

SPECIAL ISSUE

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REPUBLIC OF KENYA

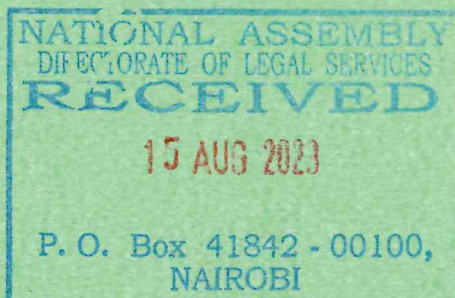
KENYA GAZETTE SUPPLEMENT

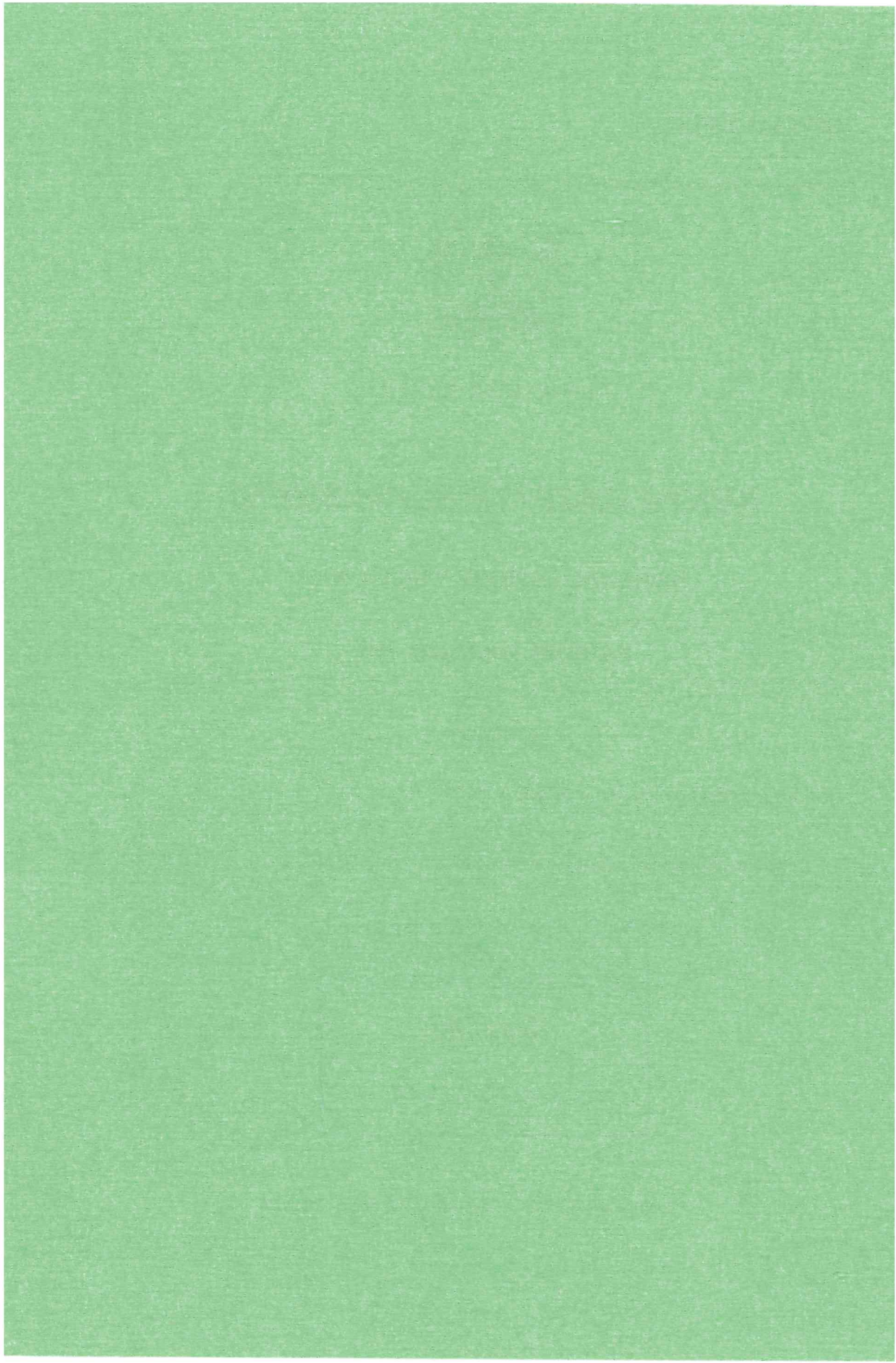
NATIONAL ASSEMBLY BILLS, 2023

NAIROBI, 3rd August, 2023

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**THE NATIONAL LAND COMMISSION
(AMENDMENT) BILL, 2023**

A Bill for

AN ACT of Parliament to amend the National Land Commission Act and for connected purposes

ENACTED by the Parliament of Kenya, as follows—

PART I—PRELIMINARY

1. This Act may be cited as the National Land Commission (Amendment) Act, 2023.

Short title.

2. The National Land Commission Act, (in this Act referred to as “the Principal Act”), is amended in section 14 by—

Amendment of section 14 of No. 5 of 2012.

(a) deleting the words “within five years of the commencement of this Act” appearing in subsection (1); and

(b) deleting subsection (9).

3. Section 15 of the Principal Act is amended—

Amendment of section 15 of No. 5 of 2012.

(a) in subsection (3) by deleting paragraph (e); and

(b) deleting subsection (11).

MEMORANDUM OF OBJECTS AND REASONS

Statement of Objects and Reasons for the Bill

The principal object of the Bill is to amend National Land Commission Act, No. 5 of 2012 to confer back to the National Land Commission the power to continue reviewing all grants or dispositions of public land to establish their propriety or legality since section 14 of the Act has since lapsed. As it is right now, the Commission is right now, the Commission is inhibited from addressing any complaints dealing with public land and providing redress even where there are clear and apparent cases of illegality in the dispositions relating to public land.

The Bill further seeks to allow the National Land Commission to continue admitting and processing historical land injustices claim since the Act provides that a historical land claim may only be admitted, registered and processed by the National Land Commission if it is brought within five years from the date of commencement of the Act.

Statement on delegation of legislative powers and limitation of fundamental rights and freedoms

This Bill does not delegate legislative powers neither does it limit fundamental rights and freedoms.

Statement on whether the Bill affects county governments

This is not a Bill concerning county governments in terms of Article 110(1) (a) of the Constitution as it does not affect the functions and powers of county governments as set out in the Fourth Schedule to the Constitution.

Statement on the financial implications of the Bill

The enactment of this Bill shall not occasion additional expenditure of public funds.

Dated the 7th March, 2023.

OWEN YAA BAYA,
Member of Parliament.

Section 14 of No. 5 of 2012 which it is proposed to amend—

14. Review of grants and dispositions

(1) Subject to Article 68(c)(v) of the Constitution, the Commission shall, within five years of the commencement of this Act, on its own motion or upon a complaint by the national or a county government, a community or an individual, review all grants or dispositions of public land to establish their propriety or legality.

(2) Subject to Articles 40, 47 and 60 of the Constitution, the Commission shall make rules for the better carrying out of its functions under subsection (1).

(3) In the exercise of the powers under subsection (1), the Commission shall give every person who appears to the Commission to have an interest in the grantor disposition concerned, a notice of such review and an opportunity to appear before it and to inspect any relevant documents.

(4) After hearing the parties in accordance with subsection (3), the Commission shall make a determination.

(5) Where the Commission finds that the title was acquired in an unlawful manner, the Commission shall, direct the Registrar to revoke the title.

(6) Where the Commission finds that the title was irregularly acquired, the Commission shall take appropriate steps to correct the irregularity and may also make consequential orders.

(7) No revocation of title shall be effected against a *bona fide* purchaser for value without notice of a defect in the title.

(8) In the exercise of its power under this section, the Commission shall be guided by the principles set out under Article 47 of the Constitution.

(9) The Commission may, where it considers it necessary, petition Parliament to extend the period for undertaking the review specified in subsection (1).

Section 15 of No. 5 of 2012 which it is proposed to amend—

15. Historical land injustices

(1) Pursuant to Article 67 (3) of the Constitution, the Commission shall receive, admit and investigate all historical land injustice complaints and recommend appropriate redress.

(2) For the purposes of this section, a historical land injustice means grievance which—

- (a) was occasioned by a violation of right in land on the basis of any law, policy, declaration, administrative practice, treaty or agreement;
- (b) resulted in displacement from their habitual place of residence;
- (c) 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;
- (d) has not been sufficiently resolved and subsists up to the period specified under paragraph (c); and
- (e) meets the criteria set out under subsection 3 of this section.

(3) A historical land claim may only be admitted, registered and processed by the Commission if it meets the following criteria—

- (a) it is verifiable that the act complained of resulted in displacement of the claimant or other form of historical land injustice;
- (b) the claim has not or is not capable of being addressed through the ordinary court system on the basis that—
 - (i) the claim contradicts a law that was in force at the time when the injustice began; or
 - (ii) the claim is debarred under section 7 of the Limitation of Actions Act, (Cap. 22) or any other law;
- (c) the claimant was either a proprietor or occupant of the land upon which the claim is based;
- (d) no action or omission on the part of the claimant amounts to surrender or renouncement of the right to the land in question; and
- (e) it is brought within five years from the date of commencement of this Act.

(4) A claim alleging historical land injustice shall be permissible if it was occasioned by—

- (a) colonial occupation;
- (b) independence struggle;

- (c) pre-independence treaty or agreement between a community and the government;
- (d) development-induced displacement for which no adequate compensation or other form of remedy was provided, including conversion of non-public land into public land;
- (e) inequitable land adjudication process or resettlement scheme;
- (f) politically motivated or conflict based eviction;
- (g) corruption or other form of illegality;
- (h) natural disaster; or
- (i) other cause approved by the Commission.

(5) When conducting investigations under subsection (1) into historical land injustices the Commission may —

- (a) request from any person including any government department such particulars, documents and information regarding any investigation, as may be necessary; or
- (b) by notice in writing, addressed and delivered by a staff of the Commission to any person, 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, and to produce such documents or objects in the possession, custody or under the control of such person and which are relevant to that investigation.

(6) Where a complainant is unable to provide all the information necessary for the adequate submission or investigation of a complaint, the Commission shall take reasonable steps to have this information made available.

(7) If at any stage during the course of an investigation, the Commission is of the opinion that the resources of the Commission may be more effectively utilized if all claims within a given area or township were to be investigated at the same time, the Commission shall cause to be published in the Gazette or in such other manner as the Commission may deem appropriate, a notice advising potential complainants of the decision and inviting them to lodge claims within a period specified in such notice.

(8) A claim in respect of a matter contemplated in subsection (7) shall not be lodged after the expiry of the period specified in the said notice.

(9) The Commission, after investigating any case of historical land injustice referred to it, shall recommend any of the following remedies —

- (a) restitution;
- (b) compensation, if it is impossible to restore the land;
- (c) resettlement on an alternative land;
- (d) rehabilitation through provision of social infrastructure;
- (e) affirmative action programmes for marginalized groups and communities;
- (f) creation of wayleaves and easements;
- (g) order for revocation and reallocation of the land;
- (h) order for revocation of an official declaration in respect of any public land and reallocation;
- (i) sale and sharing of the proceeds;
- (j) refund to *bona fide* third party purchasers after valuation; or
- (k) declaratory and preservation orders including injunctions.

(10) Upon determination of a historical land injustice claim by the Commission, any authority mandated to act under the redress recommended shall be required to do so within three years.

(11) The provisions of this section shall stand repealed within ten years.