

INVESTIGATION OF HISTORICAL LAND INJUSTICE CLAIMS

Section 15 of the National Land Commission Act as amended by section 38 of the Land Laws (Amendment) Act 2016 has opened the gates of the National Land Commission to:

Receive, admit and investigate all historical land injustice complaints and recommend appropriate redress.

National Land Commission has commenced the actualization of this section of the law by establishing a committee to carry out the task. The committee through a secretariat put in place is already analyzing the complaints so far received that to date number 56.

STEPS TO FOLLOW IN SUBMITTING A CLAIM

1. A complainant or a group of complainants submits a written complaint of historical land injustice stating clearly who they are, their full contact address and telephone number (where possible), the nature of the grievance or injustice and the cause of the injustice and when the injustice occurred.
2. The commission will receive the complaint, subject it to an admissibility criteria set out in section 15(2) (3) (4) indicated step 5 of this report and record it in a register of Historical Land Injustices.
3. The commission will send an acknowledgement letter to the complainant for receipt of the complaint that bears a claim number for future references.
4. The commission will soon commence investigations by informing the complainants on the next steps.

5. CONDITIONS FOR A COMPLAINT TO QUALIFY AS A HISTORICAL LAND INJUSTICE CLAIM

Complainants are advised to note the following conditions when submitting claims of historical land injustice:

For the purpose of this section, **a Historical land injustice means a 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.

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 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.

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 nonpublic 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

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