

SPECIAL ISSUE

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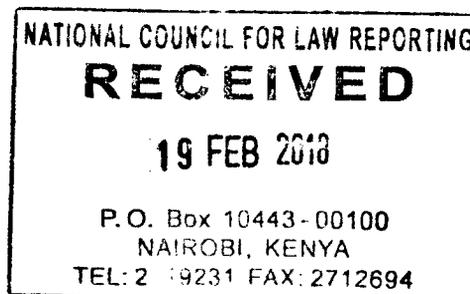
NATIONAL ASSEMBLY BILLS, 2018

NAIROBI, 12th February, 2018

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

A Bill for

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

ENACTED by Parliament of Kenya as follows—

1. This Act may be cited as the Land Value Index Laws (Amendment) Act, 2018.

Short title.

2. Section 2 of the Land Act is amended by inserting the following new definitions in their proper alphabetical order—

Amendment to section 2 of No. 6 of 2012.

“just compensation” in relation to compulsorily acquired land or creation of wayleaves, easements and public rights means a form of fair compensation that is assessed and determined through criteria set out under this Act;

“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.

“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 the land including improvements thereon and any other matter provided for in this Act;

“Tribunal” means the Land Acquisition Tribunal established under Part VIIIA.

3. Section 31 of the Land Act is amended by inserting the following subsection immediately after subsection (4)—

Amendment to section 31 of No. 6 of 2012.

(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.

4. Section 32 of the Land Act is amended by inserting the following subsection immediately after subsection (3)—

Amendment to section 32 of No. 6 of 2012.

(3A) Despite subsection (3), if the land is required for a public purpose, the court may not grant relief against forfeiture even if the licensee makes good the default.

5. Section 107 of the Land Act is amended—

Amendment to section 107 of No. 6 of 2012.

(a) in subsection (1) by deleting the word “public” appearing immediately after the phrase “acquisition of”;

(b) by deleting subsection (4) and substituting therefor the following—

(4) If the Commission establishes that the request under subsection (1) meets the requirements prescribed under subsection (2) and Article 40(3) of the Constitution, the Commission shall—

(a) cause the affected land to be mapped out and valued by the Commission using the 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 uninterrupted period of twelve years and their improvements.

(c) by inserting the following subsection immediately after subsection (5)—

(5A) The notice issued under subsection (5) 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.

(5B) Upon receipt of the notice under subsection (5), the Registrar shall make an order, pursuant to section 76 (1) of the Land Registration Act, 2012, prohibiting or restricting dealings with the affected portion of land thereof until it vests in the acquiring body.

- (d) in subsection (7) by deleting the expression “110 to 143” appearing after the word “sections” and substituting therefor the expression “107 to 133”.

6. The Land Act is amended by inserting the following new section immediately after section 107—

Insertion of a new section 107A to No. 6 of 2012.

Criteria for assessing value for compulsorily acquired freehold land.

107A. (1) 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 county government for that purpose and the provisions of this Part.

(2) For purposes of this Part “land value index” means an analytical representation showing the spatial distribution of land values in a given geographical area at specific time.

(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.

(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 if—

- (a) the increase in the potential value of land is occasioned by the intended use or development of the land to be acquired;
- (b) the increase in the actual value of the land as at the date of publication

of the notice of intention to acquire is likely to accrue from the use to which the land will be put when acquired;

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

(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 proceedings for the acquisition of the land:

provided that where the national government or the county government makes changes in the use of the land compulsorily acquired to affect other land owners, these owners shall be excluded from the application of this provision.

(ii) the improvement was done after the date of publication in the *Gazette* of the notice of intention to acquire the land, unless the improvements were necessary for the maintenance of any building in a proper state of repair.

(iii) the improvement is contrary to any law or is detrimental to the health of the occupiers or to public health generally.

(5) In addition to the provisions of subsection (1), the following circumstances