
THE NATIONAL LAND COMMISSION BILL, 2011

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**FIRST SCHEDULE
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**A Bill for
AN ACT of Parliament to provide for the functions and powers of the
National Land Commission; the qualifications and procedures for
appointment; and for connected purposes.**

ENACTED by the Parliament of Kenya as follows:

PART I— PRELIMINARY

- Short title **1.** This Act may be cited as the National Land Commission Act, 2011.
- Interpretation **2.** In this Act, unless the context otherwise requires—

 “chairperson” means the chairperson of the Commission appointed in accordance with the Constitution and section 5 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;

 “Secretary” means the Secretary appointed under section 16;

PART II — COMPOSITION AND ADMINISTRATION

- Incorporation of the Commission. **3. (1) The Commission shall in accordance with the Constitution, be a body corporate with perpetual succession and a common seal and shall in its corporate name, be capable of—**
- (a) suing and being sued;**
 - (b) acquiring, holding, charging and disposing of movable and immovable property; and**
 - (c) doing or performing all such other things or acts for the proper discharge of its functions under**

the Constitution and this Act.

(3) The headquarters of the Commission shall be in Nairobi, but the Commission may establish branches at any place in Kenya.

Membership of the Commission.

4. (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 shall serve full time basis for a term of six years non-renewable.

Qualification for appointment of chairperson and members.

5. (1) A person is qualified for appointment as chairperson if the personô

(a) is a citizen of Kenya;

(b) possesses a degree from a recognized university;

(c) has knowledge and experience of at least ten years in matters relating to either of the following fields ô

(i) public administration ;

(ii) Land management and administration;

(iii) Natural science;

(iv) Land law, land survey, physical planning or land economics; or

(v) social science.

(d) is conversant with land management and administration issues in Kenya;

(e) meets the requirements of leadership and integrity set out in Chapter Six of the Constitution; and

(f) has had a distinguished career in their respective fields.

(2) A person is qualified for appointment as a member if the personô

-
- a) is a citizen of Kenya;
 - b) possesses a degree from a recognized university;
 - c) has knowledge and experience of at least **seven years** in matters relating to either of the following fields
 - (j) **public administration ;**
 - (vi) **Land management and administration;**
 - (vii) **Natural science;**
 - (viii) **Land law, land survey, physical planning or land economics; or**
 - (ix) **social science.**
 - d) **is conversant with land management and administration issues in Kenya;**
 - e) meets the requirements of leadership and integrity set out in Chapter Six of the Constitution; and
 - f) has had a distinguished career in their respective fields.

(3) No person is qualified for appointment as a chairperson or member if the person^o

- (a) **is a member of Parliament or County Assembly;**
- (b) **is a member 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 or of a County Assembly; or**

(d) is a member of a local authority;

(e) is an undischarged bankrupt; or

(f) has not benefitted or facilitated in any unlawful or irregular allocation or acquisition of land; or

(g) has been removed from office for contravening the provisions of the Constitution or any other law.

(4) Clause 3(c) ceases to apply to a person after two general elections for Parliament have been held since the person ceased to be such a candidate or office holder.

Procedure nominations.

for 6. The chairperson and members of the Commission shall be appointed in accordance with the procedure provided in the **First Schedule**.

Oath of office

7. The Chairperson and members shall each make and subscribe before the Chief Justice to the oath or affirmation set out in the **Second Schedule**.

Termination of appointment.

8. (1) The office of the chairperson or member shall become vacant if the holder

(a) dies;

(b) by a notice in writing addressed to the President resigns from office;

(c) is convicted of an offence and sentenced to imprisonment of more than six months without the option of a fine; or

(d) is absent from three consecutive meetings of the Commission without good cause.

(2) The President shall notify every resignation, vacancy or termination in the Gazette within seven days.

Removal of chairperson and members.

9. The chairperson or a member of the Commission may

be removed from office on the ground of, and in accordance with the procedure for removal provided in Article 251 of the Constitution.

Filling of
vacancy.

10. (1) Where a vacancy occurs in the membership of the Commission in accordance with sections 8 and 9, the appointment procedure provided for in the Constitution and this Act, shall apply.

(2) A member so appointed under subsection (1) shall serve for six years.

Functions of
the Commission.

11. In addition to the functions stipulated by Article 67(2) of the Constitution, the Commission shall

- a) administer and manage public land on behalf of the national and the county governments as provided for under Article 62 of the Constitution, including land covered by legislation relating to planning matters and gazetted as urban areas under existing law;
- b) register title to all categories of land in Kenya;
- c) ensure the realization of the multiple values of land, namely, economic productivity, equity, environmental sustainability and, conservation of national heritage;
- d) exercise the powers of compulsory acquisition and development control on behalf of the national and county governments;
- e) establish county offices, county land boards and community land boards, and any other devolved units as may be necessary;
- f) develop and operate an effective digital Land Information Management System (L.I.M.S) at national and county levels;
- g) establish and manage a National Land Trust Fund (NLTF) ,as provided for under Article 206 of the Constitution, to mobilize and pool

financial resources for implementing policy reforms; and,

h) harmonise national and county spatial planning.

Forfeiture proceedings. **12.** (1) The Commission shall have the power to review all grants or dispositions of public land to establish their propriety or legality.

(2) In the exercise of the power above, the Commission may take out forfeiture proceedings before the Environment and Land Court to vary, cancel or otherwise revoke title or interest in land.

Powers of the Commission **13**(1) The Commission shall have all powers generally necessary for the execution of its functions under the Constitution and this Act, and without prejudice to the generality of the foregoing, the Commission shall have powers to

(a) gather, by means 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 as and when necessary;

(b) hold inquiries for the purposes of performing its functions under this Act;

(c) take any measures it considers necessary to ensure

i. equitable access to land;

ii. security of land rights;

iii. sustainable and productive management of land;

iv. transparency and cost effectiveness of administration of land;

v. sound conservation; and,

vi. protection of ecologically sensitive areas and elimination of all types of

discrimination in customs and practices relating to land.

(2) In the exercise of its functions, the Commission-

(a) may inform itself in such manner as it thinks fit;

(b) may receive written or oral statements; and

(c) is not bound by the strict rules of evidence.

Investigation
adjudication

and

14. The Commission shall within one year of its appointment recommend to Parliament the passing of any appropriate legislation to provide for the framework for investigation and adjudication of claims arising out of historical land injustices.

Directorates of the
Commission

15(1) The Commission may establish such number of directorates as may be necessary for the better carrying into effect its functions under the Constitution and any other written law.

(2) Pending a formal establishment of the directorates referred to in sub-section (1) above, any State organ, public officer exercising any function or powers referred to in Article 67 of the Constitution and section 11 and 12 of this Act shall be deemed to be a directorate, department, or organ of the Commission and shall be subject to the direction, supervision and control of the Commission.

Committees of the
Commission.

16. (1) The Commission may from time to time establish committees for the better carrying out of its functions.

(2) The Commission may co-opt into the membership of committees established under subsection (1) persons whose knowledge and skills are found necessary for the functions of the Commission.

Procedures of the
Commission.

17 (1)The business and affairs of the Commission shall be conducted in accordance with such rules and procedures as the Commission may prescribe.

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

Appointment
Secretary.

of **18.** (1) There shall be a Secretary of the Commission appointed in accordance with the Constitution and shall hold office for a term of five years renewable once.

(2) The Secretary is theô

(a) chief executive officer;

(b) accounting officer; and

(c) head of the Secretariat of the Commission.

(3) The Secretary shall be appointed by the Commission through a competitive recruitment process.

(5) The Secretary is accountable to the Commission.

Removal of Secretary.

19. (1) The Secretary may be removed by the Commission only forô

(a) inability to perform the functions of the office arising out of physical or mental incapacity;

(b) gross misconduct or misbehaviour; or

(c) incompetence.

(2) Before the Secretary is removed under subsection (1), the Secretary must be given an opportunity to defend himself or herself against any allegations against him or her.

Appointment of Staff

20. (1) The Commission may appoint such officers and other staff as are necessary for the proper discharge of its functions under the Constitution and this Act, upon such terms and conditions of service as may be determined by the Commission in consultation with the Salaries and Remuneration Commission.

(2) The government may, upon request by the

Commission, second to the Commission such number of public officers as may be necessary for the purposes of the Commission.

- (3) 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.

The common seal of the Commission.

21. (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.

(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 section shall be presumed to have been duly given.

Protection from personal Liability.

22. 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 III — FINANCIAL PROVISIONS

Funds of the Commission

the **23. (1) The funds of the Commission shall consist of**

- (a) monies provided 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 purposes of this Act in accordance Article 206(1)(a) and (b) of the Constitution.

Financial year.

24. 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.

Annual estimates.

25. (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 and in particular, shall provide for the

- (a) payment of remuneration in respect of the members of the Commission;
- (b) payment of salaries and remuneration in respect of staff of the Commission;
- (c) payment of pensions, gratuities and other charges in respect of benefits which are payable out of the funds of the Commission;
- (d) maintenance of the buildings and grounds of the Commission;
- (e) funding of training, research and development of activities of the Commission; and
- (f) creation of such funds to meet future or contingent liabilities in respect of benefits, insurance or replacement of buildings or installations, equipment and in respect of such other matters as the Commission may think fit.

(3) The annual estimates shall be approved by the Commission before the commencement of the financial

year to which they relate and shall be submitted to the Cabinet Secretary for tabling in Parliament.

Accounts and Audit.

26. (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.

Act 12 of 2003.

(2) The annual accounts of the Commission shall be prepared, audited and reported upon in accordance with the Public Audit Act.

PART IV — MISCELLANEOUS PROVISIONS

Annual report

27. (1) The Commission shall cause an annual report to be prepared for each financial year.

(2) The Commission shall submit the annual report to the President and Parliament three months after the end of the year to which it relates.

(3) The annual report shall contain, in respect of the year to which it relates

- (a) the financial statements of the Commission;
- (b) a description of the activities of the Commission;
- (c) such other statistical information as the Commission considers appropriate relating to the Commission's functions; and
- (d) any other information relating to its functions that the Commission considers necessary.

(4) The Commission shall cause the annual report to be published and publicised in a manner as the Commission may determine, and any information as may be required under Article 254(3) of the Constitution

Offences

28. (1) No person shall

- (a) without justification or lawful excuse,

obstruct or hinder, or assault or threaten a member or staff of the Commission acting under this Act;

(b) submit false or misleading information; or

(c) misrepresent to or knowingly mislead the 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.

Regulations.

29. The Commission may make regulations generally for the better carrying into effect of any provisions of this Act.

Code of conduct.

30. The Commission shall develop a code of conduct for its members and staff.

FIRST SCHEDULE

(S. 6)

1. The Public Service Commission shall, whenever a vacancy arises in the Commission, by notice in the Gazette and at least two national newspapers with national circulation declare vacancies in the Commission and request for applications.
2. The names of all applicants shall be published in the Gazette and at least two national newspapers with national circulation.
3. The Public Service Commission shall, with twenty-one days of the expiry of the period prescribed in the notices, convene a Committee comprising
 - (a) A representative from the Public Service Commission
 - (b) Cabinet Secretary responsible for Land;
 - (c) two persons, one a woman, and the other a man, nominated by the Non-Governmental Organisations Coordinating Council;
 - (d) two persons, one a woman and one a man, who are citizens of Kenya nominated by Association of Professional Societies of East Africa from their member organizations which have demonstrated competence and capacity in land related fields;
 - (e) Two persons, one representing pastoralists and the other farmers, each of whom shall be of either gender, nominated by the President; and,
 - (f) One person with disabilities, nominated by the President.

For purposes of considering the applications, interviewing and short listing at least two persons qualified for appointment as chairperson and fifteen persons who qualify for appointment as members.

4. The Public Service Commission shall within seven days forward the shortlisted names to the President for nomination.
5. The President shall nominate within seven days a chairperson and eight other persons for appointment as chairperson and members

respectively and forward the same to Parliament.

- 6. Parliament shall, within twenty-one days consider all nominations received under paragraph 5 and approve or reject any nominations.
- 7. Upon consideration and approval by Parliament, the Speaker shall within seven days forward the names of the approved persons to the President for appointment.
- 8. Where Parliament rejects any nomination, the Speaker shall within three days communicate its decision to the President to submit fresh nominations.
- 9. Where a nominee is rejected by Parliament under paragraph 6, the President shall within seven days, submit to Parliament a fresh nomination from amongst the persons short listed by the Public Service Commission under paragraph 4.
- 10. If Parliament rejects all or any subsequent nominee submitted by the President for approval under paragraph 9, the provisions of paragraph 5 shall apply.
- 11. In short listing, nominating and appointing persons as chairperson and members respectively, the Committee, Parliament and the President shall
 - (a) observe the principle of gender equity by ensuring that at least one-third of the members are of either gender; and
 - (b) take into account the national values set out in Article 10 of the Constitution

SECOND SCHEDULE

(S 7)

OATH/AFFIRMATION OF THE OFFICE OF CHAIRPERSON/A MEMBER

I _____ having been appointed (the chairperson/member of /Secretary to) the National Land Commission under the National Land Commission Act, 2011, do swear/ solemnly affirms 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 trust, perform the functions and exercise the powers devolving upon me by virtue of this appointment without fear, favour, bias, affection, ill-will or prejudice. (SO HELP ME GOD).

Sworn/Declared by the said í í í í í í í í í í í í í í í í

Before me this í í í í í í Day of í í í í í í í í í í í í í í í í

í í í í í í í í í
Chief Justice.

MEMORANDUM OF OBJECTS AND REASONS

The main object of this Bill is to provide for the qualifications and appointment procedure of chairperson and members of the National Land Commission established under the Article 67 of the Constitution. The Commission's principal mandate is to manage public land on behalf of national and county governments and to further advise the National government on a comprehensive programme for the registration of title in land throughout Kenya.

Part I deals with preliminary matters comprising the short title of the Bill and an interpretation of terms as used in the Bill.

Part II provides for the functions and powers of the Commission as provided for under the Constitution, as well as setting out the threshold of qualifications and procedure of appointment of the Chairperson and members. It also provides for the establishment of the National Land Trust Fund for purposes of mobilization of financial resources for the implementation of land reforms.

Part III provides for the financial affairs of the Commission, accounts and audit of the fund.

Part IV deals with miscellaneous matters. It provides for the preparation of an annual report to be submitted to the President and Parliament three months after the end of the year to which it relates. It also provides for the offences under the Act, making of regulations and development of a code of conduct.

The enactment of this Act will occasion additional expenditure to the exchequer.

Hon. James Orengo, EGH, MP

Minister For Lands

Date.....