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THE SENATE

TWELFTH PARLIAMENT

SECOND SESSION

*Approved
14/03/18*

THE STANDING COMMITTEE

ON

JUSTICE, LEGAL AFFAIRS AND HUMAN RIGHTS

THE COMMITTEE REPORT ON THE

PETITION ON THE HISTORICAL INJUSTICES SUFFERED BY THE TALAI CLAN

PAPERS LAID	
DATE	15/03/2018
TABLED BY	Chairperson
COMMITTEE	Justice, LA & HR
CLERK AT THE TABLE	CM

Clerk's Chambers,
Parliament Buildings,
P.O. Box 41842-00100,
NAIROBI

MARCH, 2018

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PREFACE

Establishment of the Committee

The Standing Committee on Justice, Legal Affairs and Human Rights is established pursuant to the Senate Standing Order 212 and mandated to consider all matters relating to constitutional affairs, the organization and administration of law and justice, elections, promotion of principles of leadership, ethics, and integrity; agreements, treaties and conventions; and implementation of the provisions of the Constitution on human rights.

Membership of the Committee

The Committee is comprised of the following members:-

1. Sen. Samson Cherarkey, MP - **Chairperson**
2. Sen. Mithika Linturi, MP - **Vice-Chairperson**
3. Sen. Fatuma Dullo, MP
4. Sen. James Orengo, MP
5. Sen. Amos Sitswila Wako, MP
6. Sen. Kilonzo Mutula Jnr., MP
7. Sen. Irungu Kang'ata, MP
8. Sen. Susan Wakarura Kihika, MP
9. Sen. Faki Mohamed, MP

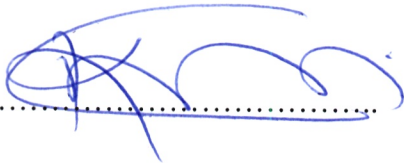
Mr. Speaker,

The Petition submitted by Governor Stephen Sang', MP, Nandi County presented and tabled in the Senate on 7th November, 2017 laid out the historical injustices suffered by the Talai Clan at the hands of the colonial administration. The Justice, Legal Affairs and Human Rights deliberated on the submissions by the Talai Clan on the matter and made appropriate observations and recommendations.

Mr. Speaker,

It is now my pleasant duty, pursuant to Standing Order 226(2), to present the Report of the Standing Committee on Justice, Legal Affairs and Human rights on the Petition by Governor Stephen Sang' on the historical injustices suffered by the Talai Clan.

Signed.....



Date.....

12/3/2018

SEN. SAMSON CHERARKEY, MP

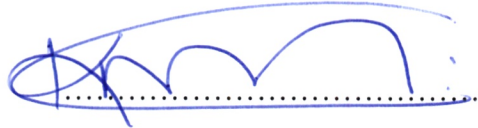
CHAIRPERSON, JUSTICE, LEGAL AFFAIRS AND HUMAN RIGHTS COMMITTEE

**ADOPTION OF THE REPORT OF THE JUSTICE, LEGAL AFFAIRS AND
HUMAN RIGHTS COMMITTEE OF THE SENATE**

**We, the undersigned Members of the Justice, Legal Affairs and Human Rights
Committee of the Senate, do hereby append our signatures to adopt the Report-**

Sen. Samson Cherarkey, MP

Chairperson



Sen. Mithika Linturi, MP

Vice-Chairperson

.....

Sen. Fatuma Dullo, MP

Member



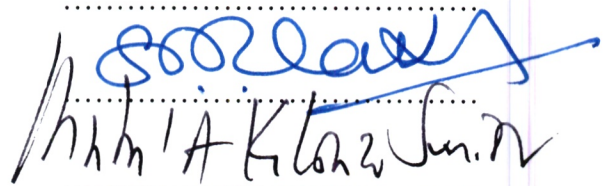
Sen. James Orengo, MP

Member

.....

Sen. Amos Sitswila Wako, MP

Member



Sen. Kilonzo Mutula Jnr., MP

Member

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Sen. Irungu Kang'ata, MP

Member

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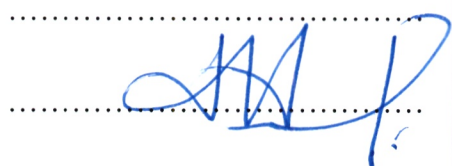
Sen. Susan Wakarura Kihika, MP

Member

.....

Sen. Faki Mohamed, MP

Member



CHAPTER ONE

INTRODUCTION

1.0 Background

The Petition by Governor Stephen Sang' was presented and tabled in the Senate on 7th November, 2017. Pursuant to standing order 226(2) the Committee was required to respond to the petitioner by way of a report addressed to the petitioner or petitioners and laid on the Table of the Senate not more than sixty calendar days from the time of reading the prayer.

The Petition was presented on behalf of the Talai Clan who are residents of Nandi County and the entire Talai Clan in the greater Nandi County and parts of Kericho County in the Rift Valley Region. The petition alleges that the Talai clan suffered the following injustices at the hands of the colonial administration-

- (a) abuse of fundamental human and civil rights by way of mass murder;
- (b) detention without trial;
- (c) economic crimes through unfair confiscation of their property including cattle and land;
- (d) imposition of internal exile and travel restrictions;
- (e) forceful eviction from ancestral land including various parcels of land in Nandi hills, Kipchamo and Kiptega estates;
- (f) forceful transfer of population; and
- (g) brutal assassination of Koitalel Arap Samoei.

The petitioner further avers that various attempts have been made to bring this matter to the attention of the Truth, Justice and Reconciliation Commission, the Independent Electoral and Boundaries Commission and the Kenya National Commission on Human Rights. The petitioner further avers that none of the issues raised in the petition are pending before any court of law or any other constitutional or legal body

1.1 Prayers to the Senate

In light of the above the petitioner prays that the Senate-

- (a) recommends the National Land Commission and the Kenya National Commission on Human Rights carry out investigations and consider the plight of the Talai clan with a view to offering redress;
- (b) recommends the identification and recognition of the Talai community as a specific people group;
- (c) recommends to the Nandi county government implementation of developmental affirmative action programmes aimed at empowering the community;
- (d) recommends to the Independent Electoral and Boundaries Commission to create a special ward to ensure that the clan is represented at the County Assembly of Nandi;
- (e) publishes a report acknowledging the many serious breaches of human rights suffered by the community;
- (f) call for the declaration of the Talai clan as a marginalized community pursuant to Article 160 of the Constitution;
- (g) recommends that the Commission on Revenue Allocation recognize the Talai clan as a marginalized community;
- (h) recommends the allocation of a substantial portion of the resources from the funds established in the National government to settle issues of historical injustices to provide compensation to the clan and to enable the clan pursue complaints against the British government

1.2 Legal provisions touching on the Petition

1.2.1 Right to petition Parliament

The right to petition Parliament is provided for under Article 119 of the Constitution, which provides as follows:-

- (1) *“Every person has a right to petition Parliament to consider any matter within its authority, including enacting, amending or repealing any legislation.*
- (2) *Parliament shall make provision for the procedure for the exercise of this right.”*

The petition therefore falls under the Committees mandate under Senate Standing Order 212. Further, Standing orders 226 the Senate Standing Order outline the procedure for committal of a petition to a Committee and transmission of its decision to the Petitioner. The Standing Committee on Justice, Legal Affairs and Human Rights is mandated to consider all matters

related to implementation of the provisions of the Constitution on human rights. Further, the Petition to Parliament (Procedure) Act, 2012 and the Standing Orders of the Senate provide for the procedure to be followed in the submission, processing and consideration of a Petition.

Articles 94 as read together with Article 96 of the Constitution further provides for the role and by extension the authority of Parliament in general and the Senate in particular. Generally, the Houses of Parliament exercise the legislative mandate of the people, deliberate on matters of national interest and oversight the exercise of power by other arms of government.

1.2.2 The Constitution of Kenya, 2010

The Constitution of Kenya, 2010 provides an institutional framework to respond to alleged human rights abuses and historical land injustices through the Kenya National Commission on Human Rights and the National Land Commission. Article 59 of the Constitution provides that the Kenya National Commission on Human Rights shall, *inter alia*-

(e) receive and investigate complaints about alleged abuses of human rights and take steps to secure appropriate redress where human rights have been violated;

(f) on its own initiative or on the basis of complaints, to investigate or research a matter in respect of human rights, and make recommendations to improve the functioning of State organs;

The provisions of Article 59(e) and (f) are reiterated in section 8(d) and (e) of the Kenya National Human Rights Commission Act Cap 5B, Laws of Kenya.

Article 67(2)(e) of the Constitution provides that the National Land Commission may initiate investigations, on its own initiative or on a complaint, into present or historical land injustices, and recommend appropriate redress.

1.2.3 The Land Act, 2012

The Land Act was amended through the Land Laws (Amendment) Act 2016 to provide for historical injustices. Section 15 of the Act defines historical injustices to include grievances which -

- (a) Were 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.

Under section 15(3) of the Act, 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 the Act.

The Act further provides that a claim alleging historical land injustice shall be permissible if, *inter alia*, it was occasioned by colonial occupation, independence struggle, pre-independence treaty or agreement between a community and the government, inequitable land adjudication process or resettlement scheme.

On remedies, the Act provides that 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 marginahzed 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.

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**. The provision on redress of historical injustices has a sunset. It provides that section shall stand repealed **after ten years**.

1.2.4 National Land Commission (Investigation of Historical Land Injustices) Regulations, 2017

The Regulations, gazetted on 6th October , 2017 ¹ sets out the procedure for investigation into historical land injustices that occurred between 15th June 1895 to 27th August, 2010. It sets out the powers of the Commission to initiate investigations or upon complaint, the procedure for lodging a claim and the conducts of hearings. The regulations sets out with procedure for the investigation and resolution of claims arising out of historical land injustices. Regulation 7(1) specifically provides for the procedure for lodging a claim which should be by prescribed form, through a letter, a Memorandum or oral submission.

¹ Special Issue, Kenya Gazette Supplement No.154, legal Notice No.258 of 6th October, 2017

1.3 Grievances Recorded By the Truth, Justice and Reconciliation Commission

The Land and Conflict chapter of the report of the **Truth Justice and Reconciliation Commission (TJRC Report)**² sets out a record of the historical injustices visited upon Kenyan communities during the colonial Era. The report notes that the colonial administration used irregular and/or illegal methods to obtain land from local communities such as: the establishment of native reserves; **forced evictions of the Talai, Pokot, Turkana, and Sabaot communities.** The *TJRC Report in Volume IIB in paragraph 78* states as follows-

For the indigenous communities that attempted to resist the oppressive interactions of white settlers and fought back, such as the Pokot and the Talai, the manner of forced eviction attracted dire consequences. The colonial government responded with great force and evicted them from their land, with the Pokot being driven to Uganda while the Talai clan members were forced to move far away from the Rift Valley to Gwasssi in South Nyanza.

The testimony of David Nasura Tuwei, on behalf of the members of the Talai clan, explains the tribulations that the community underwent and the effects of forcible eviction that they suffered as follows:

Our forefathers resisted the colonialists and were either exiled or imprisoned. The most interesting or sad thing is that never in the history of Africa regarding the European intrusion has a whole community consisting of children, women, old men and even animals been exiled. They were not given a chance to defend themselves in the court of law. Normally, leaders would be exiled or jailed just like Mzee Jomo Kenyatta and Nelson Mandela of South Africa. But in this case, it was hundreds of innocent people. This was the worst violation of human rights by the colonial government...They [the colonial administrators] chased them [members of the Talai clan] to Gwasssi in South Nyanza which is a dry place with little rain and is infested with tsetse flies, snakes and other animals...In October, 1934, the Talai trekked for 13 days from Sondu, near the Kipsigis boundary to Gwasssi. Within that period, 14 women who were pregnant miscarried while cows, sheep and goats died...several Talai women and children died as

² The TJRC Report was tabled in the National Assembly in July 2013

a result of the Gwasssi bug. That confirms that the colonial government wanted those people to die... The British Colonial Government uprooted the Talai from the prestigious positions of leadership to destitute marginalized minority groups that have been relegated from the leadership and reduced to useless beggars. Their position before the colonialists was equivalent to the British Royal Family and Uganda's Kabaka Kingdom.

The eviction of the Talai clan was effected under the *Laibon Removal Ordinance of 1934*, which contained harsh provisions for forceful eviction of African communities, directing those removed, as the Talai: to the settlement area and compulsory settlement in the “rocky area with high hills” on the shores of Lake Victoria and Mung’ori Bay.

The Truth Justice and Reconciliation Commission recommended that with regard to atrocities committed during the colonial era, the British Government should issue an acknowledgement and an apology to the communities who suffered atrocities. Further, that the Kenyan Government and the British Government should negotiate for compensation for the affected communities within 12 months of the release of the TJRC Report³. The Commission further recommended that the National Land Commission should come up with reparations for historical land injustices within 36 months⁴.

³ Truth Justice and Reconciliation Report , Volume IV, Annex: Recommendations and Implementation Matrix, 3rd May, 2013, pg.63

⁴ Ibid. pg.67

CHAPTER TWO

SUBMISSIONS ON THE PETITION

2.0 Introduction

The Petition by Governor Stephen Sang' was presented and tabled in the Senate on 7th November, 2017. The Committee on Justice, Legal Affairs and Human Rights noted that the Talai Clan presented oral and written submissions in the 11th Parliament pursuant to a similar Petition with the same facts tabled in the 11th Parliament on 1st March 2017 (*Attached at Annex I*).

2.1 Submissions by representatives of the Talai Clan

Representatives of the Talai Clan made the following submissions-

- (1) The members of the Talai Clan comprise of the following subclans;
 - (a) Kapturgat;
 - (b) Kapsogon;
 - (c) Kapmararsoi;
 - (d) Kapchesang; and
 - (e) Kapsanet

- (2) The said sub-clans are residents of Kapsisiywa Location of Nandi County, an area created under the Laibons Removal Ordinance of 1934 (*Annex 2*) and many other members numbering approximately 10,000 people are scattered across the Rift Valley Region including Kericho, Uasin Gishu, Trans Nzoia, Baringo, Elgeyo-Marakwet and Laikipa counties.

- (3) The Talai Clan suffered numerous historical injustices from back in 1905 at the hand of the colonialists and continues to suffer from the effects of such injustices.

- (4) These injustices include-
 - (a) Systematic abuse of their fundamental human rights and civil rights by way of mass murder;

- (b) Detention without trial;
 - (c) Economic crimes through unfair confiscation of their property including cattle;
 - (d) Imposition of internal exile and travel restrictions;
 - (e) Forceful evictions from their ancestral land which includes various parcels of land in Nandi Hills area; Kipchamo and Kiptega Estates;
 - (f) Forceful transfer of populations leading to loss of their fertile ancestral lands; and
 - (g) Brutal assassination of their leader, Koitalel Samoei.
- (5) During the pre-colonial period, the Talai Clan held a prominent position among the Nandi, Kipsigis and Tugen communities and provided political, military and religious leadership. Some of the famous leaders from the clan include Kimnyolei who foresaw the British invasion and the coming of the white snake (the train) and Koitalel Samoei who led the Nandi resistance against the British invasion for twelve (12) years between 1890 and 1906.
- (6) As a consequence of their prominence, members of the Talai Clan became a target for the colonialist who exerted brutal force by raids, battles, killings and burning of crops and property and confiscation of livestock. The colonialists also employed various divide and rule tactics such as claiming that the Talai Clan were wizards and sorcerous so as to alienate them from the other clans.
- (7) The colonialists also killed Koitalel Samoei, the Talai and Nandi leader on 19th October, 1905. They beheaded him but to date, have not purged this desecration. They have also failed to return his head for decent burial which is believed to be hidden somewhere in the British museums.
- (8) Through the passage of the *Natives Removal Ordinance in 1909*, the British colonialists began a systematic operation akin to ethnic cleansing by harassing, arresting and detaining various Talai Community leaders. Some of the leaders were deported and banished to internal exile in 1914 as follows-

- (a) Kipchomba arap Koilegei was deported to Fort Hall in Murang'a and died on 18th July 1916. He was buried at an unknown location in Murang'a.
 - (b) Kipngetich arap Boisio was deported to Nyeri and detained. He later got married to a Kikuyu woman named Margaret Muthoni (Chemarus Boisio) from Kamakwa Othaya in Nyeri.
 - (c) Singoei arap Buigut was deported to Meru and later killed in Moyale.
 - (d) Barsian Arap Manyei was deported in 1923 to the former North Eastern Province and was returned back in 1930. In 1938 he was taken to Mfangano Island in Lake Victoria and with nine others and was released in 1962.
- (9) On 8th November, 1919, relying on the said removal of Natives Removal Ordinance, the colonialists assembled and banished the Talai Community to a mosquito infested area known as Kapsisiywa Location No.26. of the then Nandi District. Other concentration areas that the clan was banished to include Mfangano and Gwassu Islands in Lake Victoria, Kericho Township and Kapsabet Township.
- (10) Between 1923 and 1930, another prominent Talai leader, Barsierian arap Manyei was forcefully banished to Meru and was thereafter moved to Kapmartagui where he was required to report every morning to the District Commissioner until 1957/1958. He was later exiled to Mfangano Island in Lake Victoria region alongside ten other leaders of his clan namely;
- (a) Kirwa arap Chepkwony,
 - (b) Kapnyolei Ngererpei arap Busienei,
 - (c) Kiptololet arap Lelimo,
 - (d) Kimulot arap Chepkwony,
 - (e) Kipng'etich arap Menei,
 - (f) Chepkwony arap Matutu,
 - (g) Kina arap Koitaleel,
 - (h) Koringo arap Koitaleel,
 - (i) Kipsaina arap Samoei,
 - (j) Bassi Tegendany arap Rongoei ; and

(k) Barserian arap Manyei who died and was buried in Mfangano Island and is the father of one of the petitioners therein.

(11) During this period, intermarriages between the Talai and other communities were discouraged.

(12) In 1932, the Talai in Kapsisiywa were subjected to intimidation tactics when a plane hovering over a public gathering convened by the colonial administration dropped bags of maize flour or 'white bombs' as it was called to scare the Talai Clan into submission.

(13) On 25th September, 1934, the colonialists passed the Ordinance for the Removal and Settlement of the Laibons. In addition, there was a roundup of members of the Talai Clan who had escaped or left out of the previous evictions. This Ordinance therefore restricted the Talai ancestors' freedom of movement. In particular, the said Ordinance required the Talai Clan to obtain passes in order for them to visit their relatives who lived outside the concentration areas. Whereas they were granted such passes, they were prohibited from speaking to more than four people on their journey.

(14) A detailed census carried out on all the Laibons in Nandi, Tugen and Kericho revealed that by June 1936, all the Talai Clan families had been moved to Gwasssi in South Nyanza.

(15) The injustices inflicted upon the Talai Clan continued even after Independence as follows-

(l) Instead of being accepted back into their various community areas, the Talai remained in isolation.

(m) Kapsisiywa and Kericho Township concentration camps were not closed thus continuing the Talai marginalization with its attendant mental anguish and deprivation.

(n) In the same way that Koitalel Samoei was beheaded, so too were the Talai - their leaders suffering extremely high mortality rates from removals, restrictions in

concentration areas, often mosquito infested, barred from outside marriage and access to health care and education and ignored by their own Government after Independence;

(16) They have made the best efforts to have this matter addressed by the Truth, Justice and Reconciliation Commission (TJRC), the Independent Electoral and Boundaries Commission (IEBC) and the Kenya National Commission on Human Rights (KNCHR) with no success.

(17) None of these issues raised in this Petition is pending in any court of law, constitutional or any other legal body;

2.2 Prayers to the Senate

The Petitioners made the following prayers-

- (1) Recommends that the National Land Commission (NLC) and the Kenya National Commission on Human Rights (KNCHR) carry out investigations and consider the plight of the Talai Clan and community at large;
- (2) Recommends the identification and recognition of the Talai community as a specific people group;
- (3) Recommends to the Nandi County Government for developmental affirmative action towards the community that had been marginalized and ignored for long;
- (4) Recommends that the IEBC creates a specific ward to ensure that the clan is represented at the County Assembly of Nandi as was the case in the defunct County Council of Nandi;
- (5) Publishes a report pronouncing upon the serious and many breaches of human rights that the community has suffered;
- (6) Calls for the declaration of the Talai Clan as a marginalized community, pursuant to Article 260 of the Constitution;
- (7) Recommends that the Commission on Revenue Allocation (CRA), all other national Commissions, counties and other devolved units recognize the Talai Clan as a marginalized community;

(8) Without prejudice to the generality of the foregoing, recommends the allocation of a substantial portion of the resources from the funds established to settle issues of historical injustices to:

- (a) Provide compensation for the Talai Clan;
- (b) Enable the Talai to pursue their complaints against the British Government, including the recovery of the head of Koitaleel Samoei and specific compensation for the dead leaders.

CHAPTER THREE

OBSERVATIONS

3.0 General Observation

The Justice, Legal Affairs and Human Rights Committee observed that the Legal Affairs and Human Rights Committee of the 11th Parliament deliberated on a similar Petition with similar facts tabled by the then Sen. Stephen Sang' on 1st March, 2017 on behalf of Talai Clan (*Hansard Record attached at Annex 3*)⁵. The current Petition is by Governor Stephen Sang'. The Committee on Legal Affairs and Human Rights met and held a public hearing for members of the Talai Clan in Kapsisiywa in Nandi County on 13th March, 2017. However, the term of the 11th Parliament lapsed before the report could be tabled.

The Justice, Legal Affairs and Human Rights Committee agreed that in exercise of prudent use of public resources, it was not necessary to subject the community to a second public hearing. The Committee further noted that it was seized of the facts of the Petition and the record of the public hearing as well as the advantage of institutional memory of three Senators (Sen. Amos Wako, Sen. Fatuma Dullo and Sen. Mutula Kilonzo Junior) who previously served in the Legal Affairs and Human Rights Committee of the 11th Parliament and who attended the public hearing on 13th March, 2017 and were therefore well-conversant with the facts of the Petition.

3.1 Specific Observations

The Committee made specific observations on the prayers in the Petition as follows-

1. **Prayer 1: recommends the National Land Commission and the Kenya National Commission on Human Rights carry out investigations and consider the plight of the Talai clan with a view to offering redress**

The Committee observed that the National Land Commission has the power to investigate historical injustices and to recommend appropriate remedies which must be implemented within three years after the findings of the Commission. Article 67(2)(e) of the Constitution provides that the National Land Commission may initiate investigations, on its own initiative

⁵ Parliament of Kenya, Hansard Record, Senate Debates, Wednesday, 1st March, 2017, pg.1
http://www.parliament.go.ke/the-senate/house-business/hansard/item/download/3502_3d10d2b21b793d9d0614f73389edefd [accessed 8th March , 2018]



or on a complaint, into present or historical land injustices, and recommend appropriate redress.

Section 15 of the National Land Commission Act gives further comprehensive mechanism for the exercise of this duty while the National Land Commission (Investigation of Historical Land Injustices) Regulations, 2017 provides the procedure to carry out this mandate. The Committee observed that the subject matter of the Petition falls within the ambit of the Commission.

2. Prayer 2: recommends the identification and recognition of the Talai community as a specific people group;

The Committee observed that the plight of the Talai Clan has been recognized under the TJRC Report (*Volume IIB*) as well as the Commission on Revenue Allocation Policy Paper, "*Historical Injustices: A Complementary Indicator for distributing the Equalization Fund, CRA Working Paper No. 2012/02*" used to identify minorities and marginalized communities.

3. Prayer 3: recommends to the Nandi county government implementation of developmental affirmative action programmes aimed at empowering the community;

The Committee observed that the descendants of those who were affected still faced the emotional trauma, physical disability due to injuries sustained during the detention as well as economic strife due to the forcible dispossession of their land.

The Committee observed that the Fourth schedule provides that one of the functions of the County government is county planning and development and ensuring public participation of communities in governance. The Committee therefore urges the inclusion of the Community at the local level through public participation during the planning, budgeting and the legislative process as set out under the Constitution and the County Government Act, 2012.

4. **Prayer 4: recommends to the Independent Electoral and Boundaries Commission (IEBC) to create a special ward to ensure that the clan is represented at the County Assembly of Nandi;**

The Committee observed that Article 88(4)(c) provides that the IEBC is responsible for the *delimitation of constituencies and wards*. Further Article 89(3) provides that *the Commission shall review the number, names and boundaries of wards periodically* while Article 89(8) provides that *“if necessary, the Commission shall alter the names and boundaries of constituencies, and the number, names and boundaries of wards”*.

Section 36 of the Independent and Electoral and Boundaries Act No. 9 of 2011 provides for the procedure for the delimitation of electoral boundaries. The Committee noted that the request fell within the ambit of the IEBC. The Committee observed that the IEBC was currently in a preliminary and planning engagement on electoral boundary review after the population census in 2019⁶. Article 89 (2) of the Constitution provides as follows-

(2) The Independent Electoral and Boundaries Commission shall review the names and boundaries of constituencies at intervals of not less than eight years, and not more than twelve years, but any review shall be completed at least twelve months before a general election of members of Parliament.

The Committee observed that the Talai Clan has an opportunity to make its request to IEBC when boundary review process is launched in 2019.

5. **Prayer 4: publishes a report acknowledging the many serious breaches of human rights suffered by the community;**

The Committee observed that the Talai Clan the human rights abuses and the historical land injustices suffered by the Talai Clan under the colonial administration including forcible transfer of population, confiscation and destruction of property (land, livestock and farm produce) are well documented in the Truth Justice and Reconciliation Commission Report which was tabled in the National Assembly in July 2013.

⁶ Independent Electoral and Boundaries Commission
https://www.iebc.or.ke/news/?IEBC_Sets_Stage_for_Electoral_Boundary_Review [accessed 8th March, 2018]

6. Prayer 5: call for the declaration of the Talai clan as a marginalized community pursuant to Article 260 of the Constitution;

The Committee observed that under Article 260 of the Constitution “marginalised community” means—

(a) a community that, because of its relatively small population or for any other reason, has been unable to fully participate in the integrated social and economic life of Kenya as a whole;

(b) a traditional community that, out of a need or desire to preserve its unique culture and identity from assimilation, has remained outside the integrated social and economic life of Kenya as a whole;

(c) an indigenous community that has retained and maintained a traditional lifestyle and livelihood based on a hunter or gatherer economy; or

(d) pastoral persons and communities, whether they are—

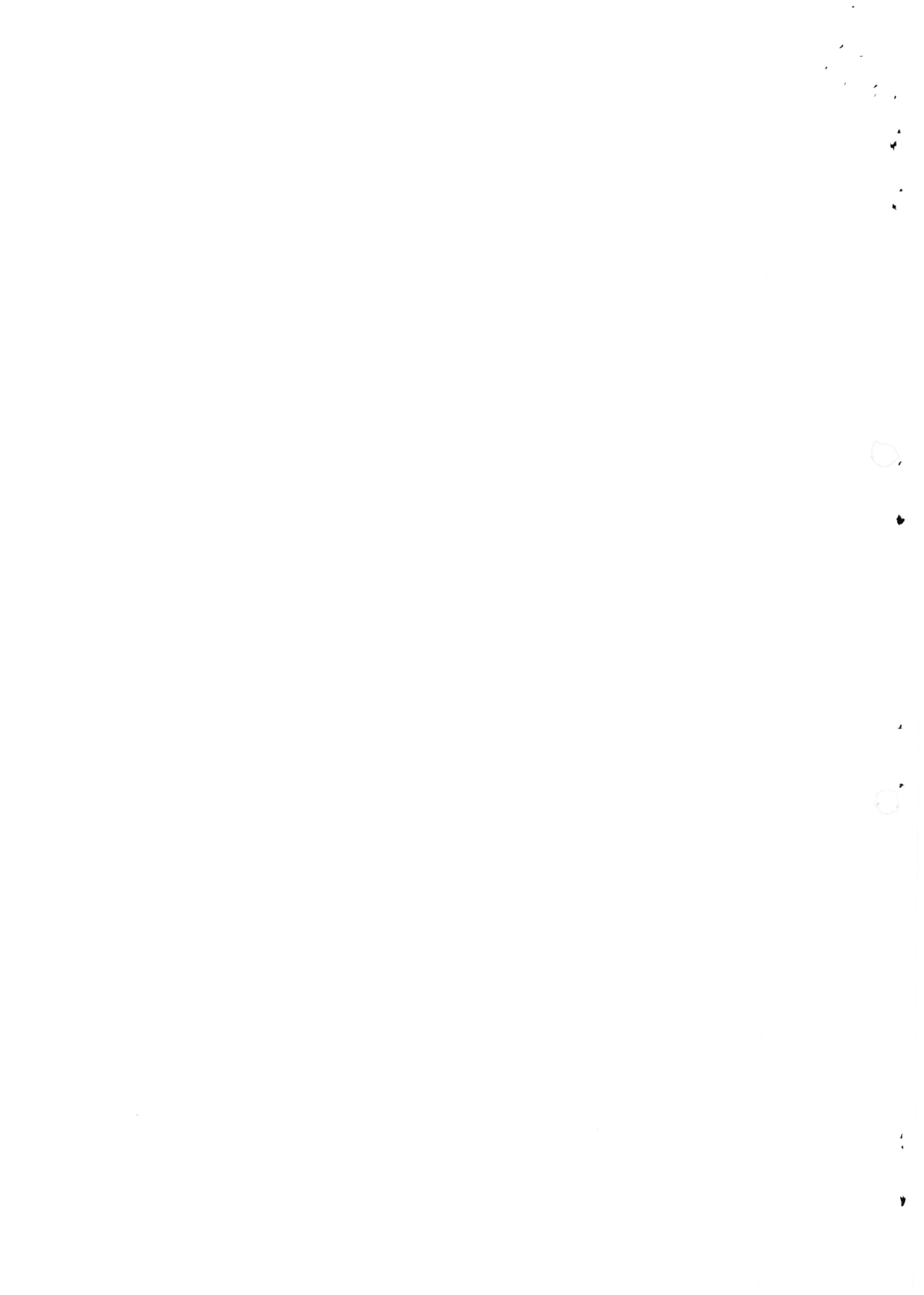
(i) nomadic; or

(ii) a settled community that, because of its relative geographic isolation, has experienced only marginal participation in the integrated social and economic life of Kenya as a whole;

The Committee further notes that the Commission of Revenue Allocation (CRA) has the core mandate is to recommend the basis for equitable sharing of revenues raised nationally between the national and the county governments, and among the county governments under Article 215 of the Constitution. The Committee observed that such a declaration would require a recommendation from the CRA which has the mandate to publish and review the policy that sets out criteria for identifying marginalized areas in actualization of the Equalization Fund.

7. Prayer 6: recommends that the Commission on Revenue Allocation recognize the Talai clan as a marginalized community;

The Committee observed that the Commission of Revenue Allocation (CRA) indeed recognized that historical injustices suffered by various communities in Kenya contributed greatly to exclusion and marginalization. The Commission adopted historical injustices as a



criterion in the allocation of the Equalization Fund in its the Policy Paper, *“Historical Injustices: A Complementary Indicator for distributing the Equalization Fund, CRA Working Paper No. 2012/02.”* The Policy paper specifically acknowledged Talai as a minority and marginalized Group in Nandi County⁷.

However, in CRA Policy on the *“Criteria for Identifying Marginalised Areas and Sharing of the Equalisation Fund (2011-2014)”* the Commission states that apart from an analysis of historical and legislated injustices, the Commission also considered the County Development Index⁸ and carried out a survey to rank the most marginalized counties which are Turkana, Narok, Mandera, Kwale, Wajir, Garissa, Marsabit, Kilifi, Samburu, Taita Taveta, West Pokok, Isiolo, Tana River and Lamu .

8. Prayer 7: recommends the allocation of a substantial portion of the resources from the funds established in the National government to settle issues of historical injustices to provide compensation to the clan and to enable the clan pursue complaints against the British government

The Committee observed that the TJRC report was published in May 2013 and tabled in the National Assembly in July 2013. In his State of the Nation address in March 2015 President Uhuru Kenyatta urged the National Assembly to process the report without further delay and issued a directive to the Treasury for the establishment of *“a fund of Kshs10 billion over the next three years to be used for restorative justice”*⁹. The Committee observed that the Fund may be able to provide relief for the Community as well as assistance to pursue the complaints against the British Government. However, the Treasury should report on whether the directive was implemented and the progress of implementation.

⁷ CRA Working Paper No. 2012/02, *Historical Injustices: A Complementary Indicator for distributing the Equalization Fund*, Appendix 4

⁸ CRA Working Paper No. 2012/01, *Creating A County Development Index To Identify Marginalized Counties, 2012*

⁹ Parliament of Kenya, Hansard Report, *Joint Parliamentary Debates, Eleventh Parliament – Third Session, Special Sitting of Parliament convened via Kenya Gazette Notices Nos.1978 and 1980 of 20th March, 2015, Thursday, 26th March, 2015*, pg.13



CHAPTER FOUR

RECOMMENDATIONS

4.0 Committee Recommendations

The Standing Committee on Justice, Legal Affairs and Human Rights resolved-

1. That the report of the Committee be forwarded to the National Land Commission to undertake investigations on land injustices suffered by the Talai Clan pursuant to the National Land Commission (Investigation of Historical Land Injustices) Regulations, 2017 (L.N. No. 258 of 2017) and recommend appropriate remedies for the community. Further that the National Land Commission shall submit a report to the Senate on this particular issue **within 6 months** of the receipt of this report pursuant to Article 254(2) of the Constitution which states as follows-

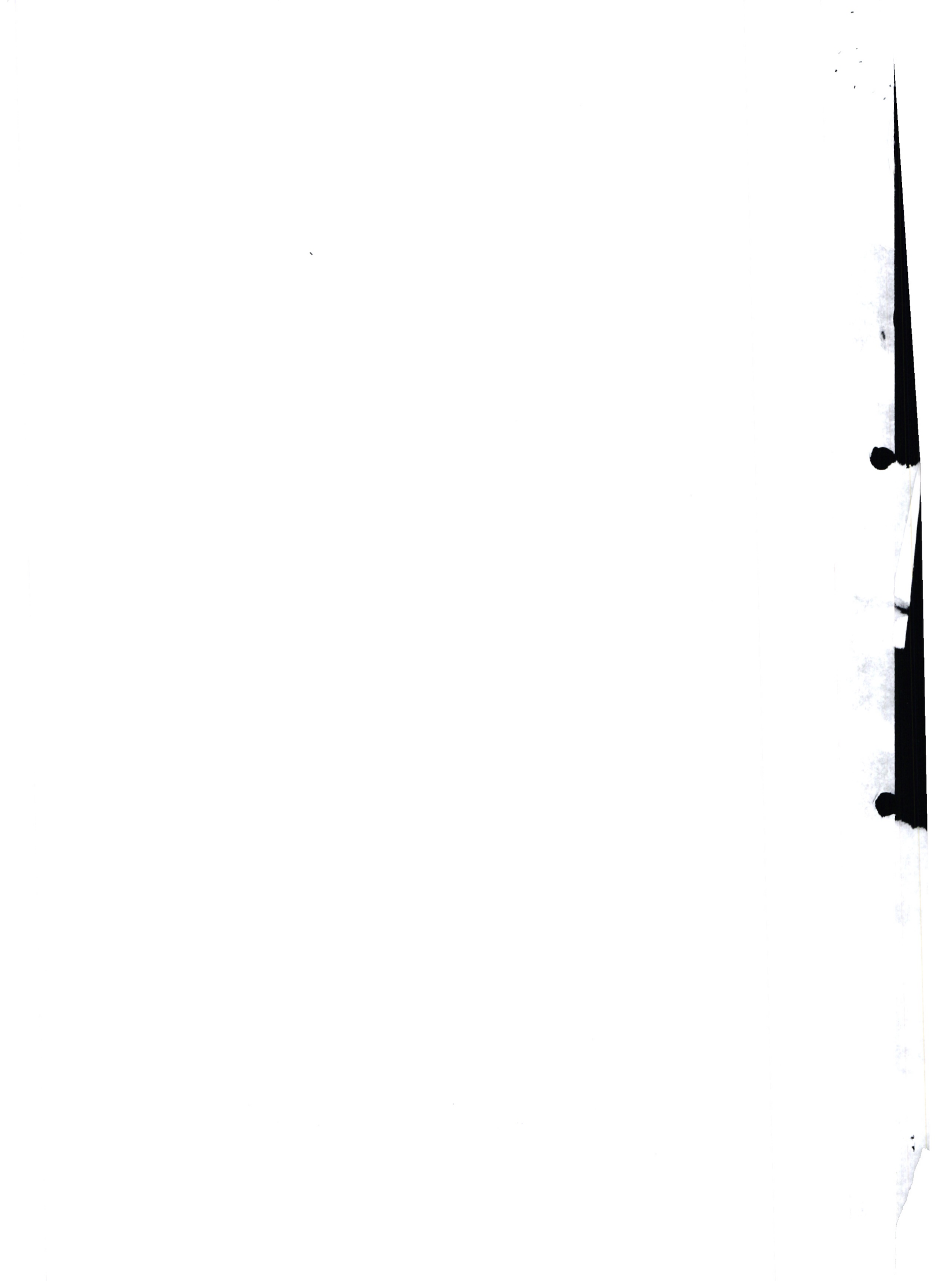
254. (2) At any time, the President, the National Assembly or the Senate may require a commission or holder of an independent office to submit a report on a particular issue.

2. That the report of the Committee be forwarded to the Commission of Revenue Allocation (CRA) to make recommendations regarding solutions for realizing the social and economic rights of the Talai Clan and other historically marginalised communities before the Second Marginalisation Policy is finalised. The Commission should make recommendations on how the Talai Clan can benefit from the Equalisation Fund pursuant to Article 204 (3) (b) of the Constitution which states as follows-

(3) The national government may use the Equalisation Fund—

(b) either directly, or indirectly through conditional grants to counties in which marginalised communities exist.

Further, the Commission on Revenue Allocation shall submit a report to the Senate on this particular issue **within 6 months** of the receipt of this report pursuant to Article 254(2) of the Constitution.



3. That the County Government of Nandi takes deliberate measures to ensure special provisions for the Talai Clan pursuant to the Constitution and the County Government Act. Specifically, Article 201 (b) (iii) states as follows-

201. The following principles shall guide all aspects of public finance in the Republic—

(b) the public finance system shall promote an equitable society, and in particular—

*(iii) expenditure shall promote the equitable development of the country, including by **making special provision for marginalised groups and areas;***

4. That the National Government assists with remedies for the Talai Clan, in particular, to pursue judicial proceedings against the British Government for the atrocities committed against the community pursuant to the Mutual Legal Assistance Act, 2011¹⁰, and for the return of the remains of Nandi Leader Koitalel Samoei to allow for a decent burial.

¹⁰ ECLR No.36 of 2011

ANNEXURES



MINUTES OF THE SITTING OF THE STANDING COMMITTEE ON JUSTICE, LEGAL AFFAIRS AND HUMAN RIGHTS HELD AT THE MAIN PARLIAMENT BUILDINGS, 2TH FLOOR, COMMITTEE ROOM 5, ON THURSDAY, 8TH MARCH, 2018 AT 11.10 AM.

PRESENT

- | | |
|-------------------------------|------------------|
| 1. Sen. Samson Cherarkey | Chairperson |
| 2. Sen. Mithika Linturi | Vice Chairperson |
| 3. Sen. Amos Wako | |
| 4. Sen. Faki Mojammed | |
| 5. Sen. Fatuma Dullo | |
| 6. Sen. Mutula Kilonzo Junior | |
| 7. Sen. Susan Kihika | |

ABSENT WITH APOLOGIES

1. Sen. James Orengo
2. Sen. Irungu Kang'ata

IN ATTENDANCE

- | | |
|-----------------------|-------------------------|
| 1. Ms. Kavata Musyoka | Committee Clerk |
| 2. Ms. Lucy Radoli | Legal Counsel |
| 3. Ms. Clare Kidombo | Research Officer |
| 4. Ms. Toona Sombe | Legal Counsel |
| 5. Ms. Njeri Manga | Media Relations Officer |

MIN.NO/8/3/JLAHRC

The Chairperson called the meeting to order at 11.10 am and the meeting began with a word of prayer.

PRELIMINARIES

MIN.NO/8/3/JLAHRC

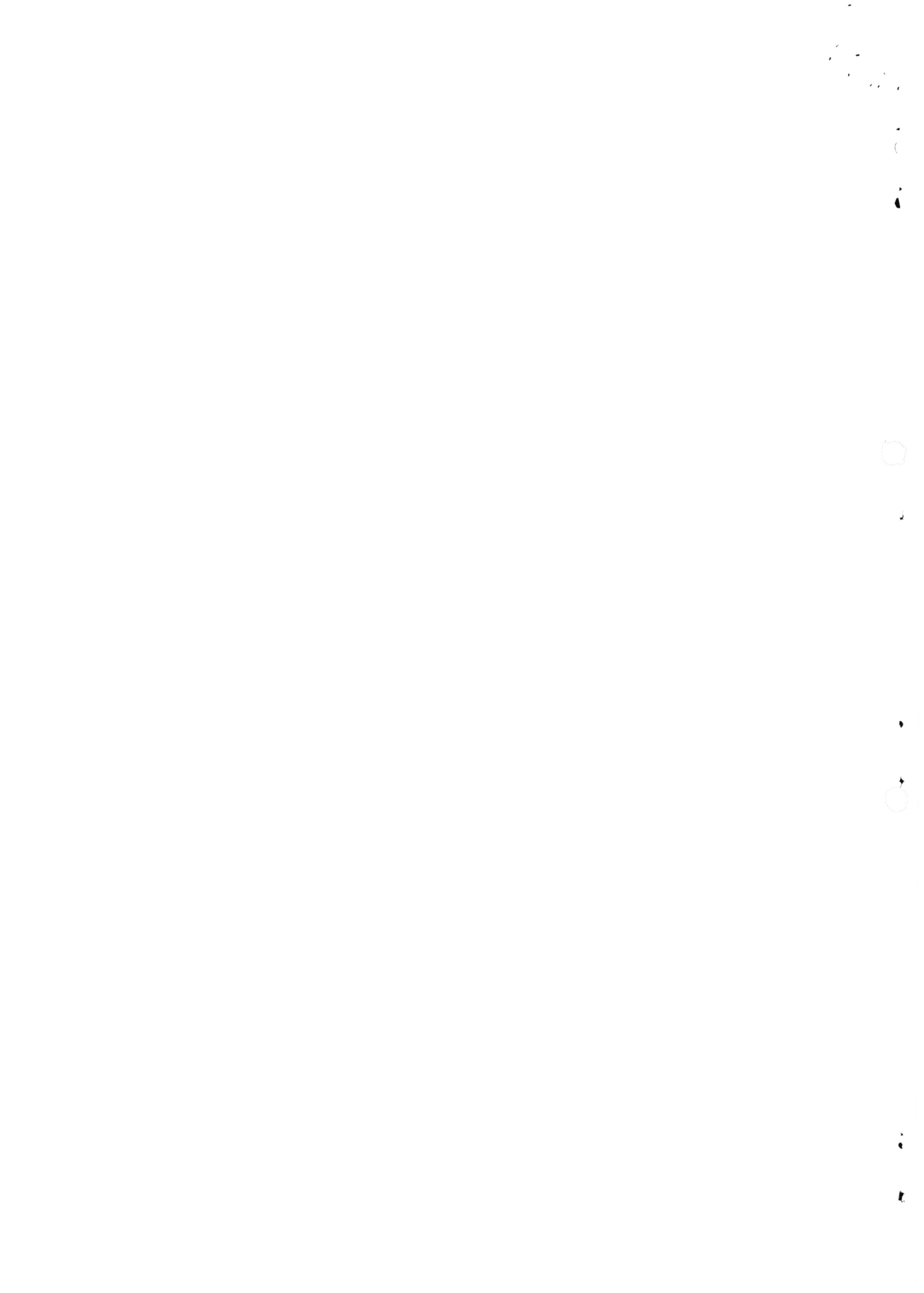
The agenda of the meeting was adopted having been proposed by Sen. Faki and seconded by Sen. Mutula.

ADOPTION OF THE AGENDA

MIN.NO/8/3/JLAHRC

The Secretariat took Members through the draft report. Thereafter the report was adopted and recommended for tabling.

PETITIONS ON THE HISTORICAL INJUSTICES SUFFERED BY THE TALAI CLAN.



MIN.NO/8/3/JLAHRC

**PETITIONS ON THE USAGE OF
THE WORD "HARAMBEE" IN THE
COAT OF ARMS AND THE PUBLIC
SEAL**

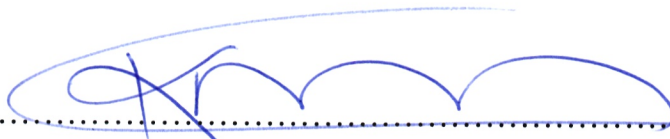
The Secretariat took Members through the draft report. Thereafter the report was adopted and recommended for tabling.

MIN.NO/8/3/JLAHRC

**ADJOURNMENT AND DATE OF
THE NEXT MEETING**

There being no other business the meeting was adjourned at 12.36 pm.

Signed:



.....
(Chairperson-Senator Samson Cherarkey)

Date:

12/3/2018
.....

**TO
CHAIRMAN OF LEGAL AFFAIRS
AND CONSTITUTIONAL
INJUSTIES OF SENATE**

ANNEX 1
TALAI CLAN

HON. MEMBERS OF SENATE COMMITTEE

Well come to this area of Kapsisiwo detation area in

Nandi – Laibons area since 8/11/1919 – upto – Now 2017.

The laibons were the Nandi spiritual and political leaders before coming of European , we were living in peace in our Nandi County.

We resist the British rule. Since 1890 – 1906. After killing Samoei in 5/10/190. The British started divide and rule.

We were deported in the area under Laibon removal ordinance.

Here it is. Well come.



“NATIVE REMOVAL ORDINANCE”. The Talai Community refused the proposed Native Removal Ordinance and therefore the Colonial Governor, Sir Henry Conway Betteld signed a warrant of arrest and devolved the Three Talai leaders to central Provinces on 7th January 1913: They were

1. Kipchomber Arap Koilegei to Murang’a - He died in 1918
2. Singoei Arap Buigut to Nyeri - He died in 1929
3. Kipngetich Arap Boisio to Moyale - He died in 1930

The above were the First Kenyan Political Detainees in Kenya and they married Kikuyu Ladies while they were in detention.

On 18th November 1919

The colonial government deported all the Talai Nandi Clan to Kapsisiywa Location.

In 1923-1930

The other Nandi Talai leader Barserian Arap Manyei was also deported 1930 to Meru in Central Province.

In 1932

The British Government led by DC called a baraza at Kapsisiywa and send aircraft to dropped a flour bomb to a sitting Baraza.

A LETTER FROM KERICHO D.C. TO NYANZA P.C.

The District Commissioner of Kericho Mr. Douglass Braumages wrote a letter to Nyanza Provincial Commissioner as follows:

“The Government of the Laibon, then is very efficient more efficient than ours has been and it is an ordinary how they have deviled it in our administration”. If nothing is done, to this people in four months to come I don’t see ourselves ruling in this part of the colony. KNA:DC/KER/17/12/34.

On 30th July, 1934

Member of Parliament Hon. Dobb Tabled a bill in the Colonial Parliament to remove all Talai Clan and taken to a side of their country and be restricted from their movement and not to meet with anybody from outside.

On 27th September, 1934

The bill was passed and enacted by the Governor of Kenya Colony and it came into force and became the LAW OF KENYA "LAIBON REMOVAL ORDINANCE".

On 1st April, 1957

The Talai Leader Barserian Arap Manyei was arrested at Laikipia and taken to Kamatargui near D.C's office at Kapsabet. He was ordered to report every morning at D.C's that he was present. After this he was deported to Mfangano Island in Lake Victoria up to 1961.

In 1957

10 Talai Elders were taken to Kapsabet G.K. Prison awaiting deportation to Mfangano Island in Lake Victoria.

On 24th March, 1958

10 Talai Elders were taken to Kapsabet G.K. Prison awaiting deportation to Mfangano Island in Lake Victoria. They were;

1. Barserian Arap Manyei - First he was taken to Meru in 1923-1930 and second he was deported to Mfangano Island in 1957 - 1961.
2. Chepkwony Matutu - to Mfangano
3. Kirwa Chepkwony - to Mfangano
4. Kipsaina Samoei - to Mfangano
5. Kiptololet Lelimo - to Mfangano
6. Kipngetch Menei - to Mfangano
7. Kina Koitalel - to Mfangano
8. Kipnyolei Busienei - to Mfangano
9. Koriko Manyei - to Mfangano
10. Kimulot Chepkwony - to Mfangano
11. Bassi Tenendany Rongoei - to Mfangano (He died in detention in 1958)

The rest were released in 1961 and they were brought back to Kapsisiywa Location detention camp (1919-1961) and up to 2015 in the same detention camp.



Annex 2

LAWS OF KENYA

The Laibons Removal Ordinance

CHAPTER 59

Revised Edition 1962
Printed and Published by the Government Printer
Nairobi

CHAPTER 59

THE LAIBONS REMOVAL ORDINANCE

ARRANGEMENT OF SECTIONS

Section

- 1—Short title.
- 2—Interpretation.
- 3—Establishment of Laibon settlement area.
- 4—Provincial Commissioner to remove Laibons.
- 5—Laibons to be restricted to settlement area.
- 6—Penalty for leaving settlement area.
- 7—Registers.
- 8—Custody of registers.
- 9—Appeals.
- 10—Powers of Provincial Commissioner concerning removal.
- 11—Provincial Commissioner's order to be sufficient authority.
- 12—Persons removed deemed to be in lawful custody.
- 13—Power of Provincial Commissioner to issue directions.
- 14—Passes; and power to revoke orders.
- 15—Measures relating to settlement of Laibons.
- 16—No appeal from removal save as in section 9.
- 17—Protection for persons acting under the Ordinance.
- 18—Miscellaneous offences.
- 19—Rules.
- 20—Saving.

SCHEDULE

CHAPTER 59

THE LAIBONS REMOVAL ORDINANCE

Commencement: 25th September, 1934

Cap. 46 (1948),
 15 of 1956,
 L.N. 362/1956,
 L.N. 370/1956,
 L.N. 172/1960,
 L.N. 173/1960.

**An Ordinance to provide for the removal and settlement of
 Laibons**

WHEREAS there are now living among the Lumbwa Tribe in the Nyanza Province, and among the Nandi tribe in the Rift Valley Province, considerable numbers of Laibons, a people alien alike to the Province and to its inhabitants:

AND WHEREAS the Lumbwa tribe and the Nandi tribe have petitioned the Government of Kenya that the said Laibons be removed from among them:

AND WHEREAS it is deemed necessary for the preservation of peace and order and in the interests of good government that the said Laibons should be so removed to and settled in some selected area:

AND WHEREAS an area suitable for such purpose has now been selected:

AND WHEREAS it is expedient to make provision for the removal to and settlement in such area of the said Laibons:

BE IT THEREFORE ENACTED by the Governor of the Colony of Kenya, with the advice and consent of the Legislative Council thereof, as follows:—

1. This Ordinance may be cited as the Laibons Removal Ordinance.

Short title.

2. In this Ordinance, except where the context otherwise requires—

Interpretation,
 15 of 1956, s. 3.

“Laibon” means an orkoyot;

“orkoyot” means an adult male member of the Talai clan resident in the South Lumbwa District* or in the Nandi District;

“Provincial Commissioner” means the Provincial Commissioner, Nyanza Province or the Provincial Commissioner, Rift Valley Province, as the case may be, or any other officer duly authorized to act in such appointment;

* i.e. the former district of that name.

“removal” means the removal to the settlement area and the compulsory settlement therein referred to in section 4 of this Ordinance;

“settlement area” means the area referred to in section 3 of this Ordinance.

3. There shall be set apart for the use of the Laibons a settlement area as defined in the Schedule to this Ordinance or such other area as the Minister may by order declare to be a settlement area.

4. Upon the commencement of this Ordinance, the Provincial Commissioner shall cause all adult male Laibons in the Nyanza Province or in the Rift Valley Province, together with all the members of their families, to be removed to and compulsorily settled in the settlement area.

5. Every Laibon and every member of every Laibon's family so removed to and settled in the settlement area shall thereafter be restricted in his movement to the boundaries of such area, and shall be and is hereby prohibited from moving out of such area at any time unless he is in possession of a written pass granted to him in that behalf by a Provincial Commissioner, or some officer authorized by him, in accordance with section 14 of this Ordinance.

6. If any person removed and settled under section 4 of this Ordinance leaves the settlement area without the written permission of the Provincial Commissioner or of some officer authorized by him (the burden of proving the possession of such permission being on the person charged), such person shall be guilty of an offence and may be arrested without warrant, and shall be liable—

- (a) on a first conviction, to imprisonment for a period not exceeding one year;
- (b) on a second conviction, to imprisonment for a period not exceeding two years;
- (c) on any subsequent conviction, to imprisonment for a period not exceeding three years,

or to a fine not exceeding one thousand shillings, or to both such imprisonment and such fine.

7. The Provincial Commissioner, before issuing directions for the removal of Laibons, shall cause registers of all Laibons and their families to be prepared by the District

Establishment
of Laibon
settlement
area.
L.N. 362/1956,
L.N. 172/1960.

Provincial
Commissioner
to remove
Laibons.
15 of 1956, s. 3.

Laibons to be
restricted to
settlement area.

Penalty for
leaving settlement
area.

Registers.

Commissioners or such other persons as he may appoint, and shall for that purpose cause notices to be published calling upon all Laibons—

- (a) to appear at times and places therein specified before the persons appointed by him in that behalf;
- (b) to give to such persons such information as may be necessary to enable the registers to be prepared; and
- (c) to allow their finger impressions to be recorded for the purposes of this Ordinance.

8. (1) The registers when completed shall be retained in the custody of the Provincial Commissioner or of an officer authorized by him.

Custody of registers.

(2) Save in the case of a successful appeal under section 9 of this Ordinance, no addition to or alteration or removal of any entry in the registers shall be made except by the direction in writing of the Provincial Commissioner.

9. (1) Any person who, on the ground that he is not a Laibon, is aggrieved by any entry relating to him or his family made or proposed to be made in a register may appeal to the Provincial Commissioner against such entry.

Appeals.

(2) Every such appeal shall be lodged within a period of seven days next after the date of the making of such entry in the register.

(3) No further action shall be taken for the purpose of effecting the removal of any person so appealing until a decision has been reached upon his appeal.

(4) On any such appeal, the burden of proving that the person so appealing is not a Laibon shall lie on that person.

(5) On any such appeal, the Provincial Commissioner may hear such witnesses and call for such documents as he thinks fit and may, if it is deemed necessary, take evidence on oath.

10. For the purposes of carrying out the removal of the Laibons and their families, it shall be lawful for the Provincial Commissioner—

- (a) to establish camps and to collect and detain the Laibons and their families therein;
- (b) to organize the compulsory movement of the Laibons and their families, flocks and herds to the settlement area;

Powers of Provincial Commissioner concerning removal.
15 of 1956, s. 2.

(c) to arrange for the guarding of the Laibons and their families in camps, on the move or at temporary halting places, and for the taking of due precautions to prevent their escape;

(d) to issue, generally for the foregoing, and for all the purposes of this Ordinance, such directions as he may deem necessary.

Provincial Commissioner's order to be sufficient authority.

11. An order in writing of the Provincial Commissioner relating to any matter necessary for the carrying into effect of any of the purposes of this Ordinance shall be sufficient authority to the person to whom it is directed or delivered for execution to receive and detain the person or persons therein described and to remove him or them in custody to the place named in the order.

Persons removed deemed to be in lawful custody.

12. All persons ordered under this Ordinance to be detained in any camp or other place or to be moved from one place in Kenya to another shall be deemed during such detention or removal to be in lawful custody, and the law for the time being in force relating to persons in custody shall apply to all such persons.

Power of Provincial Commissioner to issue directions.

13. The Provincial Commissioner if he considers it expedient may from time to time issue under his hand, in respect of all or certain specified Laibons in the settlement area, all or any of the following directions—

(a) a direction that they report themselves as he may require at fixed intervals of time;

(b) a direction that they shall notify their place of residence within such area, and any change of and any absence or intended absence from such place of residence;

(c) a direction that the carrying of any arms (as defined by the African Arms Ordinance) by them be restricted or prohibited;

(d) a direction that they be restricted in their movements to any specified locality in such area, or be settled in any specified place of residence in such area;

(e) a direction that the holding by them of public meetings of any kind be restricted or prohibited.

Cap. 125.

14. Notwithstanding the restriction and prohibition in section 5 of this Ordinance, the Provincial Commissioner may in his discretion—

Passes; and power to revoke orders.

(a) grant passes to persons in the settlement area, giving permission to leave the area; such passes shall be signed by the Provincial Commissioner or by officers authorized by him, and shall be in such form and valid for such periods and subject to such conditions as he shall think fit; and

(b) by writing under his hand, vary or revoke in its application to any person or persons in the settlement area any order of removal and settlement made under this Ordinance.

15. It shall be lawful for the Provincial Commissioner to take all such measures and to issue all such directions as he shall deem necessary for the permanent settlement of the Laibons and their families in the settlement area.

Measures relating to settlement of Laibons.

16. Save as provided in section 9 of this Ordinance, no appeal shall lie against any removal or compulsory settlement made in accordance with section 4 of this Ordinance.

No appeal from removal save as in section 9.

17. No prosecution, suit or other legal proceedings shall lie against any person for anything done or in good faith intended to be done under this Ordinance, and no compensation shall be payable to any person for any act done in good faith under the provisions of this Ordinance.

Protection for persons acting under the Ordinance.

18. Any person who without lawful excuse, the burden of proving which shall lie upon him—

Miscellaneous offences.

(a) fails to appear in compliance with any notice issued under section 7 of this Ordinance; or

(b) intentionally withholds or omits to furnish any information required under that section; or

(c) when required to furnish information under that section, furnishes as true any information which he knows or has reason to believe to be false; or

(d) refuses to allow his finger impressions to be taken by any person in accordance with section 7; or

(e) fails to obey any order or direction given, in accordance with section 10 or section 13 of this Ordinance, by the Provincial Commissioner or by any officer authorized by him; or

(f) in any way obstructs or interferes with any officer or any person duly authorized to exercise any right or power or to execute any duty under the Ordinance, shall be guilty of an offence and may be arrested without warrant, and shall be liable to imprisonment for a term not exceeding six months or to a fine not exceeding three hundred shillings, or to both such imprisonment and such fine.

Rules.
L.N. 370/1956,
L.N. 173/1960.

19. The Minister may make rules for the carrying out of the purposes of this Ordinance, and may in such rules prescribe penalties for breaches thereof.

Saving.
Cap. 288.

20. The provisions of this Ordinance shall be in addition to and not in derogation of the provisions of the Trust Land Ordinance.

SCHEDULE

(s. 3)

SETTLEMENT AREAS

(including those declared under section 3)

Cap. 46 (1948),
Sub. Leg.

1. The area of land the boundaries whereof—
commencing at a cairn on the shore of Lake Victoria at Mungeri Bay;

run thence in an easterly direction by a line of cairns to the summit of Bukini Hill;

thence along the ridge in a north-easterly direction by a line of cairns to point 6,380 feet;

thence down the stream bed immediately south of that point in a south-easterly direction to a cairn on the track passing through point 3,920 feet;

thence by a line of cairns following that track to a cairn on the right bank of the Lambwe River;

thence by a line of cairns following the right bank of that river to a cairn at the head of the Lambwe Valley;

thence in a south-westerly direction by a line of cairns to a cairn on the lake shore at Ukudu point;

thence by the lake shore to the point of commencement.

Cap. 46 (1948).

2. The islands of Mbaiyu, Mkai, Kiua, Seyusi and Mageta.

Cap. 46 (1948),
Sub. Leg.

3. The area of land the boundaries whereof—
commencing at a cairn on the headland approximately one and a third miles south of Ukongo Point on the eastern shore of Lake Victoria;

thence easterly by a straight line to the trigonometrical station Usengere;

thence still easterly by a straight line to the trigonometrical station Mirari;

thence southerly by a straight line to survey point 5260 on the summit of Kiangongo Hill;

thence south-westerly by a straight line to survey point 6070 on the summit of Ikoro Hill;

thence by that straight line produced to its intersection with the shore of Lake Victoria at Mtara Bay;

thence northerly by that shore to the point of commencement.

4. The area of land the boundaries whereof—

commencing at the junction of the Tuiyabe and Kirondusiek Rivers;

run thence up-stream by this latter river to its source;

thence by the well-defined track to the Chepkolotiet ford on the Kirirgut River;

thence by that river down-stream to its junction with the Chebtibet River;

thence by that river up-stream to its source;

thence to the Simotwet Tree on the Siongoronik Hill;

thence by a track to its intersection with the Tuiyabe River;

thence down-stream by that river to the point of commencement.

5. Mfwangano Island.

6. Kericho Township.

7. Kapsabet Township.

8. Location 26, Nandi District.

L.N. 276/1957.

SUBSIDIARY LEGISLATION

Rules under section 19

THE LAIBONS REMOVAL (APPEALS) RULES

Cap. 46 (1948),
Sub. Leg.,
L.N. 351/1957.

1. These Rules may be cited as the Laibons Removal (Appeals) Rules.
2. Every person who prepares a register of Laibons and their families shall inform each person whose name is entered in the register that such person may, within seven days, appeal to the Provincial Commissioner, Nyanza Province, or to the Provincial Commissioner, Rift Valley Province, as the case may be, against such entry, in respect of himself or his family, on the grounds that he is not a Laibon.
3. (1) Where any person whose name is inserted in a register is detained in any prison or detention camp, the person preparing the register shall notify the superintendent of the prison or the officer in charge of the detention camp in which the person whose name is entered is detained of the fact that such person's name is so entered.
(2) The superintendent of the prison or the officer in charge of the detention camp, as the case may be, shall on receipt of such notification inform the person detained accordingly, and shall, at the same time, inform him that he may, within seven days, appeal to the Provincial Commissioner, Nyanza Province, or to the Provincial Commissioner, Rift Valley Province, as the case may be, against such entry, in respect of himself or his family, on the grounds that he is not a Laibon.
(3) The superintendent of the prison or the officer in charge of the detention camp, as the case may be, shall then certify that he has so informed the person detained, and shall send the certificate to the person who is preparing the register.
4. (1) When a person has been informed in accordance with rule 2 of these Rules, the person preparing the register shall certify in the register that such person has been so informed and the date on which such information was conveyed to such person.
(2) (a) When a person has been informed in accordance with rule 3 of these Rules, the person preparing the register shall, on receipt of the certificate referred to in paragraph (3) of rule 3 of these Rules, certify the register in manner provided in paragraph (1) of this rule.
(b) For the purposes of this paragraph, the date appearing on the certificate received from the superintendent of the prison or the officer in charge of the detention camp, as the case may be, shall be deemed to be the date on which the information was conveyed to the person whose name is entered in the register.

NO. S. 7011.

Native Affair

TO

The Acting Provincial Commissioner,

K I S U M U

WHEREAS it has been made to appear to me by evidence on oath that Arap Koileke of Lumbwa has heretofore conducted himself so as to be dangerous to peace and good order in the protectorate And WHEREAS it has been considered advisable in the interest of peace and good order that the said Arap Koileke shall be deported from within the limits of the district in which he ordinarily resides to some other District.

NOW THEREFORE this is to command you Henry Hastings Horne, the Acting Provincial commissioner, Nyanza province that you forthwith cause the said Arap Koileke to be deported to forth Hall in the province of Kenya and that you Charles Robert will lane, the provincial commissioner of the said province, do hereby receive and detain the said Arap Koileke as a politically detained native at Forth Hall aforesaid under and subject to the provisions of "The Removal of Natives Ordinance 1909" and for doing so this shall be your sufficient authority.

Given under my hand and official Seal as Nairobi this 7th Day of January One thousand nine Hundred and thirteen.

(sd) H. CONWAY BELFTELD

Governor.



Ref. No. ADM. 15/20/3.III.



DISTRICT COMMISSIONER'S OFFICE
SOUTH KAVIRONDO

KISUMU, 13th October, 1937

The Hon. Provincial Commissioner,
Nyanza Province, Kisumu.

TALAI.

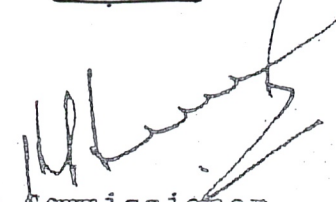
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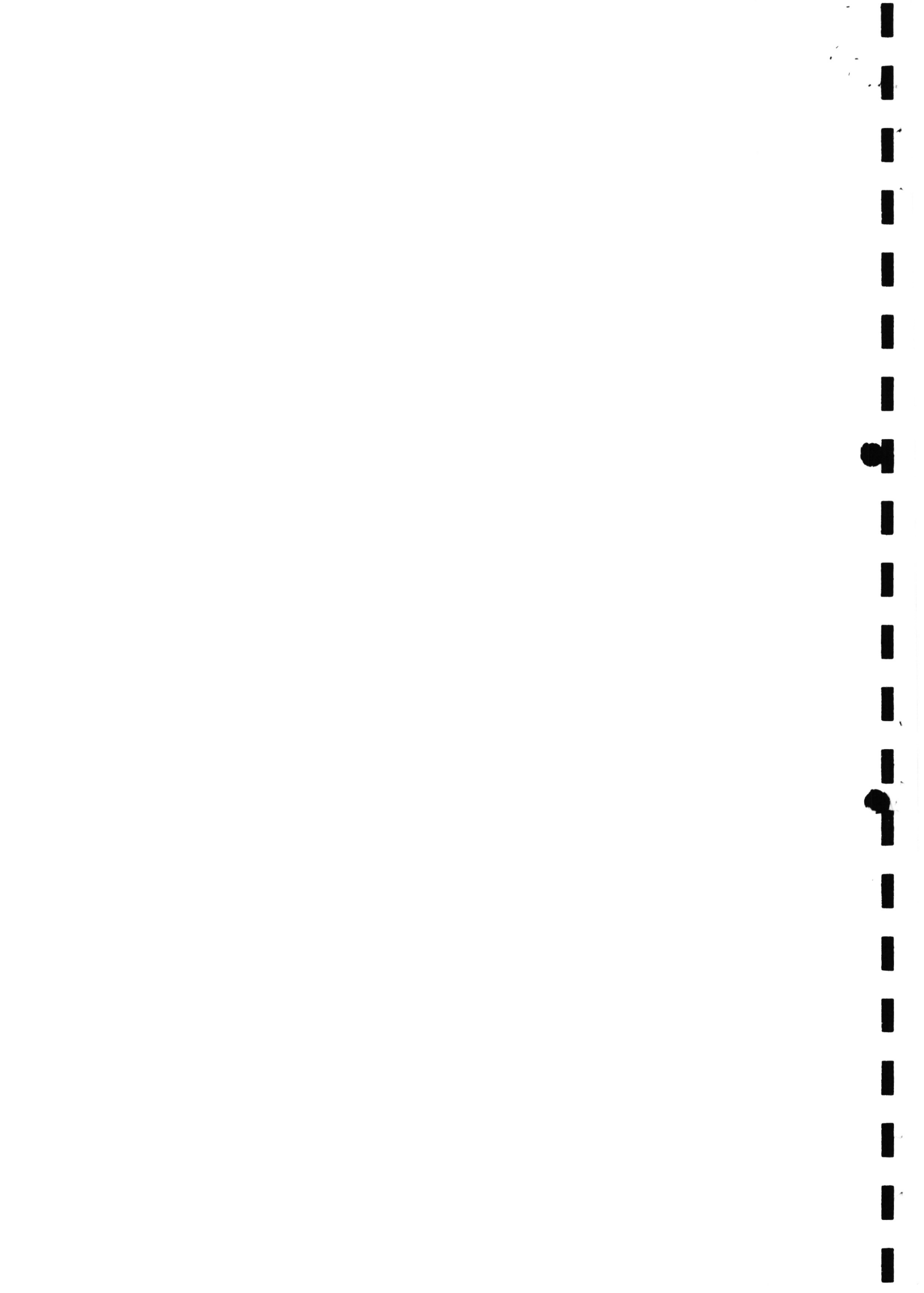
15 OCT 1937

I forward herewith for record purposes in your files, a nominal census of the Gwassí Talai.

I propose that this time next year we take a census to check their birthrate and death rate.

KLH/EFMS


District Commissioner.



REF: L&O.17/971.

DISTRICT COMMISSIONER'S OFFICE,
KAPSABET, 15th January, 1958.

Headman,
Kapsisiywa,
LOCATION 26.

MALAIBONI.

Malaiboni wafuatawo wanatumwa kwako chini ya ulinzi wa askari na wameicha onywa kwamba nilazima kupiga riporti kwako kila siku na hawawezi kuondoka Location 26 mpaka tarehe 7/3/58 wakati watakapo piga riporti katika office hii.

1. Pasi Tegendany a. Rongoei
2. Kimnyole a. Busienei
3. Kimngetich a. Menei
4. Kipsaina a. Samoei.

MJD/PKK.

DISTRICT COMMISSIONER,
NANDI.
(M.J. DARLING-D.A.)

15/1/58

William H. Man



Telegrams: "DISTRICTER", Kapsabet
Telephone: 3
When replying please quote

Ref. No. IAO.17/9/1/V63.III.
and date



DISTRICT COMMISSIONER'S OFFICE
NANDI DISTRICT
P.O. KAPSABET

15th September, 1961.

Headman William Tegendany,
SANGALO.

WIFE OF ARAP MANYEL.

This woman applied to visit Thomson's Falls to see her uncle, Kipsiengany on Mr. Paton-Ker's farm. The District Commissioner, Thomson's Falls informs me that Tapsiagga's mother and uncle do not live on the farm of Mr. Paton-Ker, and have never done so. Unless she can produce accurate details of their whereabouts I regret that I am unable to agree to a pass.

R. Gunderman
District Commissioner,
Nandi.

RHST/APSB.

Reluonda

17/10/61



KENYA DIARY

1902-1906

COLONEL R. MEINERTZHAGEN

C.B.E., D.S.O.

OLIVER AND BOYD

EDINBURGH: TWEEDDALE COURT
LONDON: 39A WELBECK STREET, W.1

6. III. 1906. *Nandi Fort*

Many years ago there used to be a section of the Masai on the Uasin Gishu Plateau. Some 15 years ago they were exterminated by the Nandi, but a tiny colony of them were enslaved and settled near where the present Nandi Fort stands. It has been decided to send this colony to the ravine under escort, and they commenced their journey today under Lewis and 30 of my men. It was an interesting procession as they filed north. The children herded the stock, small boys led blind old men and women, then came the old men, closely followed by the old women. Then came the young girls, closely followed by the warriors, who swaggered along carrying nothing but their spears and shields. The women carried all the baggage. The move reminded me of those stories of patriarchal times in Biblical days. There were among those Masai many Abrahams, Esaus and Jacobs, not to mention many representatives of the wives of Lot.

*Migration of
Masai from
Nandi*

7. III. 1906. *Nandi Fort*

Now that the Nandi have been driven out of their country it has been thrown open to European settlement. I often wonder whether it was this idea which lurked at the back of the minds of the Colonial Office and the civil authorities out here when they not only sanctioned the Nandi Expedition but defined the reserve. If this is the case, it was a most immoral excuse for dispossessing the Nandi.

*Prospective
settlers begin to
arrive in Nandi*

Two prospective settlers, called Clarke and Hurst, arrived here yesterday to have a look round. Clarke comes from New Zealand and asked if I had relations out there. On telling him that I had, he said he knew Waimarima well and that it was one of the most neglected estates in the colony and also one of the best. He told me he could easily make £10,000 a year out of it. He, of course, knew Donelly and his Maori wife. He had left New Zealand because the Government forced him to sell his estate, which had been in the possession of his family since the colony was founded. This so disgusted

*Arrival of
Clarke and
Hurst*

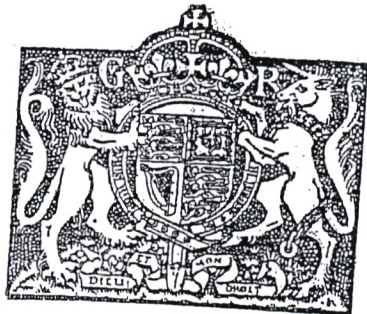


22A

78

LXII

1934



Colony and Protectorate of Kenya.

IN THE TWENTY-FIFTH YEAR OF THE REIGN OF

MAJESTY KING GEORGE V.

JOYSIUS BYRNE, G.C.M.G., K.B.E., C.B.,
Governor.

In His Majesty's
day of August

Governor.

ANCE TO PROVIDE FOR THE
AND SETTLEMENT OF LAIBONS



Telegrams: "INTESTATE", Nairobi
Telephone: 24221

Please address all communications
to the PUBLIC TRUSTEE and

quote No.
and date. PT/58/59/21



DEPARTMENT OF THE REGISTRAR-GENERAL
OFFICE OF THE PUBLIC TRUSTEE
CENTRAL GOVERNMENT BUILDING
P.O. Box 30031, NAIROBI

..... 12th ... February ..., 19... 60

To:
Mr. G. William Tegendany,
" J. Bangetuny Tegendany,
" P. Kipkolum Koskei,
" L. Lesien Koskei,
" Kibor Busienei,
" Maritim Koskei,
" Kipsoimo Kosgei,
" Sendei Basy,
" Mumeria Basy,
" Kipkering Basy

c/o The District Commissioner,
Nandi District,
P.O. KAPSABET

Dear Sir,

IN THE MATTER OF THE ESTATE OF
TEGENDANY ARAP RONGAI - DECEASED.
PUBLIC TRUSTEE'S ADMINISTRATION
CAUSE NUMBER 58 OF 1959.


In accordance with Section 6 of the Public Trustee Ordinance (Chapter 37), I hereby serve notice upon you as the next-of-kin of Tegendany Arap Rongai, deceased, who died at Kisii in Kenya on the 22nd July, 1958, of my intention to apply to the Supreme Court of Kenya for a Grant of Letters of Administration, intestate, to the estate of the said deceased.

Yours faithfully,

AJN/EB

Copy to:-

The District Commissioner,
Nandi District,
P.O. KAPSABET.


PUBLIC TRUSTEE.

