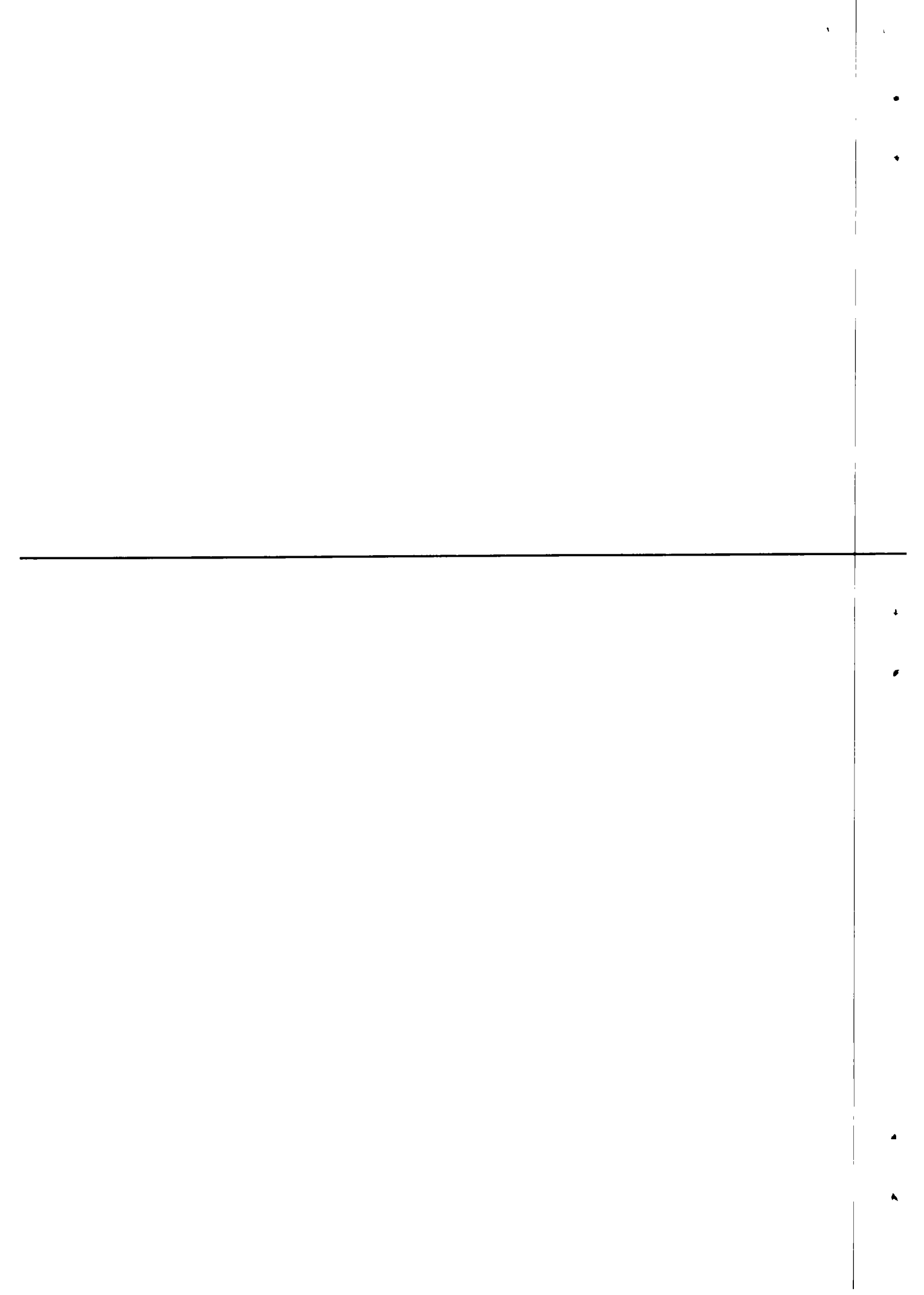
**MIN.NO. CDL /095/2018: ADJOURNMENT**

There being no other business, the meeting was adjourned at 12.30 pm until Tuesday, 20 March, 2018 at 11am.

*FOR* Signed:.....  


Date: 27/3/2018.....

**HON. GLADYS BOSS-SHOLLEI, CBS, MP  
(CHAIPERSON)**



4

Delegated

**SPECIAL ISSUE**

2249

Kenya Gazette Supplement No. 154

6th October, 2017

(Legislative Supplement No. 77)

LEGAL NOTICE NO. 258

**THE NATIONAL LAND COMMISSION ACT**

(No. 5 of 2012)

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.

Citation.

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

Application.

3. In these Regulations, unless the context otherwise requires—

Interpretation.

“claim” means a grievance lodged with the Commission as contemplated in section 15(3) of the National Land Commission Act; 2012;

No. 5 of 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;

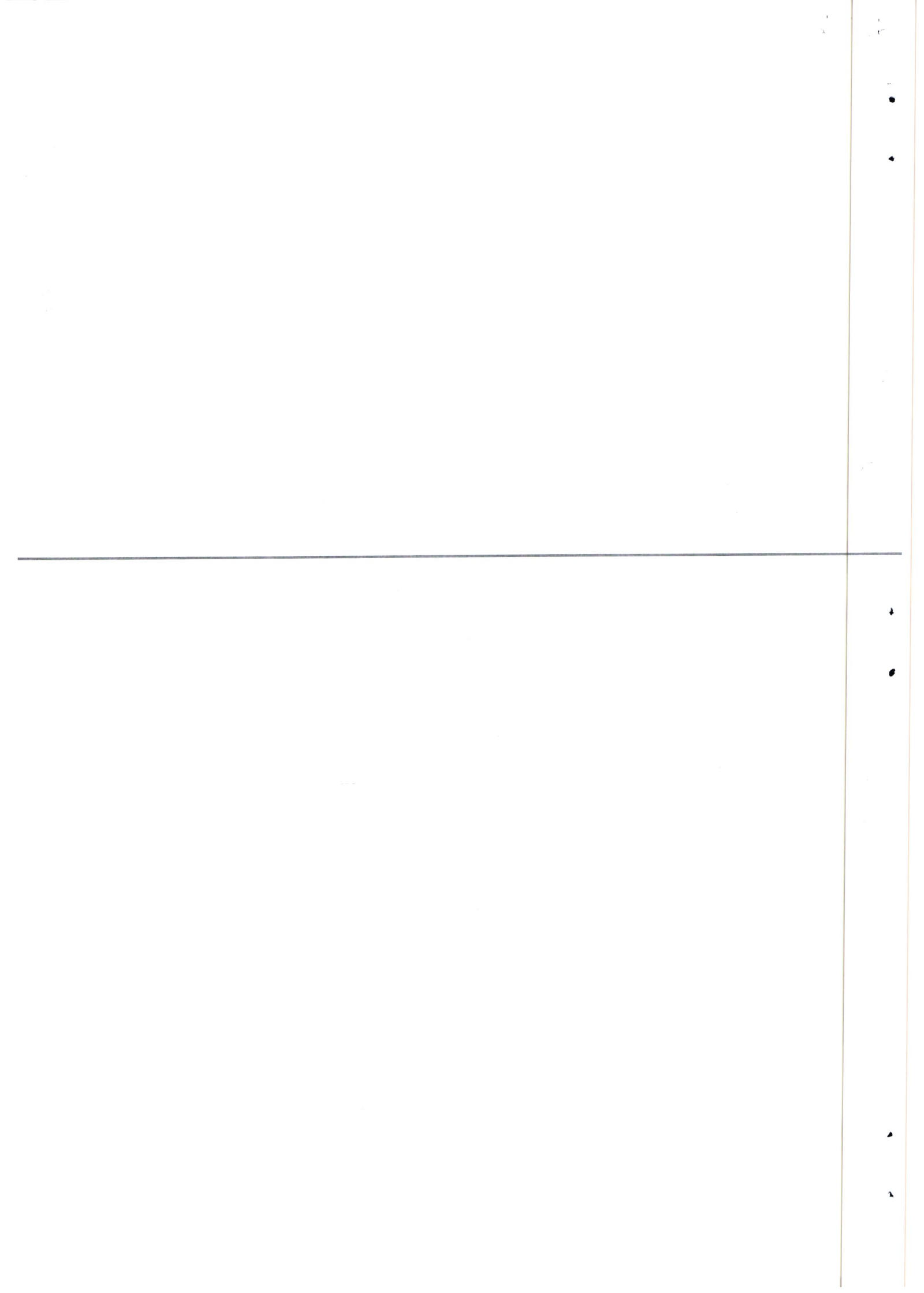
No. 27 of 2016

“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;

No. 19 of 2011

“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;



“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.

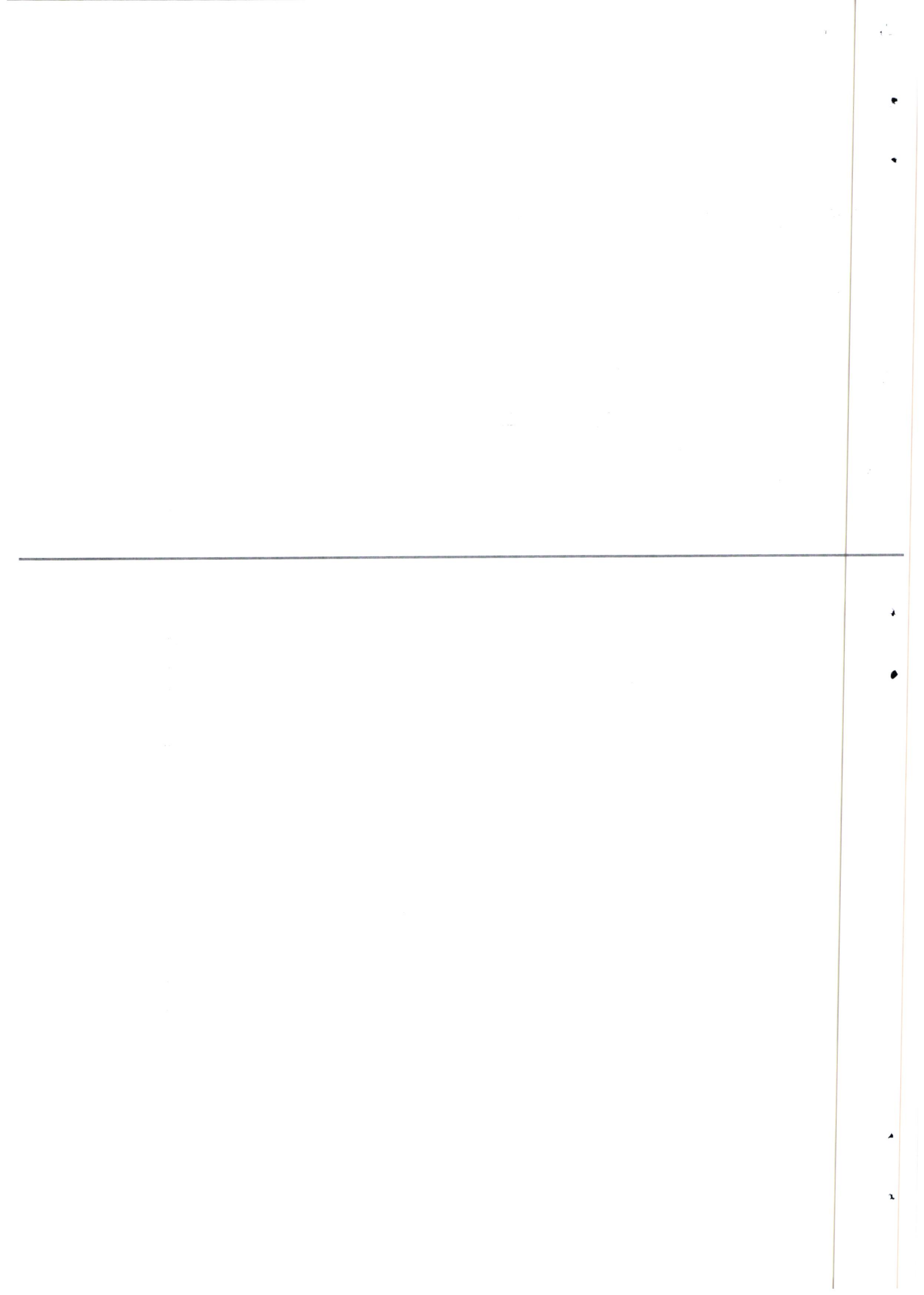
Requisition for information.

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

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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.

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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.

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SCHEDULE

FORM NLC /HLI/01

(r. 7(1) (4))

*The Historical Land Injustices Rules, 2016*

LOGGING 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 .....

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- .....  
 .....  
 .....  
 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 .....

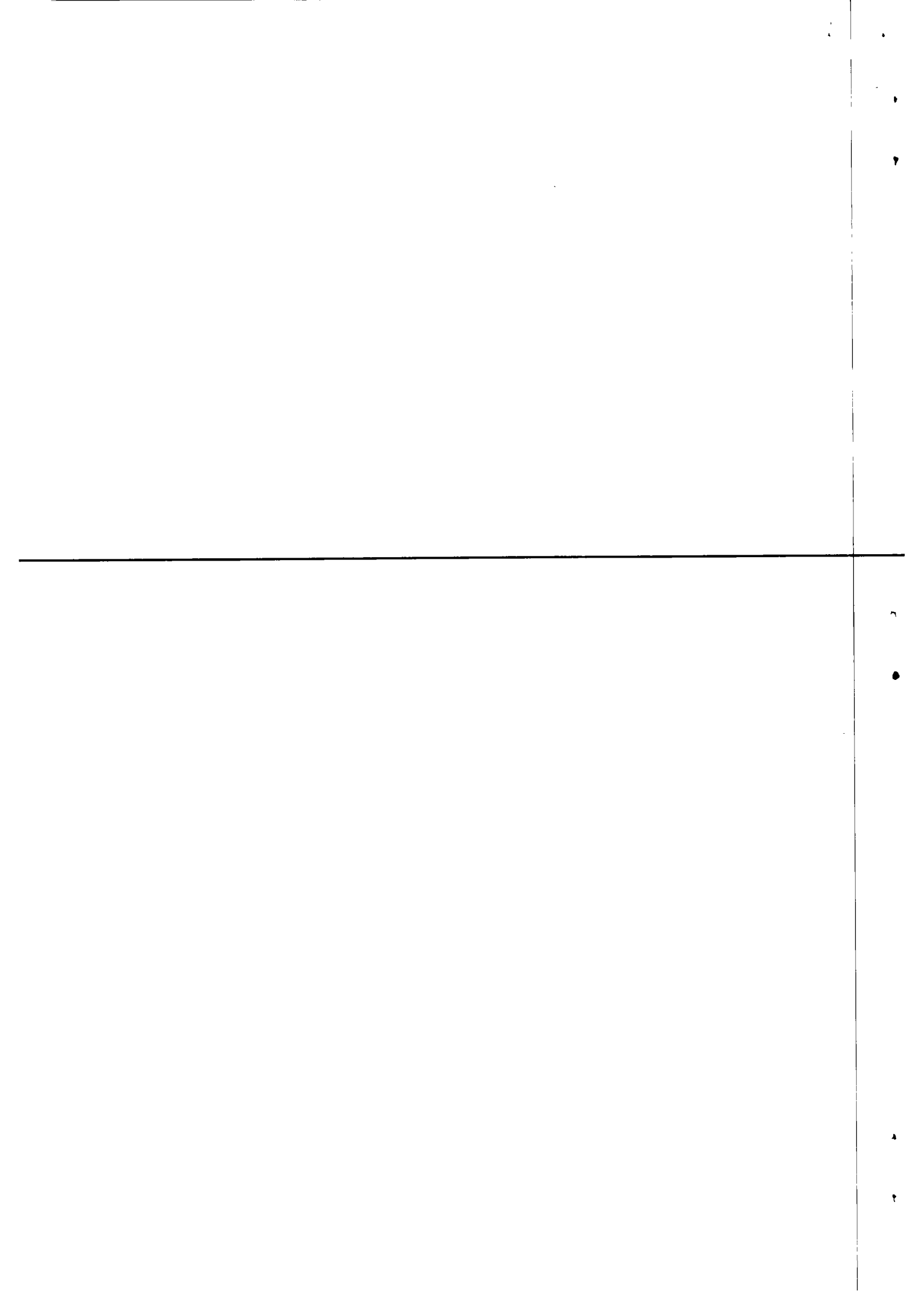
Part III – Suggested remedy

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, 12<sup>th</sup> 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))

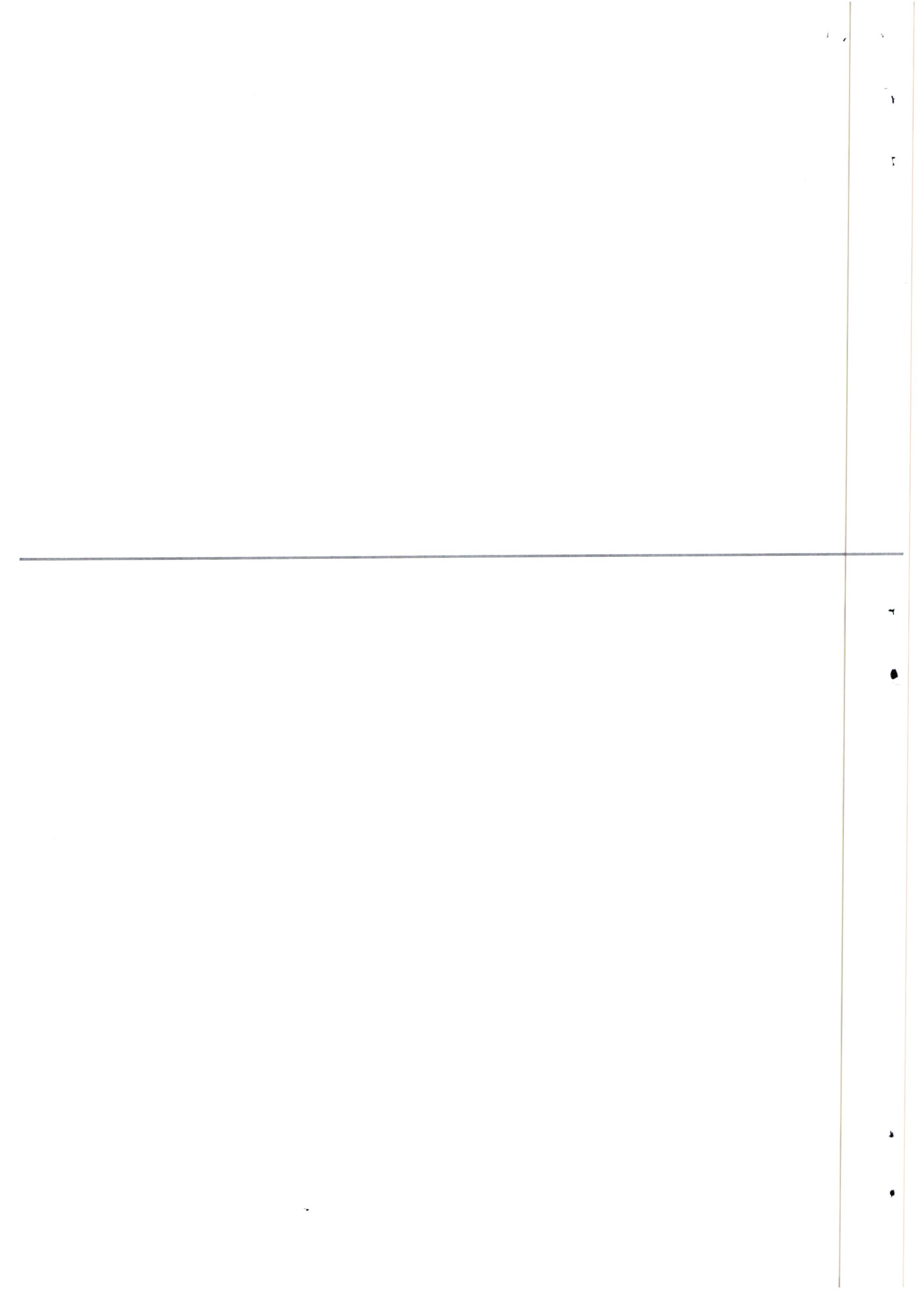
ADMISSIBILITY CHECKLIST FORM

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 <sup>th</sup> June 1895 and 27 <sup>th</sup> 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			





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

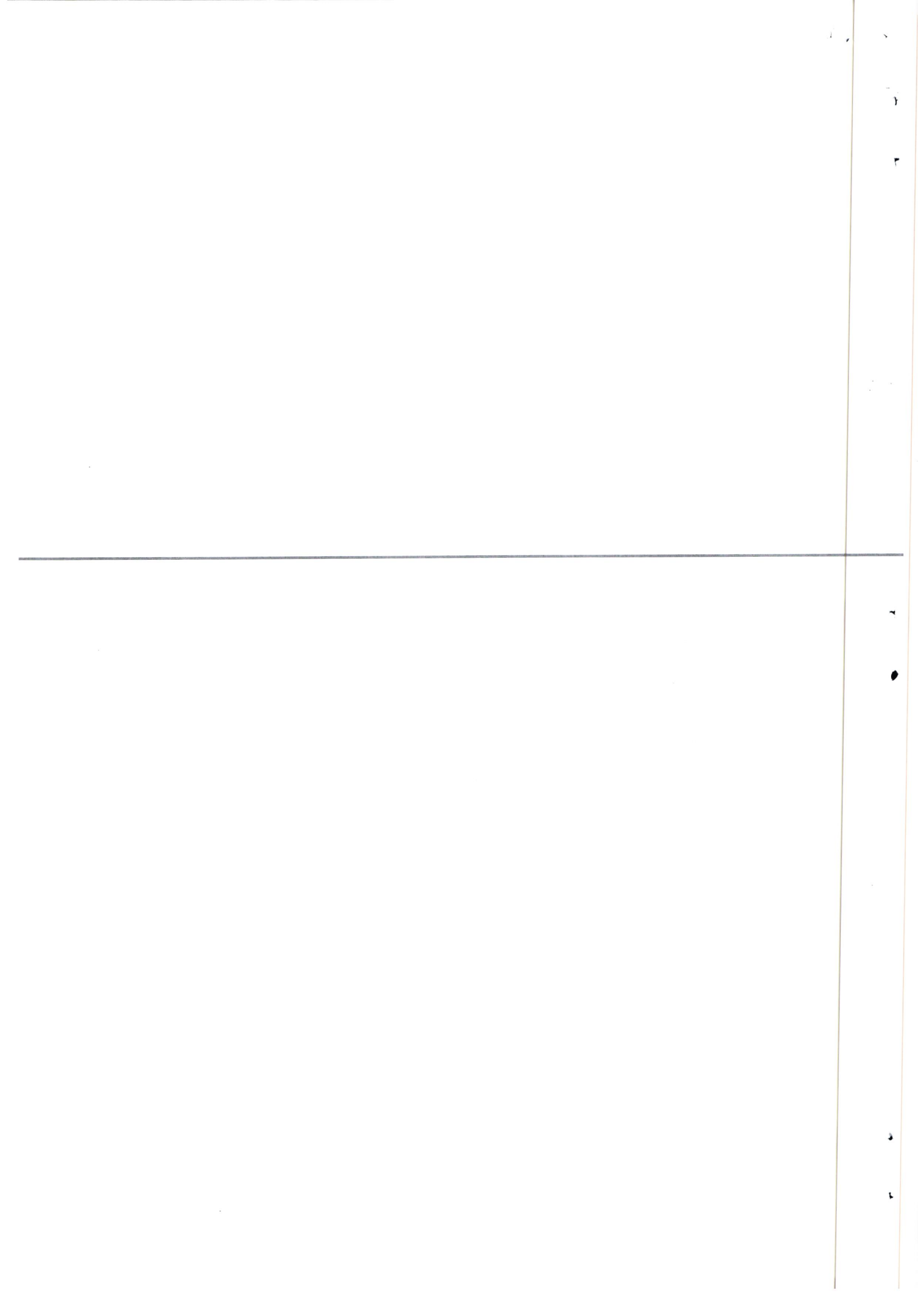
Claim Ref Number: ..... Date: .....

To: .....

Summary of Claim: .....

.....  
.....  
.....

You are hereby requested to appear before the Historical Land Injustices Committee sitting at.....on the..... day of .....20..... at.....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 at .....on.....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 .....

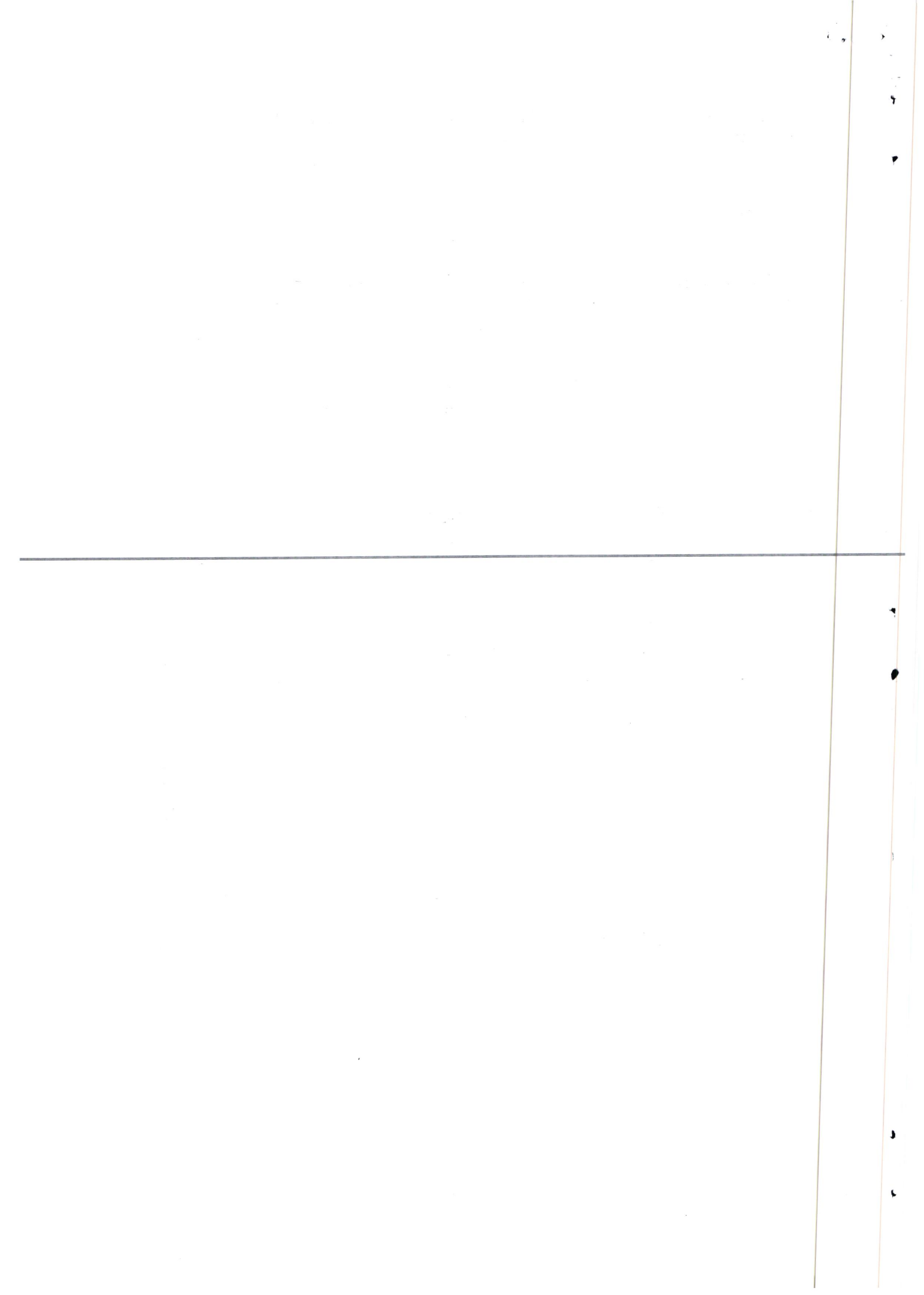
Date .....

Place .....

Time .....

Served by ..... Signature .....

MOHAMED SWAZURI,  
Chairperson,  
National Land Commission.



① D/Wittles / Ag Disp.

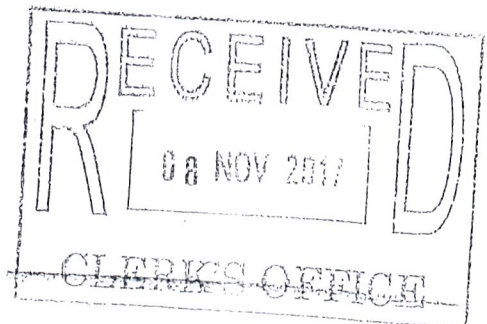
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② SUSAN  
pls deaf  
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08/11/17

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

**NOVEMBER: 2017**



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# 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,

THE UNIVERSITY OF CHICAGO

PHYSICS DEPARTMENT

PHYSICS 435

LECTURE 1

1.1. THE CLASSICAL LIMIT

1.2. QUANTUM MECHANICS

1.3. THE SCHRODINGER EQUATION

1.4. THE HEISENBERG UNCERTAINTY PRINCIPLE

1.5. THE DIRAC EQUATION

1.6. THE PAULI EXCLUSION PRINCIPLE

1.7. THE SPIN-ORBIT INTERACTION

1.8. THE FINITE POTENTIAL WELL

1.9. THE HARMONIC OSCILLATOR

1.10. THE HYDROGEN ATOM

1.11. THE ADDITION OF ANGULAR MOMENTUM

1.12. THE ADDITION OF SPIN

1.13. THE ADDITION OF ORBITAL ANGULAR MOMENTUM

1.14. THE ADDITION OF SPIN ANGULAR MOMENTUM

1.15. THE ADDITION OF TOTAL ANGULAR MOMENTUM

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1.42. THE ADDITION OF SPIN AND ORBITAL ANGULAR MOMENTUM



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.

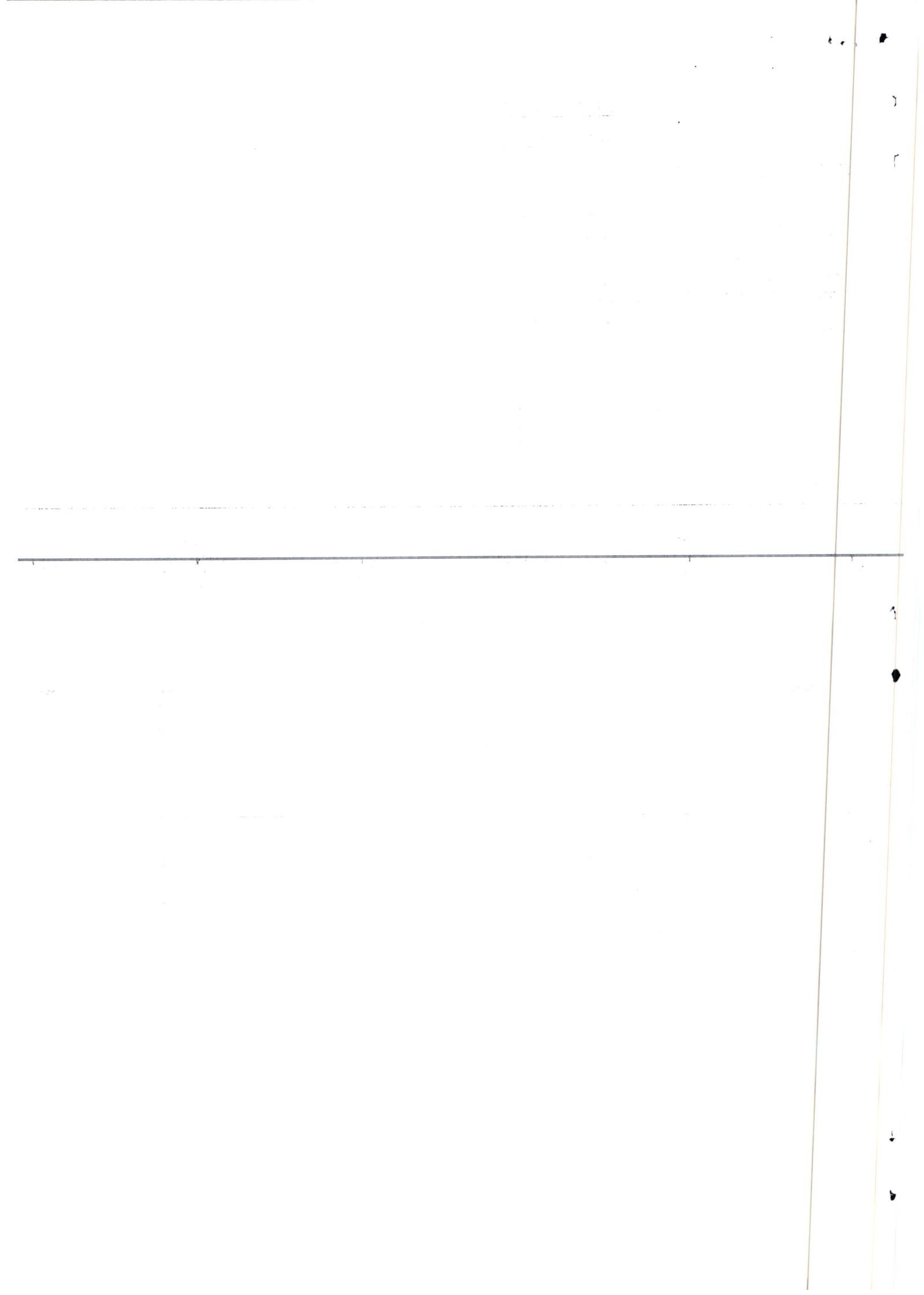
Under Agenda 4 of the KNDR process, pertinent processes have been undertaken and proved essential towards resolving Kenya's historical land injustices;

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**

