



**SPEECH BY PROF. JACOB T. KAIMENYI, PhD, FICD, EGH;  
CABINET SECRETARY, MINISTRY OF LANDS AND PHYSICAL  
PLANNING, DURING MEDIA BRIEFING ON THE PROGRESS MADE  
IN ADDRESSING HISTORICAL LAND INJUSTICES: 3<sup>RD</sup>  
NOVEMBER 2017, ARDHI HOUSE.**

Principal Secretary, Ministry of Lands and Physical Planning  
Chairman, National Land Commission,  
Commissioners NLC  
CEO/secretary NLC  
Senior staff, MoL&PP, NLC,  
Invited stakeholders,  
Ladies and gentlemen,

Historical and Land Injustices have been with us for over a Century. It is time this matter with all the complexities and sensitivities involved is confronted and resolved. I must admit, that fate has placed us here today to find a solution to this great challenge. I believe, this is the right time to have an objective conversation on this weighty subject.

Fellow Kenyans, claims of Historical Land Injustices have in the past been politicized and used to divide Kenyans along ethnic and political lines. It is our responsibility as key actors in the Land sector to ensure that never again will claims of Historical Land Injustices be used to divide Kenyans.

By having this conversation today, we are passing a clear message that the government is indeed serious in tackling historical land injustices

**Ladies and gentlemen**, through a collaborative framework, the National Land Commission developed legislation which culminated in the enactment of the Land Laws Amendment Act 2016 that gave effect from 21<sup>st</sup> September, 2016 to the constitutional requirement for redress of historical land injustices. Article 67(2) (e) of the constitution allows the Commission to “initiate investigations on its own initiative or on a complaint into present or historical land injustices and recommend appropriate redress”

Fellow Kenyans, a historical 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; **(115 YRS!)**

- d) Has not been sufficiently resolved and subsists up to paragraph © above.
- e) Meets the criteria set out under subsection 3 of this section, namely;

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 land upon which the claim is based;
- d) no action or omission on the part of the claimant amounts to surrender or renouncement of the right to the land in question; and
- e) it is brought within five years from the date of commencement of this Act.

A claim alleging historical land injustice shall be permissible if it was occasioned by:-

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

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

The Commission, after investigating any case of historical land injustice referred to it, shall recommend any of the following remedies:-

- a) restitution;
- b) compensation, if it is impossible to restore the land;
- c) resettlement on an alternative land;
- d) rehabilitation through provision of social infrastructure;
- e) affirmative action programmes for marginalized groups and communities;
- f) creation of wayleaves and easements;
- g) order for revocation and reallocation of the land;
- h) order for revocation of an official declaration in respect of any public land and reallocation;

- i) sale and sharing of the proceeds;
- j) refund to bona fide third party purchasers after valuation; or
- k) declaratory and preservation orders including injunctions.

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.

At this juncture, I must caution the Commission to be careful as they recommend remedies, so that resolutions of the Historical Land Injustices do not cause other injustices or exacerbate existing situations.

**Ladies and Gentlemen,** we are all aware that financing redress of historical land injustices will definitely require a lot of money.

I want to assure you that the Ministry of Lands and Physical Planning (MoLPP) will support all initiatives to boost this process. MoLPP will also take the initiative to raise this matter with the other relevant arms of government to ensure that resolutions of Historical Land Injustices get the support they require. As we do this, we also hope that the Commission will find other ways of raising financial resources for the same purpose. It may not be wise to peg such a big program entirely on the national government alone. I strongly believe that we have several partners who are willing to support us in this critical initiative.

To support resolutions of historical land injustices, we shall provide technical support and avail any historical or current documents in

our custody required to address a claim that comes before the Commission. The Ministry staff will also support the process within their various areas of expertise.

**Ladies and gentlemen,** we recently did forward draft regulations required to guide resolutions of Historical Land Injustices to the Attorney General. I am happy to inform the public that the regulations were gazetted on 6<sup>th</sup> October, 2017 and are now undergoing the mandatory statutory instruments process. It is our hope that the regulations will be passed by parliament in good time to allow immediate application to the process.

#### WHAT ARE THE CONTENTS OF THE SAID INVESTIGATIONS OF HISTORICAL LAND INJUSTICES REGULATIONS, 2017?

- PART I - Preliminary. Provides details on
- (i) Application, namely:- between 15<sup>th</sup> June 1895 and 27<sup>th</sup> August, 2010.
  - (ii) Interpretation of various words such as claim, claimant, community, interested person, person of interest, present injustice and remedy.
- PART II - The procedure for the investigation and resolution of claims arising out of historical land injustices.
- PART III - Conduct of hearing details. egs:-
- (i) Establishment of Historical Land Justices Committee by the Commission.
  - (ii) Investigations of a claim.
  - (iii) Conduct of hearings.

- (iv) Notice to appear.
- (v) Notification of special needs.
- (vi) Disqualification of a member of a committee.
- (vii) Appearance at a hearing.
- (viii) Hearings.
- (ix) Language. egs. Kiswahili, English, Kenyan sign language or any other language understood by claimants and witnesses.

PART IV - Miscellaneous provisions such as:-

- (i) Communication with the commission. A party who has a representative shall communicate with the commission through the representative.
- (ii) Power to seek assistance from other institutions by the commission in order to facilitate its work and enforce its decisions.

Finally, it has a schedule which provides details of the following forms:-

- a) FORM NLC/HLI/01 – Lodging a historical land injustice claim.
- b) FORM NLC/HLI/02 – Acknowledgment form.
- c) FORM NLC/HLI/03 – Admissibility checklist form. For avoidance of doubt, this form contains admissibility criteria as detailed earlier.
- d) FORM NLC/HLI/04 – Notice of admission of claim.
- e) FORM NLC/HLI/05 – Notice of appeal.
- f) FORM NLC/HLI/06 - Summons

As I conclude, I call upon all stakeholders to support us as we proceed to address historical land injustices and in the implementations of reforms in the Land sector. I am happy to hear that a comprehensive programme for addressing historical land injustices will be launched in Murang'a County in mid December, 2017. To me, this is an advance special Christmas gift to the many Kenyans who have over the years been complaining of historical land injustices.

***THANK YOU AND GOD BLESS YOU ALL***

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PLANNING**

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