



The Historical Land Injustices Rules 2016

THE NATIONAL LAND COMMISSION (HISTORICAL LAND INJUSTICES RULES)

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Article 67(2) (e) of the Constitution of Kenya mandates the Commission to initiate investigation on its own initiative or on a complaint into historical land injustices and recommend appropriate redress. To give effect to this Constitutional requirement, section 15 of the National Land Commission Act as amended by Section 38 of the Land Laws amendment Act 2016, provides the legal framework for redressing Historical Land Injustices. The Commission therefore makes the following Rules—

PART I—PRELIMINARY

- | | |
|---------------------------|---|
| Citation and commencement | <p>1. These Rules may be cited as the National Land Commission Investigation of Historical Land Injustices Claims Rules and shall come into force on such date as the Commission shall publish. These rules only apply to historical land injustices that occurred between 15th June 1895 and 27th August 2010.</p> |
| Interpretation | <p>2. In these Rules, unless the context otherwise requires—</p> <p>“Act” means the National Land Commission Act;</p> <p>“Claim” means a grievance lodged with the Commission as contemplated in section 15(3) of the National Land Commission Act;</p> <p>“Claimant” means a person or group of persons who have lodged a claim pursuant to section 15(3)(a), of the National Land Commission Act;</p> <p>“Commission” means the National Land Commission established under Article 67 of the Constitution;</p> <p>“Commission Offices” means the headquarters of the Commission located in Nairobi or any other office the Commission may designate as its office either generally or for a particular purpose;</p> <p>“Commission Staff” means staff hired by the Commission or persons with the authority of the Commission are performing functions of the Commission;</p> <p>“Committee” means a Committee established to investigate claims arising out of historical land injustices and recommend appropriate redress;</p> <p>“Community” as defined by the Community Land Act 2016;</p> <p>“Court” means the Environment and Land Court established under the Environment and Land Court Act of 2011 and includes other courts having jurisdiction on matters relating to land;</p> <p>“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;</p> <p>“Historical Land Injustices” means a grievance which occurred between 15th June 1895 when Kenya became a protectorate under the British East African Protectorate and 27th August, 2010 when the Constitution of Kenya was promulgated and which have not been sufficiently resolved;</p> <p>“Interested person” means a person who is affected by a claim/remedy arising out of historical land injustices;</p> |



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“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;

“Remedy” means a redress prescribed under Section 15(9) of the Act;

“State Organ” has the meaning assigned to it under Article 260 of the Constitution;

Object of these Rules

3. The object of these Rules is to facilitate the expeditious, efficient, impartial investigations and just resolution of claims arising out of historical land injustices.

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

Power of the Commission to commence investigations

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

(2) A claim made to the Commission by a claimant before the coming into effect of these Rules shall be investigated in accordance with these Rules.

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

Commencement of investigation and resolution of claims

5. (1) The Commission may make a public request for submission of claims arising out of historical land Injustices from aggrieved parties.

(2) The Commission shall commence the process referred to in sub-rule (1) by—

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

Requisition for Information

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.

Lodging of a claim

7. (1) A claim shall be lodged using a Form, a letter, a Memorandum or through oral submission and shall include the following information—

- (a) The name, address and location of the claimant
- (b) A description of the property including parcel number or other appropriate description where no parcel number is available;



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- (c) The date of the claim;
- (d) The particulars of the respondent if any;
- (e) The grounds on which the claim is based and, or description of the injustice;
- (f) Number and particulars of witnesses they wish to call
- (g) Period when the injustice occurred;
- (h) Resultant effect;
- (i) Previous attempts made to resolve the injustice;
- (j) Suggested remedy;

(2) A claimant may provide any document necessary to support the claim.

(3) Where the claim is made at the instance of the Commission on its own motion or where it is made in writing, orally or otherwise by a claimant, the claim shall be reduced into writing by a designated officer of the Commission using Form NLC/HLI/01 in the First Schedule.

(4) The Commission shall acknowledge in writing each claim submitted using form NLC/HLI/02 in the First Schedule

Register of claims

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

(2) Upon vetting a claim, the Commission may—

- (a) Admit the claim;
- (b) Reject the claim with reasons;
- (c) Refer claimants to other relevant institutions/mechanisms
- (d) consolidate claims of a similar nature;

(3) For purposes of this rule, a letter by the Commission notifying the claimant of the Commission's decision shall be deemed to be notice.

Power to place a restriction

9. The Commission may place a restriction on any land that is subject to a historical land injustice claim pending investigation and determination.

Assessment of a claim

10. (1) Upon admission of a claim, the Commission shall, in writing and within ninety days, notify interested persons using Form NLC/HLI/04 in the First Schedule.



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Investigations of a claim

- 11.** Investigations will involve-
- (a) Background check including official searches where appropriate
 - (b) Site visits
 - (c) Review and Verifications of documents
 - (d) Interviews
 - (e) Public hearing if appropriate
 - (f) Consultative meetings with interested parties and persons of interest
 - (g) Research

PART III—CONDUCT OF HEARINGS

Establishment of Committee

- 12.** (1) The Commission shall 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.
- (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; and
 - (b) Shall take before the Commission’s chairperson the oath or affirmation of office set out in the Second Schedule.
 - (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.

Disqualification of a member of the Committee

- 13.** (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.
- (2) The interested person referred to in sub-rule (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 Chair shall make the determination and replace the Chairperson in respect of that matter only.

Conduct of hearings

- 14.** (1) Subject to section 6(2)(b) of the National Land Commission Act, the conduct of hearings and the procedure to be followed shall be under the



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direction of the Commission.

(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

Appearance at a hearing

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

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

Communication with the Commission

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

Disclosure of documents

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

(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.

Notice of hearing

18. (1) The Commission shall send a notice of hearing to all parties. Such notice shall require indications of special needs as contemplated in rule 20.

(2) The notice of hearing shall be sent by mail or electronically at least thirty days prior to the hearing date or within such other period as the Committee may determine is fair in the circumstances.

(3) where a party repeatedly fails to appear as notified, summons shall be issued

(4) Where the Commission is of the opinion that because 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, the Commission may instead 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 otherwise as the Commission may direct.



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- (5) A notice of hearing shall include—
- (a) A statement of the purpose of the hearing;
 - (b) A statement that where the party notified twice and does not attend and participate in the hearing, the Commission may proceed in their absence 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.
- Language
- 19.** (1) The languages to be used during a hearing shall be Kiswahili, English and Sign language or where appropriate other languages understood by claimants and witnesses.
- (2) The Commission shall, taking into account all the circumstances, provide competent interpreters for spoken or sign language, as the case may be, for parties or witnesses appearing before it.
- Special needs
- 20.** A party shall notify the Commission, as early as possible, of any special needs which they or their witnesses might have, including—
- (a) Where a person has a disability; or
 - (b) The need for a translator.
- Oath or affirmation
- 21.** A witness shall give evidence after taking an oath or affirmation as set out in the Second Schedule.
- Notice to appear
- 22.** (1) The Commission may give notice to any person to appear before it in relation to any investigation or proceedings using form NLC/HLI/05.
- (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.
- Protection of a witness
- 23.** (1) The Commission shall 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.



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(2) The evidence referred to in sub-rule (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.

Adjournment

24. 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.

Hearings

25. (1) Unless otherwise ordered by the Committee, where part of a hearing is closed to the public, it may only be attended by—

(a) Parties and their representatives;

(b) Witnesses;

(c) Staff of the Commission; and

(d) Such other persons as the Committee considers appropriate.

(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 sub-rule (2) shall be availed by order of the Committee.

Decision of the Commission

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

(2) A decision under sub-rule (1) shall be in writing and shall state—

(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;

(d) The remedy, if any, to which any of the parties is entitled



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- Recommendation **27.** (1) A determination made by the Commission shall be—
- (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 (60) working days from the date of determination
- (3) Upon making a recommendations the Commission shall within twenty one (21) days furnish the authorities mandated to act under the redress recommended with a copy of the determination for appropriate action.
- Publication of decisions **28.** (1) The Commission shall publish its decisions and recommendations—
- (a) In the Kenya Gazette; or
 - (b) In at least one newspaper with national circulation; or
 - (c) On its website.
- Appeals **29.** A person aggrieved by the decision of the Commission may, within 28 days of the publication of the decisions, appeal to the Court.

PART IV—MISCELLANEOUS PROVISIONS

- Power to seek assistance **30.** 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 powers under these rules.
- Venue of making claims **31.** A person shall make their claims to the Commission at any place that the Commission shall designate as Commission offices.

Dated thisday of.....2016

Prof. Muhammad A. Swazuri, OGW
Chairman,
National Land Commission



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FIRST SCHEDULE

LODGING A HISTORICAL LAND INJUSTICE CLAIM

REF. No.....

DATE:.....

(To be filled in duplicate)

Section One- Personal Details of Claimant(s)

1. Name of Claimant:Address.....
2. (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.....
.....



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.....
.....
8. Previous attempts to resolve the injustice.....

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

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

Telephone.....

Email.....

Postal Address.....

Section Two – Particulars and description of the Property

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

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

ii. Acreage (if applicable):

iii. County.....

iv. Sub-County.....

v. Location.....

vi. Sub-Location.....

vii. Village.....



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- viii. Physical features.....
- ix. Settlement/Development Characteristics.....
- x. Boundaries
- xi. Any other information the claimant wishes to provide.....
-

Section Three– 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

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ACKNOWLEDGEMENT FORM

Claim Ref Number:.....

To:

Date:

The Commission hereby acknowledges receipt of your Historical Land Injustice claim datedday of20.....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

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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			
	(d) Administrative action			
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			
	(e) Any other cause approved by the Commission including <ul style="list-style-type: none"> • Illegal acquisitions • Multiple allocations • Exclusion of source of livelihoods 			



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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

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ASSESSMENT OF CLAIM

Claim Ref Number:.....

To:

Date:

The Commission has assessed your Historical Land Injustice claim and finds it

a) Admissible for further investigation by the Commission. You will be contacted in due course

b) Not admissible for the following reasons.....

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

Name.....

Signed.....

CEO/SECRETARY TO THE COMMISSION



FORM NLC /HLI/05

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NOTICE TO APPEAR

Claim Ref Number:.....

To:

Date:

Summary of Claim:.....
.....
.....
.....

You are hereby requested to appear before the Historical Land Injustices Committee sitting aton.....day of20..... 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



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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 of20..... 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.....