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NATIONAL LAND COMMISSION ACT

NO. 5 OF 2012

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NATIONAL LAND COMMISSION ACT

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NO. 5 OF 2012

NATIONAL LAND COMMISSION ACT

[Date of assent: 27th April, 2012.]

[Date of commencement: 2nd May, 2012.]

An Act of Parliament to make further provision as to the functions and powers of the National Land Commission, qualifications and procedures for appointments to the Commission; to give effect to the objects and principles of devolved government in land management and administration, and for connected purposes

[Act No. 5 of 2012, Act No. 18 of 2014, Act No. 28 of 2016.]

PART I – PRELIMINARY

1. Short title

This Act may be cited as the National Land Commission Act, 2012.

2. Interpretation

(1) In this Act, unless the context otherwise requires—

“**Board**” *deleted by Act No. 28 of 2016, s. 36;*

“**chairperson**” means the chairperson of the Commission appointed in accordance with Article 250(2) of the Constitution and section 8 of this Act;

“**Cabinet Secretary**” means the Cabinet Secretary for the time being responsible for matters relating to land;

“**Commission**” means the National Land Commission established by Article 67 of the Constitution;

“**community**” means a clearly defined group of users of land identified on the basis of ethnicity, culture or similar community of interest as provided under Article 63(1) of the Constitution, which holds a set of clearly defined rights and obligations over land and land-based resources;

“**irregularly**” means in a manner that does not conform to standards, procedures or the criteria prescribed under this Act or any other written law;

“**Registrar**” means the Chief Land Registrar, Deputy Chief Land Registrar, County Land Registrars and Land Registrars appointed under the Land Registration Act, 2012;

“**secretary**” means the secretary to the Commission appointed by the Commission under Article 250(12) of the Constitution, in accordance with the procedure set out in section 20 of this Act.

(2) Despite subsection (1), until after the first general elections under the Constitution, references in this Act to the expression “Cabinet Secretary” shall be construed to mean “Minister”.

[Act No. 28 of 2016, s. 36.]

3. Object and purpose of the Act

The object and purpose of this Act is to provide—

- (a) for the management and administration of land in accordance with

the principles of land policy set out in Article 60 of the Constitution and the national land policy;

- (b) for the operations, powers, responsibilities and additional functions of the Commission pursuant to Article 67(3) of the Constitution;
- (c) a legal framework for the identification and appointment of the chairperson, members and the secretary of the Commission pursuant to Article 250(2) and (12)(a) of the Constitution; and
- (d) for a linkage between the Commission, county governments and other institutions dealing with land and land related resources.

4. Offices of the Commission

(1) The Headquarters of the Commission shall be in Nairobi.

(2) The Commission shall ensure access to its services in all parts of the Republic in accordance with Article 6(3) of the Constitution.

PART II – FUNCTIONS AND POWERS

5. Functions of the Commission

(1) Pursuant to Article 67(2) of the Constitution, the functions of the Commission shall be—

- (a) to manage public land on behalf of the national and county governments;
- (b) to recommend a national land policy to the national government;
- (c) to advise the national government on a comprehensive programme for the registration of title in land throughout Kenya;
- (d) to conduct research related to land and the use of natural resources, and make recommendations to appropriate authorities;
- (e) to initiate investigations, on its own initiative or on a complaint, into present or historical land injustices, and recommend appropriate redress;
- (f) to encourage the application of traditional dispute resolution mechanisms in land conflicts;
- (g) to assess tax on land and premiums on immovable property in any area designated by law; and
- (h) to monitor and have oversight responsibilities over land use planning throughout the country.

(2) In addition to the functions set out in subsection (1), the Commission shall, in accordance with Article 67(3) of the Constitution—

- (a) on behalf of, and with the consent of the national and county governments, alienate public land;
- (b) monitor the registration of all rights and interests in land;
- (c) ensure that public land under the management of the designated state agencies is sustainably managed for the intended purposes;
- (d) may develop and maintain an effective land information system for the management of public land;
- (e) *deleted by Act No. 28 of 2016, s. 37 (a)(iii);*
- (f) *deleted by Act No. 28 of 2016, s. 37 (a)(iv);*

(3) *Deleted by Act No. 28 of 2016, s. 37(b).*

(4) Deleted by Act No. 28 of 2016, s. 37(c).

[Act No. 28 of 2016, s. 37.]

6. Powers of the Commission

(1) The Commission, shall have all the powers necessary for the execution of its functions under the Constitution, this Act and any other written law.

(2) Without prejudice to the generality of subsection (1), the Commission shall have powers to—

- (a) gather, by such means as it considers appropriate, any relevant information including requisition of reports, records, documents or any information from any source, including any State organ, and to compel the production of such information where it considers necessary;
- (b) hold inquiries for the purposes of performing its functions under this Act;
- (c) take any measures it considers necessary to ensure compliance with the principles of land policy set out in Article 60(1) of the Constitution.

(3) In the exercise of its powers and the discharge of its functions, the Commission—

- (a) may inform itself in such manner as it may consider necessary;
- (b) may receive written or oral statements; and
- (c) is not bound by the strict rules of evidence.

PART III – COMPOSITION AND ADMINISTRATION

7. Membership of the Commission

(1) The Commission shall consist of a chairperson and eight other members appointed in accordance with the Constitution and the provisions of this Act.

(2) The chairperson and members of the Commission shall be appointed in accordance with the procedure set out in the First Schedule.

8. Qualification for appointment as chairperson or member of the Commission

(1) A person shall be qualified for appointment as the chairperson if the person—

- (a) holds a degree from a university recognized in Kenya;
- (b) has knowledge and experience of at least fifteen years in matters relating to any of the following fields—
 - (i) public administration;
 - (ii) land management and administration;
 - (iii) management of natural resources;
 - (iv) land adjudication and settlement;
 - (v) land law, land survey, spatial planning or land economics; or
 - (vi) social sciences;
- (c) meets the requirements of Chapter Six of the Constitution; and
- (d) has had a distinguished career in their respective fields.

(2) A person shall be qualified for appointment as a member of the Commission if the person—

- (a) holds a degree from a university recognized in Kenya;
- (b) has knowledge and experience of at least ten years in matters relating to any of the following fields—
 - (i) public administration;
 - (ii) land management and administration;
 - (iii) management of natural resources;
 - (iv) land adjudication and settlement;
 - (v) land law, land survey, spatial planning or land economics; or
 - (vi) social sciences;
- (c) meets the requirements of Chapter Six of the Constitution; and
- (d) has had a distinguished career in their respective fields.

(3) A person shall not be qualified for appointment as the chairperson or a member of the Commission if the person—

- (a) is a member of Parliament or county assembly;
- (b) is an official of a governing body of a political party;
- (c) has at any time within the preceding five years, held or stood for election as a member of Parliament, a county assembly or as a governor;
- (d) is an undischarged bankrupt;
- (e) has been convicted of a felony;
- (f) has benefitted from, or facilitated an unlawful or irregular allocation, acquisition or use of land or other public property; or
- (g) has been removed from office for contravening the provisions of the Constitution or any other written law.

(4) Subsection (3)(b) shall cease to apply to a person after two general elections have been held since the person ceased to hold such office.

(5) The chairperson and members of the Commission shall be appointed for a single term of six years and shall not be eligible for re-appointment.

9. Oath of office of chairperson, member and secretary

The chairperson, members and the secretary shall, before assuming office, make and subscribe, before the Chief Justice, to the oath or affirmation set out in the Second Schedule.

10. Vacancy in office of chairperson or member

(1) The office of the chairperson or a member shall become vacant if—

- (a) the holder—
 - (i) dies;
 - (ii) by notice in writing addressed to the President, resigns from office;
 - (iii) is convicted of a felony;
 - (iv) is absent from three consecutive meetings of the Commission without justifiable cause;
 - (v) is removed from office under any of the circumstances specified in Article 251(1) of the Constitution; or

(b) the term of office of the holder expires.

(2) The President shall publish every resignation, vacancy or termination in the *Gazette* within seven days of such resignation, vacancy or termination.

11. Removal of chairperson or member

The chairperson or a member of the Commission may be removed from office in accordance with the procedure for removal provided under Article 251 of the Constitution.

12. Filling of vacancy

(1) Where a vacancy occurs in the membership of the Commission, the President shall appoint a replacement in accordance with the procedure set out in the First Schedule.

(2) A member appointed under subsection (1), shall serve the Commission for a single term of six years.

13. Terms and conditions of service

A member of the Commission shall be paid such remuneration or allowances as the Salaries and Remuneration Commission shall determine.

14. Review of grants and dispositions

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

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

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

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

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

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

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

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

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

15. Historical land injustices

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

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

- (a) was occasioned by a violation of right in land on the basis of any law, policy, declaration, administrative practice, treaty or agreement;
- (b) resulted in displacement from their habitual place of residence;
- (c) occurred between 15th June 1895 when Kenya became a protectorate under the British East African Protectorate and 27th August, 2010 when the Constitution of Kenya was promulgated;
- (d) has not been sufficiently resolved and subsists up to the period specified under paragraph (c); and
- (e) meets the criteria set out under subsection 3 of this section.

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

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

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

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

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

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

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

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

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

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

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

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

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

[Act No. 28 of 2016, s. 38.]

15. Historical land injustices

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

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

- (a) was occasioned by a violation of right in land on the basis of any law, policy, declaration, administrative practice, treaty or agreement;
- (b) resulted in displacement from their habitual place of residence;
- (c) occurred between 15th June 1895 when Kenya became a protectorate under the British East African Protectorate and 27th August, 2010 when the Constitution of Kenya was promulgated;
- (d) has not been sufficiently resolved and subsists up to the period specified under paragraph (c); and
- (e) meets the criteria set out under subsection 3 of this section.

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

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

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

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

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

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

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

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

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

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

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

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

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

[Act No. 28 of 2016, s. 38.]

16. Establishment of committees and county offices

(1) The Commission may, establish committees for the better carrying out of its functions.

(2) The Commission may co-opt into the membership of its committees other persons whose knowledge and skills are necessary for the functions of the Commission.

(3) A person co-opted into the membership of a committee under subsection (2) may attend the meetings of the Commission and participate in its deliberations but shall have no right to vote at any meeting.

(4) The Commission may pay persons co-opted to the committees such allowances and other expenses as it may determine from time to time.

(5) The Commission shall establish offices in the counties and may establish other offices in the sub-counties as it may consider necessary.

17. Consultation

In carrying out its functions, the Commission shall work in consultation and co-operation with the national and county governments subject to Article 10 and Article 232 of the Constitution.

18. *Repealed by Act No. 28 of 2016, s. 39.*

19. Conduct of business and affairs of the Commission

(1) The business and affairs of the Commission shall be conducted in accordance with the Fourth Schedule.

(2) Except as provided in the Fourth Schedule, the Commission may regulate its own procedure.

20. Appointment of secretary

(1) The appointment of the secretary to the Commission under Article 250(12) of the Constitution shall be through a competitive and transparent recruitment process.

(2) A person shall not qualify for appointment under subsection (1) unless such person—

- (a) is a citizen of Kenya;
- (b) holds a degree from a university recognized in Kenya;
- (c) has had at least five years experience at senior management level;
- (d) has knowledge and experience in any one of the following fields—
 - (i) public administration;
 - (ii) finance and accounting;
 - (iii) law;
 - (iv) economics;
 - (v) management;
 - (vi) land and natural resources; or
 - (vii) any other relevant field; and
- (e) meets the requirements of Chapter Six of the Constitution.

(3) The secretary shall—

- (a) be the chief executive officer of the Commission and head of the secretariat and shall be responsible to the Commission;
- (b) serve on such terms and conditions as the Commission may determine; and

(c) before, assuming office, take and subscribe to the oath or affirmation of office set out in the Second Schedule.

(4) The secretary, shall be the accounting officer of the Commission and shall be responsible to the Commission for—

- (a) all income and expenditure of the Commission;
- (b) all assets and the discharge of all liabilities of the Commission; and
- (c) the proper and diligent implementation of Part IV of this Act.

(5) The secretary shall hold office for a term of five years and shall be eligible for re-appointment for the further term of five years.

21. Removal of secretary

(1) The secretary may be removed from office by the Commission in accordance with the terms and conditions of service for—

- (a) inability to perform the functions of the office of the secretary arising out of physical or mental incapacity;
- (b) gross misconduct or misbehavior;
- (c) incompetence or neglect of duty;
- (d) violation of the Constitution; or
- (e) any other ground that would justify removal from office under the terms and conditions of service.

(2) Before the secretary is removed under subsection (1), the secretary shall be given—

- (a) sufficient notice of the allegations made against them; and
- (b) an opportunity to present their defence against the allegations.

22. Appointment of staff

The Commission shall have the power to appoint its own staff in accordance with Article 252(1)(c) of the Constitution.

23. Secondment of staff

(1) In addition to the staff appointed by the Commission, the national and county governments may, upon the request by the Commission, second to the Commission such number of public officers as may be necessary for the performance of the functions of the Commission.

(2) A public officer seconded to the Commission shall, during the period of secondment, be deemed to be an officer of the Commission and shall be subject only to the direction and control of the Commission.

24. Seal of the Commission

(1) The common seal of the Commission shall be kept in such custody as the Commission shall direct and shall not be used except on the order of the Commission.

(1A) The common seal of the Commission shall be authenticated by the signatures of the Chairperson and the Secretary to the Commission.

(2) The common seal of the Commission when affixed to a document and duly authenticated shall be judicially and officially noticed and unless the contrary is

proved, any necessary order or authorization of the Commission under this Act shall be presumed to have been duly given.

[Act No. 18 of 2014, Sch.]

25. Protection from personal liability

No matter or thing done by a member of the Commission or any officer, employee or agent of the Commission shall, if the matter or thing is done in good faith for executing the functions, powers or duties of the Commission, render the member, officer, employee or agent personally liable to any action, claim or demand whatsoever.

PART IV – FINANCIAL PROVISIONS

26. Funds of the Commission

(1) The funds of the Commission shall consist of—

- (a) monies allocated by Parliament for the purposes of the Commission;
- (b) such monies or assets as may accrue to the Commission in the course of the exercise of its powers, or the performance of its functions under this Act; and
- (c) all monies from any other source provided or donated or lent to the Commission.

(2) The receipts, earnings or accruals of the Commission and the balances at the close of each financial year shall not be paid into the Consolidated Fund but shall be retained for the purposes of this Act in accordance with Article 206(1)(a) and (b) of the Constitution.

27. Financial year

The financial year of the Commission shall be the period of twelve months commencing on the first of July and ending on the thirtieth of June of the subsequent year.

28. Annual estimates

(1) Before the commencement of each financial year, the Commission shall cause to be prepared estimates of the revenue and expenditure of the Commission for that year.

(2) The annual estimates shall make provision for all the estimated expenditure of the Commission for the financial year concerned.

(3) The Cabinet Secretary shall present the estimates approved by the Commission under subsection (2) for consideration and approval by the National Assembly.

29. Accounts and audit

(1) The Commission shall cause to be kept all proper books and records of account of the income, expenditure, assets and liabilities of the Commission.

(2) Within a period of three months after the end of each financial year, the Commission shall submit to the Auditor-General, the accounts of the Commission in respect of that year together with—

- (a) a statement of the income and expenditure of the Commission during that year; and

- (b) a statement of the assets and liabilities of the Commission on the last day of that financial year.

(3) The annual accounts of the Commission shall be prepared, audited and reported upon in accordance with the provisions of Articles 226 and 229 of the Constitution and the Public Audit Act, 2003 (No. 12 of 2003).

PART V – TRANSITIONAL PROVISIONS

30. Savings

Notwithstanding the provisions of this Act—

- (a) any orders or notices relating to public land administration made or issued by the Ministry of Lands before the commencement of the Act shall be deemed to have been made or issued under this Act; and
- (b) any function or transaction, civil proceedings or any other legal or other process in respect of any matter carried out in relation to the administration of public land administration, by or on behalf of the Ministry of Lands before the commencement of this Act, shall be deemed to have been carried out under this Act.

31. Transfer of staff

(1) Subject to subsection (3), a person who, immediately before the commencement of this Act, was serving on contract in the Ministry of Lands in any of the departments whose services have been transferred to the Commission shall, at the commencement of this Act, be appointed or employed as a member of staff of the Commission for the unexpired period, if any, of the term.

(2) Subject to subsection (3) and Article 252(1)(c) of the Constitution, every person who, immediately before the commencement of this Act, was an employee of the Government in the Ministry of Lands in any of the departments whose functions have been transferred to the Commission shall, upon the commencement of this Act, be employed or appointed as a member of staff of the Commission.

(3) Before appointing or employing a person to whom subsections (1) or (2) apply, the Commission shall—

- (a) require such person to make an application for employment or appointment to the Commission; and
- (b) using the criteria determined by the Commission, vet such a person to ensure that he or she is fit and proper to serve in the position applied for as a member of staff of the Commission.

(4) An applicant who fails to meet the vetting criteria under subsection (3), shall not be employed or appointed by the Commission.

(5) Notwithstanding the provisions of this section, and for as long as the Commission or the county government shall not have appointed staff to perform the functions transferred under this section, the staff of the Ministry of Lands shall continue to perform those functions and their acts shall be deemed to be those of the Commission or county government.

32. Transfer of assets

(1) All property, assets, rights, liabilities, obligations, agreements and other arrangements existing at the commencement of this Act and vested in, acquired, incurred or entered into by or on behalf of the Ministry of Lands with respect to the departments whose functions have been transferred to the Commission, shall

upon the commencement of this Act, be deemed to have vested in or to have been acquired, incurred or entered into by or on behalf of the Commission to the same extent as they were enforceable by or against the such departments before the commencement of this Act.

(2) Where the transfer of any property transferred to or vested in the Commission under subsection (1) is required by any written law to be registered, the Commission shall, within three months from the commencement of this Act or within such other period as may be prescribed in the written law, apply to the appropriate registering authority for the registration of the transfer and thereupon the registering authority shall, at no cost to the Commission or any person by way of registration fees, stamp duty or other taxes—

- (a) make such entries in the appropriate register as shall be necessary to give effect to the transfer;
- (b) where appropriate, issue to the Commission a certificate of title or other statutory evidence of ownership of the property or make such amendments on such certificates or in the appropriate register as may be necessary; and
- (c) make any necessary endorsements on such deeds or other documents as may be presented to such registering authority relating to the title, right or obligation concerned.

PART VI – MISCELLANEOUS PROVISIONS

33. Annual report

(1) The report of the Commission under Article 254 of the Constitution shall, in respect of the financial year to which it relates, contain—

- (a) the financial statements of the Commission;
- (b) a description of the activities of the Commission;
- (c) information relating to the progress made in the registration of title in land;
- (d) recommendations made by the Commission to the county or national governments or to any state agency or organ and the action taken on such recommendations;
- (e) any impediments to the work of the Commission; and
- (f) such other information as the Commission considers appropriate in relation to the functions of the Commission.

(2) The Commission shall cause the annual report and any information as may be required under Article 254(3) of the Constitution to be published and publicized in such manner as the Commission may determine.

34. Code of conduct

The Commission shall within six months develop a code of conduct for its members and staff.

35. Offences

(1) A person shall not—

- (a) without justification or lawful excuse, obstruct or hinder, assault or threaten a member or a member of staff of the Commission acting under this Act;

- (b) submit false or misleading information to the Commission; or
- (c) misrepresent to or knowingly mislead a member or a member of staff of the Commission acting under this Act.

(2) A person who contravenes subsection (1) commits an offence and is liable, on conviction, to a fine not exceeding three million shillings, or to imprisonment for a term not exceeding five years, or to both.

36. Regulations

The Commission may make regulations generally for the better carrying into effect of any provisions of this Act and such regulations shall be tabled before Parliament for approval.

FIRST SCHEDULE

[Sections 7(2), 12(1), Act No. 28 of 2016, s. 40.]

PROCEDURE FOR APPOINTMENT OF CHAIRPERSON AND MEMBERS OF THE COMMISSION

(1) The President shall, within fourteen days after the commencement of this Act and whenever a vacancy arises, constitute a selection panel comprising—

- (a) a nominee of the Office of the President;
- (b) *deleted by Act No. 28 of 2016, s. 40 (a)(ii)*;
- (c) a representative of the Cabinet Secretary;
- (d) two persons, of opposite gender, nominated by the Non-Governmental Organisations Council, who have demonstrated competence and capacity in matters related to natural resources;
- (e) one person who is a citizen of Kenya, nominated by the Kenya Private Sector Alliance from their member organizations who has demonstrated competence and capacity in the land sector.
- (f) a nominee of the Association of Professional Societies in East Africa; and
- (g) a nominee of the National Gender and Equality Commission.

(2) The Public Service Commission shall—

- (a) convene the first meeting of the selection panel, at which the members of the selection panel shall elect a chairperson from among their number; and
- (b) provide the selection panel with such facilities and other support as it may require for the discharge of its functions under this Act.

(3) The selection panel shall, within seven days of convening, by advertisement in at least two daily newspapers of nationwide circulation, invite applications from persons who qualify for nomination and appointment for the position of the chairperson and members referred to under section 8.

(4) The selection panel shall within twenty-one days after the expiry of the deadline for receipt of applications under paragraph (3)—

- (a) consider the applications received under paragraph (3) to determine their compliance with the provisions of the Constitution and this Act;
- (b) short list the applicants;

- (c) publish the names of the shortlisted applicants and the qualified applicants in at least two daily newspapers of nationwide circulation;
- (d) conduct interviews of the shortlisted persons in public;
- (e) shortlist two qualified applicants for the position of chairperson;
- (f) shortlist sixteen qualified applicants for the position of the members; and
- (g) forward the names of the qualified persons to the President.

(5) The President shall, within fourteen days of receipt of the names of successful applicants forwarded under paragraph (4)(g), nominate the chairperson and members of the Commission and forward the names of the persons so selected to the National Assembly for approval.

(6) The National Assembly shall, within twenty-one days of the day, it next sits after receipt of the names of the applicants under paragraph (5), vet and consider all the applicants, and may approve or reject any or all of them.

(7) Where the National Assembly approves of the nominees, the Speaker of the National Assembly shall within seven days forward the names of the approved nominees to the President for appointment.

(8) The President shall, within seven days of receipt of the approved nominees from the National Assembly, by notice in the *Gazette*, appoint the chairperson and members of the Commission approved by the National Assembly.

(8A) If the President does not appoint the chairperson or members of the Commission as prescribed under paragraph (8), the approved nominees shall be taken to have been appointed upon the lapse of twenty one days.

(9) Where the National Assembly rejects any nomination, the Speaker shall within three days communicate its decision to the President and request the President to submit fresh nominations.

(10) Where a nominee is rejected by the National Assembly under paragraph (9), the President shall within seven days, submit to the National Assembly a fresh nomination from amongst the persons shortlisted and forwarded by the selection panel under paragraph (4).

(11) If the National Assembly rejects any or all of the subsequent nominees submitted by the President for approval under paragraph (10), the provisions of paragraphs (1) to (5) shall apply.

(12) In short listing, nominating or appointing persons as chairperson and members of the Commission, the selection panel, the National Assembly and the President shall ensure that not more than two-thirds of the members are of the same gender.

(13) The selection panel may, subject to this section, determine its own procedure.

(14) *Deleted by Act No. 28 of 2016, s. 40(d).*

(15) The selection panel shall stand dissolved upon the appointment of the chairperson and members of the Commission under paragraph (8).

(16) Where the provisions of paragraph (10) apply, the selection panel shall continue to exist but shall stand dissolved upon the requisite appointments being made under paragraph (11).

National Land Commission

(17) Despite the foregoing provisions, the President may, by notice in the Gazette, extend the period specified in respect of any matter under this section by a period not exceeding twenty-one days.

SECOND SCHEDULE

[Sections 9 & 20(3)(c).]

OATH/AFFIRMATION OF THE OFFICE OF CHAIRPERSON/ A MEMBER/SECRETARY OF THE COMMISSION

I having been appointed (the chairperson to/ member of/ secretary to) the National Land Commission under the National Land Commission Act, 2012, do solemnly (swear/ declare and affirm) that I will at all times obey, respect and uphold the Constitution of Kenya and all other laws of the Republic; that I will faithfully and fully, impartially and to the best of my knowledge and ability, discharge the trust and perform the functions and exercise and powers devolving upon me by virtue of this appointment without fear, favour, bias, affection, or prejudice. (SO HELP ME GOD).

Sworn/declared by the said

Before me thisday of

Chief Justice.

THIRD SCHEDULE

[Section 18(7).]

OATH/AFFIRMATION OF THE OFFICE OF CHAIRPERSON/A MEMBER/ SECRETARY OF THE COUNTY LAND MANAGEMENT BOARD

I having been appointed (the chairperson to/member of/secretary to) the County Land Board under the National Land Commission Act, 2012, do solemnly (swear/declare and affirm) that I will at all times obey, respect and uphold the Constitution of Kenya and all other laws of the Republic; that I will faithfully and fully, impartially and to the best of my knowledge and ability, discharge the trust and perform the functions and exercise and powers devolving upon me by virtue of this appointment without fear, favour, bias, affection, or prejudice. (SO HELP ME GOD).

Sworn/declared by the said

Before me this day of

Judge.

FOURTH SCHEDULE

[Section 19.]

MEETINGS AND PROCEDURE OF THE COMMISSION

1. Meetings

(1) The Commission shall decide when and where it meets and the meetings shall be convened by the chairperson.

(2) The Commission shall have at least four meetings in every financial year and not more than four months shall elapse between one meeting and the next meeting.

(3) Unless three quarters of the members otherwise agree, at least seven days notice in writing of a meeting shall be given to every member.

(4) A meeting shall be presided over by the chairperson or in the absence of the chairperson, by the vice-chairperson of the Commission.

(5) The members of the Commission shall elect a vice-chairperson from among themselves—

(a) at the first sitting of the Commission; and

(b) whenever it is necessary to fill the vacancy in the office of the vice-chairperson.

(6) The chairperson shall, on the written application of one-third of members, convene a special meeting of the Commission.

(7) The Commission may invite any person to attend any of its meetings and to participate in its deliberations, but such person shall not have a vote in any decision of the Commission.

2. Conflict of interest

(1) If a person has a personal or fiduciary interest in any matter before the Commission, and is present at a meeting of the Commission or any committee at which such a matter is the subject of consideration, that person shall as soon as is practicable after the commencement of the meeting, declare such interest and shall not take part in any consideration or discussion of, or vote on any question touching such matter.

(2) A disclosure of interest made under sub-paragraph (1) shall be recorded in the minutes of the meeting at which it is made.

(3) A person who contravenes sub-paragraph (1) commits an offence and is liable, upon conviction, to a fine not exceeding three million shillings, or to imprisonment for a term not exceeding seven years, or to both such fine and imprisonment.

(4) No member or staff of the Commission shall transact any business or trade with the Commission.

3. Quorum

(1) Subject to sub-paragraph (2), the quorum of the meeting shall not be less than half of the members.

(2) Where there is a vacancy in the Commission, the quorum of the meeting shall not be less than three members.

4. Voting

A question before the Commission shall be decided by a majority of the members.

5. Rules of procedure and minutes

The Commission shall—

- (a) determine rules of procedure for the conduct of its business; and
 - (b) keep minutes of its proceedings and decisions.
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