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THE NATIONAL ASSEMBLY

THIRTEENTH PARLIAMENT – THIRD SESSION – 2024

DIRECTORATE OF DEPARTMENTAL COMMITTEES

DEPARTMENTAL COMMITTEE ON LANDS

REPORT ON:

THE NATIONAL LAND COMMISSION (AMENDMENT) BILL, 2023

CLERK'S CHAMBERS

DIRECTORATE OF DEPARTMENTAL COMMITTEES

PARLIAMENT BUILDINGS NAIROBI

THE NATIONAL ASSEMBLY  
PAPERS LAYD

DATE: 09 APR 2024 DAY: Tuesday

TABLED BY: Hon. Joash Nyamoko, Chair, Land Committee  
Anne Shibuko  
APRIL, 2024

CLERK AT THE TABLE

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## **CHAIRPERSON'S FORWARD**

The National Land Commission (Amendment) Bill, National Assembly Bill No 43 of 2023, sponsored by Hon. Owen Baya, MP, seeks to amend the National Land Commission Act No. 5 of 2012. The principal object of the Bill is to amend section 14 of the Act to confer back to the National Land Commission the power to continue reviewing all grants and dispositions of public land to establish their propriety or legality. The Commission's power to review grants under section 14 lapsed in 2021.

The Bill also seeks to amend section 15 of the Principal Act to allow the Commission to continue admitting and processing historical land injustice claims. The Commission's power to admit historical land injustice claims lapsed in 2021, yet many historical injustices claims have not been submitted to the Commission for redress due to the expiry of time.

The said Bill was first read on Wednesday 27<sup>th</sup> September, 2023 and subjected to public participation in accordance to Article 118 of the Constitution of Kenya, 2010 and Standing Order 127 of the National Assembly Standing Orders.

While considering the Bill the Departmental Committee on Lands met the sponsor of the Bill and called for comments from various stakeholders subject to an advert dated 2<sup>nd</sup> October 2023. The Committee did receive Memoranda from the National Land Commission, the Institution of Surveyors of Kenya as well as the Kenya Land Alliance.

I take this opportunity to thank and commend Committee Members for their devotion and commitment to duty, the Speaker and the Clerk of the National Assembly for providing leadership and direction and finally the Committee Secretariat for their exemplary performance in the provision of technical and logistical support. The Committee is also grateful to various stakeholders for their submissions and input which gave the Committee the much-needed insights in relation to the Bill.

On behalf of the Departmental Committee on Lands and pursuant to provisions of Standing Order 216 (5) (g), it is my pleasant privilege and honor to present the Report of the Committee on its consideration of the National Land Commission (Amendment) Bill, 2023.

**Hon. Joash Nyamache Nyamoko, HSC, M.P.**

**Chairperson, Departmental Committee on Lands**

## PART I

### 1.0 PREFACE

#### 1.1 Introduction

#### 1.2 Legal Provisions on Public Participation

1. Article 118 (1) (b) of the Constitution of Kenya provides as follows —

*“Parliament shall facilitate public participation and involvement in the legislative and other business of Parliament and its Committees.”*

2. Standing Order 127(3) provides that —

*“The Departmental Committee to which a Bill is committed shall facilitate public participation on the Bill through an appropriate mechanism, including—*

- a) inviting submission of memoranda;
  - b) holding public hearings;
  - c) consulting relevant stakeholders in a sector; and
  - d) Consulting experts on technical subjects.
3. Standing Order 127(3A) further provides that—

*“The Departmental Committee shall take into account the views and recommendations of the public under paragraph (3) in its report to the House.”*

#### 1.3 Methodology used by the Committee in Public Participation

4. The National Land Commission (Amendment) Bill National Assembly Bill No. 43 of 2023 was committed to the Departmental Committee on Lands for consideration having been read a First Time on Wednesday 27<sup>th</sup> September, 2023.
5. Pursuant to the provisions of the Constitution and Standing Orders, the Committee through local daily newspapers of Tuesday, 2<sup>nd</sup> October, 2023 published an advertisement inviting the public to submit memoranda.
6. The Report contains the analysis of the public submissions on the Bill, written submission received from the public noting general comments in support or against the amendments and the list of institutions that submitted their memoranda.

#### 1.4 Establishment of the Committee

7. The Departmental Committee on Lands is one of the Departmental Committees of the National Assembly established under **Standing Order 216** whose mandates pursuant to the **Standing Order 216 (5)** are as follows:

- i) To investigate, inquire into, and report on all matters relating to the mandate, management, activities, administration, operations and estimates of the assigned ministries and departments;*
- ii) To study the program and policy objectives of ministries and departments and the effectiveness of the implementation;*
- iii) On a quarterly basis, monitor and report on the implementation of the national budget in respect of its mandate;*
- iv) To study and review all legislation referred to it;*
- v) To study, assess and analyze the relative success of the ministries and departments as measured by the results obtained as compared with their stated objectives;*
- vi) To investigate and inquire into all matters relating to the assigned ministries and departments as they may deem necessary, and as may be referred to them by the House;*
- vii) To vet and report on all appointments where the Constitution or any law requires the National Assembly to approve, except those under Standing Order 204 (Committee on Appointments);*
- viii) To examine treaties, agreements and conventions;*
- ix) To make reports and recommendations to the House as often as possible, including recommendation of proposed legislation;*
- x) To consider reports of Commissions and Independent Offices submitted to the House pursuant to the provisions of Article 254 of the Constitution; and*
- xi) To examine any questions raised by Members on a matter within its mandate.*

#### 1.5 Subjects of the Committee

8. In accordance with the Second Schedule of the Standing Orders, the Committee is mandated to consider matters in relation to the subject of lands and settlement.
9. In executing its mandate, the Committee oversees the Ministry of Lands and the National Land Commission.

## 1.6 Committee Membership

10. The Departmental Committee on Lands was constituted by the House on 27th October 2022 and comprises of the following Members:

### **Chairperson**

Hon. Joash Nyamache Nyamoko, M.P  
North Muggiano Constituency

**UDA**

### **Vice-Chairperson**

Hon. Jayne Kihara, MP  
Naivasha Constituency

**UDA**

### **Members**

Hon. Rachael Kaki Nyamai, MP  
Kitui South Constituency

**Jubilee**

Hon. Gideon Ochanda, MP  
Bondo Constituency

**ODM**

Hon. Mathias Robi Nyambabe, MP  
Kuria West Constituency

**UDA**

Hon. George Koimburi, MP  
Juja Constituency

**UDA**

Hon. Paul Katana, MP  
Kaloleni Constituency

**ODM**

Hon. Josses Lelmengit, MP  
Emgwen Constituency

**UDA**

Hon. Joseph Hamisi Dena, MP  
Nominated

**ANC**

Hon. Esther M. Passaris, MP  
Women Representative  
Nairobi County

**ODM**

Hon. Ali Wario Guyo, MP  
Garsen Constituency

**ODM**

Hon. Omar Mwinyi, MP  
Changamwe Constituency

**ODM**

Hon. Thaddeus Nzambia, M.P.  
Kilome Constituency

**WIPER**

Hon. Anthony Kenga Mupe, MP  
Rabai Constituency

**PAA**

Hon. Gachoki Gitari, MP  
Kirinyaga Central Constituency  
UDA

### 1.7 Committee Secretariat

9. The Committee secretariat is composed of the following technical staff;

Mr. Joshua Ondari  
**Clerk Assistant I/ Lead Clerk**

Mr. Binensa Mabungu  
**Clerk Assistant III**

Mr. Sidney Lugaga  
**Senior Legal Counsel**

Ms. Murimi Mwangi  
**Media Relations Officer**

Ms. Audrey Ogutu  
**Legal Counsel II**

Ms. Judith Kiproo  
**Fiscal Analyst III**

Mr. Yezil Jillo  
**Serjeant-at-Arms**

Ms. Brenda Michira  
**Research Assistant III**

Ms. Cosmas Akhonya  
**Audio Recording Officer**

PART II

2.0 BRIEFING BY THE DIRECTORATE OF LEGAL SERVICES

11. National Land Commission (Amendment) Bill, 2023, is a private Bill sponsored by Hon Owen Yaa Baya, MP. The Bill was published on 3rd August, 2023. The Bill was read a First time on Wednesday 27th September, 2023 and committed to the Departmental Committees on Lands for consideration.

2.1 Object of the Bill

12. 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 currently, 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

13. The Bill further seeks to allow the National Land Commission to continue admitting and processing historical land injustice claims 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.

2.2 Analysis of Clauses

14. Clause 2 of the Bill proposes to amend section 14 of the National Land Commission Act by deleting the words "within five years of the commencement of this Act" appearing in subsection (1);  
15. Section 14(1) of the Bill reads as follows:  
**Review of grants and dispositions**

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.

16. Clause 2 of the Bill proposes to amend section 14 of the National Land Commission Act by deleting subsection (9).

Section 14(9) of the Bill reads as follows:

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

17. Clause 3 of the Bill proposes to amend section 15(3) of the National Land Commission Act by deleting paragraph (e).

**Section 15(3)(e)** of the Bill reads as follows:

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

*(e) it is brought within five years from the date of commencement of this Act.*

18. Clause 3 of the Bill proposes to amend section 15 of the National Land Commission Act by deleting subsection (11).

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

## PART III

### 3.0 SUBMISSION OF MEMORANDA BY STAKEHOLDERS

19. In considering the Bill, the Committee received submissions from various stakeholders as follows-

#### 3.1 Submission by the National Land Commission

On the 19<sup>th</sup> February, 2024, the National Land Commission (hereinafter referred to as “the Commission”) appeared before the Committee and submitted as follows-

20. In their Memorandum, the Commission agreed with the proposed amendment in clause 2 of the Bill which sought to amend section 14 of the Principal Act by deleting the words “*within five years of the commencement of this Act*” appearing in subsection (1) and also deleting subsection (9) of the Act.

*Justification: The amendment would give room for it to continue implementing its mandate of reviewing of grants and dispositions of public land in respect of complaints that were pending before it. It was equally stated the Commission would have the mandate to continuously receive new complaints without limitation of time and thereby effectively provide redress to illegally/irregularly disposed public land.*

#### Additional proposed amendments for inclusion in Section 14 of the National Land Commission Act, on review of grants and dispositions of public land

21. In their Memorandum, the Commission proposed an amendment to section 2 of the Principal Act by inserting under interpretations, the word:

“*Present land injustice*” means present-day acts and practices that directly violate current land rights and perpetuate inequalities.

*Justification: The inclusion of the definition in section 2 of the Act would provide clarity on the meaning of present injustices as envisaged under Article 67(2)(e) which mandated the Commission to initiate investigations, on its own initiative or on a complaint, into present or historical land injustices, and recommend appropriate redress.*

22. Additionally, the Commission proposed amendments to section 14 of the Principal Act as follows:

- a) In subsection (1) by inserting the words 'lease, certificate of title, certificate of lease, deed of conveyance, conversion of public land to private land' after the word grants.
- b) In subsection (1) by deleting the word 'public' appearing after the words dispositions of.
- c) In subsection by inserting subsection (1A) "The Court may at any time refer disputes falling within the mandate of the Commission herein for determination.
- d) In subsection 1 by inserting subsection (1B) "Subject to subsection (1A) above the Commission shall prepare a determination and file the same in court.
- e) In subsection 1 by inserting subsection (1C) "The determination may be adopted as an order of the court.
- f) In subsection (3) by inserting the words "through a publication of national circulation after the words"a notice of such review."
- g) In subsection (9A) by inserting the words "The court shall adopt the determination of the Commission and it shall be enforceable in the manner provided for under the Civil Procedure Act.
- h) In subsection (9C) by inserting the words, "Within 14 days of receipt of the determination made under subsection (4) the Chief Land Registrar shall revoke the grant or disposition of public land by entering the revocation in the register."
- i) In subsection (9D) by inserting the word "The Commission shall publish its determinations."
- j) In subsection (9D) by inserting the word "The Commission shall publish its determinations."
- k) Further, the Commission submitted a proposal that subsection (9F) be amended by inserting the words "Appeals to the Environment and Environment and Land Court.
  - a. Any person aggrieved by a decision or order of the Commission may, within fourteen days of such decision or order, appeal against such decision or order to the Environment and Land Court
  - b. Upon the hearing of an appeal under this section, the Environment and Land Court may—

- i. confirm, set aside or vary the decision or order in question;
  - ii. remit the proceedings to the Commission with such instructions for further consideration, report, proceedings or evidence as the court may deem fit to give;
  - iii. exercise any of the powers which could have been exercised by the Commission in the proceedings in connection with which the appeal is brought; or
  - iv. make such other order as it may deem just.
- l) The decision of the Environment and Land Court on any appeal under this section shall be final”
  - m) In subsection (9G) by inserting the words “Subject to subsection 13 an appeal shall be filed within 14 days of the determination to the Environment and land court.”
  - n) In subsection (9I) by inserting the words “For purposes of this section the Commission shall have the full powers of a court to; summon, compel attendance of any person relevant to the investigations above, call for records and evidence from any person.”
  - o) In subsection (9J) by inserting the words “A person summoned in accordance with the above provision shall attend unless he has reasonable excuse for not doing so.
  - p) In subsection (9K) by inserting the words “The Commission may impose on any person who without reasonable excuse fails to comply with summons a fine not exceeding Five hundred thousand shillings.”

*Justification: the proposed amendments would bolster the efforts of the government, through the Commission to protect and recover grabbed public land and restore it to their Reserved Public user and also strengthen the enforcement of the Commission’s determinations. It was stated that the extension of application of the law to all parcels converted from public land to private land would enable the Commission to unearth all irregularities and illegalities that might have occurred during the conversion process. Moreover, it was submitted that there was need to expand the scope to go beyond only public land and to cover the new registrable instruments in land such as licences, that had arisen from the new land laws dispensation post 2012.*

*Additionally, the Commission asserted that giving the court express powers to refer matters to the Commission would improve complementarity between the Commission and courts. Equally, it was averred that having the Commission's determination adopted would ensure it had a binding effect upon the Chief Land Registrar, because the determination would be a registrable instrument hence ensure that determinations are implemented.*

*Further, the Commission submitted that publication would ensure that all interested parties and the general public are informed of the Commission's review process to enable them to participate.*

*In addition, it was asserted that the public body/entity that owned the land should be compensated for loss of use where land was illegally disposed off/allocated and that publication would ensure all interested parties and the general public were informed of the Commission's determinations.*

#### **Proposed Amendment to Clause 3 of the Bill**

23. On the proposed amendment in clause 3 of the Bill, the Commission agreed with the proposal to amend section 15 of the Principal Act, in subsection (3), by deleting paragraph (e) and equally deleting subsection (11).

*Justification: The Commission submitted that the amendment would allow it to continue to continuously admit, register and process historical injustice claims continuously thereby allowing the Commission to handle disputes that had not been brought within the limitation period and therefore its mandate will continue to be exercised uninterrupted without time limitations.*

#### **Additional proposed amendment of Section 15 on Historical Land Injustices**

24. In their Memorandum, the Commission proposed an amendment to section 2 of the Principal Act by inserting the definition of the term 'land injustice' to mean 'a violation of land rights.' It was asserted that this would give clarity to the meaning of both present and past land injustices.

25. The Commission proposed that section 15 of the Principal Act be amended—

- a) In subsection by inserting subsection (1A) "The Court may at any time refer disputes falling within the mandate of the Commission herein for determination.

- b) In subsection 1 by inserting subsection (1B) "Subject to subsection (1A) above the Commission shall prepare a determination and file the same in court.
- c) In subsection 1 by inserting subsection (1C) "The determination may be adopted as an order of the court.
- d) In subsection (10) by deleting the words "within three" and inserting the word "or within a reasonable time."
- e) In subsection (11) by inserting the words "The Commission shall publish its determinations."
- f) In subsection (12) by inserting the words "The Commission shall monitor implementation of the recommendations and prepare a report after three years."
- g) In subsection (13) by inserting the words "Where a party is aggrieved by determination of the Commission they shall file a notice of appeal with the Commission within 14 days of the determination."
- h) In subsection 13 by inserting the words "Subject to subsection 13 an appeal shall be filed within 14 days of the determination to the Environment and land court."

*Justification: The proposed amendments would continue to issue determinations of decisions that have since been pending. The Commission would also continue with the enforcement of the redress recommended from 2019 without time limitations.*

It was also stated that giving the court express powers to refer matters to the Commission would improve complementarity between the Commission and courts.

Additionally, the Commission submitted that publication would ensure that all implementing authorities and the general public are informed of the Commission's determinations.

### 3.2 Submission by the Kenya Land Alliance

26. On the 17<sup>th</sup> October, 2023, the Kenya Land Alliance (hereinafter referred to as "the KLA") submitted its written Memorandum to the Departmental Committee on Lands and asserted as follows:

27. In their Memorandum, the KLA proposed amendment to clause 2 by deleting the words "within five years of the commencement of this Act" appearing in subsection (1) and deleting subsection (9).

28. In regard to clause 3, the KLA proposed that the Principal Act be amended in subsection (3) by deleting paragraph (e) and also deleting subsection (11)

*Justification: The amendment sought to remove the five-year time limit for reviewing of grants or dispositions of public land as this period had since lapsed. Equally, they stated that the removal of the term limitation in section 14 of the Act would be a significant change as it would transform the review from a bounded, time limited endeavor into an open-minded ongoing responsibility.*

*Additionally, the provisions of the Act that gave the Commission oversight mandate over grants of public land including renewal of leases provided adequate measure to ensure detection of any impropriety prior to any disposition of public land thereby protecting the integrity of the land titling system through easy detection of any malpractices.*

*The Principal Act provided for a five-year period in which the Commission could admit, register and process a historical land injustice claim. This therefore meant that the five-year period, after the commencement of the Principal Act, in which claims of historical land injustices could be brought had since lapsed.*

*The elimination of the term restriction in section 15 would provide the Commission an opportunity to receive and investigate historical land injustice claims and consequently provide legal redress to individuals whose matters were not initially dealt with.*

*Additionally, the proposed amendments would ensure independent budgetary allocation. They based their justification on the Supreme Court Advisory Opinion No. 2 of 2014, which provided that the independence of the Commission did not shield it from oversight and accountability.*

*It was stated that it was therefore paramount that the Commission be independent on budgetary allocation from the Treasury. The KLA averred that financial autonomy would empower the Commission to perform its mandate more effectively, transparently and independently thus enhance the protection of land rights, management of land resources and the Commission's ability to address emerging land-related disputes in a timely and impartial manner.*

*Further, the Supreme Court Advisory Opinion, there was need for collaboration, cooperation and consultation between the Commission and the Ministry of Lands on land related matters in the execution of their various mandates as stipulated in the Constitution of Kenya, 2010.*

*The Commission needed to affirm its space to avoid further attempts to mutilate its functions such as the recent attempts to allocate the role of evaluating and valuing land for compensation back to the Ministry. They stated that that posed a major risk to the Commission's future work and thus the call for collaboration and coordination between the agencies.*

### **3.3 Submission by the Institution of Surveyors of Kenya**

On the 13<sup>th</sup> October, 2023, the Institution of Surveyors of Kenya (hereinafter referred to as "the ISK") presented their submission to the Committee and submitted as follows:

29. The ISK submitted that section 14(1), limited the work of the Commission in relation to the review of grants and dispositions of public lands. They stated that the requirement to review grants or dispositions of public should not be confined to a time frame, in this case being five years.

30. In their Memorandum, the ISK recommended that the time line be deleted in order to allow the Commission review the grants and disposition of public land at any time without needing to review the Act after the lapse of five years.
31. The ISK averred that section 14(6) seemed to allow regularization of illegally acquired property. They therefore submitted that there was need to include a definition of what constituted irregularly acquired property. In addition, the provision needed to stipulate ways and measures in which the Commission intended to regularize irregular titles.
32. In section 14(9) of the Act, the ISK asserted that there was need for the Commission to petition Parliament to extend the period for undertaking the review specified in subsection (1) as it exposed the Commission to bureaucratic procedures on matters that require immediate attention. In that regard, they proposed the deletion of subsection 9 to reinforce the independence of the Commission.
33. In addition, the ISK proposed an amendment to section 15(3)(e) and subsection 15(11) of the Act. They submitted that the provisions limited the time by which cases were to be brought before the Commission to five years of commencement of the Act. In relation to that, the ISK recommended that the provisions be deleted due to the lengthy period required to discover and raise historical land injustice claims and that members of the public should not be limited as to the period of bringing an issue to the Commission for investigation and conclusion.

## PART IV

### 4.0 COMMITTEE OBSERVATIONS

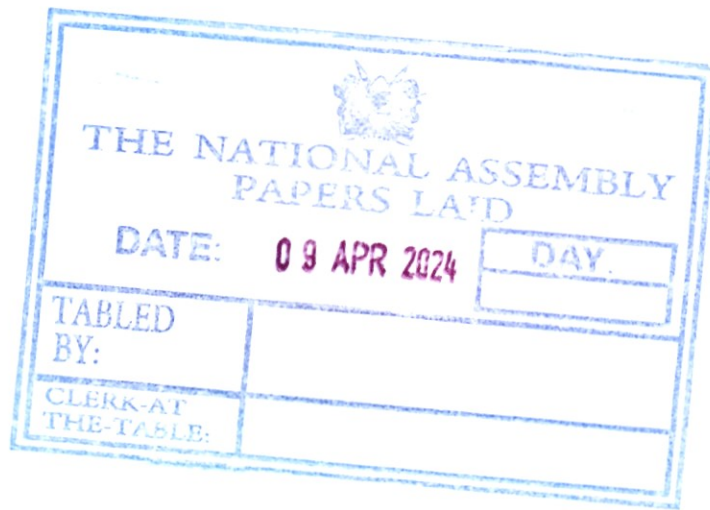
Having considered the legislative proposal and made the following observations:

- (a) There are still many cases relating to grants and dispositions of public land and historical land injustices claims that require to be reviewed and processed by the Commission to provide reprieve to aggrieved persons.
- (b) Section 14 of the Act is couched as a transitional provision that was to expire five years following its enactment hence the provisions of subsection (1).
- (c) To this end, an amendment to subsection (1) as contained in the proposal may not be in order noting the subsequent subsections in particular subsection (9) is premised on the transitional nature of the provision.
- (d) In this regard, Clause 2 ought to be amended by deleting the entire section and replacing it accordingly with the necessary amendments.
- (e) Clause 3 of the proposed Bill also requires to be amended as the amendment to section 15(3)(e) of the Act may not serve its purpose noting subsection (11) envisages that the power of Commission to determine historical land injustices claims shall expire within ten years of the enactment of the section.
- (f) Based on the statistics of the historical land injustice claims processed so far by the Commission and noting the proposed amendment to Section 15(3)(e), there is need also to delete subsection (11) as it may not be feasible and tenable for the Commission to process all the historical land injustices claims already admitted and continue receiving new claims by 2026, being the time within which the section shall stand repealed.
- (g) Additionally, the amendment to Section 15(11) of the Act is also necessary to align the Act with Article 67(2)(e) of the Constitution, which confers upon the Commission the power to deal with historical land injustices claims without any time limitations.
- (h) The Committee proposes to delete and amend clauses 2 and 3 of the Bill to address the matters raised under paragraphs (c), (f), (g) and (h).

The Committee noted that there is an emerging practice where courts grant orders attaching the accounts of the Commission to enforce a debt through garnishee or charging orders. The practice undermines the ability of the National Land Commission to carry out its functions including review of grants and dispositions, compulsory acquisition, and historical injustices. The Committee proposes to amend the Act to prevent courts from issuing garnishee or charging orders against the bank accounts of the National Land Commission

5.0 COMMITTEE RECOMMENDATIONS

The Committee having considered the views and recommendations of the public including relevant stakeholders, recommends that the Bill proceeds for Second Reading with the the Committee's proposed amendments as contained in the Schedule under **Part VI** of this Report.



## PART VI

### 6.0 SCHEDULE OF PROPOSED AMENDMENTS

#### CLAUSE 2

THAT clause 2 of the Bill be deleted and substituted by the following new clause —

Amendment of section 14 of No. 5 of 2012. 1. The National Land Commission Act, (in this Act referred to as “the Principal Act”), is amended by deleting section 14 and substituting therefor the following new section —

Review of grants and dispositions. *no.4 of 2015.* 14. (1) Subject to Article 68(c)(v) of the Constitution, the Commission shall, 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) A person may register a determination that complies with Article 40(6) of the Constitution made under subsection (6) in High Court.

(10) Where a person registers a determination under subsection (9),

(a) includes any consequential orders, the High Court shall enter judgment in accordance with the determination; and

(b) includes any consequential orders issued as a result of the determination.

(11) A person may enforce a judgment that is entered under subsection (9) in the manner provided in the Civil Procedure Act.

(12) The Commission shall publish all determinations made under subsection (6).

(13) A person who is aggrieved by a determination under this section may apply for review of the under section 7 of the Fair Administrative Action Act.

*Justification: Clause 2 of the Bill proposes to amend section 14 of the National Land Commission Act through deletions under subsections (2) and (9). However, section 14 of the Act is couched as a transitional provision that was to expire five years following its enactment hence the provisions of subsection (1). The Committee proposes to substitute clause 2 of the Bill to align with Article 68(c)(v) that does not anticipate a time limit where the National Land Commission exercises the function of reviewing of grants and dispositions.*

### CLAUSE 3

THAT clause 3 of the Bill be deleted and substituted by the following new clause —

Amendment of 3. Section 15 of the Principal Act is amended by section 15 of No. 5 of 2012.

Historical land injustices

(1) Pursuant to Article 67(2)(v) and (3) of the Constitution, the Commission shall initiate, receive, admit, and investigate a complaint on present or historical land injustices, and recommend appropriate redress.

(2) For the purposes 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 15<sup>th</sup> June 1895 when Kenya became a protectorate under the British East African Protectorate and 27<sup>th</sup> 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) For the purposes of this section, a “historical land injustice” includes a subsisting land injustice.

(4) A historical land claim may only be admitted, registered and processed by the Commission if—

- (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; and
- (d) no action or omission on the part of the claimant amounts to surrender or renunciation of the right to the land in question.

(5) 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;

no. 4 of 2015.

(13) A person who is aggrieved by a determination under this section may apply for review of the determination under section 7 of the Fair Administrative Acton Act.

*Justification: Clause 3 of the Bill proposes to amend section 15 of the National Land Commission Act through deletions under subsections (3) and (11). However, section 15 of the Act is couched as a transitional provision that was to expire five years following its enactment hence the provisions of subsection (1). The Committee proposes to substitute clause 2 of the Bill to align with Article 67(2)(v) that does not anticipate a time limit where the National Land Commission exercises the function of initiating, receiving, admitting, and investigating a complaint on present or historical land injustices.*

**NEW CLAUSE 3**

THAT clause 3 of the Bill be deleted and substituted by the following new clause —

Amendment of 3. Section 26 of the Principal Act is amended by —  
section 26 of  
No. 5 of 2012.

Bank account (1) The Commission shall open and maintain such bank accounts as are necessary for the effective management of the Commission.

(2) A court shall not issue garnishee or charging orders against a bank account under subsection (1) or any existing bank account opened and maintained by the Commission.

*Justification: The Committee proposes to amend the Bill by inserting a new clause 4 to address an emerging practice where courts grant orders attaching the accounts of the National Land Commission Act to enforce a debt through garnishee or charging orders. The practice undermines the ability of the National Land Commission to carry out its functions including review of grants and dispositions, compulsory acquisition, and historical injustices. The Committee proposes to amend the Act to prevent courts from issuing garnishee or charging orders against the bank accounts of the National Land Commission.*

SIGNED  .....

HON. JOASH NYAMACHE NYAMOKO, HSC, M.P.

(CHAIRPERSON, DEPARTMENTAL COMMITTEE ON LANDS)

DATE 09/04/2024 .....



REPUBLIC OF KENYA  
THE NATIONAL ASSEMBLY  
THIRTEENTH PARLIAMENT

**DEPARTMENTAL COMMITTEE ON LANDS**

**REPORT ADOPTION LIST**

We, the members of the Departmental Committee on Lands, have pursuant to Standing Orders 216 (5)(c), adopted this report and affix our signatures to affirm our approval and confirm its accuracy, validity and authenticity.

Date: 12/03/2024

No.	MEMBER	SIGNATURE
1.	Hon. Nyamoko Joash Nyamache, HSC, MP	
2.	Hon. Kihara Jayne Wanjiru Njeri, MP	
3.	Hon. Rachael Kaki Nyamai, CBS, MP	
4.	Hon. Ogolla Gideon Ochanda, MP	
5.	Hon. Shimbwa Omar Mwinyi, MP	
6.	Hon. Robi Mathias Nyamabe, MP	
7.	Hon. Passaris Esther Muthoni, MP	
8.	Hon. Gitari Joseph Gachoki, MP	
9.	Hon. Guyo Ali Wario, MP	
10.	Hon. Nzambia Thuddeus Kithua, MP	
11.	Hon. Ndung'u George Koimburi, MP	
12.	Hon. Mupe Anthony Kenga, MP	
13.	Hon. Katana Paul Kahindi, MP	
14.	Hon. Joseph Hamisi Dena, MP	
15.	Hon. Lelmengit Josses Kiptoo Kosgey, MP	



REPUBLIC OF KENYA

THE NATIONAL ASSEMBLY

13<sup>TH</sup> PARLIAMENT – THIRD SESSION, 2024

DEPARTMENTAL COMMITTEE ON LANDS.

MINUTES OF THE 14<sup>TH</sup> SITTING OF THE DEPARTMENTAL COMMITTEE ON LANDS HELD AT WALNUT 1 CONFERENCE ROOM, PANARI SKY CENTRE, ON TUESDAY, 12<sup>TH</sup> MARCH 2024 AT 10:00 AM.

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**PRESENT**

1. Hon. Nyamoko Joash Nyamache, M.P. *-Chairperson*
2. Hon. Kihara Jayne Wanjiru Njeri, M.P. *- Vice Chairperson*
3. Hon. Rachel Kaki Nyamai, CBS, M.P.
4. Hon. Shimbwa Omar Mwinyi, M.P.
5. Hon. Passaris Esther Muthoni, M.P.
6. Hon. Gitari Joseph Gachoki, M.P.
7. Hon. Guyo Ali Wario, M.P.
8. Hon. Nzambia Thuddeus Kithua, M.P.
9. Hon. Katana Paul Kahindi, M.P.
10. Hon. Robi Mathias Nyamabe M.P.

**APOLOGIES**

1. Hon. Ogolla Gideon Ochanda, M.P.
2. Hon. Ndung'u George Koimhuri, M.P.
3. Hon. Mupe Anthony Kenga, M.P.
4. Hon. Joseph Hamisi Dena, M.P.
5. Hon. Lelmengit Josses Kiptoo Kosgey, M.P.

**COMMITTEE SECRETARIAT**

- |                        |   |                                     |
|------------------------|---|-------------------------------------|
| 1. Mr. Joshua Ondari   | - | Clerk Assistant/Head of Secretariat |
| 2. Mr. Binensa Mabungu | - | Clerk Assistant III                 |
| 3. Mr. Sidney Lugaga   | - | Senior Legal Counsel                |
| 4. Ms. Audrey Ogutu    | - | Legal Counsel II                    |
| 5. Ms. Brenda Michira  | - | Research Officer III                |
| 6. Mr. Murimi Mwangi   | - | Media Relations Officer III         |
| 7. Mr. Yeziel Jillo    | - | Sergeant at Arms                    |

MIN/NO./NA/DC-LANDS/2024/090: **PRELIMINARIES**

The Chairperson called the meeting to order at twenty minutes past ten o'clock with a word of prayer by Hon. Kihara Jayne Wanjiru Njeri, M.P.

**MIN/NO./NA/DC-LANDS/2024/091: CONFIRMATION OF MINUTES**  
The confirmation of the previous sitting's minutes was postponed to a later date.

**MIN/NO./NA/DC-LANDS/2024/092: MATTERS ARISING**  
There were no matters arising.

**MIN/NO./NA/DC-LANDS/2024/093: ADOPTION OF THE AGENDA**

**AGENDA**

1. Prayers
2. Preliminaries;
3. Confirmation of Minutes.
4. Matters Arising;
5. **Meeting:**
  - a) **Consideration and adoption of the Report on the Land Laws (Amendment) (No.2) Bill, 2023**
  - b) **Consideration and Adoption of the Report on the National Land Commission (Amendment) Bill, 2023**
6. Any Other Business
7. Adjournment

The agenda of the meeting was adopted after it was proposed by Hon. Nzambia Thuddeus Kithua, M.P. and seconded by Hon. Passaris Esther Muthoni, M.P.

**MIN/NO.NA/DC-LANDS/2024/094: CONSIDERATION AND ADOPTION OF THE REPORT ON THE LAND LAWS (AMENDMENT) (NO.2)(NATIONAL ASSEMBLY BILL NO. 76, 2023)**

The Senior Legal Counsel took the Committee through the draft report with emphasis on the following;

The Committee considered provisions of the Bill, evaluated submissions tabled and made the following observations;

1. The Bill I proposes to amend the Registration of Documents Act; the Land Control Act, the Land Registration Act, 2012, the Land Act, 2012, Community Land Act, 201 and the Sectional Properties Act, 2020 as follows.
2. The Bill seeks to amend the **Registration of Documents Act** by decentralizing land registries for registration of documents across the country as opposed to when such services were only available in Nairobi and Mombasa, and align the Registration of Documents Act to the Constitution of Kenya, 2010. The Committee proposes to amend the Bill to provide for proportional representation of persons during the constitution of the various committees.
3. **Under the Land Control Act**, the Bill seeks to reconstitute and align land control boards according to the Constitution of Kenya, 2010 new governance structure and enable granting consents to transact in agricultural land within paradigms of Article

- 65 of the Constitution which allows non-citizens to own land on leasehold terms not exceeding 99 years, as opposed to when their ownership could only be permitted by the President.
4. The Bill seeks to amend the **Land Registration Act** streamline registration of long-term leases within the provisions of the Sectional Properties Act, 2020 and also to widen the scope under which the registrar can revoke a title obtained through fraud by the proprietor.
  5. The Bill seeks to amend the **Community Land Act** to allow the Cabinet Secretary to complete pending adjudication programmes under the Land Adjudication Act beyond the 2-year period permitted by the Community land Act.
  6. The Bill seeks to amend the **Sectional Properties Act** to widen the scope of the Sectional Properties Act to include phased developments, introduce a second-tier corporation known as Umbrella Corporation to deal with management issues associated with a big or mixed-use sectional development.
  7. The Bill seeks to amend the **Land Act** by giving clarity as to what it means by allocation of public land and the respective roles played by the National and County government as opposed to the National Land Commission.
  8. The Bill seeks to amend the **Land Act** to separate the roles of renewal and extension of leases and respectively assigning them to the National Land Commission and the Cabinet Secretary.
  9. The Bill seeks to amend the **Land Act** to provide for the periodical review of rent and valuation of land for rent after every ten years to be in tandem with the current property values,
  10. The Bill seeks to amend the **Land Act** to vest upon the Cabinet Secretary, the mandate of handling compulsory land acquisition, eliminate conflict of interest likely to occur when one entity is involved in valuation process and at the same time making compensation payments and eliminate delay in acquiring land since the acquiring public body has direct control in making compensation payments as opposed to when funds were being transferred to the Commission. The Committee shall propose amendments to streamline the process of compulsory acquisition by providing that the Cabinet Secretary shall drive the process of valuation and the Commission shall be responsible for paying compensation for land that has been compulsory acquired.
  11. The Bill seeks to amend the **Land Act** establish the Land Acquisition Committee to replace of the Land Acquisition Tribunal. The Committee shall propose amendments to assign the role of resolving administrative disputes to the Committee to ensure that matters arising from valuation are resolved promptly to enable prompt and proportional compensation.

#### **Adoption of the Report**

The Report on the Land Laws (Amendment) (No.2) Bill (National Assembly Bill No. 76 of 2023) was adopted having been proposed by The Hon. Gitari Joseph Gachoki, M.P and seconded by The Hon. Katana Paul Kahindi, M.P

CONSIDERATION AND  
ADOPTION OF THE REPORT ON  
THE NATIONAL LAND  
COMMISSION (AMENDMENT)  
(NATIONAL ASSEMBLY BILL NO.  
43 OF 2023)

The Senior Legal Counsel took the Committee through the Draft Report on The National Land Commission (Amendment) (National Assembly Bill No. 43 of 2023) with emphasis on the following:

Having considered the Bill, the Committee made the following observations:

- (a) There are still many cases relating to grants and dispositions of public land and historical land injustices claims that require to be reviewed and processed by the Commission to provide reprieve to aggrieved persons.
- (b) Section 14 of the Act is couched as a transitional provision that was to expire five years following its enactment hence the provisions of subsection (1).
- (c) To this end, an amendment to subsection (1) as contained in the proposal may not be in order noting the subsequent subsections in particular subsection (9) is premised on the transitional nature of the provision.
- (d) In this regard, Clause 2 ought to be amended by deleting the entire section and replacing it accordingly with the necessary amendments.
- (e) Clause 3 of the proposed Bill also requires to be amended as the amendment to section 15(3)(e) of the Act may not serve its purpose noting subsection (11) envisages that the power of Commission to determine historical land injustices claims shall expire within ten years of the enactment of the section.
- (f) Based on the statistics of the historical land injustice claims processed so far by the Commission and noting the proposed amendment to Section 15(3)(e), there is need also to delete subsection (11) as it may not be feasible and tenable for the Commission to process all the historical land injustices claims already admitted and continue receiving new claims by 2026, being the time within which the section shall stand repealed.
- (g) Additionally, the amendment to Section 15(11) of the Act is also necessary to align the Act with Article 67(2)(e) of the Constitution, which confers upon the Commission the power to deal with historical land injustices claims without any time limitations.
- (h) The Committee proposes to delete and amend clauses 2 and 3 of the Bill to address the matters raised under paragraphs (c), (f), (g) and (h).
- (i) The Committee noted that there is an emerging practice where courts grant orders attaching the accounts of the Commission to enforce a debt through garnishee or charging orders. The practice undermines the ability of the National Land Commission to carry out its functions including review of grants and dispositions, compulsory acquisition, and historical injustices. The Committee proposes to amend the Act to prevent courts from issuing garnishee or charging orders against the bank accounts of the National Land Commission.

**Adoption of the Report**

The Report on the National Land Commission (Amendment) (National Assembly Bill No. 43 of 2023) was adopted having been proposed by The Hon. Robi Mathias Nyamabe, M.P and seconded by The Hon. Rachael Kaki Nyamai, CBS, M.P

**MIN/NO.NA/DC-LANDS/2024/096: ANY OTHER BUSINESS**

There was no other business.

**MIN/NO.NA/DC-LANDS/2024/097: ADJOURNMENT**

There being no other business, the meeting was adjourned at nine minutes past twelve o'clock. The next meeting would be held on notice.

SIGNED..........DATE 12/03/2023.....

**HON. JOASH NYAMACHE NYAMOKO, MP**  
**(CHAIRPERSON)**



## Annexure 3



### RE: VIEWS ON THE NATIONAL LAND COMMISSION (AMENDMENT) BILL, 2023

#### 1. Amendment of Section 14 on review of grants and dispositions

S/No.	Section	Amendment	Comment	Recommendation/rationale
1.	2	The national Land Commission Act, (in this Act referred to as “the Principal Act”), is amended in section 14 by –  (a) Deleting the words “within five years of the commencement of this Act” appearing in subsection (1); and  (b) Deleting subsection (9)	Agree with the amendment	The Commission will continue with the review of grants or dispositions of public land in respect of complaints that were pending before it when its mandate under that section expired and receive new complaints continuously without limitation of time and providing redress.

#### 2. Amendment of Section 15 on Historical land injustices

S/No.	Section	Amendment	Comment	Recommendation/rationale
2.	3	Section 15 of the Principal Act is amended –  (a) In subsection (3) by deleting paragraph (e); and  (b) Deleting subsection (11)	Agree with the amendment	The Commission will continue to admit, register and process historical injustices claims continuously thereby allowing the Commission to handle disputes that were not brought within the limitation period and the mandate will continue to be exercised uninterrupted without time limitations.

### 3. Additional proposed amendments of Section 14 on review of grants and dispositions

S/No.	Section	Amendment	Comment	Recommendation/rationale
1.	14	<p>Section 14 of the Principal Act is amended-</p> <p>(a) In subsection (9) by inserting the words “The court shall enter judgement in accordance with the determination of the Commission and upon judgement being entered a decree shall issue and shall be enforceable in the manner provided for under the Civil Procedure Act.”</p> <p>(b) In subsection (10) by inserting the word “The Commission shall publish its determinations in the Kenya gazette.”</p>		<p>The proposed amendments will go along in bolstering the efforts of the government, through the Commission to protect and recover grabbed public land and restore it to their Reserved Public user. The amendment will also strengthen the enforcement of the Commission’s determinations and inform all authorities and the general public.</p>

### 4. Additional proposed amendment of Section 15 on Historical land injustices

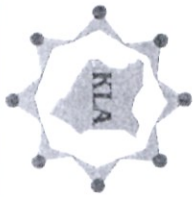
S/No.	Section	Amendment	Comment	Recommendation/rationale
1.	15	<p>Section 15 of the Principal Act is amended –</p> <p>(c) In subsection (10) by deleting the words “within three” and</p> <p>(d) In subsection (11) by inserting the words “The Commission shall publish its determinations in the Kenya gazette.”</p>	Agree with the amendment	<p>The Commission will continue be able to issue determinations of decisions that have been pending enforcement of the redress recommended from 2019 without time limitations and inform all implementing authorities and the general public.</p>



# KENYA LAND ALLIANCE

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 or [kla@kenyalandalliance.or.ke](mailto:kla@kenyalandalliance.or.ke) Website: [www.kenyalandalliance.or.ke](http://www.kenyalandalliance.or.ke)

PROPOSED PROVISION FOR AMENDMENT	PROPOSED AMENDMENT	OUR COMMENTS	Way Forward
Amendment of section 14 of No. 5 of 2012	<p>The National Land Commission Act (in this Act referred to as “the principal Act”, is amended in section 14 by:</p> <ul style="list-style-type: none"> <li>a. deleting the words “within five years of the commencement of this Act” appearing in subsection (1); and</li> <li>b. deleting subsection (9).</li> </ul>	<p>The amendment seeks to remove the five-year time limit for reviewing of grants or dispositions of public land. This is because this period has since lapsed.</p>	<p>The removal of the term limitation in Section 14 on the review of grants and dispositions is a significant change, as it transforms this review process from a bounded, time-limited endeavor into an open-ended, ongoing responsibility.</p> <p>The provisions of the Act giving the NLC an oversight mandate over grants of public land including renewal and extension of leases provides adequate measure to ensure any impropriety is detected prior to any disposition of public land, protecting the integrity of the land titling system through early detection of any malpractices.</p>
Amendment of section 15 of No. 5 of 2012	<p>Section 15 of the Principal Act is amended:</p> <ul style="list-style-type: none"> <li>a. in subsection (3) by deleting paragraph (e); and</li> <li>b. deleting subsection (11).</li> </ul>	<p>The Principal Act provided for a five-year period in which the National Land Commission could admit, register and process a historical land injustice claim. This means that the five-year period in which claims of historical land injustices could be brought before the National Land Commission has since lapsed, five years after the Principal Act came into force.</p> <p>This clause seeks to remove the time limits imposed by the Principal Act. The rationale of this is to provide legal</p>	<p>Similarly, the elimination of the term restriction in Section 15 fundamentally will allow the Commission to receive and investigate these complaints perpetually.</p> <p>There is need to provide saving provisions for the matters which have been received and still under investigation after the lapse of the stipulated period. This will insulate any decisions by the NLC on those matters from court challenges</p>



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 or [kla@kenyalandalliance.or.ke](mailto:kla@kenyalandalliance.or.ke) Website: [www.kenyalandalliance.or.ke](http://www.kenyalandalliance.or.ke)

	Independent budgetary allocation	<p>redress to people having claims of historical land injustices that were not dealt with during the initial period.</p> <p>In reference to Advisory Opinion 2 of 2014, the Supreme Court provided that Independence of the NLC does not shield it from oversight and accountability. There is need for the NLC to be independent on budgetary allocation from the Treasury. The continued underbudgeting “<b>tokenistic model of funding</b>” incapacitates commission’s ability to adequately perform its functions e.g., the ongoing digitization process through “Ardhi sasa”, receiving and presiding over historical land injustices among other roles.</p>	<p>Financial autonomy for the National Land Commission will empower the institution to carry out its mandate more effectively, transparently, and independently. It will enhance the protection of land rights, the management of land resources, and the NLC’s ability to address emerging land-related challenges in a timely and impartial manner. This independence is critical for its ability to fulfill its mandate impartially and without political interference, ensuring that land management and allocation decisions are based on merit and adherence to the law.</p>
	Checks and balances	<p>The Supreme court advisory ruled that the National Land Commission and the Ministry of lands should collaborate, co-operate and consult each other on all land matters as they perform their various mandates as spelt in the constitution. This was aimed at clearing the misconception that the Commission is a subtrule of the ministry of Land.</p>	<p>The Commission need to affirm its space to avoid further attempts to mutilate its functions as envisioned under the constitution. The recent attack and attempt by the president to allocate the role of evaluating and valuing land for compensation back to the ministry of land poses a major risk to the commission future work. The Supreme court advisory was deliberate in ascertaining the need for the two functions (NLC and Ministry of Lands) to work independently to avoid conflicts and interference. Therefore, there is need for the NLC Act to outline mechanisms for collaboration and coordination with other</p>



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or [kla@kenyalandalliance.or.ke](mailto:kla@kenyalandalliance.or.ke) Website: [www.kenyalandalliance.or.ke](http://www.kenyalandalliance.or.ke)

	Confidentiality and Data Protection	<p>The Data Protection Act, 2019, came into force on 25th November, 2019 and is now the primary statute on data protection in Kenya. It gives effect to Article 31 (c) and (d) of the Constitution of Kenya, 2010 (right to privacy). The Data protection law is aimed at protecting individual privacy, promote responsible data handling, enhance trust, and create a legal framework for managing personal data in a rapidly evolving digital and data-driven society.</p>	<p>relevant government agencies involved in land management, such as the Ministry of Lands and the Ministry of Environment.</p> <p>There is need for the NLC Act to introduce provisions that ensure the confidentiality and protection of sensitive land-related information and data.</p>

For further information, please contact Kenya Land Alliance on:

Tel: +254 731 282207

Email: [info@kenyalandalliance.or.ke](mailto:info@kenyalandalliance.or.ke)

P. O. Box 2177 – 20100, Nakuru-Kenya

[www.kenyalandalliance.or.ke](http://www.kenyalandalliance.or.ke)

c) **Subsection 9** - The requirement under Section 14(9) for NLC to petition Parliament to extend the period for undertaking the review specified in subsection 1 exposes NLC to bureaucratic procedures on matters that require immediate attention.

**Recommendation:** We recommend the deletion of this section to reinforce the independence of the National Land Commission (NLC).

2. **Section 15 of No. 5 of 2012 (on Historical Land Injustices)** --

Subsection 15(3) paragraph (e) and subsection 15(11) limits the time by when the cases should be brought before NLC to five years of commencement of the NLC Act.

**Recommendation - ISK** recommends that the clauses should be deleted because it can take long before an issue of historical injustice is discovered or raised. Members of the public should not be limited as to when they can be having an issue brought to the NLC for investigation and conclusion.

The amendment of the Act should however include clarification on principles of how the review and determinations should be done with explicit thresholds to cure any abuse of vested interests and reengineering of historical disputes. In conclusion, the National Land Commission should not be inhibited from addressing any complaints relating to public land and providing redress where there is evidence illegality in grant and dispositions of public land.

We look forward to consideration of our concerns

Yours sincerely,



Rose Mwaura

**Chief Executive Officer**

CC

- Owen Yaa Baya, Member of parliament, Kilifi North Constituency

NATIONAL ASSEMBLY  
RECEIVED  
DEPUTY CLERK  
J.W.N  
P.O. Box 41842 - 00100, NAIROBI



D.D. Hassan  
8  
16/10

## INSTITUTION OF SURVEYORS OF KENYA

13<sup>th</sup> October 2023

Ref: ISK/COU/RM/23/882

Joshua Ondari  
to final date  
19/10/23

Mr. Samuel Njoroge,  
Clerk of the National Assembly,  
The National Assembly,  
P.O. Box 41842 - 00100.  
**NAIROBI.**

NATIONAL ASSEMBLY  
RECEIVED  
★ 16 OCT 2023 ★  
CLERK'S OFFICE  
P O Box 41842, NAIROBI

Dear Mr. Njoroge,

**RE: Institution of Surveyors of Kenya (ISK) Comments to The National Land Commission (NLC) (Amendment) Bill 2023**

ISK supports the proposed amendments to the National Land Commission Act via the National Land Commission (Amendment) Bill, 2023. The proposed amendments will enable the National Land Commission fulfil its obligations fully. In this regard, ISK submits its comments on the draft Bill as follows:

1. **Section 14 of No. 5 of 2012 of the NLC Act, 2012 -**

a) **Subsection 1.** ISK notes that this section limited the work of NLC in relation to the review of grants or dispositions of public land. It is arguable that the requirement to review grants or dispositions of public land should not be confined to a time frame, in this case 5 years.

**Recommendation:** We recommend that the time line be deleted to allow NLC review the grants and dispositions of public land anytime, without needing to review the Act after 5 years have lapsed.

b) **Subsection 6** – The clause seems to allow NLC to regularize irregular acquired properties.

**Recommendation** – The clause should include a definition of what irregularly acquired property is. In addition, the clause should stipulate ways in which NLC intends to regularize the irregular titles and the measures to be taken.

16 OCT 2023

**Head Office**

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**South Rift Branch Office**

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Tel: 0723586216  
Email: southriftbranch@isk.or.ke

c) **Subsection 9** - The requirement under Section 14(9) for NLC to petition Parliament to extend the period for undertaking the review specified in subsection 1 exposes NLC to bureaucratic procedures on matters that require immediate attention.

**Recommendation:** We recommend the deletion of this section to reinforce the independence of the National Land Commission (NLC).

2. **Section 15 of No. 5 of 2012 (on Historical Land Injustices)** --

Subsection 15(3) paragraph (e) and subsection 15(11) limits the time by when the cases should be brought before NLC to five years of commencement of the NLC Act.

**Recommendation - ISK** recommends that the clauses should be deleted because it can take long before an issue of historical injustice is discovered or raised. Members of the public should not be limited as to when they can be having an issue brought to the NLC for investigation and conclusion.

The amendment of the Act should however include clarification on principles of how the review and determinations should be done with explicit thresholds to cure any abuse of vested interests and reengineering of historical disputes. In conclusion, the National Land Commission should not be inhibited from addressing any complaints relating to public land and providing redress where there is evidence illegality in grant and dispositions of public land.

We look forward to consideration of our concerns

Yours sincerely,



Rose Mwaura

**Chief Executive Officer**

CC

- Owen Yaa Baya, Member of parliament, Kilifi North Constituency