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THE SENATE

TWELFTH PARLIAMENT
SECOND SESSION, 2018

SENATE STANDING COMMITTEE ON LAND, ENVIRONMENT AND
NATURAL RESOURCES

REPORT ON THE LAND VALUE INDEX LAWS (AMENDMENT) BILL
(NATIONAL ASSEMBLY BILLS NO. 3 OF 2018)

| PAPERS LAID | |
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| DATE | 15/11/2018 |
| TABLED BY | Sen. George Khariix |
| COMMITTEE | Land |
| CLERK AT THE TABLE | M. Oest |



Clerk's Chambers,
First Floor,
Parliament Buildings,
NAIROBI.

Rt. Hon. Speaker
You may approve for tabling
14/11/18
Approved
[Signature]
November, 2018
14/11/2018

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TABLE OF CONTENTS

| | |
|---|-----------|
| TABLE OF CONTENTS | 1 |
| PREFACE..... | 2 |
| Establishment of the Committee | 2 |
| Membership of the Committee..... | 2 |
| Acknowledgement..... | 3 |
| | |
| CHAPTER ONE | 5 |
| INTRODUCTION..... | 5 |
| 1.0 Background | 5 |
| 1.1 The Object of the Bill..... | 5 |
| 1.2 Overview of the Bill..... | 6 |
| 1.3 Consequences of the Bill..... | 8 |
| | |
| CHAPTER TWO | 9 |
| PUBLIC PARTICIPATION | 9 |
| 2.0 Attendance by Stakeholders | 9 |
| 2.1 Submissions from Stakeholders | 9 |
| | |
| CHAPTER THREE | 32 |
| COMMITTEE OBSERVATIONS AND RECOMMENDATIONS | 33 |
| 3.0 Observations and Determinations | 33 |
| 3.1 Recommendations | 38 |

PREFACE

Establishment of the Committee

The Standing Committee on Land, Environment and Natural Resources is established under the standing order 218(3) of the Senate Standing Orders. The mandate and the functions of the committee are set out under the Second Schedule to the Senate Standing Orders to consider all matters relating to lands and settlement, housing, environment, forestry, wildlife, mining, water resource management and development.

Membership of the Committee

The Committee is comprised of the following members:-

- | | |
|---------------------------------------|---------------------------|
| 1. Sen. Mwangi Paul Githiomi, M.P. | - Chairperson |
| 2. Sen. Prengei Victor, M.P. | - Vice Chairperson |
| 3. Sen. George Khaniri, MGH, M.P. | - Member |
| 4. Sen. Godana Hargura, M.P. | - Member |
| 5. Sen. Ndwiga Peter Njeru, EGH, M.P. | - Member |
| 6. Sen. Halake Abshiro, M.P. | - Member |
| 7. Sen. Boy Issa Juma, M.P. | - Member |
| 8. Sen. (Arch.) Sylvia Kasanga, M.P. | - Member |
| 9. Sen. Mwaruma Johnes, M.P. | - Member |

Mr. Speaker,

The Land Value Index Laws (Amendment) Bill, National Assembly Bills No. 3 of 2018 seeks to amend three Acts of Parliament, i.e. 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) to provide a framework for the assessment of the value of land in compulsory acquisition of land.

The Committee considered the Bill at length, conducted public participation and deliberated on the submissions received from various stakeholders. Based on the deliberations and public participation, the Committee will present a raft of amendments with the view of strengthening the provisions of the Bill for consideration by this House.

Acknowledgement

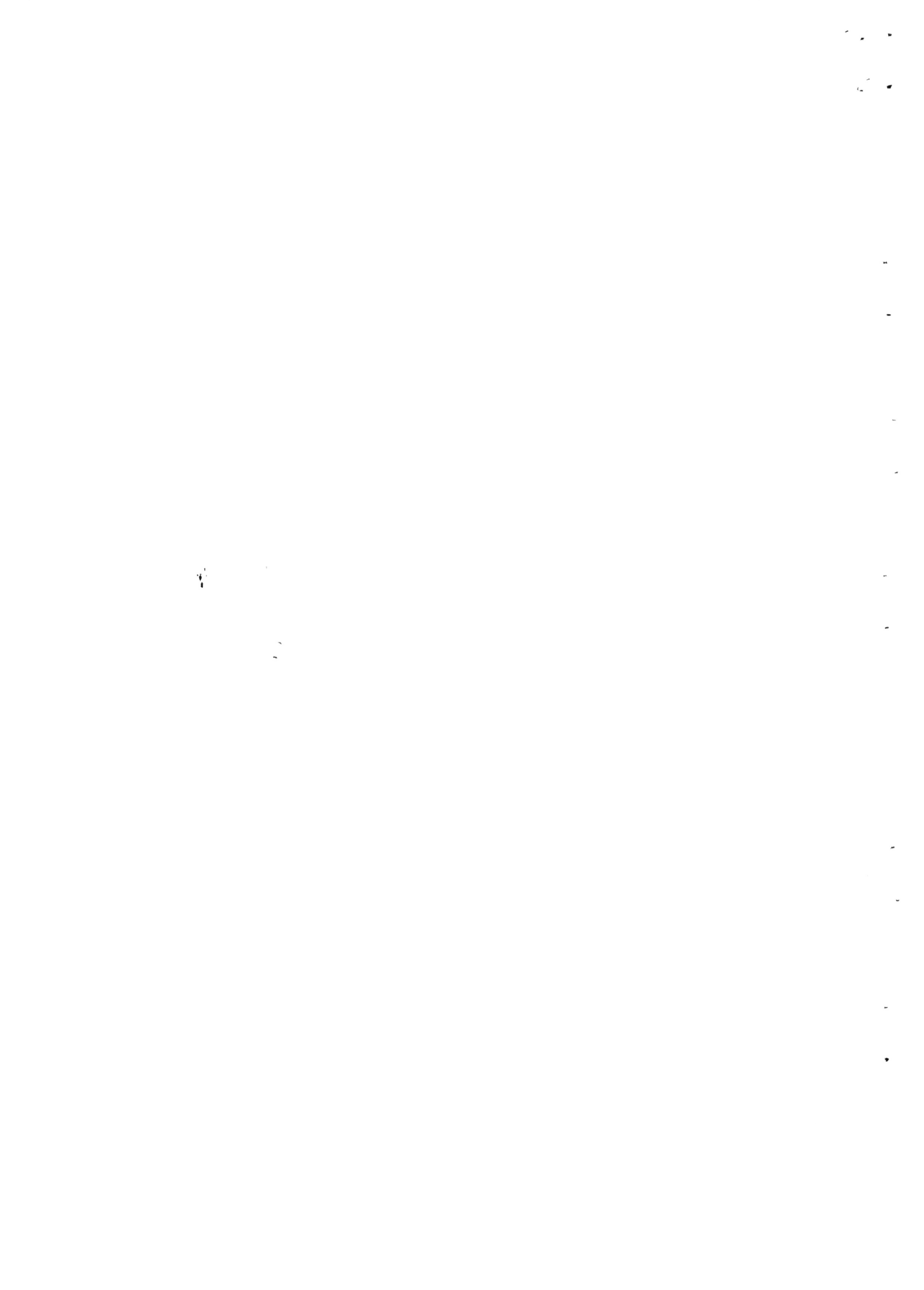
The Committee wishes to thank the Offices of the Speaker and the Clerk of the Senate as well as the Secretariat comprised of Mr. Victor Bett, Mr. Mitchell Otoro and Mr. Ahmed Odhwa for the support extended to it in the conduct of the public hearings and in fulfilling its mandate. Further it wishes to thank stakeholders who made both written and oral submissions such as the Ministry of Lands and Physical Planning, the National Land Commission, the Council of County Governors, the Institution of Surveyors of Kenya and Haki Madini Kenya.

Mr. Speaker,

It is now my pleasant duty, pursuant to standing order 143 of the Senate Standing Orders, to present the Report of the Standing Committee on Land, Environment and Natural Resources on the Land Value Index Laws (Amendment) Bill, National Assembly Bills No. 3 of 2018.

Signed.......... Date.....13/11/18.....

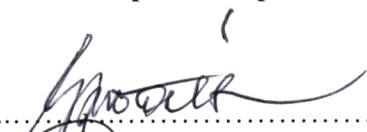
SEN. MWANGI PAUL GITHIOMI, MP
CHAIRPERSON
STANDING COMMITTEE ON LAND, ENVIRONMENT AND NATURAL
RESOURCES




**ADOPTION OF THE REPORT OF THE SENATE STANDING COMMITTEE
ON LAND, ENVIRONMENT AND NATURAL RESOURCES
THE LAND VALUE INDEX LAWS (AMENDMENT) BILL,
NATIONAL ASSEMBLY BILLS NO. 3 OF 2018**

We, the undersigned members of the Senate Standing Committee on Land, Environment and Natural Resources, do hereby append our signatures to adopt the Report-

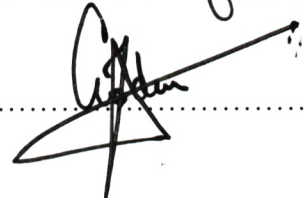
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2. Sen. Prengei Victor, M.P

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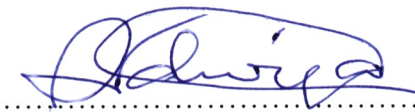
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5. Sen. Ndwiga Peter Njeru, EGH, MP.

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6. Sen. Halake Abshiro, M.P.

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7. Sen. Boy Issa Juma, M.P.

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8. Sen. (Arch.) Sylvia Kasanga, M.P.

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9. Sen. Mwaruma Johnes, M.P.

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CHAPTER ONE

INTRODUCTION

1.0 Background

The Land Value Index Laws (Amendment) Bill, National Assembly Bills No. 3 of 2018 is sponsored by, Sen. Kipchumba Murkomen, the leader of the majority party in the Senate. It seeks to amend three Acts of Parliament, i.e. 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) to provide a framework for the assessment of the value of land in compulsory acquisition of land.

The Bill was published on 12th February, 2018, considered and passed by the National Assembly with amendments on 8th August, 2018 and was read a First Time before the Senate on 12th September, 2018. Following the First Reading in the Senate, it stood committed, pursuant to standing order 140(1) of the Senate Standing Orders, to the Standing Committee on Land, Environment and Natural Resources for facilitation of public participation. Subsequently, the Committee, pursuant to Article 118(1)(b) of the Constitution and standing order 140 (5) of the Senate Standing Orders, invited submissions from members of the public on the Bill via an advertisement on the Standard and the Daily Nation Newspapers.

1.1 The Object of the Bill

The object of the Bill is to amend three Acts of Parliament, i.e. 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) to provide a framework for the assessment of the value of land in compulsory acquisition of land.

Since the enactment and operationalisation of the Land Act, the process of compulsory acquisition of land has been marred by controversies. This has mostly been around the valuation attached to land being acquired by the government. The arbitrary valuation of land intended for acquisition by the government has led to loss of public funds and delays in completion of public projects and payment of just compensation to legitimate owners of the land so acquired.

The importance of acquisition of private land for public purposes cannot be gainsaid. There is therefore need to streamline compulsory acquisition of land in Kenya to facilitate a just and efficient process that ensures that public projects are not inordinately delayed and that just compensation is promptly paid to legitimate owners of compulsorily acquired land.

The Bill does just that as it proposes to amend the three Acts to provide a seamless land acquisition process for public projects and payment of just compensation to owners of land so acquired.

1.2 Overview of the Bill

The Bill provides as follows-

1.2.1 Amendments to the Land Act

The Bill amends the Land Act to restrict courts from issuing orders against the forfeiture of land leased or licensed from the government where a tenant or licensee had initially defaulted in paying rent and the land is required for a public purpose.

The Bill also amends the Land Act to provide for the mapping, valuation and identification of occupiers of land identified for compulsory acquisition. It further provides for the particulars of the notice to be issued by the National Land Commission in initiating a compulsory acquisition process and the making of an order by a Land Registrar restricting dealings in any land identified in the notice.

The Bill further amends the Land Act by including a detailed criteria for assessing the value of freehold land that is being compulsorily acquired (See clause 6).

The Bill also amends the Land Act to include a criteria for assessing the value of leasehold land that is being compulsorily acquired. It provides for reversion of the land back to the government and payment of just compensation after considering the value of the land based on the unexpired term and the cost of improvements to the land.

The Bill amends the Land Act to include the forms of compensation for compulsorily acquired land from which the relevant owner will select one. These include —

- (a) alternative parcel of land of equivalent value and comparable geographical location;
- (b) monetary payment (lump sum or instalments in not more than one year);
- (c) government bond;
- (d) grant or transfer of development rights;
- (e) equity shares in a government owned entity; or
- (f) any other lawful compensation.

The Bill also amends the Land Act to remove the stipulation that the National Land Commission only takes possession of a compulsorily acquired land after paying compensation to the owner of the land.

The Bill further amends the Land Act to restrict courts from issuing orders stopping the development of land which has been formally taken by the National Land Commission through compulsory acquisition and funds for compensation have been 'committed'.

The Bill also amends the Land Act by inserting a new PART VIIIA which establishes the Land Acquisition Tribunal whose mandate would be to hear and determine appeals from the decision of the National Land Commission. The Tribunal will comprise of members appointed by the Cabinet Secretary responsible for land and drawn from the Judicial Service Commission (chairperson), Valuers Registration Board (two members), Surveyors Registration Board (one member) and the Attorney General (one member).

The Bill also amends the Land Act to create an offence where public officers divulge information on intended land acquisition before its publication with the intention of achieving some benefit or where they assist, facilitate or aid transaction in any such land contrary to the law. The offence is punishable by a maximum fine of Kshs. 5,000,000/- or imprisonment for 3 years or both.

1.2.2 Amendments to the Land Registration Act

The Bill amends the Land Registration Act to include compulsory acquisition as one of the matters that can trigger the registration of a restriction on a parcel of land by a Land Registrar.

1.2.3 Amendments to the Prevention, Protection and Assistance to Internally Displaced Persons and Affected Communities Act

The Bill amends the Prevention, Protection and Assistance to Internally Displaced Persons and Affected Communities Act to exempt compulsory acquisition of land with just compensation as an act constituting arbitrary displacement. In making this provision, the Bill deletes section 22 of the Act which makes provision for '*procedures for displacement induced by development projects*'. This is because the so called 'displacement induced by development projects' falls under compulsory acquisition of private land for public purposes and will be subject to the provisions regarding compulsory acquisition under the Land Act.

1.3 Consequences of the Bill

The Bill will harmonize and standardize the long and protracted process of compulsory acquisition of private land for public purposes, especially with respect to the compensation thereof. It will standardize and harmonize the value of land intended for compulsory acquisition and make compensation predictable, rational and not prone to subjective valuations.

CHAPTER TWO

PUBLIC PARTICIPATION

2.0 Attendance by Stakeholders

The Committee, pursuant to Article 118 of the Constitution and standing order 140 (5) of the Senate Standing Orders, invited submissions from members of the public on the Bill via an advertisement on the Daily Nation Newspaper and Standard Newspapers on 21st September, 2018. On 3rd October, 2018, the Committee met at the Mini Chamber, County Hall, Nairobi and received views on the Bill from stakeholders and members of the public. The Committee received oral and written submissions from —

1. Ministry of Lands and Physical Planning (MoLPP);
2. National Land Commission (NLC);
3. The National Environment Management Authority (NEMA);
4. The Council of County Governors (CoG);
5. The Institution of Surveyors of Kenya (ISK); and
6. Haki Madini Kenya (HMK).

2.1 Submissions from Stakeholders

The Committee received and considered the proposals from stakeholders on specific provisions of the Bill as follows-

(1) Long title

Proposal

Delete the long title and substitute the same with the following:

“AN ACT of Parliament to amend the Land Act 2012 reviewed in 2016 and the Land Registration Act 2012 reviewed in 2016 to provide for the assessment of land value index in respect of compulsory acquisition of land and for connected purposes”.

Rationale

Both clause 21 and the amended section 23 have no relevance to the Land Act, Land Registration Act nor the Land Value Index Bill and should be handled in the specific Act i.e. the Prevention, Protection and Assistance to Internally Displaced Persons and Affected Communities Act.

(2) Clause 1- Short title

Proposal 1

Delete the short title and substitute the same with the following:

“Compulsory Land Acquisition Bill, 2018”

Rationale 1

To ensure that the bill, once enacted will be the primary Act on compulsory acquisition in the Country. The land index is a tool to be used in valuation for compulsory acquisition and may not be a title of the Act.

Proposal 2

Delete the short title and substitute the same with the following:

“The Land Laws (Amendment) Bill, 2018”

Rationale 2

The Bill assumes that there is a Land Value Index Act in operation which is not the case.

(3) Clause 2- Interpretation

Proposal 1

Amend the definition of the term 'prompt' to provide that prompt payment includes payment, or portion of payment, at the time of acquisition and a total payment within a defined period, but not exceeding 3 months.

Rationale 1

Specificity is required in the definition of “prompt” compensation.

As currently defined, it leaves it at the discretion of the National Land Commission to determine “reasonable time” which may include any time within a period of a year. This may have adverse negative impact on displaced people who may have no means of income having lost possession to their livelihood source – land.

Proposal 2

1. Amend the definition of the term ‘prompt’ at paragraph (i) to replace the words “reasonable time” with “within 6 months”.
2. Amend the definition of the term ‘prompt’ at paragraph (ii) to replace the words “within one year” with “within 6 months”.

Rationale 2

1. The term, “reasonable time” is ambiguous. As such it is likely to be abused and the Government will take unnecessarily long to compensate affected persons.
2. Furthermore, the time period of “not more than one year” is equally long. Land value in Kenya is subject to several dynamics that occasion its increase within the shortest. Therefore the period provided does not take into consideration the interest of the land owners who may purchase alternative land with the compensation as land values may have risen during the period.

Proposal 3

Amend the definition of the term ‘full’ by deleting the words “not more than”.

Rationale 3

Compulsory acquisition of land most time occasion extremely severe social and economic disruption that compensation should not only be limited to the value of land but also take greater consideration about the value and quality of livelihoods of the affected persons after the loss of land and compensation.

Proposal 4

Amend the definition of the term ‘full’ to state as follows:

“full in relation to compensation for compulsorily acquired land” means the restoration of not more than market value of land, Crop/Trees damage, based on prevailing government rates and Building structures, based on gross replacement cost plus 15% for relocation costs.

“full in relation with wayleave acquisition” means restoration of land of not more than 30% of the Value of the wayleave trace or higher depending on the impact, crop/damage based on the prevailing government rates and building structures based on gross replacement cost plus 15% for relocation cost.

Rationale 4

Land Act recognizes two different forms of compensation for compulsory acquisition in respect to land and interests including easement and analogous rights

- (a) Compensation for Compulsorily acquired land, which is specified under sections 107
- (b) Compensation for easement and analogous rights which is specified under section 148.

The compensation approaches are equally different, as indicated by our proposed amendment.

The wayleave acquired within the owners land may be used for other activities such as grazing land, cultivation but development is limited.

Proposal 5

Amend the definition of the term ‘full’ to state as follows:

“full” in relation to compensation for compulsorily acquired land or of wayleaves, 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;

Rationale 5

In the definition, the word, “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.

Proposal 6

Insert the definition of the term ‘an occupant in good faith’ as set out under Article 40(4) of the Constitution to state as follows:

“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—

- (a) a person unlawfully occupying any land;
- (b) a person who occupies land without the consent of the lawful land owner, or whose right to occupation of the land is contested;
- (c) a person who acquired 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
- (d) a person in occupation of public land.

Rationale 6

This proposal gives meaning to the term “persons in good faith occupation of land” which is not defined under the Constitution, and ensures the principles of Article 40(4) of the Constitution are promoted.

It also protects the public interest in excluding compensation for persons occupying public land, as well as persons who are in the business of invading lands targeted for acquisition for public projects (also known as landpreneurs or speculators).

(4) Clause 3- Amendment to section 31 of the Land Act

Proposal

Delete the clause.

Rationale

This is an infringement of grantors' rights under Article 40 of the Constitution of Kenya that protects right to property which also allows any person who has an interest in or over a property the right of access to a court of law.

The Clause is unconstitutional as it is inconsistent with Article 40 of the Constitution. The Court has jurisdiction to pronounce itself on matters land. Include another object as follows: "to provide for research on land-use and development".

(5) Clause 4- Amendment to section 32 of the Land Act

Proposal

Delete the clause.

Rationale

This is an infringement of grantors' rights under Article 40 of the Constitution of Kenya that protects right to property which also allows any person who has an interest in or over a property the right of access to a court of law.

The Clause is unconstitutional as it is inconsistent with Article 40 of the Constitution. The Court has jurisdiction to pronounce itself on matters land

(6) Clause 5- Amendment to section 107 of the Land Act

Proposal 1

Amend by deleting paragraph (5) (b) (4) (b) and replacing it with the following:

"establish that the acquiring agency has identified the number of and maintained register of persons in actual occupation of the land, confirming for each such occupation how much time they have been in uninterrupted occupation or owned the interest in the land prior to the date on which the notice to compulsorily acquire was published, and their improvements thereon".

Rationale 1

This data enables the acquiring entity to identify persons eligible under the principles of the law for compensation, including particularly, persons in good faith occupation of land.

It also promotes the objectives of weeding out land speculation, helping the Government to lower the cost of acquiring private land for public use, thereby speeding up the delivery of public infrastructure development programmes.

Proposal 2

1. Amend by deleting paragraph 5 (a).
2. Amend by deleting paragraph 5 (b).
3. Amend by deleting paragraph 5 (d).

Rationale 2

1. This has already been addressed *by* the Land Act 2012 (revised) 2016 in section 107(1).
2. It is prudent to give reasons for the decline to acquire, so subsection 4 of the Land Act should not be deleted as proposed in the Bill.
3. This has already been addressed *by* the Land Act 2012 (revised) 2016 in section 107(7).

Proposal 3

In paragraph (5) (b) (4) (a) by deleting the words “Cause the affected land to be mapped out and”.

Rationale 3

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.

Proposal 4

Delete the paragraph (5) (b) (4) (b).

Rationale 4

It will be practically impossible for the acquiring body establish the persons in actual occupation for twelve years. This is addressed during inquiry where any person with claim is expected to present it to the Commission.

(7) Clause 6- Amendment to the Land Act by insertion of a new section 107A and 107B

Proposal 1

Amend subclause (1) of the proposed section 107A of the Land Act to state as follows:

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 in consultation with county governments for that purpose and the provisions of this Act.

Rationale 1

The issue of the index being developed by both the National Government and County Government will bring delays. Only a few counties have valuers. This will only delay the development of the index, which is a strategic national initiative.

Let this function be left to the Chief Government Valuer who has the personnel and the data necessary for the exercise, but in consultation with counties.

Proposal 2

Amend subclause (1) of the proposed section 107A of the Land Act to state as follows:

Valuation of freehold land and Registered Community Land for purposes of compensation under this Act shall be based on the land value index jointly developed by the Chief Government Valuer and Institution of Surveyors of Kenya in accordance with the provisions of Valuation Standards Developed by ISK for that purpose and the provisions of this Part *and*.

Rationale 2

The issue of the index being developed by both the National Government and County Government will bring challenges in development. There are 47 counties and having one office develop and disseminate to the public would be most efficient and cost effective.

We have therefore proposed to replace County Governments with the Institution of Surveyors of Kenya (ISK) mainly because it comprises of Valuers who are engaged in Valuation for compulsory acquisition.

ISK is a professional body that sets practice standards for valuers and has developed valuation standards for use by practitioners.

We have equally proposed that Valuation Standards developed by ISK to also form basis for valuation for the purpose of compulsory land acquisition.

We have also proposed to specify that the community land under consideration is “Registered” as per the provisions of Community Land Act, 2016, to avoid potential confusion with unregistered community.

Proposal 3

Under the proposed subsection 107A (1) of the Land Act:

Land value index development should be made an inclusive process which in addition to National and County Governments, also consider involving the National Land Commission and other stakeholders in the land sector including a valuer, surveyor and qualified non-state representative.

Consider establishing a land value index committee/body for consistency, institutionalization of the process and continued learning.

The bill should also include a clause allowing cabinet secretary in charge to enact regulations setting out further details on the value index process. For instance, can the value index developed at a given time subject to challenge and even in court or tribunal? Is the value index public information...among other clarification that can go into regulations.

Rationale 3

If this bill passes, the Land Value Index will be a key factor in land valuation and costing and thus should be developed in a participatory manner by the National Government, County Governments and Stakeholders in the Land Sector.

Proposal 4

Insert the new subclause 1 (a) after the proposed section 107A (1) of the Land Act to read as follows:

“The chief valuer and ISK shall publish the valuation indices quarterly 30 days after the end of the quarter”.

Rationale 4

We anticipate that the index will generate data on property values. This can easily be used to predict market development. The data can also be used by other stakeholders.

Therefore our amendment will ensure that this data is jointly published regularly by the Chief Government Valuer and ISK.

Proposal 5

Amend subclause (3) of the proposed section 107A of the Land Act to state as follows:

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, provided that such value indexation shall ensure that persons entitled to lawful compensation as a result of compulsory acquisition are left in a “no-better-no-worse” financial or economic condition as a result of such compensation.

Rationale 5

The Land Index Value should be realistic and allow persons affected to find alternative land and settle. If it is too low people will be homeless.

Proposal 6

Amend subclause (3) of the proposed section 107A of the Land Act to state as follows:

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.

Rationale 6

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.

Proposal 7

Amend subclause (3) of the proposed section 107A of the Land Act to replace the words “the declared value of the land for purposes of payment of rates, rents or stamp duty” appearing after the word ‘index’ with the words “declared market value shall be taken into account”.

Rationale 7

Payment of rates, rents and stamp duty ought not to be used for the purposes of calculating the land value index simply because their unimproved site values used in the rating roll are lower than the present values of the properties.

As a matter of fact, their rates payable for the aforementioned is arrived at using a different valuation approaches.

Proposal 8

Amend paragraph (4) (c) of the proposed section 107A of the Land Act to state as follows:

...the increase in the market value of the land is occasioned by any development or improvement to the land if...

Rationale 8

The word apparent value is a bit ambiguous and can be subject to misinterpretation. The proposal is to replace the word with ‘market value’.

Proposal 9

Delete subparagraph (4) (c) (i) of the proposed section 107A of the Land Act.

Rationale 9

It is impossible for a land owner to foresee acquisition of their land before actual gazettelement. It will therefore be unfair to stop the land owners from maximizing their land in anticipation of unforeseen acquisition.

The basis that ought to be relied on is the publication of intention to acquire, which has been addressed in (ii).

Proposal 10

In subparagraph (4) (c) (ii) of the proposed section 107A of the Land Act, insert the words “excluding capital improvements” after the word ‘maintenance’.

Rationale 10

There is a tendency for individuals would carry out significant improvement on their properties in guise of maintenance for purposes of compulsory acquisition.

The amendment therefore seeks to specify the threshold of such maintenance activities and deter potential abuse of the clause.

Proposal 11

Amend paragraph (5) (b) of the proposed section 107A of the Land Act to state as follows:

(b) any inconvenience caused to a third party interested in the land; or

Rationale 11

This paragraph is subject to misinterpretation.

Proposal 12

Amend paragraph (8) (a) of the proposed section 107A of the Land Act to state as follows:

- (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, or such other period of time as may from time to time be prescribed by way of regulations; or

Rationale 12

To ensure fairness in determination of occupants in good faith, and provide an avenue for addressing situations where well-meaning persons are not excluded from compensation on a technicality.

In addition, and particularly for trust lands, the systems and institutions established under the Community Land Act are progressively growing, and this flexibility permits for good practice to emerge, without exposing government to unmerited compensation obligations, while at the same time protecting legitimate property rights.

Proposal 13

Amend paragraph (8) (a) of the proposed section 107A of the Land Act to state as follows:

(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 not hold title to the land shall be assessed based on—

- (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;

Rationale 13

Compensation is not based on number of persons but on the area to be acquired.

Proposal 14

Insert a proviso to subclause (8) of the proposed section 107A of the Land Act after paragraph (d) to state as follows:

Provided that for the avoidance of doubt, compensation to be made to occupants in good faith of land compulsorily acquired shall not extend, under any circumstances, to compensation for the land actually occupied.

Rationale 14

To make it clear that compensation to persons in good faith occupation of land does not include a valuation and compensation of the actual land, but will cover only structures on the land and any associated improvements on the land.

Proposal 15

Delete subclause (9).

Rationale 15

This is now substantively addressed in the new amendment proposal for inclusion of this definition under section 2 of the Act.

Proposal 16

In subclause (10) of the proposed section 107 A of the Land Act, delete the section or replace the word 'shall' with 'may' and delete the phrase "in any case".

Rationale 16

Compensation is an emotive process that most times cause serious social, economic and cultural disturbance and has aspects that may be difficult to ordinarily value. Compensation payable should therefore not be very restricted.

Proposal 17

Amend paragraphs (2) (b) and (2) (c) of the proposed section 107B of the Land Act to state as follows:

- (b) the value of developments or improvements on the land and any other cost incurred on the basis of the terms and conditions of the lease; and

- (c) any other criteria which the Commission may prescribe through Regulations in consultation with both National and County Governments.

Rationale 17

1. Developments put up depreciate with time, and cost does not factor in that element. Other market forces come into play and therefore cost is not necessarily value.
2. 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 National and County Governments.

(8) Clause 7- Amendment to section 111 of the Land Act

Proposal 1

Amend paragraph (b) of the proposed subsection 111 (1A) of the Land Act to state as follows:

(b) monetary payment either in lump sum or in instalments spread over a period of not more than two years;

Rationale 1

This amendment takes cognizance of the Government's cash flows for compensation sums, which frequently flows beyond one financial year, promotes stabilisation of compensation values, and forces public agencies to achieve efficiency in compulsory acquisition programmes that promote fairness to affected persons, and allows Government to execute its development programmes.

Proposal 2

In paragraph (a) of the proposed subsection 111 (1A) of the Land Act:

1. Introduce an exception to limit communities who may be affected by the land acquisition as a unit towards land-for-land compensation. This is crucial to maintain social ties and family relationships
2. Insert the words 'or high' immediately before the word 'value'

3. Expand clause (a) to set out principles to be considered for the compensation land (new land). According to IFC:

- New land should comparably be equivalent or superior in production potential
- New land should be located in reasonable proximity to the land which is compulsorily acquired
- New land should be provided free of any transaction cost or encumbrances
- New land should be prepared for productive levels similar to the land compulsorily acquired

Rationale 2

2. Compensation especially for a large group of people affected and disrupted together should preferably exceed what prevailed before the disturbance.
3. There are experiences where communities are compensated in alternative land in which life becomes unbearable. A case in point is Kwale County where communities have been complaining that they were settled in swampy land having been displaced by mining being undertaken by Base Titanium.

Proposal 3

In paragraph (a) of the proposed section 111 (1A) of the Land Act, expand clause (b) to set out the principles to be observed where monetary/cash compensation is used.

Rationale 3

No rationale provided.

Proposal 4

Amend the proposed subsection 111 (1A) of the Land Act to add a general proviso below paragraph (f) to state as follows:

Provided that regardless of the form of compensation provided under this section, where an acquisition process is not completed within a period of twenty four months from the date of publication of the notice of intention to acquire, the acquisition shall lapse.

Rationale 4

To force efficiency on the Government, and ensure the acquisition processes are time bound and have consequences for non-completion.

Proposal 5

In the proposed section 111 (1B) of the Land Act, replace the word '*shall*' with '*may*'.

Rationale 5

We take great caution with the clause particularly considering the case where land being acquired is commonly owned or land acquisition that affect large/section community as a unit. In such case, guidance should be provided so that the form of compensation to be used takes due consideration for continued livelihoods.

Proposal 6

Delete the proposed section 111 (1C) of the Land Act.

Rationale 6

No compensation to a public body should be done. The public body can apply or relocation of facilities or developments but government cannot pay government.

Proposal 7

In paragraph (b) of the proposed section 111 (1A) of the Land Act, amend the paragraph to read "Monetary prompt payment in full".

Rationale 7

Our amendment seeks to align the proposed bill with Sections art. 40 (3) of the Constitution which provides for "prompt payment in full."

(9) Clause 10- Amendment to section 115 of the Land Act

Proposal 1

Amend the proposed subsection (3) to provide that title is held in trust for the beneficiaries by the respective county government.

Rationale 1

The title should be held in trust for the beneficiaries by the respective county government since only county governments are mandated to do this by virtue of Article 62 (1) (d) & (e) and (2) of the Constitution. The Mandate of the National Land Commission is only limited to administration.

Proposal 2

Amend the proposed subsection (3) by replacing the words “the Commission” with the words “Public Trustee”.

Rationale 2

The public trustee can use the property profitably to benefit the beneficiaries.

(10) Clause 12- Amendment to section 120 of the Land Act

Proposal

Further amend Section 120 (1) of the Land Act by adding the following proviso immediately after the words “as the case may be”:

Provided that such taking of possession shall not result in persons affected being rendered homeless, and provided further that payment of the award shall be completed within the period of time permitted under the Act.

Rationale

This amendment ensures that unfairness and injustice, as well as hardship, is not occasioned particularly to families.

It also promotes the concept of compulsory acquisition, which affirms the right of affected persons to fair and just compensation, in a prompt manner, without derailing development programmes.

(11) Clause 13- Amendment to section 121 of the Land Act

Proposal 1

Delete paragraph (b).

Rationale 1

This clause would limit the jurisdiction of the court to hear land disputes which then blocks an important avenue for seeking redress.

Proposal 2

Amend subclause (b) by adding the words “or project implementation” after the words “any development”.

Rationale 2

To remove ambiguity in the clause by clarifying that the subject under consideration is related to the implementation of projects in the case where the acquired land is part of a big project such as dams, roads, pipelines etc.

Proposal 3

Further amend Section 121 of the Land Act by—

- (a) inserting the following proviso to the proposed subsection (3A) by adding the following after the words “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.

(b) inserting a new subsection (b) to state as follows:

Without prejudice to subsection (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.

(c) renumbering the current subsection (b) as the new subsection (c).

Rationale 3

- (a) To prevent an impression that this is an unreasonable fetter of the court's freedom to adjudicate. This also means that payment of an award is not a precondition to possession – and courts cannot issue orders stopping taking of possession.
- (b) To ensure that where litigation ensues, all parties are first afforded an opportunity to be heard before any orders are made by a court of law.
- (c) For readability and flow.

(12) Clause 15- Amendment to section 124 of the Land Act

Proposal

Further amend Section 124 of the Land Act by deleting subclause (3).

Rationale

This is a consequential amendment to proposal 10 (amendment to Section 120 of the Land Act).

This provision effectively makes it impossible to undertake public projects before all payments are made to affected persons. Left un-repealed, we will not have solved anything through this entire set of amendments, and would effectively have legislated a stalemate in execution of Government development programmes.

This is inconsistent with the ability of the state to acquire private lands compulsorily, for public purposes. It renders futile the entire Land Value Index Laws (Amendment) Bill, 2018.

The amendment proposed achieves regulatory harmony on the subjects covered by this Bill, and ensures attainment of well-meaning public policy objectives.

This is a new proposal, necessitated by the import of the amendments under consideration in this Bill.

(13) Clause 16- Amendment to section 125 of the Land Act

Proposal 1

1. Further amend Section 125 1) of the Land Act by deleting the word “before” and substitute it with the word “after”.
2. Further amend Section 125 1) of the Land Act by inserting the following words immediately after the words “in the land”:

, within a period of twenty four months from the date of publication of the intention to compulsorily acquire the land.

Rationale 1

1. This will provide greater clarity and achieve regulatory harmony on the point in time when the entitlement to compensation becomes truly crystallised.
2. For the avoidance of doubt, the taking of possession does not extinguish, but in fact gives rise to claim a compensation – which is assured through the making of an award, but not through blockage of public projects.

Proposal 2

Delete the clause.

Rationale 2

There are risks associated with acquisition of land before making payment. This provision can also be misused by NLC. The International Finance Corporation (IFC) recommends that compensation should be made before any acquisition of assets takes place unless those payments are staggered to enable affected people to begin preparation of new site.

(14) Clause 17- Amendment to the Land Act by insertion of a new PART VIIIA

Proposal 1

Delete the entire clause.

Rationale 1

It is our take that there are adequate legal redress mechanism including Land and Environment Court and thus no need for a tribunal.

We also contend that the establishment of the tribunal violates the Constitution in Art40 (3)(ii) which: “allows any person who has an interest in, or right over, that property a right of access to a court of law.

Proposal 2

Amend the entire clause by deleting the ‘Land Acquisition Tribunal’ and substituting it with a “Land Acquisition Appeals Board”.

Rationale 2

To have a board that is more executive in nature than one that is judicial in nature.

Proposal 3

Amend the proposed subsection 133A (2) to read as follows:

The members of the Tribunal shall consist of —

- (a) one person appointed from among three registered valuers nominated by Valuers Registration Board, who shall serve as the chairperson
- (b) one person appointed from among three persons nominated by the Valuers Registration Board
- (c) one person appointed from among three persons nominated by the Institution of Surveyors of Kenya (ISK)

(d) One person appointed from among three persons nominated by Land Surveyors Board

(e) one person appointed from among two persons nominated by Attorney General

Rationale 3

Compulsory land acquisition is predominantly valuation related. As such, having a chairperson who is a registered and practicing valuer will ensure the Tribunal benefits from practical experience in the sector.

Furthermore, it is important to have valuers in private practice represented in the tribunal so as to establish critical link in the process and practice.

Proposal 4

In the proposed subsection 133A (1), delete the words “The Judicial Service Commission” and substitute with the words “The Cabinet Secretary”.

Rationale 2

To retain the new board within the executive, owing to its specialised nature.

Proposal 3

Insert a new subclause (2A) after the proposed subsection 133A (2) as follows:

In making the appointments in subsection (1), the Cabinet Secretary shall choose from the following—

- (a) one person from three nominees of the Judicial Service Commission, who shall serve as the chairperson;
- (b) two persons from five persons nominated by the Valuers Registration Board;

Clauses 3, 4 and 13 (b) of the Bill restrict the power of courts to issue orders against forfeiture of land by the government where a tenant or licensee breaches any condition of a lease or licence. These provisions seem to violate the letter and spirit of the Constitution. Article 50 (1) of the Constitution gives every person unfettered access to a court of law while Article 165 (3) (a) therein confers on the High Court unlimited original jurisdiction in civil matters. The Constitution therefore provides courts with the power to adjudicate disputes and does not contemplate the restriction of those powers.

Subclauses 5 (a), 12 (a), 13 (a) and 16 (b) of the Bill are not necessary as the amendments they propose to make were effected vide the Land Laws (Amendment) Act, 2016.

Subclause 5 (b) of the Bill introduces important steps to be taken by the National Land Commission after establishing that the request to compulsorily acquire land by the government complies with the Constitution. The effect of the amendment however removes the requirement for the Commission to inform and give reasons to the relevant government body when it rejects the body's request to compulsorily acquire land. This requirement should be retained.

The land value index should be developed jointly by the national and county governments to ensure that both levels of government have meaningful participation in its development. Other stakeholders will be captured in the public participation conducted during the development of the index. The index should then be tabled before both houses of Parliament for their approval.

Compensation for compulsorily acquired land should be based solely on the value of the interest in the land and therefore the development of the land value index should be based on the value of the interest in the land. The index should not be subjected to the economic or financial position of the persons being compensated. It should not be relevant whether they will be better off after the compensation but only that the compensation reflects the true value of the interest in the land.

Owners of land make declarations on the value of their land when paying rates, stamp duty and other taxes. Since this is the value that is used when the county and national governments are collecting revenue on the land, the value should be taken into consideration when calculating the land value index, noting that it was declared by the owner. Owners of land cannot undervalue

their land to pay lower taxes and then ask for a higher value when the same government they paid lower taxes to wants to acquire the property for public use.

Twelve years is a very long period and restricting occupants in good faith to those in uninterrupted occupation of land for at least twelve years is not tenable and will exclude very many people with legitimate interest in land. The period should be amended to at least six years and should not be subject to change unless through statute by the Senate and the National Assembly.

Since an occupant in good faith under the Bill does not own the property they occupy, the value of compensation should not be based on the size of the land they occupy.

The compensation given to occupants in good faith should not exceed the value of the structures they've built and the improvements they've made on the land. It is prudent to make this provision to distinguish between owners of land and occupiers in good faith to encourage people to own land legally.

Compensation of leasehold land should be based on, among others, the value of developments or improvements on the land and not the cost of the developments and improvements. Developments and improvements vary with time and the cost thereof does not necessarily reflect the value at the time of compulsory acquisition.

The National Land Commission, when making regulations under the Bill, should consult both the national and county governments and seek the approval of the Senate and the National Assembly.

Compensation for land compulsorily acquired should be paid before taking possession. There are however times where early possession is necessary for emergencies or to avoid wastage of public resources. In such cases, early possession should be allowed provided that it does not render an occupant of the land homeless and the compensation is paid within a year of the taking of possession. A compulsory acquisition process should not last more than two years after the notice of intention to acquire has been issued.

The person whose interest in land is being compulsorily acquired should be at liberty to choose either of the following methods of compensation—

- (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.

There are a number of public bodies, some with relative independence from other public bodies. Some public bodies purchase land or develop the land that they own. It is therefore imperative that the public bodies that buy or develop land are compensated for the funds used. For instance if a county government utilises its funds to buy and develop land, when the national government requires that land for a national project then it should compensate the county government which used its share of public funds to buy and develop the land.

Article 67 (2) (a) of the Constitution confers on the National Land Commission the power to manage public land on behalf of national and county governments. It is therefore the public body best suited to hold titles to absent owners of compulsory acquired land in their trust.

Entities required to nominate persons to the Land Acquisition Tribunal should only nominate the people to be appointed, not more so that the Cabinet Secretary chooses from among the nominees.

Section 22 of the Prevention, Protection and Assistance to Internally Displaced Persons and Affected Communities Act makes provision for the procedures for displacement induced by development projects, in essence compulsory acquisition. Clause 21 of the Bill therefore deletes the provision, noting that the Land Act sufficiently makes provision for compulsory acquisition.

Clause 21 of the Bill also exempts compulsory acquisition of land with just compensation from acts constituting arbitrary displacement under the Act.

3.1 Recommendations

The Committee makes the following recommendations and proposes to make the following amendments to the Bill:

1. To amend the title to the Bill to state “Land Laws (Amendment) Bill, 2018.
2. To amend clause 2 of the Bill in paragraph (i) of the definition of the term ‘prompt’ to provide that “prompt” means within a reasonable time of, and in any case not more than one year after, the taking of possession of the land by National Land Commission.
3. To amend clause 2 of the Bill in the definition of the term ‘full’ to provide that “full” means the restoration of the value of the land including improvements thereon as at the date of the notice of intention to acquire the land and any other matter provided for in the Act.
4. To delete clauses 3 and 4 of the Bill.
5. To delete subclauses 5 (a), 12 (a) and 16 (b) of the Bill.
6. To amend Clause 5 of the Bill to provide for an amendment to section 107 (3) of the Land Act to provide that the National Land Commission informs an acquiring body when it rejects a request for acquisition of land and provides reasons for such a rejection.
7. To amend subclause 5 (b) in the proposed subsection 107 (4) (b) of the Land Act to provide that the National Land Commission shall establish that the acquiring body has identified the number and maintains a register of persons in actual occupation of the land, confirming for each such occupation how much time they have been in uninterrupted occupation or ownership of interest in the land prior to the date of the request for acquisition of the land and their improvements thereon.
8. To amend the proposed sections 107A (1) and 107B (2) (a) of the Land Act under clause 6 of the Bill to provide that the land value index be approved by the Senate and the National Assembly and that it be gazetted by the Cabinet Secretary responsible for Land.

9. To amend the proposed section 107A (3) (c) of the Land Act under clause 6 of the Bill to delete the word ‘apparent’ appearing immediately after the introductory words ‘the increase in the’.
10. To amend the proposed section 107A (3) (c) (ii) of the Land Act under clause 6 of the Bill to exclude capital improvements from among maintenance of structures allowed on land being compulsorily acquired after the notice of intention to acquire has been issued.
11. To amend the proposed section 107A (8) (a) of the Land Act under clause 6 of the Bill to reduce the period required for someone to be considered an occupant in good faith from twelve years to six years.
12. To amend the proposed section 107B (2) (b) of the Land Act under clause 6 of the Bill to state that in assessing the value of the leasehold land and determining the just compensation to be awarded for compulsorily acquired land, the value of developments or improvements on the land and any other cost incurred on the basis of the terms and conditions of the grant shall be taken into consideration.
13. To amend the proposed section 107B (2) (c) of the Land Act under clause 6 of the Bill to state that in assessing the value of leasehold land and determining the just compensation to be awarded for compulsorily acquired land, criteria prescribed by the National Land Commission through Regulations in consultation with both National and County Governments and with the approval of the Senate and the National Assembly shall be taken into consideration.
14. To introduce a new amendment to section 110 (1) of the Land Act to delete the word ‘authority’ appearing immediately after the words ‘to the acquiring’ and substitute it with the word ‘body’ so that it refers to an ‘acquiring body’.
15. To amend the proposed section 111 (1A) of the Land Act under clause 7 of the Bill to provide that regardless of the form of compensation provided, where an acquisition process is not completed within a period of two years from the date of publication of the notice of intention to acquire, the acquisition lapses.

16. To introduce a new amendment to section 120 (1) of the Land Act to provide that taking of possession before compensation shall be allowed provided that payment of the award is completed within one year of the taking of possession and further that those living on the compulsorily acquired land are compensated before being dispossessed.
17. To delete clause 13 of the Bill.
18. To amend the proposed section 133A (2) of the Land Act under clause 17 of the Bill to read as follows:
 - (2) The members of the Tribunal shall consist of —
 - (a) one person nominated by the Judicial Service Commission, who shall serve as the chairperson;
 - (b) one person nominated by the Cabinet Secretary;
 - (c) one person nominated by the Valuers Registration Board
 - (d) one person nominated by Land Surveyors' Board; and
 - (e) one person nominated by Attorney General.

The Committee shall introduce the above amendments during the committee of the whole house for consideration and approval of the Senate.

REPUBLIC OF KENYA



**TWELFTH PARLIAMENT
THE SENATE**

PUBLIC HEARINGS/ RECEIPT OF MEMORANDA

**LAND VALUE INDEX LAWS (AMENDMENT) BILL, NATIONAL ASSEMBLY
BILLS NO. 3 OF 2018**

The Land Value Index Laws (Amendment) Bill, National Assembly Bills No. 3 of 2018 was read a First Time in the Senate on 12th September, 2018 and was thereafter committed to the Senate Standing Committee on Land, Environment and Natural Resources for consideration.

Pursuant to the provisions of Article 118(1)(b) of the Constitution and standing order 140 of the Senate Standing Orders, the Senate Standing Committee on Land, Environment and Natural Resources now invites interested members of the public and stakeholders to submit their views on the Bill. The views may be submitted through submission of written memoranda in the following manner-

1. Public Hearing for the Bill shall be held on **Wednesday, 3rd October, 2018 from 10:00 a.m. to 12:00 noon at Mini Chamber, County Hall, Parliament Buildings, Nairobi;** or
2. Written Memoranda may be forwarded to the **Clerk of the Senate/ Secretary, Parliamentary Service Commission, P.O. Box 41842-00100, Nairobi,** hand-delivered to the **Office of the Clerk of the Senate/ Secretary, Parliamentary Service Commission, First Floor, Main Parliament Buildings, Nairobi** or emailed to **cSenate@parliament.go.ke**, to be received **on or before Wednesday, 3rd October, 2018 at 5.00 p.m.**

The Bill may be found on the Parliament website at <http://www.parliament.go.ke/senate>.

**CLERK OF THE SENATE/ SECRETARY,
PARLIAMENTARY SERVICE COMMISSION.**

MINUTES OF THE 49TH MEETING OF THE SENATE STANDING COMMITTEE ON LAND, ENVIRONMENT AND NATURAL RESOURCES HELD ON TUESDAY, 13TH NOVEMBER, 2018 IN COMMITTEE ROOM 10, MAIN PARLIAMENT BUILDING AT 9.00 AM.

MEMBERS

1. Sen. Mwangi Paul Githiomi, M.P.
2. Sen. Ndwiga Peter Njeru, EGH. M.P.
3. Sen. George Khaniri, MGH, M.P.
4. Sen. Mwaruma Johnes, M.P.

PRESENT

- **Chairperson**
- Member
- Member
- Member

ABSENT WITH APOLOGY

1. Sen. Prengei Victor, M.P.
2. Sen. Slyvia Kasanga, M.P.
3. Sen. Godana Hargura, M.P.
4. Sen. Boy Issa Juma, M.P.
5. Sen. Halake Abshiro, M.P.

- **Vice Chairperson**
- Member
- Member
- Member
- Member

IN ATTENDANCE

SENATE SECRETARIAT

1. Mr. Victor Bett - Clerk Assistant
2. Mr. Mitchell Otoro - Legal Counsel
3. Mr. Wilson Bosumet - Principal Seargent at arms
4. Mr. Abdalla Mboore - Seargent at arms
5. Ms. Joyce Chelang'at - Audio Recording

MINUTE SEN/SCLNDR/290/2018: PRELIMINARIES

The meeting was called to order at 9.30am by the Chairperson followed by a word of prayer.

MINUTE SEN/SCLNDR/291/2018: ADOPTION OF AGENDA

The agenda was therefore proposed by Sen. Mwaruma Johnes, M.P. and seconded by Sen. George Khaniri, M.P as follows.

1. Preliminaries;
 - *Prayer,*
 - *Chairpersons remarks*
2. Adoption of the agenda;
3. Confirmation of Minutes
4. Matters Arising
5. Adoption of Committee Report on the Land Value Index Laws (Amendment) Bill, National Assembly Bills No. 3 of 2018;
6. Pending site visits;
7. Pending Petitions and Statements;

8. Any other Business;
9. Date of the next meeting;
10. Adjournment.

MINUTE SEN/SCLNR/292/2018:

CONFIRMATION OF MINUTES

The Minutes of the 41st sitting held on 3rd October, 2018 were confirmed as a true record of the proceedings having been proposed and seconded by Sen. Ndwiga Peter Njeru, M.P. and seconded by Sen. Mwaruma Johnes, M.P. respectively.

The Minutes of the 48th sitting held on 7th November, 2018 were confirmed as a true record of the proceedings having been proposed and seconded by Sen. Mwaruma Johnes, M.P. and seconded by Sen. Mwangi Paul Githiomi, M.P. respectively.

MINUTE SEN/SCLNR/293/2018:

MATTERS ARISING

Under MINUTE SEN/SCLNR/286/2018:

DISCUSS THE MATTER ON DISOBEYING OF SUMMONS BY THE GOVERNOR, MURANG'A COUNTY TO DISCUSS THE CONTROVERSY SURROUNDING THE CONTROL AND MANAGEMENT OF MURANG'A WATER AND SEWERAGE COMPANY LIMITED WHICH HAS RESULTED IN THE INTERRUPTION OF WATER SERVICES PROVISION IN MURANG'A COUNTY.

The Committee resolved that following the earlier decision to that the Governor, Muranga County be arrested by the Inspector General of Police and be compelled to appear before the Committee on Thursday, 15th November, 2018 in Committee Room 10, Main Parliament Building at 11.00 a.m; that he be surcharged and fined Kshs. 500,000 when he appears before the Committee.

MINUTE SEN/SCLNR/294/2018:

ADOPTION OF THE COMMITTEE REPORT ON THE LAND VALUE INDEX LAWS (AMENDMENT) BILL, NATIONAL ASSEMBLY BILLS NO. 3 OF 2018;

The Committee reviewed the draft amendments and recommendations in its Report on the Land Value Index Laws (Amendment) Bill, National Assembly Bills No. 3 of 2018. The Committee then adopted them after having been proposed by Sen. Mwaruma Johnes, M.P. and seconded by Sen. Prengel Victor, M.P.

MINUTE SEN/SCLNR/295/2018: PENDING SITE VISITS

The Committee deferred the aforementioned agenda to the next sitting.

MINUTE SEN/SCLNR/296/2018: PETITIONS AND STATEMENTS

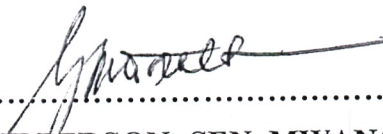
The Committee deferred the aforementioned agenda to the next sitting.

MINUTE SEN/SCLNENR/297/2018: ANY OTHER BUSINESS;

There were no other matters discussed during the meeting.

MINUTE SEN/SCLNENR/298/2018: DATE OF NEXT MEETING;

The meeting was adjourned at 11.04 am and the date of the next meeting was to be called on notice.

SIGNATURE.......... DATE.....
(CHAIRPERSON: SEN. MWANGI PAUL GITHIOMI, MP.)

MINUTES OF THE 48TH MEETING OF THE SENATE STANDING COMMITTEE ON LAND, ENVIRONMENT AND NATURAL RESOURCES HELD ON WEDNESDAY, 7TH NOVEMBER, 2018 IN COMMITTEE ROOM 10, MAIN PARLIAMENT BUILDING AT 11.00 AM.

MEMBERS

1. Sen. Mwangi Paul Githiomi, M.P.
2. Sen. Prengei Victor, M.P.
3. Sen. Slyvia Kasanga, M.P.
4. Sen. Mwaruma Johnes, M.P.

PRESENT

- **Chairperson**
- **Vice Chairperson**
- Member
- Member

ABSENT WITH APOLOGY

1. Sen. Godana Hargura, M.P. - Member
2. Sen. Ndwiga Peter Njeru, EGH. M.P. - Member
3. Sen. Boy Issa Juma, M.P. - Member
4. Sen. Halake Abshiro, M.P. - Member
5. Sen. George Khaniri, MGH, M.P. - Member

IN ATTENDANCE

SENATE SECRETARIAT

1. Mr. Victor Bett - Clerk Assistant
2. Mr. Mitchell Otoro - Legal Counsel
3. Mr. Wilson Bosumet - Principal Seargent at arms
4. Ms. Hawa Abdi - Seargent at arms
5. Ms. Joyce Chelang'at - Audio Recording

MINUTE SEN/SCLNR/281/2018: PRELIMINARIES

The meeting was called to order at 11.30am by the Chairperson followed by a word of prayer.

MINUTE SEN/SCLNR/282/2018: ADOPTION OF AGENDA

The agenda was therefore proposed by Sen. Mwaruma Johnes, M.P. and seconded by Sen. Prengei Victor, M.P as follows.

1. Preliminaries;
 - *Prayer,*
 - *Chairpersons remarks*
2. Adoption of the agenda;
3. Confirmation of Minutes
4. Matters Arising
5. Discuss the Public Hearing Matrix on the Land Value Index Laws (Amendment) Bill, National Assembly Bills No. 3 of 2018;
6. Discuss the matter on disobeying of summons by the Governor, Murang'a County to discuss the controversy surrounding the control and management of

Murang'a Water and Sewerage Company Limited which has resulted in the interruption of water services provision in Murang'a County.

7. Pending site visits: Kajiado - Naivasha SGR Project and Gilgil area on Land disputes, Wildlife Conservancies site visits to Isiolo, Garissa & Samburu counties, resettlement of the minority Ngerek Community following their proposed eviction from South Nandi Forest, in Nandi County and Visit to Makueni on Oil Spillage compensations.
8. Any other Business;
9. Date of the next meeting;
10. Adjournment.

MINUTE SEN/SCLNR/283/2018: CONFIRMATION OF MINUTES

The confirmation of previous minutes were differed to such a time when the Committee will be able to handle housekeeping matters

MINUTE SEN/SCLNR/284/2018: MATTERS ARISING

Matters arising would be discussed during confirmation of minutes at housekeeping.

MINUTE SEN/SCLNR/285/2018:

PUBLIC HEARING MATRIX ON THE LAND VALUE INDEX LAWS (AMENDMENT) BILL, NATIONAL ASSEMBLY BILLS NO. 3 OF 2018;

The Committee reviewed the Public Hearing Matrix and resolved to take the following amendments and recommendations:

1. To amend the title to the Bill to state "Land Laws (Amendment) Bill, 2018.
2. To amend clause 2 of the Bill in paragraph (i) of the definition of the term 'prompt' to provide that "prompt" means within a reasonable time of, and in any case not more than one year after, the taking of possession of the land by National Land Commission.
3. To amend clause 2 of the Bill in the definition of the term 'full' to provide that "full" means the restoration of the value of the land including improvements thereon as at the date of the notice of intention to acquire the land and any other matter provided for in the Act.
4. To delete clauses 3 and 4 of the Bill.
5. To delete subclauses 5 (a), 12 (a) and 16 (b) of the Bill.
6. To amend Clause 5 of the Bill to provide for an amendment to section 107 (3) of the Land Act to provide that the National Land Commission informs an

acquiring body when it rejects a request for acquisition of land and provides reasons for such a rejection.

7. To amend subclause 5 (b) in the proposed subsection 107 (4) (b) of the Land Act to provide that the National Land Commission shall establish that the acquiring body has identified the number and maintains a register of persons in actual occupation of the land, confirming for each such occupation how much time they have been in uninterrupted occupation or ownership of interest in the land prior to the date of the request for acquisition of the land and their improvements thereon.
8. To amend the proposed sections 107A (1) and 107B (2) (a) of the Land Act under clause 6 of the Bill to provide that the land value index be approved by Parliament and that it be gazetted by the Cabinet Secretary responsible for Land.
9. To amend the proposed section 107A (3) (c) of the Land Act under clause 6 of the Bill to delete the word 'apparent' appearing immediately after the introductory words 'the increase in the'.
10. To amend the proposed section 107A (3) (c) (ii) of the Land Act under clause 6 of the Bill to exclude capital improvements from among maintenance of structures allowed on land being compulsorily acquired after the notice of intention to acquire has been issued.
11. To amend the proposed section 107A (8) (a) of the Land Act under clause 6 of the Bill to reduce the period required for someone to be considered an occupant in good faith from twelve years to six years.
12. To amend the proposed section 107B (2) (b) of the Land Act under clause 6 of the Bill to state that in assessing the value of the leasehold land and determining the just compensation to be awarded for compulsorily acquired land, the value of developments or improvements on the land and any other cost incurred on the basis of the terms and conditions of the grant shall be taken into consideration.
13. To amend the proposed section 107B (2) (c) of the Land Act under clause 6 of the Bill to state that in assessing the value of leasehold land and determining the just compensation to be awarded for compulsorily acquired land, criteria prescribed by the National Land Commission through Regulations in consultation with both National and County Governments and with the approval of Parliament shall be taken into consideration.
14. To introduce a new amendment to section 110 (1) of the Land Act to delete the word 'authority' appearing immediately after the words 'to the acquiring' and substitute it with the word 'body' so that it refers to an 'acquiring body'.

15. To amend the proposed section 111 (1A) of the Land Act under clause 7 of the Bill to provide that regardless of the form of compensation provided, where an acquisition process is not completed within a period of two years from the date of publication of the notice of intention to acquire, the acquisition lapses.
16. To introduce a new amendment to section 120 (1) of the Land Act to provide that taking of possession before compensation shall be allowed provided that it does not result in persons affected being rendered homeless and further that payment of the award is completed within one year of the taking of possession.
17. To delete clause 13 of the Bill.
18. To amend the proposed section 133A (2) of the Land Act under clause 17 of the Bill to read as follows:
 - (2) The members of the Tribunal shall consist of —
 - (a) one person nominated by the Judicial Service Commission, who shall serve as the chairperson;
 - (b) one person nominated by the Cabinet Secretary;
 - (c) one person nominated by the Valuers Registration Board
 - (d) one person nominated by Land Surveyors' Board; and
 - (e) one person nominated by Attorney General.

MINUTE SEN/SCLNR/286/2018:

DISCUSS THE MATTER ON DISOBEYING OF SUMMONS BY THE GOVERNOR, MURANG'A COUNTY TO DISCUSS THE CONTROVERSY SURROUNDING THE CONTROL AND MANAGEMENT OF MURANG'A WATER AND SEWERAGE COMPANY LIMITED WHICH HAS RESULTED IN THE INTERRUPTION OF WATER SERVICES PROVISION IN MURANG'A COUNTY.

The Committee resolved that following the defiance by the Governor to appear before the Committee on the date and time specified in the Summons, that he be arrested by the Inspector General of Police and be compelled to appear before the Committee on Thursday, 15th November, 2018 in Committee Room 10, Main Parliament Building at 11.00 a.m.

MINUTE SEN/SCLNR/287/2018: PENDING SITE VISITS

The agenda on pending site visits to Kajiado – Naivasha SGR Project and Gilgil area on Land disputes, Wildlife Conservancies site visits to Isiolo, Garissa & Samburu counties, resettlement of the minority Ngerek Community following their proposed



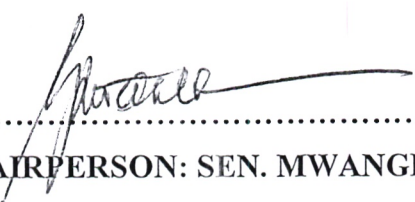
eviction from South Nandi Forest, in Nandi County and Visit to Makueni on Oil Spillage compensations was differed to the next meeting.

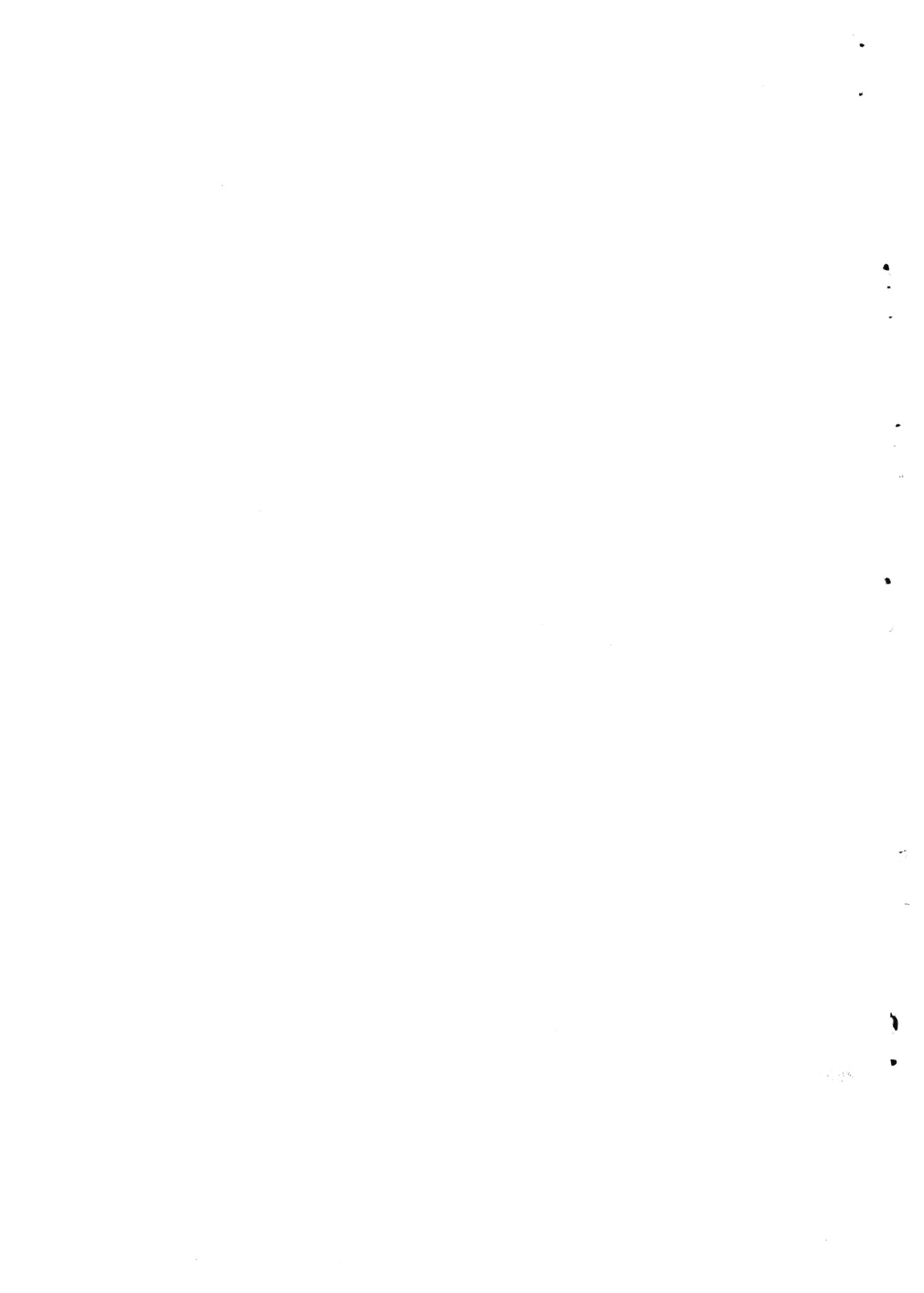
MINUTE SEN/SCLNDR/288/2018: ANY OTHER BUSINESS;

There were no other matters discussed during the meeting.

MINUTE SEN/SCLNDR/289/2018: DATE OF NEXT MEETING;

The meeting was adjourned at 12.34 pm and the date of the next meeting was to be called on notice.

SIGNATURE.......... DATE..... 13/11/18.....
(CHAIRPERSON: SEN. MWANGI PAUL GITHIOMI, MP.)



MINUTES OF THE 41ST MEETING OF THE SENATE STANDING COMMITTEE ON LAND, ENVIRONMENT AND NATURAL RESOURCES HELD ON WEDNESDAY, 3RD OCTOBER, 2018 IN THE MINI CHAMBER, COUNTY HALL, PARLIAMENT BUILDINGS AT 9.00 AM.

MEMBERS

1. Sen. Mwangi Paul Githiomi, M.P.
2. Sen. Prengei Victor, M.P.
3. Sen. Halake Abshiro, M.P.
4. Sen. Ndwiga Peter Njeru, EGH. M.P.
5. Sen. Mwaruma Johnes, M.P.

PRESENT

- **Chairperson**
- **Vice Chairperson**
- Member
- Member
- Member

ABSENT WITH APOLOGY

1. Sen. Godana Hargura, M.P. - Member
2. Sen. Boy Issa Juma, M.P. - Member
3. Sen. George Khaniri, MGH, M.P. - Member
4. Sen. Slyvia Kasanga, M.P. - Member

IN ATTENDANCE

STAKEHOLDERS

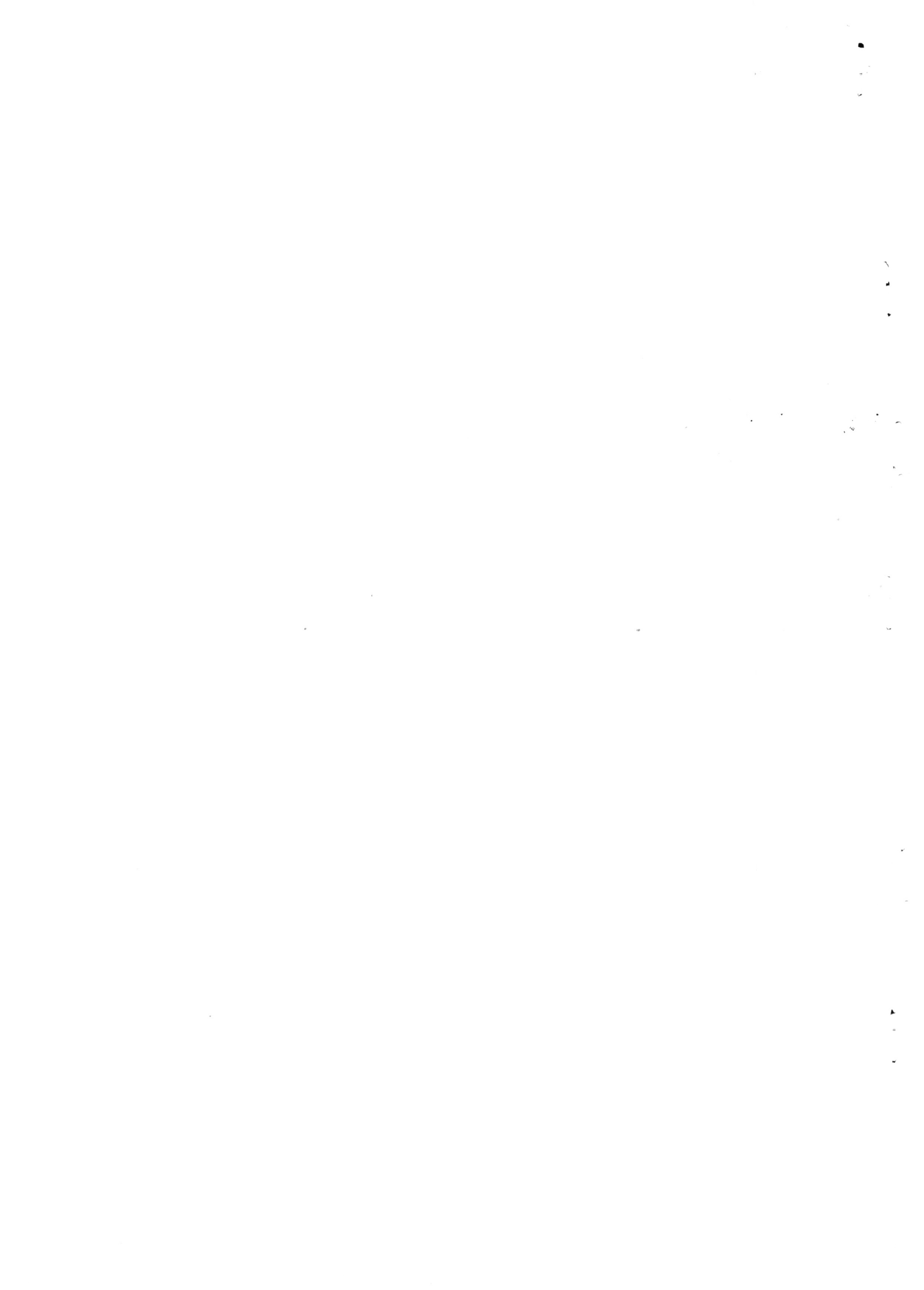
1. Farida Karoney-CS MOLPP
2. Hon. Gideon Mung'aro-CS MOLPP
3. Hon. Waititu Baba Yao-Governor
4. Prof. David Kiwia-Ag CEO NLC
5. Abraham Samoei-chairman ISK
6. Moses Kiambuku-CEO
7. Monica Obongo-SADO
8. Herbert Were-DDLV
9. Charles Moemi-DDLV
10. Benard Cherutich-ADFA
11. Jacob Oindo-Ag Dir. VA&T
12. Jacob Owino-Registry
13. Nicholas Owino-SDLV
14. Francis C. Bor-NLC
15. Owino Jacob Cartwright-SLRO MLPP
16. William K Kalegu-OGIEK

SENATE SECRETARIAT

1. Mr. Victor Bett - Clerk Assistant
2. Mr. Mitchell Otoro - Legal Counsel
3. Ms. Joyce Chelang'at - Audio Recording

MINUTE SEN/SCLNR/233/2018: PRELIMINARIES

The meeting was called to order at 9.30am by the Chairperson followed by a word of prayer.



MINUTE SEN/SCLNDR/234/2018: ADOPTION OF AGENDA

The agenda of the meeting was adopted with amendments to allow beginning with agenda 5 then come back to agenda 4 after the guests have arrived. The agenda was therefore proposed by Sen. Godana Hargura, M.P. and seconded by Sen. Halake Abshiro, M.P.

1. Preliminaries;
 - *Prayer,*
 - *Chairpersons remarks*
2. Adoption of the agenda
3. Confirmation of Minutes
4. **Public Hearing on The Land Value Index Laws (Amendment) Bill, National Assembly Bills No. 3 of 2018;**
 - **Submissions from The National Land Commission; Ministry of Lands; Council of Governors; Institute of Surveyors of Kenya; Law Society of Kenya; and Kenya Private Sector Alliance.**
 - **General Public**
5. Any other Business;
6. Date of the next meeting;
7. Adjournment.

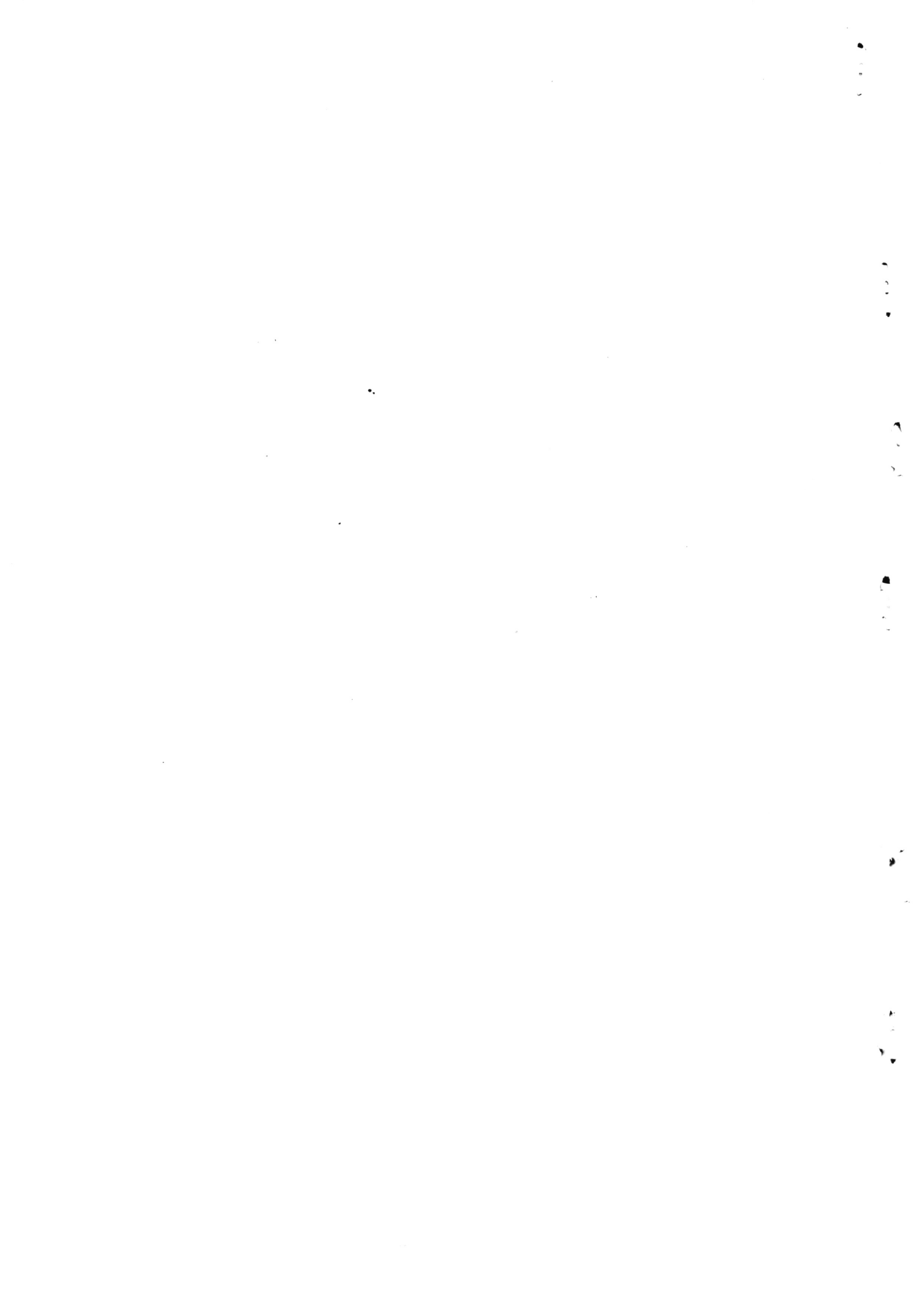
MINUTE SEN/SCLNDR/235/2018: CONFIRMATION OF MINUTES

The confirmation of previous minutes was deferred to such a time when the Committee will be able to handle housekeeping matters.

**MINUTE SEN/SCLNDR/236/2018:
PUBLIC HEARING ON THE LAND VALUE INDEX LAWS (AMENDMENT)
BILL, NATIONAL ASSEMBLY BILLS NO. 3 OF 2018;**

The Committee received a number of amendments from;

1. Ministry of Lands and Physical Planning (MoLPP),
2. National Land Commission (NLC),
3. The Institution of Surveyors of Kenya (ISK),
4. The Council of Governors (CoG) and
5. Haki Madini Kenya (HMK).



The aforementioned organizations sent in their proposals both orally and hard copy signed memoranda and summarized in for of a matrix as attached.

MINUTE SEN/SCLNDR/237/2018: ANY OTHER BUSINESS;

There were no other businesses discussed.

MINUTE SEN/SCLNDR/238/2018: DATE OF NEXT MEETING;

The meeting was adjourned at 11.43am and the date of the next meeting was to be called on notice.

SIGNATURE.......... DATE..........

(CHAIRPERSON: SEN. MWANGI PAUL GITHIOMI, MP.)

