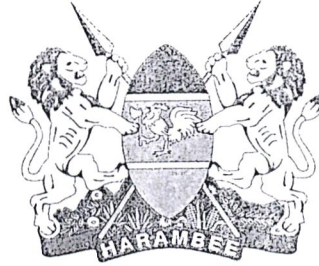


PARLIAMENT OF KENYA



*Paper Laid*  
*By the Chair of the*  
*Land Hon. Nyamau*  
*on 6/6/2018*

THE NATIONAL ASSEMBLY

PARLIAMENT  
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LIBRARY

TWELFTH PARLIAMENT – SECOND SESSION – 2018

DEPARTMENTAL COMMITTEE ON LANDS

REPORT ON THE CONSIDERATION OF THE LAND VALUE INDEX LAWS  
(AMENDMENT) BILL, 2018

06 JUN 2018  
FR LAID

DIRECTORATE OF COMMITTEE SERVICES  
CLERK'S CHAMBERS  
PARLIAMENT BUILDINGS  
NAIROBI

JUNE 2018

Table of Contents

|  |    |
|--|----|
| List of Abbreviations .....                    | 2  |
| CHAIRPERSON'S FOREWORD .....                   | 3  |
| EXECUTIVE SUMMARY .....                        | 4  |
| 1.0 PREFACE .....                              | 5  |
| 1.1 Mandate of the Committee.....              | 5  |
| 1.2 Committee subjects.....                    | 5  |
| 1.3 Oversight.....                             | 6  |
| 1.4 Committee Membership.....                  | 6  |
| 1.5 COMMITTEE OBSERVATIONS .....               | 7  |
| 1.6 COMMITTEE RECOMMENDATION .....             | 8  |
| 1.7ANALYSIS OF THE BILL .....                  | 9  |
| 1.8 SUBMISSIONS AND PUBLIC PARTICIPATION ..... | 12 |
| 1.9 CONSIDERATION OF THE BILL .....            | 20 |
| 2.0 GENERAL OBSERVATIONS .....                 | 21 |
| 2.1 COMMITTEE RECOMMENDATION .....             | 22 |
| 2.2 PROPOSED AMENDMENTS .....                  | 22 |

Annextures

1. Advert for submission of Memoranda;
2. Minutes of the Committee proceedings on the Bill.
3. Memoranda from stakeholders.

## List of Abbreviations

|     |   |                                   |
|-----|---|-----------------------------------|
| CS  | - | Cabinet Secretary                 |
| CEC | - | County Executive Committee Member |
| NLC | - | National Land Commission          |

## CHAIRPERSON'S FOREWORD

The Land Value Index Laws (Amendment) Bill, 2018 proposes to amend the Land Act, the Land Registration Act and the Prevention, Protection and Assistance to Internally Displaced Persons and Affected Communities Act in order to provide for the assessment of land value index in respect of compulsory acquisition of land. The Bill once enacted will standardize and harmonize the land value of land across the country. The Bill also seeks to regulate the long and protracted process of compulsory acquisition and harmonize and standardize the compensation thereof.

In deliberating on the Bill, the Committee subjected it to the provisions of Article 118 of the Constitution and Standing Order 127 of the National Assembly Standing Orders on public participation and indeed did receive various views from the Ministry of Land and Physical Planning and the National Land Commission, the Council of Governors, the Institution of Surveyors of Kenya; and Ashitiva and Company Advocates, Natural Justice and Kasarani Estate Cooperative Union Society.

The Ministry of Lands and Physical Planning and the National Land Commission who will be key implementers of the Bill if passed into law also made very detailed and insightful joint submissions to the Committee. Thereafter the Committee did deliberate on the submissions on each clause of the Bill and made recommendations which will inform the committee stage amendments to the Bill.

The Committee appreciates the support accorded to the Committee in discussing the Bill by the office of the Clerk and also the participation of the Honourable Members of the Committee. This report represents an analysis of the Bill, submissions made to the Committee by different stakeholders, observations and recommendations of the Committee on the Bill



**Hon. Dr. Rachael Kaki Nyamai, MP**  
**Chairperson, Departmental Committee on Lands**

## EXECUTIVE SUMMARY

The Land Value Index Laws (Amendment) Bill, 2018 underwent first Reading on 27<sup>th</sup> February, 2018 and was subsequently committed to the Departmental Committee on Lands for consideration pursuant to the provisions of Standing Order 127.

The Committee subjected the Bill to the provisions of Article 118 of the Constitution and Standing Order 127 of the National Assembly Standing Orders on public participation and placed an advert in the print media on Wednesday March 7, 2018 inviting the public to submit memoranda on the Bill. By close of business on Wednesday 14<sup>th</sup> March 2018, the Committee had received submissions from the Ministry of Land and Physical Planning and the National Land Commission, the Council of Governors, the Institution of Surveyors of Kenya, Ashitiva and Company Advocates Natural Justice and Kasarani Estate Cooperative Union Society.

Further, the Committee held meetings with representatives of the Institution of Surveyors of Kenya and representatives of Ashitiva and Company Advocates on Tuesday 17<sup>th</sup> March 2018, the Cabinet Secretary, Ministry of Lands and Physical Planning and Vice-Chairperson, National Land Commission on Tuesday 20<sup>th</sup> March 2018. The Council of Governors sent their written memoranda on the Bill and did not appear before the Committee.

The Committee thereafter proceeded to a retreat on report writing where it analyzed the submissions by the stakeholders and made various observations and recommendations as indicated in this Report.

## **1.0 PREFACE**

### **1.1 Mandate of the Committee**

The Departmental Committee on Lands is established pursuant to the provisions of Standing Order No. 216 (1) and (5) with the following terms of reference:-

- (i) make reports and recommendations to the House as often as possible, including recommendation of proposed legislation;
- (ii) investigate, inquire into, and report on all matters relating to the mandate, management, activities, administration, operations and estimates of the assigned Ministries and departments;
- (iii) study the programme and policy objectives of Ministries and departments and the effectiveness of the implementation;
- (iv) study, access and analyze the relative success of the Ministries and departments as measured by the results obtained as compared with their stated objectives;
- (v) investigate and inquire into all matters relating to the assigned Ministries and departments as they may deem necessary, and as may be referred to them by the House or a Minister.
- (vi) study and review all legislation referred to it

### **1.2 Committee subjects**

The Committee is mandated to consider the following subjects:-

- a) Land Policy,
- b) Physical Planning,
- c) Land Transactions,
- d) Survey and Mapping
- e) Land Adjudication
- f) Settlement
- g) Land registration
- h) Land Valuation
- i) Administration of Private, community and Public Land
- j) Land Information and Management System

### 1.3 Oversight

The Committee oversights.

- i. The Ministry of Lands and Physical Planning ;and
- ii. The National Land Commission

### 1.4 Committee Membership

|                         |   |
|-------------------------|---|
| <b>Chairperson</b>      | The Hon. Dr. Rachael Nyamai, MP                 |
| <b>Vice Chairperson</b> | The Hon. Khatib Mwashetani, MP                  |
|                         | The Hon. Jayne Njeri Wanjiru Kihara, MP         |
|                         | The Hon Joshua Kutuny Serem, MP                 |
|                         | The Hon. Kimani Ngunjiri, MP                    |
|                         | The Hon. Mishi Mboko, MP                        |
|                         | The Hon. Omar Mwinyi, MP                        |
|                         | The Hon. Ali Mbogo, MP                          |
|                         | The Hon. Babu Owino, MP                         |
|                         | The Hon. Caleb Kipkemei Kositany, MP            |
|                         | The Hon. Catherine Waruguru, MP                 |
|                         | The Hon George Aladwa, MP                       |
|                         | The Hon George Risa Sunkuyia,MP                 |
|                         | The Hon. Jane Wanjuki Njiru,MP                  |
|                         | The Hon. Josphat Gichunge Mwirabua Kabeabea, MP |
|                         | The Hon. Owen Yaa Baya, MP                      |
|                         | The Hon. Samuel Kinuthia Gachobe, MP            |
|                         | The Hon. Simon Nganga Kingara, MP               |
|                         | The Hon Teddy Mwambire, MP                      |

### Committee Secretariat

|                                |                     |
|--------------------------------|---------------------|
| <b>Clerk Assistant I</b>       | Mr. Leonard Machira |
| <b>Clerk Assistant III</b>     | Mr. Ahmad Guliye    |
| <b>Legal Counsel I</b>         | Ms. Jemimah Waigwa  |
| <b>Researcher III</b>          | Mr. Joseph Tiyan    |
| <b>Senior Fiscal Analyst</b>   | Mr. Joash Kosiba    |
| <b>Audio Officer</b>           | Mr. John Mungai     |
| <b>Media Relations Officer</b> | Ms. Winnie Kizziah  |
| <b>Serjeant At Arms</b>        | Ms. Peris Kaburi    |

## 1.5 COMMITTEE OBSERVATIONS

Having considered the Bill and the memoranda submitted to the Committee by the public, the Committee observed and made comments as follows-

1. The principal object of the Bill is to provide an elaborate framework for governing compulsory acquisition processes.
  2. There is need to ensure that public infrastructure investments are easily undertaken by Government while safeguarding the right of property of every individual in Kenya.
  3. Compensation for land compulsorily acquired by NLC should be made within a reasonable time of taking possession of land not being more than one year from the date of the undertaking.
  4. Clauses 3 and 4 of the Bill will ensure that where land is required for a public purpose, the court may not grant relief against forfeiture even if the grantor or licensee makes good the default.
  5. The land value index should be developed by the national government in consultation with the county governments.
  6. The market value of land should be considered in calculating the land value index in addition to the other principles specified in clause 6.
  7. Clause 6(11) of the Bill takes into consideration that occupants in good faith may include persons occupying ancestral land or land traditionally occupied by individuals, families or entities pending adjudication.
- 
8. The amendments proposed to clause 11 of the Bill were made by the Land Laws (Amendment) Act, 2016 and hence should be dropped.
  9. There is need to include a proviso in the provision limiting the courts discretion to issue orders stopping any development in the land compulsorily acquired if public funds have been committed to read "Provided that due process has been followed by the Commission in the declaration of an intention to acquire, and in the taking of possession of the property compulsorily acquired."
  10. Clause 18 of the Bill should be amended to provide for the appointment of the members of the Land Acquisition Tribunal by the Cabinet Secretary and further shorten the period within which the Tribunal should hear and determine a case filed before it from ninety to sixty days.



## **1.6 COMMITTEE RECOMMENDATION**

Having analyzed the Bill vis-à-vis the memoranda submitted by the public, the Committee recommends that the Bill be approved and passed by the House subject to the proposed amendments in this Report.

## INTRODUCTION

The Land Value Index Laws (Amendment) Bill, 2018 proposes to amend the Land Act, the Land Registration Act and the Prevention, Protection and Assistance to Internally Displaced Persons and Affected Communities Act in order to provide for the assessment of land value index in respect of compulsory acquisition of land. The Bill once enacted will standardize and harmonize the land value of land across the country. The Bill also seeks to regulate the long and protracted process of compulsory acquisition and harmonize and standardize the compensation thereof. The Bill also proposes to amend the Land Act in order to ease the acquisition of and access to land or rights over land in order to successfully implement public infrastructure projects. Consequently, the actualization of the country's development strategy relating to public infrastructure would re-establish Kenya as the jurisdiction of choice for investment and improve the ease of doing business, in Kenya.

### 1.7 ANALYSIS OF THE BILL

The Bill contain twenty-two clauses as follows-

Clause 1 is the short title of the Bill.

Clause 2 of the Bill seeks to define the following terms-

- (a) Just compensation in relation to compulsorily acquired land or creating of wayleaves, easements and public rights means a form of fair compensation that is assessed and determined through criteria set out under this Act.
- (b) Prompt in relation to payment of compensation for compulsorily acquired land or creation of wayleaves, easements and public rights means-
  - (i) Within a reasonable time of the taking of possession of the land by Commission; or
  - (ii) A written undertaking indicating the appointed dates, not being more than one year from the date of the undertaking, when compensation is to be made.

(c) "Full" in relation to compensation for compulsorily acquired land or of wayleaves, easements and public rights of way means the restoration of not more than the value of land including improvements thereon and any other matter provided for in the Act. Tribunal means the Land Acquisition Tribunal.

Clause 3 of the Bill seeks to amend section 31 of the Lands Act which deals with forfeiture of lease to provide that where land is required for a public purpose, the court may not grant relief against forfeiture even if the grantor makes good the default.

Clause 4 of the Bill seeks to amend section 32 of the Lands Act which deals with forfeiture of licence to provide that where land is required for a public purpose, the court may not grant relief against forfeiture even if the licensee makes good the default.

Clause 5 of the Bill seeks to amend section 107 of the Lands Act in order to remove a typographical error and to substitute with a requirement that once the Commission determines that a request to acquire land meets the requirements prescribed under Article 40(3) of the Constitution, the Commission shall—

valuation criteria set out under this Act; and

(b) establish the number of and maintain a register of persons in actual occupation of the land for un-interrupted period of twelve years and their improvements.

The clause also requires the NLC to publish a notice of approval of a request by the CS or CEC as the case may be. The notice issued shall contain the following particulars—

- (a) the purpose for which the land is to be compulsorily acquired; and
- (b) the location, general description and approximate area of the land.

The amendment further provides that upon receipt of the notice issued by NLC, the Registrar shall make a restriction order prohibiting or restricting dealings with the affected portion of land thereof until it vests in the acquiring body.

Clause 6 of the Bill seeks to introduce a new section 107A which provides for the criteria to be used assessing value for compulsorily acquired freehold and leasehold land.

Clause 7 of the Bill sets out the various forms of compensation of compulsory acquisition of land which may take any one or more of the following forms-

- (a) allocation of alternative parcel of land of equivalent value and comparable geographical location and land use to the land compulsorily acquired;
- (b) monetary payment either in lump sum or in instalments spread over a period of not more than one year;
- (c) issuance of government bond;
- (d) grant or transfer of development rights as may be prescribed;
- (e) equity shares in a government owned entity; or
- (f) any other lawful compensation.

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Clause 8 of the Bill seeks to align the provisions of section 113 of the Land Act with clause 7.

Clause 9 of the Bill seeks to align the provisions of section 114 of the Land Act with clause 7.

Clause 10 of the Bill seeks to amend section 115 of the Land Act to provide that where compensation is in the form of alternative land, the Commission may hold the title to such land in trust for the beneficiaries in the circumstances listed in section 115 of the Land Act.

Clauses 11-16 of the Bill seeks to rectify inconsistencies in the marginal notes and remove typographical errors. Further, the clauses also seek to provide that payment of interest shall be on the prevailing central bank rates and also prohibit courts from issuing orders stopping public funded projects after the formal taking of possession of land for a public purpose.

Clause 17 of the Bill seeks to amend section 125 of the Lands Act in order to provide that the Commission may as soon as is practicable pay full and just compensation to all persons interested in the land.

Clause 19 of the Bill seeks to amend section 146 of the Lands Act to reduce the period of giving notice from ninety to thirty days.

Clause 20 of the Bill proposes to create an offence for any public officer who colludes or corruptly influences transactions in land intended to be compulsorily acquired.

Clause 21 of the Bill seeks to amend the Land Registration Act by providing that the Registrar shall for purposes of compulsory acquisition where he or she considers it fit, make an order for restriction.

Clause 22 of the Bill seeks to harmonize the Prevention, Protection and Assistance to Internally Displaced Persons and Affected Communities Act with the provisions of the Bill.

## 1.8 SUBMISSIONS AND PUBLIC PARTICIPATION

The Committee subjected the Bill to the provisions of Article 118 of the Constitution and Standing Order 127 of the National Assembly Standing Orders on public participation and placed an advert in the print media on Wednesday March 7, 2018 inviting the public to submit memoranda on the Bill. By close of business on Wednesday 14<sup>th</sup> March 2018, the Committee had received submissions from-

- (1) The Ministry of Land and Physical Planning and the National Land Commission;
- (2) The Council of Governors;
- (3) The Institution of Surveyors of Kenya; and
- (4) Ashitiva and Company Advocates.

Further the Committee held meetings with representatives of the Institution of Surveyors of Kenya and representatives of Ashitiva and Company Advocates on Thursday 15<sup>th</sup> March 2018 and with the Cabinet Secretary, Ministry of Lands and Physical Planning and the Vice-Chairperson, National Land Commission on Tuesday 20<sup>th</sup> March 2018. The Council of Governors sent their written memoranda on the Bill and did not appear before the Committee.

The stakeholders made the following written and oral submissions among others-

| Clause   | Institution                   | Proposed Amendment  |
|----------|-------------------------------|---|
| Title    | COG                           | Reword the long title to read-<br><br>An Act of Parliament to amend the Land Act, 2012 reviewed in 2016 and the LRA reviewed in 2016 to provide for the assessment of land value index in respect of compulsory acquisition of land and for connected purposes.   |
| Clause 2 | Ashitiva & -Company Advocates | Word “within reasonable time” not clear.<br><br>Redraft to read “within a reasonable time before taking possession of the land by the Commission”.  |
|          | COG                           | Redefine “full” to delete restoration of not more than the value.   |
|          | Ministry and NLC              | Define who an occupant in good faith is as used in Article 40(4) of the COK.<br><br>“An occupant in good faith” in relation to payment of compensation for compulsorily acquired land or creation of wayleaves, easements and public rights does not include –<br><ol style="list-style-type: none"> <li>(a) a person unlawfully occupying any land;</li> <li>(b) a person who occupies land without the consent of the lawful owner, or whose right to the occupation of the land is contested;</li> </ol> |

|          |                              |   |
|----------|------------------------------|---|
|          |                              | <p>(c) a person who acquired the interest in the land within a period of twelve years prior to the date of issuance of notice to acquire compulsorily or such other period as may by regulation be established; and</p> <p>(d) a person in occupation of public land.”</p>  |
| Clause 3 | Ashitiva & Company Advocates | <p>The amendment is unconstitutional as the Land Act requires the court to be guided by the doctrine of equity. Equity allows for the doctrine of forfeiture. The National values and principles also include the doctrine of equity.</p> <p>Delete the clause.</p>   |
|          | COG                          | <p>Need to include an amendment to provide that the forfeiture document should be registered and copy sent to NLC.</p>  |
| Clause 4 | Ashitiva & Company Advocates | <p>The amendment is unconstitutional as the Land Act requires the court to be guided by the doctrine of equity. Equity allows for the doctrine of forfeiture. The National values and principles also include the doctrine of equity.</p> <p>Delete the clause.</p>   |
|          | COG                          | <p>Need to include an amendment to provide that the forfeiture document should be registered and copy sent to NLC.</p>  |
|          | ISK                          | <p>Delete the phrase “cause the affected land to be mapped out”. It is the work of the acquiring body to undertake survey.</p> <p>Delete paragraph (b) also as it will be impossible for NLC to carry out the exercise.</p>   |
| Clause 5 | Ministry and NLC             | <p>Delete clause 5(b) and substitute with-</p> <p>(b) establish that the acquiring agency has identified the number of and maintained a register of persons on actual occupation of the land. Confirming for each such occupant how much time they have been in uninterrupted occupation or owner the interests in the land prior to the date on which the notice to compulsorily acquire was published and their improvements thereon.</p> |

|          |                              |   |
|----------|------------------------------|---|
|          | COG                          | <p>5(a) was already effected the Land Laws (Amendment) Act. 2016</p> <p>(4) should not be deleted as it is prudent for NLC to state the reasons for the decline.</p> <p>Delete 5(d).</p>  |
| Clause 6 | ISK                          | <p>Amend to provide that the land value index shall be developed by the Chief Government Valuer.</p> <p>Amend paragraph (a) by deleting the intended use and replacing with “declaration of NLC to acquire”.</p> <p>Delete paragraph (c) as it seeks to disregard increase that may be occasioned by development or improvement of land.</p> <p>Amend paragraph (e) to delete the words “the intended use” with the “use to which the land may be put”.</p> |
|          | COG                          | <p>107A(3) include market value.</p> <p>107A(4)(c) delete apparent and substitute with market value.</p> <p>107A(5)(b) redraft to read any inconvenience caused to a third party interested in the land.</p>  |
|          |                              | <p>107A(5)(b) delete the number of persons and give reference to the area acquired by each of the persons.</p> <p>107B(2)(b) and (c) refer to the value of developments and criteria to be developed in consultation with both the National and County Governments.</p>   |
|          | Ashitiva & Company Advocates | <p>The two levels of government in developing the value index might fail to take into consideration all the prevailing circumstances.</p> <p>Need to amend to provide as follows-</p> <p>The land value index shall be open to public scrutiny</p>  |

|          |                  |   |
|----------|------------------|---|
|          |                  | <p>and any party whose interests shall have been injured shall be allowed access to a court of land to have the land value index reviewed.</p> <p>Further, 107A(5)(b) should be deleted as it contravenes Article 10 of the Constitution on equity.</p> <p>107(B)(1) is unconstitutional as the automatic reversion does not include a notice period to allow the lessee to make good the default.</p> <p>Amend to read-</p> <p>“Where the lessee of public land is in breach of any terms or condition of the grant, twelve months notice to make good shall be issued failure to which the land shall revert back to the national or county government.</p> |
|          | Ministry and NLC | <p>Sub-clause (1)-Delete the word jointly and insert in consultation with.</p> <p>Sub-clause (3) include “provided that such land value indexation shall ensure that persons entitled to lawful compensation as a result of compulsory acquisition are left in no better or no worse financial and or economic condition as a result of such compensation.”</p> <p>Sub-clause (8)(a) amend to include the words or such other period as may be prescribed by regulations.</p>   |
|          |                  | <p>Include a proviso-</p> <p>“Provided that for the avoidance of doubt, compensation to be made in good faith shall not extend, under any circumstance to compensation for the land actually occupied.</p> <p>Delete sub-clause (9) as it will be provided for in clause 2.</p>   |
| Clause 7 | ISK              | Amend paragraph (b) as it contradicts section 111 of the Act that provides that payment should be made promptly and in full.  |
|          | Ministry and NLC | <p>1(b) delete one year and increase to two years.</p> <p>Include proviso to read</p>   |



|           |                              |   |
|-----------|------------------------------|---|
|           |                              | “Provided that regardless of the form of compensation provided under this section, where an acquisition process is not completed within a period of 24 months from the date of publication of notice of intention to acquire, the acquisition shall lapse.”   |
| Clause 10 | COG                          | Title should be held in trust by the county governments on behalf of the beneficiaries.   |
| Clause 11 | COG                          | Delete already provided for.  |
| Clause 13 | Ministry and NLC             | Include a proviso in section 120(3) to read-<br><br>Provided that such taking of possession shall not result in persons affected being rendered homeless and provided that the payment of the word is paid within the time permitted under the Act.   |
| Clause 14 | Ashitiva & Company Advocates | The clause in contravention of Article 40 of the Constitution which provides that the State shall allow any person who has an interest in or right over property a right to access to a court of law.<br><br>The clause should be deleted.  |
|           | Ministry and NLC             | Proposal (1)<br><br>It is proposed to add a proviso at the end of this statement to read as follows –<br><br>“...if public funds have already been committed, Provided that due process has been followed by the Commission in the declaration of an intention to acquire, and in the taking of possession of the property compulsorily acquired.”<br><br>Proposal (2):<br><br>Introduce a new sub-section (b), to provide as follows –<br><br>“b. Without prejudice to sub-section (a), where an application on a point of law is made to the court, no ex-parte orders thereon may be issued by any court if public funds have already been committed’<br><br>Proposal (3): |

|           |                              |  |
|-----------|------------------------------|--|
|           |                              | Re-number the current sub-section (b) as the new sub-section (c).  |
| Clause 16 | COG                          | Delete already provided for in the Land Laws (Amendment) Act of 2016.  |
|           | Ministry and NLC             | Delete/repeal the amendment.   |
| Clause 17 | Ashitiva & Company Advocates | The issue with the clause is what point the compensation is going to take place with consideration of the people whose land has been compulsorily acquired.<br><br>The phrase before possession should remain.   |
|           | Ministry and NLC             | Delete the word “before” and replace it with the word “after”.<br><br>After the word “land” at the end of sub-section (1), add the following words –<br><br>“..., within a period of twenty-four months from the date of publication of the intention to compulsorily acquire the land.” |
| Clause 18 | ISK                          | Amend paragraph (b) to read “two registered valuers of not less than ten years standing seconded by the Institution of Surveyors of Kenya.”  |
|           |                              | Amend paragraph (c) to read “seconded by Institution of Surveyors of Kenya<br><br>Amend by deleting “question of law only” in 133D(2) to allow a person to appeal on other grievances and also be represented by a private valuer.   |
|           | Ministry and NLC             | Amend by deleting the words –<br><br>“Judicial Service Commission...”<br><br>And substituting therefor the words –<br><br>“Cabinet Secretary”  |

|  |  |  |
|--|--|--|
|  |  | <p>Introduce a new sub-clause 1A to provide as follows -</p> <p>“1A. In making the appointments in sub-section (1), the Cabinet Secretary shall choose from the following –</p> <p>(a) one person from three nominees of the Judicial Service Commission, who shall serve as the Chairperson;</p> <p>(b) two persons from five persons nominated by the Valuers Registration Board;</p> <p>(c) one person from three persons nominated by the Surveyors Registration Board;</p> <p>(d) one person from two persons nominated by the Attorney General.”</p> |
|--|--|--|

The Committee also received the following general comments on proposed amendments to the Bill from-

#### A. NATURAL JUSTICE

- (1) Clause 2 should be amended to provide that prompt payment should include payment or portion of payment at the time of acquisition and a total payment within a defined period, but not exceeding three months.
- (2) Clause 6 in the proposed new section 107A should be amended to include a new paragraph to read “valuation of freehold land and community land for purposes of compensation under this Act shall be based on the land value index developed by the national government and county government in conjunction with the National Land Commission for that purpose.”
- (3) Clause 6 in the proposed new section 107A(8)(a) should be amended in terms of reference to the twelve years period to one year so that the compensation to be made to occupants in good faith is assessed based on the number of persons in actual occupation of the land for an interrupted period of one year.
- (4) There is need to remove the excessive discretion conferred upon the Commission by providing for disturbance allowance pegged at 15% of the sum awarded instead of considering change of residences as a factor in assessing value of land. There is also need to amend the clause to provide

diminution of profits as a factor in assessing compensation to be made.

- (5) There is need for the national and county governments to educate the citizens on the best form of compensation that they can explore when land has been compulsorily acquired. Further, owners of land should have the option of choosing on whether to be paid in full or installments.
- (6) Clauses 13, 16 and 17 should be deleted as they allow NLC to formally take land once an award has been made rather than first requiring a compensation payment to be made.
- (7) Clause 13(c) should be amended by deleting the phrase “uncultivated or pasture or arable land” and provide for the use of urgent necessity consideration which are public safety, public order and public health.
- (8) The proposed amendment to clause 14 seeking to prevent a court from stopping any development in the land is unconstitutional, renders ineffectual any of the legal processes required for a development project including environment licenses, weakens the judiciary and in effect is detrimental to people’s wellbeing.
- (9) The reduction of the number of days upon which NLC shall make a decision following an application for a public right of way from 90 to 30 days would place the NLC in an extremely difficult position in decision making.
- (10) The amendment to clause 21 of the Bill be amended to include a comma after the words “for purpose of compulsory acquisition”.
- (11) The proposed amendment to clause 22 of the Bill should be deleted as it negates the free prior and informed consent of persons to be displaced.

#### **B. KASARANI ESTATE COOPERATIVE UNION SOCIETY**

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The workers of the Kasarani Cooperative Union Society submitted among other things that the amendments to the Bill are discriminatory in particular the amendment to clause 14 which provides that the court may not grant relief against forfeiture.

## 1.9 CONSIDERATION OF THE BILL

The Committee deliberated on the Bill as follows:

|                 |                     |
|-----------------|---------------------|
| Clauses 1 to 4  | Agreed to           |
| Clause 5        | Proposed amendments |
| Clause 6        | Proposed amendments |
| Clauses 7 to 10 | Agreed to           |
| Clause 11       | Proposed amendment  |
| Clause 12       | Agreed to           |
| Clause 13       | Proposed amendments |
| Clause 14       | Proposed amendments |
| Clause 15       | Agreed to           |
| Clause 16       | Proposed amendments |
| Clause 17       | Agreed to           |
| Clause 18       | Proposed amendments |
| Clauses 19-22   | Agreed to           |
| Short title     | Agreed to           |
| Long Title      | Agreed to           |

## 2.0 GENERAL OBSERVATIONS

The Committee made the following observations and comments on the Bill:

1. The principal object of the Bill is to provide an elaborate framework for governing compulsory acquisition processes.
2. There is need to ensure that public infrastructure investments are easily undertaken by Government while safeguarding the right of property of every individual in Kenya.
3. Compensation for land compulsorily acquired by NLC should be made within a reasonable time of taking possession of land not being more than one year from the date of the undertaking.
4. Clauses 3 and 4 of the Bill will ensure that where land is required for a public purpose, the court may not grant relief against forfeiture even if the grantor or licensee makes good the default.
5. The land value index should be developed by the national government in consultation with the county governments.
6. The market value of land should be considered in calculating the land value index in addition to the other principles specified in clause 6.
7. Clause 6(11) of the Bill takes into consideration that occupants in good faith may include persons occupying ancestral land or land traditionally occupied by individuals, families or entities pending adjudication.
8. The amendments proposed to clause 11 of the Bill were made by the Land Laws (Amendment) Act, 2016 and hence should be dropped.
9. There is need to include a proviso in the provision limiting the courts discretion to issue orders stopping any development in the land compulsorily acquired if public funds have been committed to read "Provided that due process has been followed by the Commission in the declaration of an intention to acquire, and in the taking of possession of the property compulsorily acquired."
10. Clause 18 of the Bill should be amended to provide for the appointment of the members of the Land Acquisition Tribunal by the Cabinet Secretary and further shorten the period within which the Tribunal should hear and determine a case filed before it from ninety to sixty days.

## 2.1 COMMITTEE RECOMMENDATION

Having analyzed the Bill vis-à-vis the memoranda submitted by the public the Committee recommends the Bill be approved and passed by the House subject to the proposed amendments in this Report.

## 2.2 PROPOSED AMENDMENTS

The Committee made the following proposed amendments to the Bill—

### CLAUSE 5

**THAT** clause 5 of the Bill be amended by deleting the words “establish the” appearing in paragraph (b) and substituting therefor the words “establish that the acquiring body has identified the”.

#### Justification

The amendment recognizes that the acquiring body and not NLC is best placed to identify the number of persons in actual occupation of its land for uninterrupted period of twelve years and their improvements.

### CLAUSE 6

**THAT** clause 6 of the Bill be amended—

- (a) by deleting the words “jointly by the national government and county government” appearing in the proposed new section 107(A)(1) and substituting therefor the words “by the national government in consultation with the county government”;
- (b) by inserting the words “the market value of the land and” immediately after the words “calculating the land value index” appearing in the proposed new section 107(A)(3); and
- (c) by deleting the words “jointly by the national government and county government” appearing in the proposed new section 107(B)(2)(a) and substituting therefor the words “by the national government in consultation with the county government”.

#### Justification

The amendment seeks to place the responsibility of developing the land value index on the national government in consultation with the county governments. Further, the amendment includes market value of land as one of the principles to be considered in calculating the land value index.

### CLAUSE 11

**THAT** clause 11 of the Bill be deleted.

---

The amendment as proposed was carried in the Land Laws (Amendment) Act, 2016.

**CLAUSE 13**

THAT clause 13 of the Bill be amended by deleting paragraph (a).

**Justification**

The amendment as proposed was carried in the Land Laws (Amendment) Act, 2016.

**CLAUSE 14**

THAT clause 14(b) of the Bill be amended in the proposed new sub-section (3A) —

(a) by deleting paragraph (b);

(b) by inserting the following proviso immediately after subsection (3A) —

“Provided that due process has been followed by the Commission in the declaration of an intention to acquire, and in the taking of possession of the property compulsorily acquired.”

**Justification**

The amendment seeks to delete paragraph (b) on jurisdiction of the Tribunal as this is already provided for in clause 18. Further, the amendment seeks to limit the discretion of the court only in instances where the due process has been followed by the Commission in the declaration of an intention to acquire, and in the taking of possession of the property compulsorily acquired.

**CLAUSE 16**

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THAT clause 16 of the Bill be amended by deleting the words “after paying the first offer of compensation” and substituting therefor the words “after paying full compensation”.

**Justification**

The amendment as proposed in the Bill does not recognize the amendment that was occasioned by the Land Laws (Amendment) Act, 2016. Further, the amendment seeks to harmonize the clause with clause 2 of the Bill and hence allows the Commission after issuing notice to take possession of land by entering into land.

**CLAUSE 18**

THAT clause 18 of the Bill be amended—

(a) by deleting sub-section (1) and substituting therefor the following new sub-section—



shall consist of five persons appointed by the Cabinet Secretary through a notice in the Gazette.

(b) by inserting the following new sub-section immediately after sub-section (1) —

“(1) The members of the Tribunal shall consist of —

- (a) one person appointed from among three persons nominated by the Judicial Service Commission, who shall serve as the Chairperson;
- (b) two persons appointed from among five persons nominated by the Valuers Registration Board;
- (c) one person appointed from among three persons nominated by the Surveyors Registration Board; and
- (d) one person appointed from among two persons nominated by the Attorney-General.”

(c) by deleting the words “ninety days” appearing in the proposed new section 133C(3) and substituting therefor the words “sixty days”.

**Justification**

The amendment seeks to provide for the appointment of the members of the Land Acquisition Tribunal by the Cabinet Secretary and further shorten the period within which the Tribunal should hear and determine a case filed before it from ninety to sixty days.

Signed..........Date..........

**The Hon. Dr. Rachael Nyamai, M.P**  
**Chairperson, Departmental Committee on Lands**



NATIONAL ASSEMBLY

CLERK'S CHAMBERS

DEPARTMENTAL COMMITTEE ON LANDS

MEMBERS ATTENDANCE LIST

AGENDA:

Adoption List of the Report on the Land Value under Laws (Amendment) Bill, 2018

DATE: 19/05/2018 TIME: 10.00 a.m. VENUE: Indaba Inn, Mombasa

| NO  | NAME  | SIGNATURE |
|-----|---|-----------|
| 1.  | The Hon. Dr. Rachael Nyamai, MP - Chairperson     |           |
| 2.  | The Hon. Khatib Mwashetani, MP - Vice Chairperson |           |
| 3.  | The Hon. Jayne Wanjiru Kihara, MP                 |           |
| 4.  | The Hon Joshua Kutuny Serem, MP                   |           |
| 5.  | The Hon. Kimani Ngunjiri, MP                      |           |
| 6.  | The Hon. Mishi Mboko, MP                          |           |
| 7.  | The Hon. Omar Mwinyi Shimbwa, MP                  |           |
| 8.  | The Hon. Ali Mbogo, MP                            |           |
| 9.  | The Hon. Babu Owino, MP                           |           |
| 10. | The Hon. Caleb Kipkemei Kositany, MP              |           |
| 11. | The Hon. Catherine Waruguru, MP                   |           |
| 12. | The Hon George Aladwa, MP                         |           |

|     |  |  |
|-----|--|--|
| 13. | The Hon George Risa Sunkuyia,MP        |  |
| 14. | The Hon. Jane Wanjuki Njiru,MP         |  |
| 15. | The Hon. Josphat Gichunge Kabeabea, MP |  |
| 16. | The Hon. Owen Yaa Baya, MP             |  |
| 17. | The Hon. Samuel Kinuthia Gachobe, MP   |  |
| 18. | The Hon. Simon Nganga Kingara, MP      |  |
| 19. | The Hon Teddy Mwambire, MP             |  |

MINUTES OF THE 42<sup>ND</sup> SITTING OF THE DEPARTMENTAL COMMITTEE ON  
LANDS HELD ON FRIDAY 18<sup>TH</sup> MAY 2018, AT PRIDE INN RESORT, MOMBASA, AT  
2.30 P.M

---

**PRESENT**

1. Hon. Dr. Rachael Nyamai, M.P - Chairperson
2. Hon. Khatib Mwashetani, M.P - Vice Chairperson
3. Hon. Jayne Kihara, M.P
4. Hon. Joshua Kutuny, M.P
5. Hon. Kimani Ngunjiri, M.P
6. Hon. Mishi Mboko, M.P
7. Hon. Omar Mwinyi Shimbwa, M.P
8. Hon. Ali Mbogo, M.P
9. Hon. Babu Owino, M.P
10. Hon. Caleb Kositany, M.P
11. Hon. Catherine Waruguru, M.P
12. Hon. George Risa Sunkuyia, M.P
13. Hon. Owen Yaa Baya, M.P
14. Hon. Teddy Mwambire, M.P

**ABSENT WITH APOLOGY**

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1. Hon. George Aladwa, M.P
2. Hon. Jane Wanjuki Njiru, M.P
3. Hon. Josphat Gichunge Kabeabea, M.P
4. Hon. Samuel Kinuthia Gachobe, M.P
5. Hon. Simon Nganga Kingara, M.P

**IN ATTENDANCE**

**KENYA NATIONAL ASSEMBLY SECRETARIAT**

1. Mr. Leonard Machira - Clerk Assistant I
2. Mr. Ahmad Adan Guliye - Clerk Assistant III
3. Mr. Joash Kosiba - Senior Fiscal Analyst
4. Ms. Jemimah Waigwa - Legal Counsel I
5. Mr. Joseph Tiyan - Research Officer III
6. Ms. Peris Kaburi - Serjeant At Arms
7. Mr. John Mungai - Audio Officer

**MIN. DCL/153/2018: PRELIMINARIES**

The meeting was called to order at forty five minutes past two o'clock in the afternoon and prayers were said.

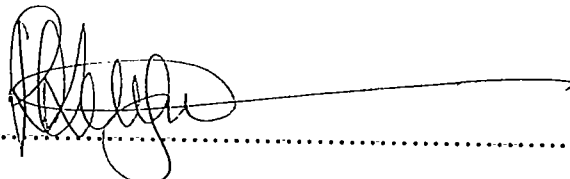
**MIN. DCL/154/2018: ADOPTION OF THE REPORT ON THE LAND VALUE INDEX LAWS (AMENDMENT) BILL, 2018**

The Committee considered and adopted the report of the Land Value Index Laws Amendment Bill, 2108 as per the amendments contained in the report.

**MIN. DCL/155/2018: ADJOURNMENT**

There being no other business, the meeting was adjourned at thirty minutes past four o'clock in the afternoon.

Signature .....



**HON. DR. RACHAEL KAKI NYAMAI, M.P.**

**(Chairperson)**

Date.....

5/6/2018

MINUTES OF THE 36<sup>TH</sup> SITTING OF THE DEPARTMENTAL COMMITTEE ON  
LANDS HELD ON FRIDAY 27<sup>TH</sup> APRIL 2018, AT LAKE NAIVASHA SIMBA LODGE  
AT 2.30 P.M

---

**PRESENT**

1. Hon. Dr. Rachael Nyamai, M.P - Chairperson
2. Hon. Khatib Mwashetani, M.P - Vice Chairperson
3. Hon. Jayne Kihara, M.P
4. Hon. Joshua Kutuny, M.P
5. Hon. Mishi Mboko, M.P
6. Hon. Omar Mwinyi Shimbwa, M.P
7. Hon. Catherine Waruguru, M.P
8. Hon. Jane Wanjuki Njiru, M.P
9. Hon. George Risa Sunkuyia, M.P
10. Hon. Owen Yaa Baya, M.P
11. Hon. Samuel Kinuthia Gachobe, M.P
12. Hon. Simon Nganga Kingara, M.P
13. Hon. Teddy Mwambire, M.P

**APOLOGIES**

1. Hon. Kimani Ngunjiri, M.P
2. Hon. Ali Mbogo, M.P
3. Hon. Caleb Kositany, M.P
4. Hon. Babu Owino, M.P
5. Hon. George Aladwa, M.P
6. Hon. Josphat Gichunge Kabeabea, M.P

**IN ATTENDANCE**

**NATIONAL ASSEMBLY SECRETARIAT**

1. Mr. Ahmad Guliye - Clerk Assistant III
2. Ms. Jemimah Waigwa - Legal Counsel I
3. Mr. Joseph Tiyan - Research Officer III
4. Mr. John Mungai - Audio Officer
5. Ms. Betty Auma - Secretary

MIN. DCL/135/2018: PRELIMINARIES

The meeting was called to order at twenty minutes to three o'clock in the afternoon and prayers were said.

MIN. DCL/136/2018: CONSIDERATION OF THE LAND VALUE INDEX LAWS (AMENDMENT) BILL, 2018

The Committee continued with the consideration of the Land Value Index Laws (Amendment) Bill, 2018 as follows:

I. Clause 11

The Committee proposed the following amendments to clause 11;

THAT clause 11 of the Bill be deleted.

Justification

The amendment as proposed was carried in the Land Laws (Amendment) Act, 2016.

II. Clause 12

The Committee agreed to clause 12 of the Bill.

III. Clause 13

The Committee proposed the following amendments to clause 13;

THAT clause 13 of the Bill be amended by deleting paragraph (a).

Justification

The amendment as proposed was carried in the Land Laws (Amendment) Act, 2016.

IV. Clause 14

The Committee proposed the following amendments to clause 14;

THAT clause 14(b) of the Bill be amended in the proposed new sub-section (3A) —

(a) by deleting paragraph (b);

(b) by inserting the following proviso immediately after subsection (3A) —

“Provided that due process has been followed by the Commission in the declaration of an intention to acquire, and in the taking of possession of the property compulsorily acquired.”

Justification

The amendment seeks to delete paragraph (b) on jurisdiction of the Tribunal as this is already provided for in clause 18. Further, the amendment seeks to limit the discretion of the court only in

instances where the due process has been followed by the Commission in the declaration of an intention to acquire, and in the taking of possession of the property compulsorily acquired.

**V. Clause 15**

The Committee agreed to clause 15 of the Bill.

**VI. Clause 16**

The Committee proposed the following amendments to clause 16;

**THAT** clause 16 of the Bill be amended by deleting the words “after paying the first offer of compensation” and substituting therefor the words “after paying full compensation”.

**Justification**

The amendment as proposed in the Bill does not recognize the amendment that was occasioned by the Land Laws (Amendment) Act, 2016. Further, the amendment seeks to harmonize the clause with clause 2 of the Bill and hence allows the Commission after issuing notice to take possession of land by entering into land.

**VII. Clause 17**

The Committee agreed to clause 17 of the Bill.

**VIII. Clause 18**

The Committee proposed the following amendments to clause 18;

**THAT** clause 18 of the Bill be amended—

(a) by deleting sub-section (1) and substituting therefor the following new sub-section—

“(1) There is established a Tribunal to be known as the Land Acquisition Tribunal which shall consist of five persons appointed by the Cabinet Secretary through a notice in the Gazette.

(b) by inserting the following new sub-section immediately after sub-section (1) —

“(1) The members of the Tribunal shall consist of —

(a) one person appointed from among three persons nominated by the Judicial Service Commission, who shall serve as the Chairperson;

(b) two persons appointed from among five persons nominated by the Valuers Registration Board;

(c) one person appointed from among three persons nominated by the Surveyors Registration Board; and



(d) one person appointed from among two persons nominated by the Attorney-General.”

(c) by deleting the words “ninety days” appearing in the proposed new section 133C(3) and substituting therefor the words “sixty days”.

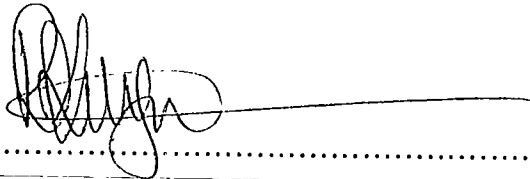
**Justification**

The amendment seeks to provide for the appointment of the members of the Land Acquisition Tribunal by the Cabinet Secretary and further shorten the period within which the Tribunal should hear and determine a case filed before it from ninety to sixty days.

**MIN. DCL/137/2018:                      ADJOURNMENT**

The meeting was adjourned at thirty minutes past four o'clock in the afternoon.

Signature .....



**HON. DR. RACHAEL KAKI NYAMAI, M.P.**

**(Chairperson)**

Date.....

5/6/2018

MINUTES OF THE 35<sup>TH</sup> SITTING OF THE DEPARTMENTAL COMMITTEE ON  
LANDS HELD ON FRIDAY 27<sup>TH</sup> APRIL 2018, AT LAKE NAIVASHA SIMBA LODGE  
AT 09.30 A.M

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**PRESENT**

1. Hon. Dr. Rachael Nyamai, M.P - Chairperson
2. Hon. Khatib Mwashetani, M.P - Vice Chairperson
3. Hon. Jayne Kihara, M.P
4. Hon. Joshua Kutuny, M.P
5. Hon. Mishi Mboko, M.P
6. Hon. Omar Mwinyi Shimbwa, M.P
7. Hon. Catherine Waruguru, M.P
8. Hon. Jane Wanjuki Njiru, M.P
9. Hon. George Risa Sunkuyia, M.P
10. Hon. Owen Yaa Baya, M.P
11. Hon. Samuel Kinuthia Gachobe, M.P
12. Hon. Simon Nganga Kingara, M.P
13. Hon. Teddy Mwambire, M.P

**APOLOGIES**

1. Hon. Kimani Ngunjiri, M.P
2. Hon. Ali Mbogo, M.P
3. Hon. Caleb Kositany, M.P
4. Hon. Babu Owino, M.P
5. Hon. George Aladwa, M.P
6. Hon. Josphat Gichunge Kabeabea, M.P

**IN ATTENDANCE**

**NATIONAL ASSEMBLY SECRETARIAT**

1. Mr. Ahmad Guliye - Clerk Assistant III
2. Ms. Jemimah Waigwa - Legal Counsel I
3. Mr. Joseph Tiyan - Research Officer III
4. Mr. John Mungai - Audio Officer
5. Ms. Betty Auma - Secretary

MIN. DCL/132/2018: PRELIMINARIES

The meeting was called to order at fifteen minutes to ten o'clock and prayers were said.

MIN. DCL/133/2018: CONSIDERATION OF THE LAND VALUE INDEX LAWS  
(AMENDMENT) BILL, 2018

The Committee deliberated on the Bill and the memoranda received from the public as follows:

**I. Long title of the Bill**

The Committee agreed to the long title and noted that:

- a) The Council of Governors proposed that the long title be reworded to read "An Act of Parliament to amend the Land Act, 2012 reviewed in 2016 and the LRA reviewed in 2016 to provide for the assessment of land value index in respect of compulsory acquisition of land and for connected purposes"
- b) The Committee agreed to the long title of the Bill.

**II. Clauses 1 to 4**

The Committee agreed to clauses 1 to 4 and noted that Clauses 3 and 4 of the Bill will ensure that where land is required for a public purpose, the Court may not grant relief against forfeiture even if the grantor or licensee makes good the default.

**III. Clause 5**

The Committee prosed the following amendments to clause 5;

~~THAT~~ clause 5 of the Bill be amended by deleting the words "establish the" appearing in paragraph (b) and substituting therefor the words "establish that the acquiring body has identified the".

**Justification**

The amendment recognizes that the acquiring body and not NLC is best placed to identify the number of persons in actual occupation of its land for uninterrupted period of twelve years and their improvements.

**IV. Clause 6**

The Committee prosed the following amendments to clause 6;

~~THAT~~ clause 6 of the Bill be amended—

- (a) by deleting the words "jointly by the national government and county government" appearing in the proposed new section 107(A)(1) and substituting therefor the words "by the national government in consultation with the county government";
- (b) by inserting the words "the market value of the land and" immediately after the words "calculating the land value index" appearing in the proposed new section 107(A)(3); and

(c) by deleting the words “jointly by the national government and county government” appearing in the proposed new section 107(B)(2)(a) and substituting therefor the words “by the national government in consultation with the county government”.

**Justification**

The amendment seeks to place the responsibility of developing the land value index on the national government in consultation with the county governments. Further, the amendment includes market value of land as one of the principles to be considered in calculating the land value index.

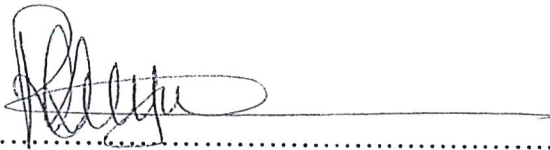
**V. Clauses 7 to 10**

The Committee agreed to clauses 7 to 10.

**MIN. DCL/134/2018: Adjournment**

The meeting was adjourned at one o'clock in the afternoon.

Signature .....



**HON. DR. RACHAEL KAKI NYAMAI, M.P.**

(Chairperson)

Date.....

5/6/2018



MINUTES OF THE 18<sup>TH</sup> SITTING OF THE DEPARTMENTAL COMMITTEE ON  
LANDS HELD ON THURSDAY 22<sup>ND</sup> MARCH 2018 IN 2<sup>ND</sup> FLOOR, CONTINENTAL  
HOUSE PARLIAMENT BUILDINGS AT 09.30 A.M

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**PRESENT**

1. Hon. Dr. Rachael Nyamai, M.P - Chairperson
2. Hon. Joshua Kutuny, M.P
3. Hon. Omar Mwinyi Shimbwa, M.P
4. Hon. George Aladwa, M.P
5. Hon. Ali Mbogo, M.P
6. Hon. George Risa Sunkuyia, M.P
7. Hon. Jane Wanjuki Njiru, M.P
8. Hon. Simon Nganga Kingara, M.P
9. Hon. Samuel Kinuthia Gachobe, M.P

**APOLOGIES**

1. Hon. Khatib Mwashetani, MP - Vice Chairperson
2. Hon. Jayne Kihara, M.P
3. Hon. Kimani Ngunjiri, M.P
4. Hon. Mishi Mboko, M.P
5. Hon. Babu Owino, M.P
6. Hon. Josphat Gichunge Kabeabea, M.P
7. Hon. Owen Yaa Baya, M.P
8. Hon. Teddy Mwambire, M.P
9. Hon. Catherine Waruguru, M.P
10. Hon. Caleb Kositany, M.P

**IN ATTENDANCE**

**MINISTRY OF LANDS AND PHYSICAL PLANNING**

1. Ms. Farida Koroney - Cabinet Secretary
2. Hon. Gideon Mungaro - Chief Administrative Secretary
3. Dr. Nicholas Muraguri - Principal Secretary
4. Ms. Teresia Kimondu - Director Valuation
5. Mr. Herbert Were - Deputy Director Valuation
6. Mr. Jacob Owino Cattwright - Senior Land Registrar

## NATIONAL LAND COMMISSION

1. Ms. Abigael Mbagaya Mukolwe – Vice Chairperson
2. Mr. FC Bor-
3. Mr. Samuel Odari- Deputy Director Land Administration

## NATIONAL ASSEMBLY SECRETARIAT

- |                        |   |                             |
|------------------------|---|-----------------------------|
| 1. Mr. Leonard Machira | - | Clerk Assistant I           |
| 2. Ms. Jemimah Waigwa  | - | Legal Counsel I             |
| 3. Mr. Joseph Tiyan    | - | Research Officer III        |
| 4. Ms. Winnie Kizziah  | - | Media Relations Officer III |
| 5. Ms. Peris Kaburi    | - | Serjeant At Arms            |
| 6. Mr. John Mungai     | - | Audio Officer               |

## MIN. DCL/069/2018: PRELIMINARIES

The meeting was called at nine minutes past ten o'clock and prayers were said. Thereafter, introductions were made.

## MIN. DCL/070/2018: MEETING WITH THE CABINET SECRETARY, MINISTRY OF THE LANDS AND PHYSICAL PLANNING ON THE LAND VALUE INDEX LAWS (AMENDMENT) BILL, 2018

During the meeting the Cabinet Secretary Ministry of Lands and Physical Planning observed that the objectives of the Bill included, to:

- i. Cure the challenge of huge compensation amounts incurred by the government in compulsory acquisition of land for infrastructural projects particularly since 2015;
- ii. Curb speculation on land following information on upcoming government projects;
- iii. Harmonize land values;
- iv. Establish a quasi – judicial body to handle appeals emanating from compensations on land acquisition; and
- v. Fast- track land acquisition process.

The Cabinet Secretary proposed the following amendments to the Bill:

### Clause 6

That clause 6 sub clause 3 should be amended to provide for zonal values appraised using the market value as determined by the Chief Government Valuer.

Further that sub clause (4) (a, b &c) be amended by deleting the words “potential, actual and apparent value” and be replaced by market value.

The Cabinet Secretary also proposed that sub clause (4) (c) (iii) the phrase “detrimental to health of occupiers” should be defined under the Bill or by the Occupational Safety and Health Act No. 15 of 2007

#### Clause 18

The Cabinet Secretary also proposed that the clause 18 be amended in the proposed new section 113A (1) (a) by providing that the Judicial Service Commission to forward three names for consideration of appointment as chair of the tribunal and one to be appointed by the Cabinet Secretary, Ministry of Lands and Physical Planning.

Further that sub section (1) (b) should be amended to provide for the Valuers Registration Board to nominate six names and two to be appointed by the Cabinet Secretary.

The Cabinet Secretary also proposed that sub clause (1) (c) should be amended to provide for the Surveyors Registration Board to nominate three names and one to be appointed by the Cabinet Secretary.

Further that sub section (1) (d) should be amended to provide for the Attorney General to nominate three advocates from his office and one to be appointed by the Cabinet Secretary.

The Cabinet Secretary further proposed that the quorum of the tribunal should be a minimum of three members and in the absence of the chairperson the members present can appoint a chair.

### **MIN. DCL/071/2018 MEETING WITH THE NATIONAL LAND COMMISSION ON THE LAND VALUE INDEX LAWS (AMENDMENT) BILL, 2018**

During the meeting the Vice Chairperson, National Land Commission proposed the following amendments to the Bill:

#### **Clause 5**

That Clause 5 be amended in sub clause 4 (a) by deleting the phrase “Clause the affected land to be mapped out and” appearing before “valued” given that the work of survey was the responsibility of the acquiring body and also noting the work of the commission is to implement the acquisition through gazettement and valuation to determine compensation.

Further that sub clause 4 (b) be deleted as it was practically impossible for the commission to carry out the exercise because land was dynamic.



**Clause 6**

That Clause 6 (107A) be amended in sub clause (1) by deleting the phrase “county government” “appearing after “national government and” as this would bring delays and that only a few counties had valuers and the capacity to make any meaningful contribution. The function should be left to the Chief Government Valuer.

Further that Clause 6 (107A) sub clause 2 should be amended by inserting 2 (a) to read “the land value index should reflect the prevailing market values at any given time”

The Commission also proposed that Clause 6 (107A) sub clause 6 be amended by providing that the disturbance amount to be 15% of the compensation amount as having a fixed amount would remove subjectivity and close any door for corruption. The clause also left too much discretion to the person undertaking the valuation.

Further that clause 6 (107A) sub clause 8 (d) should be amended provide that payment for compelling an occupant to change residence should be 15% of the value of the land. This would ensure that too much discretion would be avoided.

Clause 107 B sub clause 7 (1b) (a) should also be deleted as it contradicted Article 40 (3) (b) (I) of the Constitution on prompt payment.

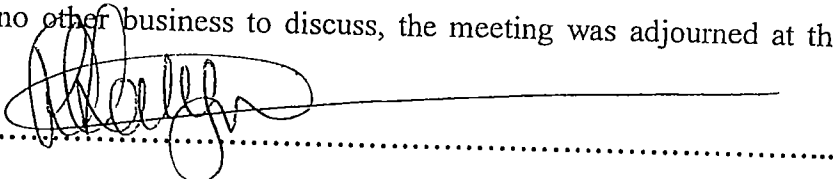
**Committee observations**

The Committee observed that as the key implementers of the proposed Act ,both the ministry of lands and physical planning and the national land commission needed to harmonize their proposed amendments to the Bill and resolved that the two parties present harmonized amendments to the Bill within seven (7) days.

**MIN. DCL/072/2018: ADJOURNMENT**

There being no other business to discuss, the meeting was adjourned at thirty minutes to two o'clock.

Signature .....



**HON. DR. RACHAEL KAKI NYAMAI, M.P.**

**(Chairperson)**

Date.....

5/6/2018

MINUTES OF THE 17<sup>TH</sup> SITTING OF THE DEPARTMENTAL COMMITTEE ON  
LANDS HELD ON THURSDAY 15<sup>TH</sup> MARCH 2018, AT MINI CHAMBER COUNTY  
HALL PARLIAMENT BUILDINGS AT 9.30 A.M

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**PRESENT**

1. Hon. Khatib Mwashetani, M.P - Vice Chairperson
2. Hon. Omar Mwinyi Shimbwa, M.P
3. Hon. Caleb Kositany, MP
4. Hon. Catherine Waruguru, M.P
5. Hon. Samuel Kinuthia Gachobe, M.P
6. Hon. Simon Nganga Kingara, M.P
7. Hon. Teddy Mwambire, M.P
8. Hon. Jane Wanjuki Njiru, M.P

**APOLOGIES**

1. Hon. Dr. Rachael Nyamai, M.P - Chairperson
2. Hon. Jayne Kihara, M.P
3. Hon. Joshua Kutuny, M.P
4. Hon. Kimani Ngunjiri, M.P
5. Hon. Mishi Mboko, M.P
6. Hon. Ali Mbogo, M.P
7. Hon. Josphat Gichunge Kabeabea, M.P
8. Hon. Babu Owino, M.P
9. Hon. Owen Baya, MP
10. Hon. George Risa Sunkuyia, M.P
11. Hon. George Aladwa, M.P

**IN ATTENDANCE**

**INSTITUTION OF SURVEYORS OF KENYA**

1. Abraham Samoei – Chairperson
2. Moses Kinyanjui
3. Robert Koech

**ASHITIVA ADVOCATES**

Mr. Nelson Mudibo

## NATIONAL ASSEMBLY SECRETARIAT

|                        |   |                         |
|------------------------|---|-------------------------|
| 1. Mr. Leonard Machira | - | Clerk Assistant I       |
| 2. Mr. Ahmed Guliye    | - | Clerk Assistant III     |
| 3. Ms. Jemimah Waigwa  | - | Legal Counsel I         |
| 4. Mr. Joseph Tiyan    | - | Research Officer III    |
| 5. Ms. Peris Kaburi    | - | Serjeant At Arms        |
| 6. Mr. John Mungai     | - | Audio Recording Officer |

### MIN. DCL/063/2018: PRELIMINARIES

The meeting was called to order at fifteen minutes past nine o'clock and prayers were said. Thereafter introductions were made.

### MIN. DCL/064/2018: CONFIRMATION OF MINUTES

The Minutes of the 6<sup>th</sup> Sitting were confirmed as a true record of the proceedings as proposed by Hon. Teddy Mwambire, M.P and seconded by Hon. Omar Mwinyi Shimbwa, M.P.

The Minutes of the 7<sup>th</sup> Sitting were confirmed as a true record of the proceedings as proposed by Hon. Samuel Kinuthia Gachobe, M.P and seconded by Hon. Teddy Mwambire, M.P.

The Minutes of the 8<sup>th</sup> Sitting were confirmed as a true record of the proceedings as proposed by Hon Samuel Kinuthia Gachobe., M.P and seconded by Hon. Simon Nganga Kingara, M.P

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The Minutes of the 9<sup>th</sup> Sitting were confirmed as a true record of the proceedings as proposed by Hon. Jane Wanjuki Njiru,, M.P and seconded by Hon. Teddy Mwambire, M.P

The Minutes of the 10<sup>th</sup> Sitting were confirmed as a true record of the proceedings as proposed by Hon. Samuel Kinuthia Gachobe,, M.P and seconded by Hon. Teddy Mwambire, M.P

The Minutes of the 11<sup>th</sup> Sitting were confirmed as a true record of the proceedings as proposed by Hon. Omar Mwinyi Shimbwa,, M.P and seconded by Hon Simon Nganga Kingara., M.P

The Minutes of the 12<sup>th</sup> Sitting were confirmed as a true record of the proceedings as proposed by Hon. Jane Wanjuki Njiru,, M.P and seconded by Hon. Omar Mwinyi Shimbwa, M.P

The Minutes of the 13<sup>th</sup> Sitting were confirmed as a true record of the proceedings as proposed by Hon. Omar Mwinyi Shimbwa, M.P and seconded by Hon. Jane Wanjuki Njiru, M.P

MIN. DCL/065/2018: MATTERS ARISING

Under MIN. DCL/28/2018: The Committee was informed that Hon. Khatib Mwashetani, M.P - Vice Chairperson had replaced Hon. Dr. Rachael Nyamai, M.P Chairperson as the leader of the delegation that would pa the Land and Poverty Conference to be held in Washington DC from 10<sup>th</sup> March, 2018. While Hon. Jayne Kihara, M.P and Hon. George Aladwa, M.P would not be able to travel for various reasons that included registration deadline.

MIN. DCL/066/2018: PUBLIC HEARINGS ON THE LAND VALUE INDEX LAWS (AMENDMENT) BILL, 2018

### **Submissions by Ashitiva Advocates**

The representative of Ashitiva Advocates, Mr. Nelson Mudibo outlined the process of compulsorily acquisition of land as provided under Article 40(3) and 4 of the Constitution and the Land Act 2012 and observed that the Land Value Index Laws (Amendment) Bill, 2018 sought to ease the acquisition of land or rights in land to successfully implement public infrastructure projects. He also proposed the following amendments to the Bill:

#### **Clause 2**

That the definition of the word “prompt” should include an undertaking that payment will be done within one year from the date of possession. The representative of the company argued that it was not clear in the clause when prompt compensation would take place; whether it was before or after the commission takes possession on the land.

#### **Clause 3**

That clause 3 be deleted.

He argued that the proposed amendment to section 31 of the Land Act 2012 would prevent the courts from grating relief on forfeiture of lease for unpaid rent or breach of covenant and went against the rules of natural justice and good governance; thus, it contravened Article 10 of the Constitution.

#### **Clause 4**

That the proposed amendment to section 32 of the Land Act 2012 should be deleted as it was unconstitutional as it sought to prevent the courts from granting relief against forfeiture even if the grantor made good the default. He also observed that all state organs were bound by Article 10 of the Constitution when enacting, applying or interpreting the law.

## Clause 6

The firm proposed that clause 6 of the Bill be amended to provide that valuation of freehold land and community land for purposes of compensation shall be based on the land value index developed jointly by the national and county governments and which shall be open to public scrutiny. Further any party whose interests may be affected should also be allowed to access a court of law to have the land value index reviewed to protect the interests of 3<sup>rd</sup> parties with interests in the land earmarked for compulsory acquisition by the government.

Further he argued that the proposed insertion of a new section 107 B on the criteria for assessing value for compulsorily acquired leasehold land constituted a form of automatic reversion without one being granted cause to make good lease default and proposed that the clause be amended to provided that a notice of 12 months be given to make good default of lease before the land would revert to the national or county government.

## Clause 14

The representative proposed that the clause be amended to provide a limitation of time for one to appeal after a parcel of land earmarked for compensation in the compulsory acquisition land has been valued.j He argued that the proposed amendment to section 121 of the Land Act 2018 contravenes Article 40 (3) (b) (ii) of the Constitution and observed that no one should be deprived of their right to access the courts unless they were barred by statute ..

He further proposed that the phrase “before taking possession” be deleted and the whole section be retained as it is in the current Act to ensure that compensation is done before the government takes possession of land earmarked for compulsory acquisition.

## Submissions by Institution of Surveyors of Kenya

The Chairperson, Institution of Surveyors of Kenya proposed the following amendments to the Bill:

### Clause 5

That clause 5 sub clause (4) (a) be amended by inserting the phrase ‘cause the affected land to be mapped out and’ appearing before the word “valued”. The Chairperson observed that the work of the National land Commission is to implement the acquisition by doing the necessary gazettment and valuation to determine compensation. The cause seemed to suggest that the Commission would undertake survey.

He also proposed that sub -clause 4 (b) be deleted as it was practically impossible for the Commission to undertake the exercise of for a period of twelve years

Further clause 5A (b) should be amended by deleting the phrase “brief description of land” appearing after location as description is only possible after inspecting the land and that gazettelement should be done before inspection.

#### **Clause 6**

Clause 6 107A sub clause 1 should be amended to read valuation of freehold land for purposes of compensation under this Act shall be based on the land value index developed by the Chief Government Valuer for that purpose of this part.

The Institution argued that the proposed development of the index jointly by the national and county government would bring complications as only a few counties had valuers and the capacity to make meaningful contributions. He suggested that function should be handled by the Chief Government Valuer who has the personnel and the necessary data to conduct the exercise.

Further sub clause 4 (a) should be should be amended by deleting the phrase “intended use” and replacing it with “declaration of the National Lad Commission to acquire” given that the intended use would be difficult to ascertain.

He also proposed that sub clause 107 (7\_ (b) should be amended by deleting the phrase “either or installments spread over one year” as this contradicts the provisions of sub clause 111 that provides for “promptly in full” payment.

#### **Clause 8**

The Institution proposed that sub clause 113A (1) (b) be amended to read “Two registered Valuers of not less than 10 years standing seconded by the Institution of Surveyors of Kenya” Given than registered valuers were competent regardless of whether they were in private or public practice and that membership in ISK ensured professional accountability.

Further sub clause 1 (c) should be amended by inserting the phrase“ seconded by the Institution of Surveyors of Kenya” after the word “Surveyor” to ensure that only registered surveyors are accorded the opportunity to serve in the tribunal.

Finally the Institution proposed that sub clause 2 be amended by deleting the phrase “question of law only” to allow the persons to appeal on other grievances and should also be allowed representation by a private valuer.

### **MIN. DCL/067/2018: BRIEF ON THE LAND VALUE INDEX LAWS (AMENDMENT) BILL, 2018**

Members observed that the briefing session on the Bill scheduled earlier had not taken place due to lack of quorum and resolved that it was necessary for the Legal Counsel to present a brief on

the Bill for the members to get acquainted with the Bill. Consequently, the Legal Counsel briefed the Committee as follows:

**Clause 1**

Provides for the Short Title- Land Value Index Laws (Amendment) Act, 2018

**Clause 2**

Seeks to define the following terms-

- (a) Just compensation in relation to compulsorily acquired land or creating of way leaves, easements and public rights means a form of fair compensation that is assessed and determined through criteria set out under this Act.
- (b) Prompt in relation to payment of compensation for compulsorily acquired land or creation of way leaves, easements and public rights
- (c) "Full" in relation to compensation for compulsorily acquired land or of way leaves, easements and public rights of way means the restoration of not more than the value of land including improvements thereon and any other matter provided for in the Act. Tribunal means the Land Acquisition Tribunal.

**Clause 3**

Clause 3 seeks to amend section 31 of the Lands Act which deals with forfeiture of lease to provide that where land is required for a public purpose, the court may not grant relief against forfeiture even if the grantor makes good the default.

**Clause 4**

Clause 4 seeks to amend section 32 of the Lands Act which deals with forfeiture of licence to provide that where land is required for a public purpose, the court may not grant relief against forfeiture even if the licensee makes good the default.

**Clause 5**

Seeks to amend section 107 of the Lands Act to remove a typographical error and to substitute with a requirement that once the Commission determines that a request to acquire land meets the requirements prescribed under Article 40(3) of the Constitution

**Clause 6**

Provides the criteria for assessing value for compulsorily acquired freehold land and the criteria for assessing value for compulsorily acquired leasehold land

#### Clause 7

Seeks to amend Section 111 of the Land Act to provide that compensation for compulsorily acquired land may take any one or more of the following forms-

- (a) allocation of alternative parcel of land of equivalent value and comparable geographical location and land use to the land compulsorily acquired;
- (b) monetary payment either in lump sum or in instalments spread over a period of not more than one year;
- (c) issuance of government bond;
- (d) grant or transfer of development rights as may be prescribed;
- (e) equity shares in a government owned entity; or
- (f) any other lawful compensation.

#### Clause 8

The clause seeks align the provisions of section 113 of the Land Act with clause 7.

#### Clause 9

The clause seeks align the provisions of section 114 of the Land Act with clause 7.

#### Clause 10

The clause seeks to amend section 115 of the Land Act to provide that where compensation is in the form of alternative land, the Commission may hold the title to such land in trust for the beneficiaries in the circumstances listed in section 115 of the Land Act.

#### Clause 11

The clause seeks to amend section 117 of the Land Act in order to provide that payment of interest shall be on the prevailing central bank rates and also to remove a typographical error.

#### Clauses 12

The clause seeks to obligate the Commission upon completion of final survey to issue new title documents for every affected parcel.

#### Clause 13

The clause is intended to rectify inconsistencies with marginal notes and create clarity. The amendment further seeks to provide that the Commission may upon the expiry of fifteen days in cases where there is urgent necessity for the acquisition of land take possession of



land. Prior to the amendment, the Commission would only take possession of uncultivated/pasture/arable land in such circumstances.

#### **Clause 14**

The clause provides that upon the formal taking of possession of land by the Commission—

(a) no order stopping any development in the land may be issued by any court if public funds have already been committed; and  
the Tribunal shall have jurisdiction to determine disputes relating to the process of compulsory acquisition of land in the first instance

#### **Clause 15**

The clause seeks to amend section 122 of the Land Act in order to create clarity on reference to the acquiring body

#### **Clause 16**

The clause seeks to create clarity in section 124 of the Land Act in light of the proposed amendment to clause 7.

#### **Clause 17**

The clause seeks to amend section 125 of the Lands Act in order to provide that the Commission may as soon as is practicable pay full and just compensation to all persons interested in the land.

The clause also deletes the requirement that an acquiring authority shall pay the first offer of compensation to the interested parties before taking possession

#### **Clause 18**

Clause 18 of the Bill establishes a Tribunal known as the Land Acquisition Tribunal which shall consist of five members appointed by the Judicial Service Commission through a notice in the *Gazette*.

#### **Clause 19**

The clause seeks to amend section 146 of the Lands Act to reduce the period of giving notice from ninety to thirty days

#### **Clause 20**

Creates an offence for any public officer who-

- (a) divulges any information on an intended land acquisition to any person before publication of the notice of the intention to acquire the land with an intention to influence any form of transaction for purposes of conferring any benefit as a result of the acquisition; or
- (b) assist, facilitates or in way aids any transaction in such land contrary to any law;

A person who commits such an offence shall upon conviction be liable to a fine not exceeding five million shillings or to imprisonment not exceeding three years or to both the fine and imprisonment not exceeding three years or to both the fine and imprisonment.

**Clause 21**

The Bill seeks to amend the Land Registration Act by providing that the Registrar shall for purposes of compulsory acquisition where he or she considers it fit, make an order for restriction.

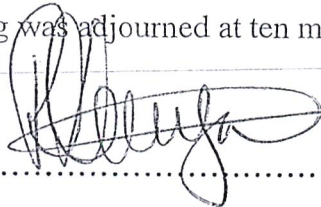
**Clause 22**

The clause seeks to amend the Prevention, Protection and Assistance to Internally Displaced Persons and Affected Communities Act by deleting section 22 and providing that Internal displacement of persons resulting from a lawful compulsory acquisition of land subject to prompt payment in full, of just compensation to the persons shall not, for purposes of the Act, constitute arbitrary displacement

**MIN. DCL/068/2018:                      Adjournment**

The meeting was adjourned at ten minutes past eleven o'clock in the afternoon.

Signature .....



**HON. DR. RACHAEL KAKI NYAMAI, M.P.**

**(Chairperson)**

Date.....

5/6/2018



SPECIAL EDUCATION

# Teach Kiswahili to hearing impaired

Kiswahili is important not only as a national and official language, also a compulsory subject in the primary and secondary school curricula as a medium of instruction over primary. Kiswahili is a *lingua franca* language or dialect commonly used by people who do not share a common language or dialect to communicate, particularly a third language distinct from native languages. It is the oldest and richest in literature south of the Sahara, Kiswahili increasingly become dominant because of its demand and use as a national and international language and is poised to become the common language of Africa. However, Kiswahili is taught to the deaf and hearing impaired. There was an outcry when teachers performed Kiswahili in national exams. Some holders even conceded Kiswahili overburdened them since they already learn two other languages (English and Sign Language, or Kiswahili) and that it should be removed from the curriculum.



VERONICA ONJORO

Learners with hearing impairment are not exceptional since they pursue the same curriculum as the rest."

KSL follows the language structure of the American Sign Language (ASL), often incorporating non-manual markers to complement signs. They include gestures, facial expressions, signing space and the speed of signs. Conversely, KSS (Kenyan Sign for Schools) often misses out on the subtle features of language. It uses a subject-object-verb (S-O-V) sentence pattern while English uses subject-verb-object (S-V-O). A sentence

like "I am going to the store" will be signed "I store go". Notably, KSL is not a written language: Its function is to transmit information visually. While this helps a deaf person to communicate effectively, it is confusing while writing. Although both KSL and KSS are used in schools all over the country, it is unclear what is sanctioned by the Kenya Institute of Curriculum Development (KICD). However, the Kenya National Association of the Deaf (KNAD) and the University of Nairobi-based Kenyan Sign Language Research Project (KSLRP) advocate KSL. A majority of deaf adults in Kenya use KSL. Post-lingual deaf adults (those who lost their hearing after they had learnt a language, typically at five years or older) tend to advocate KSS since they have a previous understanding of the features of spoken language. Pre-lingual deaf adults did not have a solid foundation in any language and so have limited KSS comprehension. Many teachers find KSS easier to learn and use as they simply sign exactly what they say. But their students have

difficulty understanding them. For deaf Kenyans, KSL is a natural means of communicating; many pupils revert to KSL outside class. As children join primary school, they are expected to acquire the pre-requisite language skills by the end of the eighth year. They should be able to listen, speak, read and write in Kiswahili and develop an interest in it beyond the primary school level. Learners with hearing impairment are not exceptional, as they pursue the same curriculum as the rest. Ultimately, they should read, write and use signed media for Kiswahili language at the highest level of education. **Listening experience** Hearing children learn to talk by listening to people around them use language meaningfully. But children who do not hear lack the listening experience. English and Kiswahili are different but they use fairly similar letters of the alphabet. Teaching and learning of reading and writing can basically be done using similar strategies. Listening and speaking for children with hearing

impairment are skills that need a differentiated approach. Kiswahili-specific signs should be established for the KSL to facilitate comprehension and proficiency of the language, while schools should have adequate visual aids for Kiswahili on display. Kiswahili textbooks should be adequate and used optimally for the deaf and visually impaired and an exam also set. Besides training all teachers and exam officials to translate English signs into Kiswahili, the Ministry of Education should include Kiswahili, which should be taught to the deaf and hearing impaired, and add it to their syllabus. It is imperative that learners, particularly post-lingually deaf and hard of hearing, become proficient in Kiswahili to acquire the necessary communicative skills to integrate into the community. Ms Onjoro, a publisher, author, motivational speaker, educationalist, consultant and freelance writer, is a PhD student at Mount Kenya University. onjoroveronica@yahoo.com

## MORALITY NCIC, film board must get tougher

The Kenya Film Classification Board has been on the forefront of curbing the spread of immorality, particularly by ensuring proper categorisation of television and radio programmes. Towards the end of last year, the board conducted a number of programmes to promote morality. Led by chief executive officer Ezekiel Mutua, the KFCB has reduced the pornographic videos shown in matatus. Recently, KFCB coast region coordinator Bonventure Kioko led a search and matatu crews were arrested. It was right for Dr Mutua to ban a song titled, *Ikamba*, which is said to mock the Akamba and castigate Kitui Governor Charity Ngilu for her charcoal ban. Dr Mutua termed the song as a "primitive piece" and incitement to violence and hate speech. However, corruption is diluting the board's efforts. People caught showing filthy videos often go scot-free after dramatic arrests. On the song, the National Cohesion and Integration Commission should hasten their interrogation and take the singers to court. The NCIC and KFCB should get harsher on offenders to curb immorality and hate. MAUREN CHESEREK, Mombasa

REPUBLIC OF KENYA  
COUNTY GOVERNMENT OF UASIN GISHU

COUNTY PUBLIC SERVICE BOARD

**INTERNSHIP OPPORTUNITIES**

County Government of Uasin Gishu wishes to roll out an internship program is geared towards giving unemployed graduates in Uasin Gishu County an opportunity for practical work experience. The County Public Service Board before invites applications from qualified graduates for the following internship opportunities:-

| QUALIFICATION | OPPORTUNITIES | MONTHLY STIPEND |
|---------------|---------------|-----------------|
| Degree        | 250           | Kshs. 13,500    |
| Diploma       | 250           | Kshs. 11,500    |
| Certificate   | 150           | Kshs. 8,500     |

**Duration of Internship:**  
The length of the internship shall be twelve (12) months.

**Requirements:**  
A Bachelor's Degree/Diploma/Certificate from a recognized institution in a relevant area of specialization (with the course duration having lasted not less than two years).  
Be aged at least 18 years but not more than 35 years  
Have no previous work experience related to their area of study  
Graduated not earlier than 2015  
Valid certificate of good conduct

**How to Apply**  
Interested applicants are required to complete the Online Internship Application available at <https://jobs.uasingishu.go.ke> on or before 20th March, 2018.

County Public Service Board

REPUBLIC OF KENYA

**NATIONAL ASSEMBLY**  
**TWELFTH PARLIAMENT - SECOND SESSION**

In the Matter of consideration by the National Assembly -  
The Land Value Index Laws (Amendment) Bill, 2018

**SUBMISSION OF MEMORANDA**

Article 118(1)(b) of the Constitution provides that, "Parliament shall facilitate public participation and involvement in the legislative and other business of Parliament and its Committees". Standing Order 127(3) provides that, "the Departmental Committee to which a Bill is committed shall facilitate public participation and shall take into account views and recommendations of the public when the Committee makes its report to the House".

The Land Value Index Laws (Amendment) Bill, 2018 seeks to amend the Land Act No. 6 of 2012, the Land Registration Act No. 3 of 2012 and the Prevention Protection and Assistance to Internally Displaced Persons and Affected Communities Act No. 56 of 2012 in order to provide for the assessment of land value index in respect of compulsory acquisition of land.

The Land Value Index Laws (Amendment) Bill, 2018 has undergone First Reading pursuant to the provisions of Standing Order 127(3) and is now committed to the Departmental Committee on Lands for consideration. The Bill is sponsored by Hon. Aden Duale, MP Leader of the Majority Party in the National Assembly.

Pursuant to Article 118(1)(b) and Standing Order 127(3), the Committee invites interested members of the public to submit any representations that they may have on the said Bill. The views may be submitted through the submission of written memoranda in the following manner:-

- Public hearings will be held on Thursday 15th March, 2018 at 9.30 am at the Mini-Chamber, First Floor County Hall, Parliament Buildings.
- The representations may be forwarded to the Clerk of the National Assembly, P.O. Box 41842-00100, Nairobi; hand-delivered to the Office of the Clerk of the National Assembly, First Floor, Main Parliament Buildings, Nairobi, or emailed to [clerk@parliament.go.ke](mailto:clerk@parliament.go.ke) to be received on or before Wednesday 14th March, 2018 at 5.00 pm.

A copy of the Bill may be downloaded from <http://kenyalaw.org>. Follow the link on Bills/Bill tracker/National Assembly Bills/2018.

MICHAEL R. SIALAI, EES  
CLERK OF THE NATIONAL ASSEMBLY

Interested applicants are required to complete the Online Internship Application available at <https://jobs.nasinsishu.go.ke> on or before 20th March, 2018.

**To Apply**  
 Valid certificate of good conduct  
 Graduated not earlier than 2015  
 Have no previous work experience related to their area of study  
 Aged at least 18 years but not more than 35 years  
 Pass than two years.  
 Relevant area of specialization (with the course duration having lasted not  
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**Internships:**  
 Length of the internship shall be twelve (12) months.

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For further applications from qualified graduates for the following internship opportunities:-  
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 is geared towards giving unemployed graduates in Uasin Gishu County an opportunity for practical work experience.

**INTERNSHIP OPPORTUNITIES**

COUNTY PUBLIC SERVICE BOARD  
 COUNTY GOVERNMENT OF UASIN GISHU  
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**VERONICA OMONDI**

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**Each Kiswahili to hearing impaired**

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... hearing impaired, and add it  
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 ... Njiru for her charcoal ban.  
 ... castigate Kinyu Governor Charity  
 ... said to mock the Akamba and  
 ... ban a song titled, *Ikamba*, which  
 ... was right for Dr Mutua to  
 ... and mataifa crews were arrested.  
 ... into Kiswahili, the Ministry  
 ... of Education should include  
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 ... be taught to the deaf and  
 ... hearing impaired, and add it  
 ... to their syllabus.  
 ... Ms Omondi, a publisher  
 ... author, motivational  
 ... speaker, educational  
 ... consultant and freelance  
 ... writer, is a PhD student at  
 ... Mount Kenya University.  
 ... onjoveronica@yahoo.com

**board must**

... get tougher

... The Kenya Film Classification  
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... board must  
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REPUBLIC OF KENYA  
 NATIONAL ASSEMBLY  
 TWELFTH PARLIAMENT - SECOND SESSION  
 In the Matter of consideration by the National Assembly -  
 The Land Value Index Laws (Amendment) Bill, 2018  
**SUBMISSION OF MEMORANDA**

Article 118(1)(b) of the Constitution provides that, "Parliament shall facilitate public participation and involvement in the legislative and other business of which a Bill is committed to the Departmental Committee... Standing Order 127(3) provides that, "the Departmental Committee to which a Bill is committed shall facilitate public participation and involvement in the legislative and other business of which a Bill is committed to the Departmental Committee on Lands for consideration. The Bill is sponsored by Hon. Aden Duale, MP Leader of the Majority Party in the National Assembly.  
 Pursuant to Article 118(1)(b) and Standing Order 127(3), the Committee invites interested members of the public to submit any representations that they may have on the said Bill. The views may be submitted through submission of written memoranda in the following manner:-  
 1. Public hearings will be held on Thursday 15th March, 2018 at 9:30 am at the Mini-Chamber, First Floor County Hall, Parliament Buildings.  
 2. The representations may be forwarded to the Clerk of the National Assembly, P.O. Box 41842-01000, Nairobi, hand-delivered to the Office of the Clerk of the National Assembly, First Floor, Main Parliament Buildings, Nairobi, or emailed to [clerk@parliament.go.ke](mailto:clerk@parliament.go.ke), to be received on or before Wednesday 14th March, 2018 at 5:00 pm.  
 A copy of the Bill may be downloaded from <https://kenyalaws.go.ke>. Follow the link on Bills/Bill tracker/National Assembly Bills/2018.  
 MICHAEL R. SIALA, EBS  
 CLERK OF THE NATIONAL ASSEMBLY

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**MEMORANDUM FROM THE NATIONAL LAND COMMISSION (NLC)  
ON  
THE LAND VALUE INDEX LAWS (AMENDMENT) BILL, 2018**

**PRESENTED TO**

**THE DEPARTMENTAL COMMITTEE ON LANDS**

**NATIONAL ASSEMBLY**

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**20<sup>TH</sup> MARCH 2018**

## Introduction

The National Land Commission is a Constitutional Commission established under Article 67 of the Constitution of Kenya 2010. It was established in March 2013. The Commission draws its mandate and powers from article 67 2(d) of the Constitution and the National Land Commission Act 2012. The main function and power of the Commission among others, is to manage public land on behalf of National and county Governments, which includes compulsory acquisition of land on behalf of the National and County Governments.

We would like to bring to your attention the following concerns with regard to the proposed amendments to the Land Value Index (Amendment) bill, 2018.

### 1. Specific comments

| Section | Subsection | Proposal   |
|---------|------------|--|
| 5       | 4 (a)      | <p><u>Provision</u><br/>It provides for the commission to cause the affected land to be mapped out and valued by the Commission using Valuation criteria set out under the Act.</p> <p><u>Our proposal</u><br/>Delete "Cause the affected land to be mapped out and" appearing before valued</p> <p><u>Justification</u><br/>It is important to note that the work of survey is the responsibility of the 'Acquiring Body'. By the time the request comes to the NLC the survey should have been done by the acquiring body.</p> <p>The request to NLC must be accompanied by cadastral drawings. The client (acquiring body) is the one who knows what they want – the extent of the acquisition hence needs to map and survey the same and present to NLC. The work of NLC is to implement the acquisition by doing the necessary gazettelement and valuation to determine compensation. This section seems to suggest that NLC will undertake the survey. This should be corrected.</p> |
| 5       | 4 (b)      | <p><u>Provision</u><br/>Provides for commission to establish the number of and maintain a register of persons in actual occupation of the land for un-interrupted period of twelve years and their improvements</p> <p><u>Our proposal</u></p>   |

Delete the subsection.

| Section  | Subsection | Proposal   |
|----------|------------|--|
|          |            | <p><u>Justification</u><br/>It will be practically impossible for the commission to carry out this exercise because land is dynamic/</p>   |
| 6(107A)  | 1          | <p><u>Provision</u><br/>It provides valuation of freehold land for purposes of compensation using Land Value Index development jointly by the national and county governments</p> <p><u>Our proposal</u><br/>Remove County Government</p> <p><u>Justification</u><br/>The issue of the index being developed by both the National Government and County Government will bring delays. Only a few counties have valuers and the capacity to make any meaningful contribution. This will only delay the development LVI. Let this function be left to the chief government valuer who has the personnel and the data necessary for the exercise.</p> |
| 6 (107A) | 2          | <p><u>Provision</u><br/>It defines Land value index as an analytical representation showing the spatial distribution of land values in a given geographical area at a specific time.</p> <p><u>Our proposal</u></p> <p>Insert part 2(a) to read ‘the land value index should reflect the prevailing market values at any given time’</p> <p><u>Justification</u><br/>The Land Index Value should be live and realistic to allow persons affected to find alternative land and settle. If it is too low people will be homeless</p>   |
| 6 (107A) | (6)        | <p><u>Provision</u><br/>It provides that, if in consequence of the acquisition, any of the</p>   |



|  |   |
|--|---|
|  | <p>persons interested in the land is or will be compelled to change residence or place of business, the payment of reasonable expenses will be determined by the commission.</p> <p><u>Our proposal</u><br/>The disturbance amount to be 15% of the compensation amount as has been the case in the past.</p> <p><u>Justification</u></p> |
|--|---|

| Section  | Subsection | Proposal   |
|----------|------------|--|
|          |            | It is a practice in all common wealth countries .Having a fixed percentage removes subjectivity and closes any door for corruption. That section, if left as it is, leaves too much discretion to the person valuing the property.   |
| 6(107A)  | (8) (a)    | <p><u>Provision</u><br/>The subsection provides for 12yrs as one of the consideration during compensation to occupants in good faith.</p> <p><u>Our proposal</u><br/>Two years of consistent occupation before the date of publication to qualify as occupants in good faith.</p> <p><u>Justification</u><br/>Consistency with the law</p> |
| 6 (107A) | 8 (d)      | <p><u>Provision</u><br/>It provides for payment of reasonable expenses</p> <p><u>Our proposal</u><br/>15% of the value as in 107A(6)</p> <p><u>Justification</u><br/>To avoid too much discretion.</p>   |
| 6 (107A) | 8 (d)      | <p><u>Provisions</u><br/>It provides that;<br/>In subsection (1) by deleting the words ""</p>  |

|      |                  |   |
|------|------------------|---|
|      |                  | <u>Provisions</u><br>It provides for monetary payment in lump sum or in installments spread over a period of not more than one year<br><br><u>Our proposal</u><br><br>Delete the section<br><br><u>Justification</u><br>Contradicts Article 40 (3) (b)(i) of the Constitution that provides for prompt payment in full or just compensation |
| 107B | (1B)(b)(c)(d)(e) | <u>Provisions</u>   |

| Section | Subsection | Proposal   |
|---------|------------|--|
|         |            | The Section provides for alternative forms of compensation when there is land available for compensation<br>b) Issuance of government bond;<br>c) Grant or transfer of development rights as may be prescribed<br>d) Equity shares in government owned entity; or<br>e) Any other lawful compensation  |
|         |            | <u>Proposal</u><br>make the alternative forms above optional<br><br><u>Justification</u><br>This is subjective. Not everyone will be able to take the forms of compensation being given as it will depend on someone's status among other factors.   |
| 107B    | 13(b)(c)   | <u>Provisions</u><br>It provides that;<br>In subsection (1) by deleting the words ""and the amount of the first offer has been paid'<br>,<br>In subsection(2)by deleting the phrase "uncultivated or pasture o arable" appearing immediately after the words "possession of"and substituting thereafter the article "the".<br>This section by deleting arable pasture in Section 120 (2) of the Land Act, It means that we may take someone's' land even if it |

|      |       |  |
|------|-------|--|
| 107B | 14(a) | <p>has a building before paying for it.</p> <p>The Land Act 2012 section 124(3) states that we could make a first offer and thereafter take possession.</p> <p>In the Land Amendment Act, 2016 section 124 (3) talks about the Commission taking possession upon full payment.</p> <p>This section 107(b) (13 b,c) deletes sc. 123 of the Land Act 2012 and says that we can take possession without payment or first offer.</p> <p>It contradicts Land Amendment Act 2016 and Article 40(3) (b) of the Constitution.</p> <p><u>Proposal</u></p> <p>Delete 107 (B) (13 b, c) so that it can conform to the Constitution</p> <p>Provision</p> |
|      |       | <p><u>Provides that no order stopping any development in the land may be issued by any court if public funds have already been committed;</u></p> <p><u>Our proposal</u></p> <p>Amend the section by deleting 'development' and inserting 'compulsory acquisition and project development by national or county government'</p> <p><u>Justification</u></p>  |
| 107B | 14(b) | <p><u>Provision</u></p> <p>The Section provides for the jurisdiction of the tribunal in handling disputes related to compulsory acquisition.</p> <p><u>Our proposal</u></p> <p>Delete the section</p> <p><u>Justification</u></p> <p>Has been repeated in 133C and 133D</p>  |



## COUNCIL OF GOVERNORS

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Ref: COG/6/10 Vol. 4 (37)

28<sup>th</sup> March 2018

Mr. Michael Sialai  
The Clerk of the National Assembly  
Parliament Buildings  
Nairobi

① D/cutter  
28/3

Dear Mr. Sialai

LETTER FORWARDING THE LEGISLATION MEMORANDUM ON THE LAND VALUE INDEX LAWS (AMENDMENT) BILL, 2018

The above matter refers.

The Council of Governors appreciates that in realizing the objects of Devolution, the principles of consultation and cooperation under Article 6(2) and Article 189 of the Constitution are inevitable.

Based on these principles, the Council of Governors has reviewed the Land Value Index Laws (Amendment) Bill, 2018 and would like to forward for your consideration the following legislative memorandum enclosed herein.

Yours sincerely

*Anam*

Jacqueline Mogeni  
Chief Executive Officer



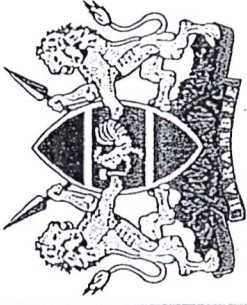
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Thank you

CHAIRMAN  
NATIONAL LAND COMMISSION.

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COUNCIL OF GOVERNORS

MEMORANDUM TO THE NATIONAL ASSEMBLY ON LAND VALUE INDEX LAWS (AMENDMENT) BILL 2018

FROM

THE COUNCIL OF GOVERNORS

27<sup>TH</sup> MARCH 2018

## Introduction

The Council of Governors is a non-partisan organization established under section 19 of the intergovernmental relations Act 2012. The Council of Governors comprises of the Governors of the forty seven counties. The mandate of the Council includes: (a) consultation amongst county governments; (b) sharing of information on the performance of the counties in the execution of their functions with the objective of learning and promotion of best practice and where necessary, initiating preventive or corrective action; (c) considering matters of common interest to county governments; dispute resolution between counties within the framework provided under this Act; (e) facilitating capacity building for governors; (f) receiving reports and monitoring the implementation of inter-county agreements on inter-county projects; (g) consideration of matters referred to the Council by a member of the public; (h) consideration of reports from other intergovernmental forums on matters affecting national and county interests or relating to the performance of counties; and (i) performing any other function as may be conferred on it by this Act or any other legislation or that it may consider necessary or appropriate.

The Bill proposes to amend the Land Act, the Land Registration Act and the Prevention, Protection and Assistance to Internally Displaced Persons and Affected Communities Act in order to provide for the assessment of land value index in respect of compulsory acquisition of land.

## Considerations in reviewing the Land Value Index Laws (Amendment) Bill 2018

The Council of Governors considered the following:

- Constitutional threshold
- Consistency with the existing legislation
- Topographical errors in the bill

Below is a table highlighting the issues in the Bill. The Council recommends that the following clauses should be reviewed for purposes of further improving the Bill:

| No | Principal Act | Bill Clause | Provision in the Bill  | Rationale for Amendment  | CoGs Proposed Amendment  |
|----|---------------|-------------|--|--|--|
| 0  |               | Title       | The Land Value Index Laws (Amendment) Bill, 2018   | The Bill assumes that there is a Land Value Index Act in operation which is not the case   | Remove the word amendment to read <i>The Land Laws (Amendment) Bill 2018.</i>  |
|    |               |             | An Act of Parliament to amend the Land Act, the Land Registration Act and the Prevention, Protection and Assistance to Internally Displaced Persons and Affected Communities Act; to provide for the assessment of land value index in respect of compulsory acquisition of land; and for connected purposes | Both section 22 and 23 have no relevance to the Land Act, Land Registration Act nor the Land Value Index Bill and should be handled in the Prevention, Protection, and Assistance to internally displaced persons and affected communities Act | An Act of parliament to amend the Land Act 2012 reviewed in 2016 and the Land Registration Act 2012 reviewed 2016 to provide for the assessment of land value index in respect of compulsory acquisition of Land and for connected Purposes. |
| 1  |               | Section 2   | "full" in relation to compensation   | In the definition the word   | Amend to Read  |



|   |                            |                        |   |   |  |
|---|----------------------------|------------------------|---|---|--|
|   |                            |                        | <p>for compulsorily acquired land or of way leaves, easements and public rights of way means the restoration of not more than the value of the land including improvements thereon and any other matter provided for in this Act;</p> | <p>“restoration” needs to be replaced with the word “compensation” since the word restoration implies that you are reimbursing someone to their former state before acquisition which is not the case. The amount of compensation is usually added a disturbance allowance of 15% of the market value. The words “not more than” need to be deleted based on the description above.</p> | <p>“full” in relation to compensation for compulsorily acquired land or of way leaves, easements and public rights of way means the compensation of the value of the land including improvements thereon and any other matter provided for in this Act;</p>  |
| 3 | 31 of the Land Act         | Section 3 of the bill. | <p>(4A) Despite subsection (4), if the land is required for a public purpose, the court may not grant relief against forfeiture even if the grantor makes good the default.</p>   | <p>After the forfeiture it should not be left open to avoid mischievous persons taking advantage of that clause to reallocate the land. After the court has declared a lease forfeited the forfeiture document should be registered and copy sent to National Land Commission since the National Land Commission is the custodian of such public.</p>                                   | <p>(4A) Despite subsection (4), if the land is required for a public purpose, the court may not grant relief against forfeiture even if the grantor makes good the default. After the court has declared a lease forfeited the forfeiture document should be registered and copy sent to National Land Commission.</p> |
| 4 | Section 32 of the Land Act | Section 4 of the bill  | <p>(3A) Despite subsection (3), if the land is required for a public</p>  | <p>After the forfeiture it should not be left open to avoid</p>   | <p>(3A) Despite subsection (3), if the land is required</p>  |

|    |                    |                  |  |   |   |
|----|--------------------|------------------|--|---|---|
|    |                    |                  | purpose, the court may not grant relief against forfeiture even if the licensee makes good the default.  | mischievous persons taking advantage of that clause to reallocate the land. After the court has declared a lease forfeited the forfeiture document should be registered and copy sent to National Land Commission since the National Land Commission is the custodian of such public. | for a public purpose, the court may not grant relief against forfeiture even if the licensee makes good the default. After the court has declared a lease forfeited the forfeiture document should be registered and copy sent to the National Land Commission. |
| 5  | 107(1)<br>Land Act | Section 5<br>(a) | Section 107 of the Land Act is amended in subsection (1) by deleting the word "public" appearing immediately after the phrase "acquisition of";<br><br>by deleting subsection (4) and substituting therefore the following | This has already been addressed the Land Act 2012 (revised) 2016 in section 107(1)<br><br>It is prudent to give reasons for the decline to acquire, so this section 4 of the principal act should not be deleted as proposed in the bill  | Delete the section on the bill<br><br>Section 107(4) to be maintained in the Principal Act (The Land Act 2012 reviewed in 2016  |
| 6. | 107(7)             | 5 (d)            | In subsection 7 deleting 110 to 143 and substituting therefore with 107 to 133   | This has already been addressed the Land Act 2012 (revised) 2016 in section 107(7)  | Delete the section on the bill  |

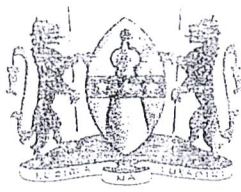
|   |                             |  |   |   |
|---|-----------------------------|--|---|---|
| 8 | Section 6<br>107 A<br>(3)   | In addition to any other principle that may be employed in calculating the land value index, the declared value of the land for purposes of payment of rates, rents or stamp duty shall be taken into account. | The declared value especially for stamp duty is most of the times low compared to the market value and therefore may not be a proper guide to land value index. Instead of using the declared value the market values would be a better guide in the determination of the land value index. | Amend to read<br>In addition to any other principle that may be employed in calculating the land value index, the market value of the land shall be taken into account. |
|   | Section<br>107 A (4)<br>(C) | The increase in the apparent value of the land is occasioned by any development or improvement to the land if  | The word apparent value is a bit ambiguous and can be subject to misinterpretation. The proposal is to replace the word with Market Value.  | "The increase in the market value of the land is occasioned by any development or improvement to the land if..."  |
|   | Section<br>107A(5)(b)       | any inconvenience caused to a person interested in the land; or  | This section is subject to misinterpretation  | "any inconvenience caused to a third party interested in the land; or"  |
| 9 | Section<br>8(a)             | (8) For purposes of Article 40 (4) of the Constitution, compensation to be made to occupants in good faith of land compulsorily acquired who may   | Compensation is not based on number of persons but on the area to be acquired.  | 8) For purposes of Article 40 (4) of the Constitution, compensation to be made to occupants in  |

|   |   |
|---|---|
| <p>not hold title to the land shall be assessed based on –<br/> (a) the number of persons in actual occupation of the land for an uninterrupted period of twelve years immediately before the publication of notice of intention to acquire the land;</p> | <p>good faith of land compulsorily acquired who may not hold title to the land shall be assessed based on –<br/> (a) the area acquired by each of the person(s) in actual occupation of the land for an uninterrupted period of twelve years immediately before the publication of notice of intention to acquire the land;</p>                                     |
| <p>10</p>   | <p>Section 107B 2(b)<br/> (c)</p>   |
| <p>(b) the cost of developments or improvements on the land and any other cost incurred on the basis of the terms and conditions of the grant; and<br/> (c) any other criteria which the Commission may prescribe in Regulations.</p>                     | <p>Developments put up and depreciate with time, and cost does not factor in that element. Other market forces come into play and therefore cost is not necessarily value<br/> The commission manages public land on behalf of both National and County Governments and therefore any regulations developed by the commission must be in consultation with both</p> |
|   | <p>Amend to read “the value of developments or improvements on the land and any other costs incurred on the basis of the terms and conditions of the lease; and”<br/> Any other criteria which the Commission may prescribe through regulations in consultation with both the National and County Governments.</p>  |



|    |              |                       |  |  |                                |
|----|--------------|-----------------------|--|--|--------------------------------|
| 11 | 117 land act | Section 11<br>a and b | (a) in subsection (1) by deleting the word "bank" appearing immediately after the word "prevailing" and substituting therefore the phrase "Central Bank of Kenya";<br>(b) in subsection (2) by deleting the figure "120" appearing immediately after the word "section" and substituting therefore the figure "119". | This has already been addressed the Land Act 2012 (revised) 2016 in section 117 (1)) (2)   | Delete the section in the bill |
| 13 | 124          | Section 16            | Section 124 of the Land Act is amended in Amendment to section 124 of No. subsection (3) by deleting the words "after paying the first offer of compensation".   | This has already been addressed the Land Act 2012 (revised) 2016 in section 124 (3)  | Delete the section in bill     |
| 15 |              | Section 22<br>and 23  | 22. The Prevention, Protection and Assistance to Internally Displaced Persons and Affected Communities No.56 of 2012 Act is amended by deleting section 22 and substituting therefore the following new section:<br><br>23. Internal displacement of persons occasioned by   | Section 22 makes reference to a new section that is not provided and therefore the section is hanging<br><br>Both section 22 and 23 have no relevance to the Land Act, Land Registration Act nor the Land Value Index Bill and should be and handled | Delete the section in bill     |

|  |  |  |  |   |  |
|--|--|--|--|---|--|
|  |  |  | <p>compulsory resulting from a lawful compulsory acquisition of land, subject to prompt payment in full, of just compensation to the persons shall not, for purposes of this Act, constitute arbitrary displacement.</p> | <p>in the specific Act i.e. the Prevention, Protection, and Assistance to internally displaced persons and affected communities Act</p> |  |
|--|--|--|--|---|--|



# THE INSTITUTION OF SURVEYORS OF KENYA

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## MEMORANDUM FROM THE INSTITUTION OF SURVEYORS OF KENYA (ISK)

ON

## THE LAND VALUE INDEX LAWS (AMENDMENT) BILL, 2018

PRESENTED TO

MICHAEL R. SIALAI, EBS  
CLERK OF THE NATIONAL ASSEMBLY

15<sup>TH</sup> MARCH 2018



## 1. About us

The Institution of Surveyors of Kenya (ISK) is the Landed professional organization in that brings together professionals in land and real estate sector. The professionals fall within six major disciplines of the surveying profession namely the Valuation and Estate Management Surveying; Land Surveying; Building Surveying and Land Administration Management; Engineering Surveying and Geospatial Information Management Surveying.

We would like to bring to your attention the following concerns with regard to the proposed amendments to the Land Value Index (Amendment) bill, 2018.

### 1. Specific comments

| Section | Subsection | Proposal  |
|---------|------------|---|
| 5       | 4 (a)      | <p><u>Provision</u><br/>It provides for the commission to cause the affected land to be mapped out and valued by the Commission using Valuation criteria set out under the Act.</p> <p><u>Our proposal</u><br/>Delete "Cause the affected land to be mapped out and" appearing before valued</p> <p><u>Justification</u><br/>It is important to note that the work of survey is the responsibility of the Acquiring body. By the time the request comes to the NLC (the acquiring authority), the survey should have been done. The request to NLC must be accompanied by cadastral drawings. The client (acquiring body) is the one who knows what they want – the extent of the acquisition hence needs to map the same and present to NLC. The work of NLC is to implement the acquisition by doing the necessary gazettelement and valuation to determine compensation. This section seems to suggest that NLC will undertake the survey. This should be corrected.</p> |
| 5       | 4 (b)      | <p><u>Provision</u><br/>Provides for commission to establish the number of and maintain a register of persons in actual occupation of the land for un-interrupted period of twelve years and their improvements</p> <p><u>Our proposal</u><br/>Delete the subsection</p>  |

| Section  | Subsection | Proposal  |
|----------|------------|---|
|          |            | <u>Justification</u><br>It will be practically impossible for the commission to carry out this exercise   |
| 5        | 5A (b)     | <u>Provision</u><br>It provides for the contents of the notice to be issues for the purposes of compulsory acquisition<br><br><u>Our proposal</u><br>Delete "brief description of the land" appearing after "location"<br><br><u>Justification</u><br>Description is only possible after inspecting the land. Gazettment is done before inspection  |
| 6 (107A) | 1          | <u>Provision</u><br>It provides valuation of freehold land for purposes of compensation using Land Value Index development jointly by the national government and county government<br><br><u>Our proposal</u><br>Amend this section to read "Valuation of freehold land for purposes of compensation under this Act shall be based on the land value index developed by the Chief Government Valuer for that purpose and the provisions of this Part |
|          |            | <u>Justification</u><br>The issue of the index being developed by both the National Government and County Government will bring complications. Only a few counties have Valuers and the capacity to make any meaningful contribution. This will only serve to delay the development of the LVI. Let this function be left to the chief Government Valuer who has the personnel and the data necessary for the exercise.                               |
| 6 (107A) | (4) (a)    | <u>Provision</u><br>Provides for the criteria for assessing for compulsorily acquired freehold land<br><br><u>Our proposal</u><br>Amend the sub-section by deleting "intended use" and replacing with "declaration of NLC to acquire"<br><br><u>Justification</u>   |

| Section  | Subsection | Proposal  |
|----------|------------|---|
|          |            | The intended use is difficult to ascertain  |
|          | (4) (c)    | <p><u>Provision</u><br/>It provides for the disregarding increase is occasioned by development or improvement to the land</p> <p><u>Our proposal</u><br/>Delete the subsection</p> <p><u>Justification</u><br/>Improvements subject to compensation should have been approved by applicable authorities where applicable</p>  |
| 6 (107A) | 6 (e)      | <p><u>Provision</u><br/>The subsection provides for intended use as one of the parameters for assessing value of land</p> <p><u>Our proposal</u><br/>Amend the subsection by replacing "the intended use" with "the use to which the land may be put"</p> <p><u>Justification</u><br/>This provision of the subsection is not clear and it appears to have been borrowed from the previous law Cap 295 but has been altered here with the effect of losing its meaning. The use referred to here is the present use. The aim is to draw the valuer to any condition on the title which may restrict the use of the land. e.g a User may be written as "shops, offices and flats excluding the sale of motor oils". This means that if such a property is compulsorily acquired, any loss associated with sale of motor oil cannot be compensated.</p> |
| 107 B    | 7 (b)      | <p><u>Provisions</u><br/>It provides for monetary payment in lump sum or in installments spread over a period of not more than one year</p> <p><u>Our proposal</u><br/>Amend the section by deleting "either or installments spread over one year"</p> <p><u>Justification</u><br/>The Section contradicts provisions of subsection 111 that provides for "Promptly in full"</p>  |
| 133A     | 1 (b)      | <u>Provisions</u>   |

| Section           | Subsection | Proposal   |
|-------------------|------------|--|
|                   |            | <p>The Section provides for the establishment of the tribunal</p> <p><u>Proposal</u><br/>Amend the section to read "Two registered Valuers of not less than 10 years standing seconded by the Institution of Surveyors of Kenya"</p> <p><u>Justification</u><br/>All registered valuers are competent regardless of whether they are private or public practice. Membership to ISK ensures that they are professionally accountable.</p> |
| Part VIII A-133 A | 1 (c)      | <p><u>Provision</u><br/>Provides for membership of a registered surveyor to the tribunal</p> <p><u>Our proposal</u><br/>Amend the section by inserting "seconded by Institution of Surveyors of Kenya" after Surveyor</p> <p><u>Justification</u><br/>This will ensure that only the registered surveyors who are professionally sound are accorded the opportunity</p>  |
| Part VIII A-133D  | <u>2</u>   | <p><u>Provision</u><br/>The Section provides for an appeal from the decision of the Tribunal to be made on a question of law only</p> <p><u>Our proposal</u><br/>Amend the section by deleting " question of law only"</p> <p><u>Justification</u><br/>Our proposed amendments seeks to allow the aggrieved persons to appeal on other grievances and should also be allowed representation by a private valuer.</p>                     |

Thank you

  
 Moses Kiambuthi  
 Chief Executive Officer

ASHITIVA ADVOCATES LLP COMMENTSON THE LAND VALUE INDEX LAWS (AMENDMENT) BILL

*1.01.2018*  
*2.1.2018*  
*Zakaria M. M. M.*  
*For Committee*  
*14/3/18*

Ashitiva & Company Advocates is a full service commercial Law Firm that undertakes international and cross-border matters on behalf of its clients. As a Law Firm, we have taken interest in legislation passed at County and National levels, affecting our clients in the energy and property sector. The Land value Index Laws (Amendment) Bill, 2016 is one such Bill.

All land in Kenya belongs to the people of Kenya collectively as a nation, as communities and as individuals and it can be classified into public, community or private land. The constitution states that Land in Kenya shall be held, used and managed in a manner that is equitable, efficient, productive and sustainable, and in accordance with the following principles-

- (a) equitable access to land;
- (b) security of land rights;
- (c) sustainable and productive management of land resources;
- (d) transparent and cost effective administration of land;
- (e) sound conservation and protection of ecologically sensitive areas;
- (f) elimination of gender discrimination in law, customs and practices related to land and property in land; and
- (g) encouragement of communities to settle land disputes through recognized local community initiatives consistent with this Constitution.

However, the State may regulate the use of any land, or any interest in or right over any land, in the interest of defense, public safety, public order, public morality, public health, or land use planning. This therefore gives the state power to acquire private rights in land without the willing consent of its owner or occupant in order to benefit society through a compulsory acquisition.

Compulsory Acquisition of Land is provided for under Article 40 (3) and (4) of the Constitution of Kenya 2010. The Land Act No. 6 of 2012 outlines the procedure of Compulsory Acquisition of Property in Kenya. The Land Value Index Laws (Amendment Bill) seeks to amend the Land Act in order to ease the acquisition of and access to land or rights of land in order to successfully implement public infrastructure projects. The Bill additionally seeks to regulate the long and protracted process of compulsory acquisition and harmonize and standardize the compensation.

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## Process of Compulsory Acquisition

The process is initiated by Cabinet Secretary or the County Executive Committee on behalf of the National or County Government respectively, submitting a request for acquisition to the National Land Commission to acquire the Land on its behalf.

The National Land Commission may reject or accept the request for compulsory acquisition. If the Commission rejects the application, it should notify the acquiring authority within 30 days of the decline outlining the conditions that must be met. If the Commission accepts the request, it shall publish a notice to that effect in the Gazette and county Gazette and deliver a copy of the notice to the Registrar and every person who appears to the Commission to be interested in the land.

At least 30 days after publishing the notice of intention to acquire land, the Commission shall appoint a date for an inquiry to hear issues of proprietary and claims for compensation by persons interested in the land- they shall gazette a notice of the inquiry to be published in the Gazette or county Gazette at least fifteen days before the inquiry and serve a copy of the notice on every person who appears to the Commission to be interested or who claims to be interested in the land.

The Notice shall call upon persons interested in the land to deliver a written claim of compensation to the Commission not later than the date of inquiry. Upon the conclusion of the inquiry, the Commission shall prepare a written award of compensation detailing the compensation to be made to all interested parties. The Commission shall then serve on each person whom the Commission has determined to be interested in the land, the notice of the award and offer of compensation.

After the notice of award has been served on all the persons determined to be interested in the land, the Commission shall, promptly, pay compensation in accordance with the award to the persons entitled thereunder.

The Registrar upon service of the notice shall make an entry in the register of the intended acquisition.

The acquiring authority is required to deposit with the Commission the Compensation funds in addition to survey fees, registration fees and any other costs before the acquisition is undertaken.

The Commission can only take possession of the land only after the award has been made, and the amount of the first offer has been paid. The Commission shall take possession of the land by serving on every person interested in the land a notice that on a specified day possession of the land and the title to the land will vest in the national or county government as the case may be.

After taking possession, the Commission shall serve upon the registered proprietor of the land and the Registrar a notice that possession of the land has been taken and that the land has vested in the national or county governments as the case may be.

The Commission shall write to the proprietor of land being acquired requesting them to deliver the title documents to the registrar, who shall cancel the title documents if the whole of the land comprised in the documents has been acquired and if only part of the land comprised in the documents has been acquired, the Registrar shall register the resultant parcels and caused to be issued, to the parties, title documents in respect of the resultant parcels.

The Commission has the power to revoke a direction to acquire land at any time before possession is taken. If the Commission exercises this power, it shall determine and pay compensation for all damage suffered and all costs and expenses reasonably incurred in the land by reason of or in consequence of the proceedings for acquiring land.

Compulsory acquisition under the Act envisions a scenario where a public body may require temporary occupation of land. The Commission in such circumstance issue a notice to all interested parties informing them that the Commission shall take possession of the land for the period in question.

After the lapse of the notice period, the Commission after paying full compensation may take possession of the property by entering, personally or by agents on the land and posting on the land a notice in the prescribed form that possession has been taken of the land.

#### Proposed Changes

The Land Value Index Laws Amendment Bill proposes to amend the Land Act by introducing the valuation of free hold and community land for purposes of compensation to be based on the land value index developed jointly by the national and county government when such land is compulsorily acquired.

The Bill highlights what shall and shall not be taken into consideration in determining the compensation to be awarded for land that is compulsorily acquired.

The Bill additionally proposes the different forms of compensation to be awarded other than monetary compensation. These are:

- Allocation of alternative parcel of land of equivalent value and comparable geographical location and land use to the land compulsorily acquired;
- Issuance of government bond;
- Grant or transfer of development rights as may be prescribed;
- Equity shares in a government owned entity or
- Any other lawful compensation.

It is important to note that the Bill proposes that if monetary compensation is the award, the same may be paid in lump sum or in instalments spread over a period of not more than one year.

To achieve its objectives, the Bill proposes additions to the definition section of the Land Act by providing the definitions for the following words *just compensation, prompt, full and Tribunal*.

However there are certain aspects which still need clarifications and which if not addressed may prejudice the investors' goals towards development of the natural resources within the country. Therefore it is important to address these concerns

Below is a summary of these issues of concern/clarifications and proposed amendments/suggestions, which we wish to request the senate to consider.

COMMENTSON THE THE LAND VALUE INDEX LAWS (AMENDMENT) BILL, 2016

| REF. SECTION                            | ISSUE         | BILL PROVISIONS   | COMMENTS  | PROPOSAL  |
|---|---------------|---|---|---|
| Amendment no. 2; definition section (2) | Clarification | <p>"Prompt" in relation to payment of compensation for compulsorily acquired land or creation of way leaves, easements and public rights means-</p> <p>(i) Within a reasonable time of the taking of possession of the land by commission</p> | <p>☐ Not clear</p> <p>☐ We hold the view that this section is not clear when exactly prompt compensation takes place, whether it is before or after the Commission takes possession.</p> <p>☐ If the compensation is paid after taking possession then this means that the persons whose property has been compulsorily acquired will be left displaced and this may raise hostility amongst the persons</p> <p>☐ If however the compensation is paid before the commission takes possession then this will ensure smooth compulsory acquisition process without the persons whose properties has been compulsorily acquired being displaced.</p> <p>☐ The hostility could be a hindrance to the investors or persons undertaking the development for public purpose therefore halt the development and eventually discourage investors</p> | <p>Change the definition of the word "prompt" to include the word "before" before the words taking possession for avoidance of doubt when possession takes place.</p> <p>The definition should read as follows,</p> <p>Prompt" in relation to payment of compensation for compulsorily acquired land or creation of way leaves, easements and public rights means-</p> <p>(i) <i>Within a reasonable time before the taking of possession of the land by Commission</i></p> |



| REF. SECTION   | ISSUE                   | BILL PROVISIONS   | COMMENTS   | PROPOSAL  |
|--|-------------------------|---|--|---|
| <p>Amendment no. 3; (31) (4) A</p> <p>An additional subsection to section 31</p> | <p>Unconstitutional</p> | <p>Despite subsection (4), if the land is required for a public purpose, the court may not grant relief against forfeiture even if the grantor makes good the default</p> | <ul style="list-style-type: none"> <li><input type="checkbox"/> The Land Act mandates the court to be guided by doctrines of equity when exercising power of granting relief against forfeiture.</li> <li><input type="checkbox"/> This amendment however prevents the courts to grant relief against forfeiture of lease for unpaid rent or breach of covenant even if the default is remedied.</li> <li><input type="checkbox"/> Equity allow relief for forfeiture as long as the default is made good. The issue of not being granted relief on forfeiture therefore goes against the principles of natural justice and governance thus contravening the constitution under article 10.</li> <li><input type="checkbox"/> Article 10 provides the National values and principles of governance bind all state organs whenever any of them;</li> </ul> <p>(1) (b) enacts, applies or interprets any law.<br/> (2) The national values and principles of governance include equity</p> | <p>This section should be completely struck off in light of unconstitutionality/illegality.</p> |

| REF. SECTION   | ISSUE                   | BILL PROVISIONS   | COMMENTS  | PROPOSAL   |
|--|-------------------------|---|---|--|
| <p>Amendment no. 4; (32) (3)</p> <p>An additional subsection to section 32</p> | <p>Unconstitutional</p> | <p>Despite subsection (3), if the land is required for a public purpose, the court may not grant relief against forfeiture even if the grantor makes good the default</p> | <ul style="list-style-type: none"> <li data-bbox="852 255 1235 353">☐ The Land Act mandates the court to be guided by doctrines of equity when exercising power of granting relief against forfeiture.</li> <li data-bbox="852 356 1235 454">☐ This amendment however prevents the courts to grant relief against forfeiture of license even if the default is remedied.</li> <li data-bbox="852 456 1235 622">☐ Equity allow relief for forfeiture as long as the default is made good. The issue of not being granted relief on forfeiture therefore goes against the principles of natural justice and governance thus contravening the constitution.</li> <li data-bbox="852 624 1235 701">☐ Article 10 provides the National values and principles of governance bind all state organs whenever any of them;</li> </ul> <p>(1) (b) enacts, applies or interprets any law.<br/> (2) The national values and principles of governance include equity</p> | <p>This section should be completely struck off in light of unconstitutionality/ illegality.</p> |

| REF. SECTION  | ISSUE            | BILL PROVISIONS  | COMMENTS  | PROPOSAL   |
|---|------------------|--|---|--|
| Amendment no. 6; [107A (1)]<br>An additional subsection to section 107. | Clarification    | Valuation of freehold land and community land for purposes of compensation under this Act shall be based on the land value index developed jointly by the national government and the county government for that purpose and the provisions of this part | The two governments, while developing the land value index might fail to take into consideration all the prevailing circumstances at the time and this may adversely affect the vested interests of 3 <sup>rd</sup> parties to the land that the government will be keener on acquiring compulsorily. Such interests may be a land under a lease. While the government will compensate the lessor, the interests of the lessee may not be taken into consideration. | (107A) (a) Valuation of freehold land and community land for purposes of compensation under this Act shall be based on the land value index developed jointly by the national government and the county government for that purpose and the provisions of this part.<br><br><i>(b) The land value index aforementioned in sub section (107A) (a) shall be open to public scrutiny and any party whose interests shall have been injured by it shall be allowed access to a court of law to have the land value index reviewed.</i> |
| Amendment no. 6; [to 107 A (5) (b)]                                     | Unconstitutional | In addition to the provisions of subsection (1), the following circumstances shall not be taken into account in determining the value of the land.....<br><br>(b) Any inconvenience caused to a person interested in the land; or.....                   | This section contravenes article 10 of the constitution which talks about National values and principles of governance. The state when acting applying or interpreting any law should take into account the national value and principles of governance which includes equity.<br><br>Therefore if someone removed from their ancestral land it is only equitable that they be compensated for that inconvenience   | This section should be struck out.   |

| REF. SECTION                                   | ISSUE            | BILL PROVISIONS  | COMMENTS  | PROPOSAL   |
|--|------------------|--|---|--|
| Amendment no. 6;(to 107 B (1)                  | Unconstitutional | Where the lessee of a public land is in breach of any terms or condition of the grant the land shall revert back to the national or county government as provided for under this act | This is a form of automatic reversion without being granted a chance to make good the lessees default There should be a given notice with time frame of 90days to make good the breach committed  | <i>Where the lessee of public land is in breach of any terms or condition of the grant, a 12 month notice to make good shall be issued failure to which the land shall revert back to the national or county government as provided for under this act</i> |
| Amendment no. 14 (to section 121 as 121 3A (a) | Unconstitutional | No order stopping any development in the land may be issued by any court if public funds have already been committed   | The section is in sheer contravention of the Constitution of Kenya 2010, to wit, Article 40 (3) (b) (ii), which provides that the state shall not deprive a person of his property, unless the deprivation is necessary for public importance. Even in case of the deprivation, <i>the state shall allow any person who has an interest in, or right over, that property a right of access to a court of law.</i><br><br>No one should be deprived of their right to access the courts, unless they are statute barred (Limitation of Actions Ad), in the event of which they may file an application in a court of law to file a suit out of time. | This Section should be struck out altogether.  |

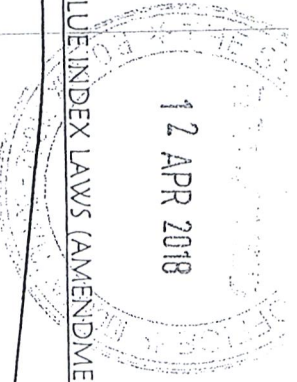
| REF. SECTION                       | ISSUE         | BILL PROVISIONS   | COMMENTS   | PROPOSAL   |
|------------------------------------|---------------|---|--|--|
| Amendment no. 17; [to Section 125] | Clarification | <p>Power to obtain temporary occupation of land</p> <p>(1) The Commission shall, as soon as is practicable, before taking Possession, pay full and just compensation to all persons interested in the land.</p> <p>(2) An acquiring authority shall pay the first offer of compensation to the interested parties before taking possession.</p> | <p>The issue with the section is at what point the compensation is going to take place with consideration of the people whose land is being compulsorily acquired</p> <p>It is important for this to be done before possession</p> | <p>The phrase "before possession" should remain</p> <p>The whole section should be left as it is</p> |

ASHITIVA  
& CO. ADVOCATES



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ASHITIVA ADVOCATES LLP COMMENTS ON THE LAND VALUE INDEX LAWS (AMENDMENT) BILL

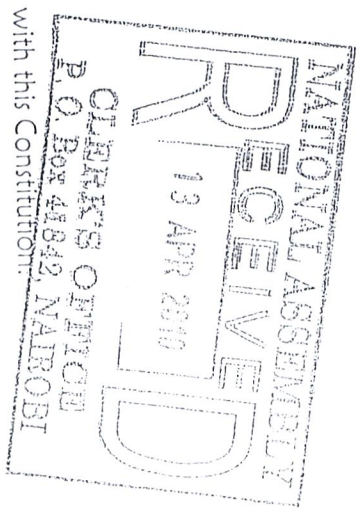
Ashitiva & Company Advocates is a full service commercial Law Firm that undertakes international and cross-border matters on behalf of its clients. As a Law Firm, we have taken interest in legislation passed at County and National levels, affecting our clients in the energy and property sector. The Land Value Index Laws (Amendment) Bill, 2016 is one such Bill.

All land in Kenya belongs to the people of Kenya collectively as a nation, as communities and as individuals and it can be classified into public, community or private land. The constitution states that Land in Kenya shall be held, used and managed in a manner that is equitable, efficient, productive and sustainable, and in accordance with the following principles--

- (a) equitable access to land;
- (b) security of land rights;
- (c) sustainable and productive management of land resources;
- (d) transparent and cost effective administration of land;
- (e) sound conservation and protection of ecologically sensitive areas;
- (f) elimination of gender discrimination in law, customs and practices related to land and property in land; and
- (g) encouragement of communities to settle land disputes through recognized local community initiatives consistent with this Constitution.

However, the State may regulate the use of any land, or any interest in or right over any land, in the interest of defense, public safety, public order, public morality, public health, or land use planning. This therefore gives the state power to acquire private rights in land without the willing consent of its owner or occupant in order to benefit society through a compulsory acquisition.

Compulsory Acquisition of Land is provided for under Article 40 (3) and (4) of the Constitution of Kenya 2010. The Land Act No. 6 of 2012 outlines the procedure of Compulsory Acquisition of Property in Kenya. The Land Value Index Laws (Amendment Bill) seeks to amend the Land Act in order to ease the acquisition of and access to land or rights of land in order to successfully implement public infrastructure projects. The Bill additionally seeks to regulate the long and protracted process of compulsory acquisition and harmonize and standardize the compensation.



## Process of Compulsory Acquisition

The process is initiated by Cabinet Secretary or the County Executive Committee on behalf of the National or County Government respectively, submitting a request for acquisition to the National Land Commission to acquire the land on its behalf.

The National Land Commission may reject or accept the request for compulsory acquisition. If the Commission rejects the application, it should notify the acquiring authority within 30 days of the decline outlining the conditions that must be met. If the Commission accepts the request, it shall publish a notice to that effect in the Gazette and county Gazette and deliver a copy of the notice to the Registrar and every person who appears to the Commission to be interested in the land.

At least 30 days after publishing the notice of intention to acquire land, the Commission shall appoint a date for an inquiry to hear issues of proprietary and claims for compensation by persons interested in the land- they shall gazette a notice of the inquiry to be published in the Gazette or county Gazette at least fifteen days before the inquiry and serve a copy of the notice on every person who appears to the Commission to be interested or who claims to be interested in the land.

The Notice shall call upon persons interested in the land to deliver a written claim of compensation to the Commission not later than the date of inquiry. Upon the conclusion of the inquiry, the Commission shall prepare a written award of compensation detailing the compensation to be made to all interested parties. The Commission shall then serve on each person whom the Commission has determined to be interested in the land, the notice of the award and offer of compensation.

After the notice of award has been served on all the persons determined to be interested in the land, the Commission shall, promptly, pay compensation in accordance with the award to the persons entitled thereunder.

The Registrar upon service of the notice shall make an entry in the register of the intended acquisition.

The acquiring authority is required to deposit with the Commission the Compensation funds in addition to survey fees, registration fees and any other costs before the acquisition is undertaken.

The Commission can only take possession of the land only after the award has been made, and the amount of the first offer has been paid. The Commission shall take possession of the land by serving on every person interested in the land a notice that on a specified day possession of the land and the title to the land will vest in the national or county government as the case may be.

After taking possession, the Commission shall serve upon the registered proprietor of the land and the Registrar a notice that possession of the land has been taken and that the land has vested in the national or county governments as the case may be.

The Commission shall write to the proprietor of land being acquired requesting them to deliver the title documents to the registrar, who shall cancel the title documents if the whole of the land comprised in the documents has been acquired and if only part of the land comprised in the documents has been acquired, the Registrar shall register the resultant parcels and caused to be issued, to the parties, title documents in respect of the resultant parcels.

The Commission has the power to revoke a direction to acquire land at any time before possession is taken. If the Commission considers that it is not in the public interest to determine and pay compensation for all damage suffered and all costs and expenses reasonably incurred in the land by reason of or in consequence of the proceedings for acquiring land.

Compulsory acquisition under the Act envisions a scenario where a public body may require temporary occupation of land. The Commission in such circumstance issue a notice to all interested parties informing them that the Commission shall take possession of the land for the period in question.

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#### Proposed Changes

The Land Value Index Laws Amendment Bill proposes to amend the Land Act by introducing the valuation of free hold and community land for purposes of compensation to be based on the land value index developed jointly by the national and county government when such land is compulsorily acquired

The Bill highlights what shall and shall not be taken into consideration in determining the compensation to be awarded for land that is compulsorily acquired

The Bill additionally proposes the different forms of compensation to be awarded other than monetary compensation. These are:

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- Issuance of government bond;
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It is important to note that the Bill proposes that if monetary compensation is the award, the same may be paid in lump sum or in instalments spread over a period of not more than one year.

To achieve its objectives, the Bill proposes additions to the definition section of the Land Act by providing the definitions for the following words: use of compensation, prompt, full and Tribunal.

Final Observation, Compulsorily acquired land doesn't fall under the Prevention, Protection and Assistance to internally displaced persons and affected communities Act as there is no mention of this act in relation to the bill.

However there are certain aspects which still need clarifications and which if not addressed may prejudice the investors' goals towards development of the natural resources within the country. Therefore it is important to address these concerns.

Below is a summary of these issues of concern/clarifications and proposed amendments/suggestions, which we wish to request the senate to consider:



| REF. SECTION                            | ISSUE         | BILL PROVISIONS   | COMMENTS   | PROPOSAL   |
|---|---------------|---|--|--|
| Amendment no. 2: definition section (2) | Clarification | <p>"Prompt" in relation to payment of compensation for compulsorily acquired land or creation of way leaves, easements and public rights means-</p> <p>(i) Within a reasonable time of the taking of possession of the land by commission</p> | <p><input type="checkbox"/> Not clear</p> <p><input type="checkbox"/> We hold the view that this section is not clear when exactly prompt compensation takes place, whether it is before or after the Commission takes possession.</p> <p><input type="checkbox"/> If the compensation is paid after taking possession then this means that the persons whose property has been compulsorily acquired will be left displaced and this may raise hostility amongst the persons.</p> <p><input type="checkbox"/> If however the compensation is paid before the commission takes possession then this will ensure smooth compulsory acquisition process without the persons whose properties has been compulsorily acquired being displaced.</p> <p><input type="checkbox"/> The hostility could be a hindrance to the investors or persons undertaking the development for public purpose therefore halt the development and eventually discourage investors.</p> | <p>Change the definition of the word "prompt" to include an undertaking that payment will be done within one year from the date of possession</p> <p>The definition should read as follows:</p> <p>"Prompt" in relation to payment of compensation for compulsorily acquired land or creation of way leaves, easements and public rights means-</p> <p>(i) Within one year of the taking of possession of the land by commission</p> |

| REF. SECTION  | ISSUE            | BILL PROVISION   |  |  |
|---|------------------|--|--|--|
| Amendment no. 3; (31) (4) A<br>An additional subsection to section 31 | Unconstitutional | Despite subsection (4), if the land is required for a public purpose, the court may not grant relief against forfeiture even if the grantor makes good the default | <ul style="list-style-type: none"> <li><input type="checkbox"/> The Land Act mandates the court to be guided by doctrines of equity when exercising power of granting relief against forfeiture.</li> <li><input type="checkbox"/> This amendment however prevents the courts to grant relief against forfeiture of lease for unpaid rent or breach of covenant even if the default is remedied.</li> <li><input type="checkbox"/> Equity allow relief for forfeiture as long as the default is made good. The issue of not being granted relief on forfeiture therefore goes against the principles of natural justice and governance thus contravening the constitution under article 10.</li> <li><input type="checkbox"/> Article 10 provides the National values and principles of governance bind all state organs whenever any of them:               <ul style="list-style-type: none"> <li>(1) (b) enacts, applies or interprets any law.</li> <li>(2) The national values and principles of governance include equity</li> </ul> </li> </ul> | This section should be completely struck off in light of unconstitutionality/illegality. |

| REF. SECTION  | ISSUE            | BILL PROVISION   | COMMENTS  |   |
|---|------------------|--|---|---|
| Amendment no. 4: (32) (3)<br>An additional subsection to section 32 | Unconstitutional | Despite subsection (3), if the land is required for a public purpose, the court may not grant relief against forfeiture even if the grantor makes good the default | <ul style="list-style-type: none"> <li><input type="checkbox"/> The Land Act mandates the court to be guided by doctrines of equity when exercising power of granting relief against forfeiture.</li> <li><input type="checkbox"/> This amendment however prevents the courts to grant relief against forfeiture of license even if the default is remedied.</li> <li><input type="checkbox"/> Equity allow relief for forfeiture as long as the default is made good. The issue of not being granted relief on forfeiture therefore goes against the principles of natural justice and governance thus contravening the constitution.</li> <li><input type="checkbox"/> Article 10 provides the National values and principles of governance bind all state organs whenever any of them:               <ul style="list-style-type: none"> <li>(1) (b) enacts, applies or interprets any law.</li> <li>(2) The national values and principles of governance include equity</li> </ul> </li> </ul> | This section should be completely struck off in light of unconstitutionality/ illegality. |

| REF. SECTION  | ISSUE         | BILL PROVISION   | COMMENTARY  |
|---|---------------|--|---|
| Amendment no. 6: [107A (1)]<br>An additional subsection to section 107. | Clarification | Valuation of freehold land and community land for purposes of compensation under this Act shall be based on the land value index developed jointly by the national government and the county government for that purpose and the provisions of this part | <p>The two governments, while developing the land value index might fail to take into consideration all the prevailing circumstances at the time and this may adversely affect the vested interests of 3<sup>rd</sup> parties to the land that the government will be keener on acquiring compulsorily. Such interests may be a land under a lease. While the government will compensate the lessor, the interests of the lessee may not be taken into consideration.</p> <p>This index should be reviewed annually to be in line with market value. so the risk is values will often be outdated and compensation will be based on outdated values if it is not annually reviewed</p> <p>(107A) (a) Valuation of freehold land and community land for purposes of compensation under this Act shall be based on the land value index developed jointly by the national government and the county government for that purpose and the provisions of this part.</p> <p>(b) The land value index aforementioned in sub section (107A) (a) shall be open to public scrutiny and any party whose interests shall have been injured by it shall be allowed access to a Court of law to have the land value index reviewed.</p> <p>c) The index will be reviewed annually to be in line with market value</p> |
|   |               |  |   |

| REF. SECTION  | ISSUE            | BILL PROVISION  | COMMITTEE COMMENT   | RECOMMENDATION   |
|---|------------------|---|---|--|
| no.6, 107 A<br>bullet 4.                                | Review           | <p>c) the increase in the apparent value of the land is occasioned by any development or improvement to the land if</p> <p>(i) the improvement was made on the land within two years prior to the date of publication in the gazette of the notice of intention to acquire the land, unless it is proved that the improvement was made bona fide and not in contemplation of proceeding for the acquisition of the land</p> | <p>Impacted people would be forced to forgo value realized 2 years prior to the intention to acquire. Should be from when the intention to acquire is published, at the very minimum. Also 4 (C) i of the same, value of improvements made 2 years prior to publication of notice of enquiry</p>  | <p>c) the increase in the apparent value of the land is occasioned by any development or improvement to the land if</p> <p>(i) the improvement was made on the land when the intention to acquire is published in the gazette of the notice of intention to acquire the land, unless it is proved that the improvement was made bona fide and not in contemplation of proceeding for the acquisition of the land</p>   |
| Amendment<br>no. 6:(to 107<br>B (1)                     | Unconstitutional | <p>Where the lessee of a public land is in breach of any terms or condition of the grant the land shall revert back to the national or county government as provided for under this act</p>   | <p>This is a form of automatic reversion without being granted a chance to make good the lessees default There should be a given notice with time frame of 90days to make good the breach committed</p>   | <p>Where the lessee of public land is in breach of any terms or condition of the grant, a 12 month notice to make good shall be issued failure to which the land shall revert back to the national or county government as provided for under this act</p>   |
| Amendment<br>no. 14 (to<br>section 121 as<br>121 3A (a) | Unconstitutional | <p>No order stopping any development in the land may be issued by any court if public funds have already been committed</p>   | <p>The section might be in contravention of the Constitution of Kenya 2010, to wit, Article 40 (3) (b) (ii), which provides that the state shall not deprive a person of his property, unless the deprivation is necessary for public importance. Even in case of the deprivation, the state shall allow any person who has an interest in, or right over, that property a right of access to a court of law.</p> <p>No one should be deprived of their right to access the courts, unless they are statute barred (Limitation of Actions</p> | <p>This Section should be amended to ensure that as much as the law is protecting the investors it should not expose the process to an endless litigious process.</p> <p>The section should consider precise process by having a limitation of time to appeal after parcels have been valued for compensation. The section should consider publishing the compensation estimates and publish the same in the newspaper to allow appeals but not after the lapse of time.</p> |

| REF. SECTION                       | ISSUE         | BILL PROVISIONS   | COMMENTS   | PROPOSAL   |
|------------------------------------|---------------|---|--|--|
| Amendment no. 17; [to Section 125] | Clarification | <p>Power to obtain temporary occupation of land</p> <p>(1) The Commission shall, as soon as is practicable, before taking possession, pay full and just compensation to all persons interested in the land.</p> <p>(2) An acquiring authority shall pay the first offer of compensation to the interested parties before taking possession.</p> | <p>The issue with the section is at what point the compensation is going to take place with consideration of the people whose land is being compulsorily acquired</p> <p>It is important for this to be done before possession</p> | <p>The phrase "before possession" should remain</p> <p>The whole section should be left as it is</p> |

1. Dil...  
15/03

2. Keon...  
For Consideration  
the committee  
16/3/18



**TCPAK**

TOWN AND COUNTY PLANNERS ASSOCIATION OF KENYA

"Better Towns, Counties and Country"

TOWN AND COUNTY PLANNERS ASSOCIATION OF KENYA

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**Our Reference**

NA/ Y18/ F01

**Your Reference**

**Date**

15 March 2018

Clerk of the National Assembly

Parliament Buildings

Nairobi

Dear Sir,

**LAND VALUE INDEX LAWS (AMENDMENT) BILL 2018 - NATIONAL ASSEMBLY BILL  
MEMORANDA BY TOWN AND COUNTY PLANNERS ASSOCIATION OF KENYA (TCPAK)**

The Town and County Planners Association of Kenya (TCPAK) is registered and approved professional association in Kenya for town planners, land user planners or physical planners. In line with the Constitution of Kenya 2010, TCPAK motto is "Better Towns, Counties and Country". The association is a member of the International Society of City and Regional Planners (The Hague/Netherlands). As a member of the international community, TCPAK promotes the United Nations sustainable development goals (SDG) and the New Urban Agenda.

At the national level, TCPAK works closely with both national and county government departments, the private sector, NGOs and the academia. TCPAK is a member of Kenya Private Sector Alliance (KEPSA) and also Kenya Property Developers Association (KPDA). TCPAK has working partnership with Kenya Green Building Society and the Royal Institute of Chartered Surveyors (RICS, UK) among other institutions.

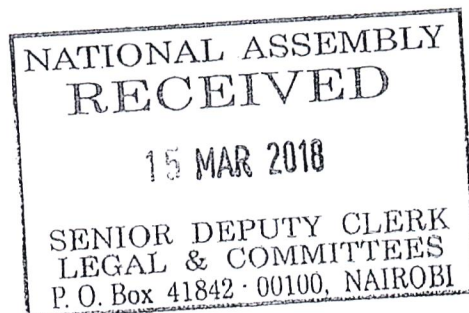
Please receive memoranda on the Land Value Index Laws (Amendment) Bill, 2018. Attached are specific comments and recommendations on each of the clauses/sections of the Bill.

Yours faithfully,

**Mairura Omwenga**

Chairman,

Town and County Planners Association of Kenya (TCPAK)





"Better Towns, Counties and Country"

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**COMMENTS ON SPECIFIC CLAUSES OF THE BILL**

|                                 |  |
|---------------------------------|--|
| <b>SECTION 107A OF THE BILL</b> | <b>EXISTING</b><br>- Not provided for  |
|                                 | <b>PROPOSED AMENDMENT:</b><br>-Add new section 107A(6)(f): Approved and gazetted land use plan and attendant development planning conditions of the zone in city, urban or rural area                |
|                                 | <b>JUSTIFICATION:</b><br>-Value of land is greatly influenced by approved land use plan for any urban area, city or rural area and the attendant development planning conditions in the area or zone |

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|---------------------------------|---|
| <b>SECTION 107B OF THE BILL</b> | <b>EXISTING:</b><br>- Not provided for  |
|                                 | <b>PROPOSED AMENDMENT:</b><br>-Add new section 107B(2)(d): approved and gazetted land use plan and attendant development planning conditions of the zone in city, urban or rural area |
|                                 | <b>JUSTIFICATION:</b><br>-Value of land greatly influenced by approved land use plan and attendant development planning conditions of an area or zone                                 |

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|---------------------------------|---|
| <b>SECTION 133A OF THE BILL</b> | <b>EXISTING : 133A(1)(d)</b><br>133 A  (1)(d): One advocate of the High Court not less than ten years' experience in land matters   |
|                                 | <b>PROPOSED AMENDMENT :</b><br>-Delete the contents in 133A(1)(d)<br>-Replace with 133(1)(d): One registered town planner with not less than ten years' experience on land use matters in both urban and rural areas  |
|                                 | <b>JUSTIFICATION:</b><br>-One advocate of the High court is already provided for in 1(a) as Chairman. The additional advocate in 1(d) does not add value but more costs to the Tribunal<br>-One town planner adds much value to the Tribunal as value of land is greatly influenced by land use and attendant development planning conditions |



From: "Gilbert Makore" <GMakore@oxfam.org.uk>  
To: clerk@parliament.go.ke  
Sent: Wednesday, March 14, 2018 3:20:17 PM  
Subject: Comments to the Land Value Index (Amendment) Bill 2018

1. D/Committees,  
2. Leonard Macharia  
For Amendment by  
the Committee  
16/3/18

Dear Sir/Madam,

Please find attached submissions to the Land Value Index Bill.

Regards

Gilbert Makore | East Africa Extractive Industries Advisor  
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1. 104(A)(4) In assessing the value of freehold land and determining the just compensation to be awarded for land acquired under this Act, an increase in the value shall be disregarded

(c) the increase in the apparent value of land is occasioned by any development or improvement to the land if-

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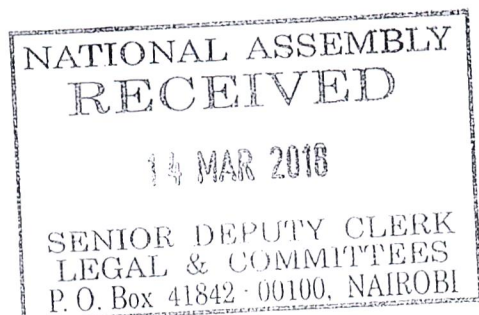
i) the improvement was made on the land within 2 years prior to the date of publication in the Gazette of the notice of intention to acquire the land unless it is proved that the improvement was made bona fide and not in contemplation of proceedings for the acquisition of the land

While this tries to address potential speculation, it has the potential of not assessing value based on genuine improvements by communities. In any case- there will be valuation and payment is fair-market (that is, no profit no loss) There should be clarity of bona fide/ at whose discretion. Particularly, as there is constant reference to compensation being paid out only where People have been in actual occupation of the land for an uninterrupted period of 12 years immediately before the publication of notice of intention to acquire the land. The provision should be reduced to 1 year.

2. (6) Despite subsections (1) and (2) the following matters may be taken into consideration in assessing the value of land-

c) if, in the consequence of the acquisition any of the persons interested in the land is or will be compelled to change residences or place of business, the payment of reasonable expenses to be determined by the Commission.

Too much left to discretion of Commission and therefore open to contestation. Best practice is to peg (percentage) this to the compensation award. In Uganda for example, law says there shall be paid as a disturbance allowance a sum not exceeding 15 percent of the sum awarded to the person from whom land is to be acquired where that person was using the land as his or her home.



(7) In determining the damage resulting from diminution of the profits of the land, the Commission shall require proof of existence of the profits including evidence of tax returns

In assessing land value, the Commission will consider diminution of profits and will require proof of existence of profits including evidence of tax returns. This would be difficult for communities who derive profit from land. The provision should provide exception for rural communities who trade off produce from their land.

People in actual occupation of the land for an uninterrupted period of 12 years immediately before the publication of notice of intention to acquire the land.

7. Section 111 of the Land Act is amended by inserting the following subsections immediately after subsection (1)

(1A) Compensation for compulsorily acquired land may take one or more of the following forms

(b) Monetary payment either in lump sum or in instalments spread over a period of not more than one year

While it is good that person whose land is being acquired has an option to choose compensation. On monetary payment- the Bill states that monetary payment either in lump sum or in instalments spread over a period of not more than one year. This again should be at the choosing of the person whose land is being acquired. Alternatively, the payment should just be a lump sum.

Definition of ' Prompt'

- i) Within a reasonable time of the taking of possession of the land by the Commission or
- ii) A written undertaking indicating the appointed dates not being more than one year from the date of the undertaking when compensation is to be made.

This leaves a lot to the discretion of the Commission. Who determines reasonable time? And prompt is also defined as anything within a year. This should be reduced to at most 90 days.

120 (2) In cases of where there is an urgent necessity for the acquisition of land and it would be contrary to the public interest for the acquisition to be delayed by the following, the normal procedure of compulsory acquisition under this Act, the Commission may take possession of uncultivated or pasture or arable land upon the expiration of 15 days from the date of publication of the notice of intention to acquire and on the expiration of that time the Commission shall notwithstanding that no award has been made, take possession of that land, in the manner prescribed by subsection (1)