

**SPECIAL ISSUE**

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REPUBLIC OF KENYA

***KENYA GAZETTE SUPPLEMENT***

**NATIONAL ASSEMBLY BILLS, 2018**

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**NAIROBI, 12th February, 2018**

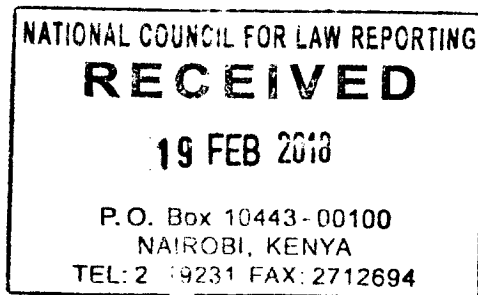
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**THE LAND VALUE INDEX LAWS (AMENDMENT)  
BILL, 2018**

**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

shall not be taken into account in determining the value of the land—

- (a) the degree of urgency which has led to the acquisition;
- (b) any inconvenience caused to a person interested in the land; or
- (c) damage which is likely to be caused to the land after the date of publication in the *Gazette* of the notice of intention to acquire the land or in consequence of the intended land use;

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

- (a) damage sustained or likely to be sustained by persons interested at the time of the Commission's taking possession of the land by reason of severing the land from other land;
- (b) damage sustained or likely to be sustained by persons interested in the land at the time of the Commission's taking possession of the land injuriously affecting other property, whether movable or immovable or in any other manner affecting the person's actual earnings;
- (c) if, in consequence of the acquisition, any of the persons interested in the land is or will be compelled to change residence or place of business, the payment of reasonable expenses to be determined by the Commission;
- (d) damage genuinely resulting from diminution of the profits of the land between the date of publication in the *Gazette* of the notice of intention to acquire the land and the

date the Commission takes possession of the land; and

- (e) the effect of any express or implied condition of title or law which restricts the intended land use.

(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.

(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 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;
- (b) improvements done before the date of publication in the *Gazette* of the notice of intention to acquire the land; and
- (c) damage sustained or likely to be sustained by the occupants of the land at the time of the Commission's taking possession of the land injuriously affecting other property, whether movable or immovable or in any other manner affecting the person's actual earnings; and
- (d) if, in consequence of the acquisition, any of the occupants in good faith of the land is or will be compelled to change residence or place of business, the payment of reasonable expenses to be determined by the Commission.

(9) An occupant in good faith does not include a person unlawfully occupying any land without the consent of the owner.

(10) The compensation payable under subsection (6) shall not in any case exceed the value of the structures and improvements on the land.

(11) Despite subsection (9), where boundaries of land are ascertainable, prompt payment in full, of just compensation may be made to occupants in good faith in the case of—

- (a) land lawfully held, managed or used by individuals or families as ancestral land; or
- (b) land traditionally occupied by individuals, families or entities pending adjudication.

(12) For the purposes of this section, “value” in relation to land means the value of the land, assessed in accordance with this section, at the date of publication in the *Gazette* of the notice of intention to acquire the land.

**107B.** (1) 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.

Criteria for assessing value for compulsorily acquired leasehold land.

(2) In assessing the value of the leasehold land and determining the just compensation to be awarded for land acquired under this Act, where the lessee of a public land has complied with all the conditions of the grant, the following matters shall be taken into consideration—

- (a) the value of the land based on unexpired term of the lease calculated on the basis of a land value index developed jointly by the national government and county government for that purpose;
- (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



- (c) any other criteria which the Commission may prescribe in Regulations.

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

Amendment to  
section 111 of  
No. 6 of 2012.

(1A) 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.

(1B) Subject to subsection (1A), an owner of land compulsorily acquired shall elect the form of compensation.

(1C) Compensation relating to compulsory acquisition shall not be paid to a public body unless there is a demonstrable inference that the land was purchased and developed by that public body.

**8.** Section 113 of the Land Act is amended in subsection (2) (a) (iii) by deleting the word “amount” appearing immediately before the phrase “of the compensation” and substituting therefor the word “form”.

Amendment to  
section 113 of No.  
6 of 2012.

**9.** Section 114 of the Land Act is amended by deleting subsections (2) and (3).

Amendment to  
section 114 of No.  
6 of 2012.

**10.** Section 115 of the Land Act is amended by inserting the following new subsection immediately after subsection (2)—

Amendment to  
section 115 of the  
Principal Act.

- (3) If the compensation payable in any of the cases referred to in paragraphs (a), (b) and (c) of subsection

(1), is in the form of an alternative land, the Commission may hold the title to such land in trust for the beneficiaries.

**11. Section 117 of the Land Act is amended—**

Amendment to  
section 117 of No.  
6 of 2012.

- (a) in subsection (1) by deleting the word “bank” appearing immediately after the word “prevailing” and substituting therefor the phrase “Central Bank of Kenya”;
- (b) in subsection (2) by deleting the figure “120” appearing immediately after the word “section” and substituting therefor the figure “119”.

**12. Section 118 of the Land Act is amended by renumbering the section as subsection (1) and inserting the following new subsection—**

Amendment to  
section 118 No. 6  
of 2012.

“(2) Upon completion of final survey under subsection (1), the Commission shall cause to be issued new title documents for every affected parcel.”

**13. Section 120 of the Land Act is amended—**

Amendment to  
section 120 of the  
Principal Act.

- (a) in the marginal note by deleting the phrase “Additional compensation where area found to be greater” and substituting therefor the phrase “Formal taking of possession and vesting”;
- (b) in subsection (1) by deleting the words “and the amount of the first offer has been paid”;
- (c) in subsection (2) by deleting the phrase “uncultivated or pasture or arable” appearing immediately after the words “possession of” and substituting therefor the article “the”.

**14. Section 121 of the Land Act is amended by—**

Amendment to  
section 121 of No.  
6 of 2012.

- (a) deleting the marginal note and substituting therefor the following marginal note—

“Surrender of documents of title”;

- (b) inserting the following new subsection immediately after subsection (3)—

(3A) 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

- (b) the Tribunal shall have jurisdiction to determine disputes relating to the process of compulsory acquisition of land in the first instance.

**15.** Section 122 of the Land Act is amended in subsection (3) by deleting the word “authority” appearing immediately after the word “acquiring” and substituting therefor the word “body”.

Amendment to section 122 of No. 6 of 2012.

**16.** Section 124 of the Land Act is amended in subsection (3) by deleting the words “after paying the first offer of compensation”.

Amendment to section 124 of No. 6 of 2012.

**17.** Section 125 of the Land Act is amended—

- (a) in subsection (1) by deleting the phrase “before taking possession,” appearing immediately before the word “pay”; and

- (b) by deleting subsection (2).

Amendment to section 125 of No. 6 of 2012.

**18.** The Land Act is amended by inserting the following new Part immediately after Part VIII—

Insertion of new Part VIIIA in No. 6 of 2012.

### **PART VIIIA—THE LAND ACQUISITION TRIBUNAL**

Establishment of the Tribunal.

**133A.** (1) There is established a Tribunal to be known as the Land Acquisition Tribunal which shall consist of five members appointed by the Judicial Service Commission through a notice in the *Gazette* of whom—

- (a) one shall be an advocate of not less than ten years’ standing, who shall be the chairperson;
- (b) two registered valuers with not less than ten years’ practical experience in statutory valuation in a public body;
- (c) one registered surveyor of not less than ten years’ standing; and
- (d) one advocate of the High Court not less than ten years’ experience in land matters.

(2) The Judicial Service Commission shall second a Deputy Registrar and such other staff members as are necessary to

assist the Tribunal in the performance of its functions under this Act.

(3) The Tribunal may, co-opt an expert to advise it on any matter before it and shall regulate its own procedure.

(4) Members of the Tribunal shall be paid such allowances or other remuneration as the Judicial Service Commission may, on the advice of the Salaries and Remuneration Commission, determine.

Term of office for members.

**133B.** (1) The chairperson of the Tribunal is appointed for a term of four years and is eligible for re-appointment for one more term of four years.

(2) A member of a Tribunal is appointed for a term of three years and is eligible for re-appointment for one more term of three years.

(3) A member of a Tribunal shall serve on part time basis.

Jurisdiction of the Tribunal.

**133C.** (1) The Tribunal has jurisdiction to hear and determine appeals from the decision of the Commission in matters relating to the process of compulsory acquisition of land.

(2) A person dissatisfied with the decision of the Commission may, within thirty days, apply to the Tribunal in the prescribed manner.

(3) Within ninety days after the filing of an application under this Part, the Tribunal shall hear and determine the application.

(4) Despite subsection (3), the Tribunal may, for sufficient cause shown, extend the time prescribed for doing any act or taking any proceedings before it upon such terms and conditions, if any, as may appear just and expedient.

(5) If, on an application to the Tribunal, the form or sum which in the opinion of the

Tribunal ought to have been awarded as compensation is greater than the sum which the Commission did award, the Tribunal may direct that the Commission shall pay interest on the excess at the prescribed rate.

(6) Despite the provisions of sections 127, 128 and 148 (5), a matter relating to compulsory acquisition of land or creation of wayleaves, easements and public right of way shall, in the first instance, be referred to the Tribunal.

(7) Subject to this Act, the Tribunal has power to confirm, vary or quash the decision of the Commission.

(8) The Tribunal may, in matters relating to compulsory acquisition of land, hear and determine a complaint before it arising under Articles 23 (2) and 47 (3) of the Constitution, using the framework set out under the Fair Administrative Action Act or any other law.

#### Appeals.

**133D.** (1) A party to an application to the Tribunal who is dissatisfied with the decision of the Tribunal may, in the prescribed time and manner, appeal to the court on any of the following grounds—

- (a) the decision of the Tribunal was contrary to law or to some usage having the force of law;
- (b) the Tribunal failed to determine some material issue of law or usage having the force of law; or
- (c) a substantial error or defect in the procedure provided by or under this Act has produced error or defect in the decision of the case upon the merits.

(2) An appeal from the decision of the Tribunal may be made on a question of law only.

Limitation of liability  
for members of the  
Tribunal.

**133E.** Members of the Tribunal shall not be personally liable for any act or default done or committed in good faith in the course of exercising the powers conferred by this Act.

**19.** Section 146 of the Land Act is amended in subsection (1) (b) by deleting the words “ninety days” appearing immediately after the words “at least” and substituting therefor the words “thirty days”.

Amendment to  
section 146 of No.  
6 of 2012.

**20.** Section 157 of the Land Act is amended by inserting the following subsections immediately after subsection (5)—

Amendment to  
section 157 of No.  
6 of 2012.

(5A) Any person who, being a public officer—

(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 a intention to influence any form of transaction for purposes of conferring any benefit as a result of the acquisition; or

(b) assists, facilitates, or in way aids any transaction in such land contrary to any law,

commits an offence and upon conviction is liable, to a fine not exceeding five million shillings or to imprisonment not exceeding three years or to both the fine and imprisonment.

**21.** Section 76 of the Land Registration Act is amended in subsection (1) by inserting the words “the purposes of compulsory acquisition” immediately after the word “For”.

Amendment to  
section 76 of Act  
No. 3 of 2012.

**22.** The Preventon, Protection and Assistance to Internally Displaced Persons and Affected Communities Act is amended by deleting section 22 and substituting therefor the following new section—

Amendment to  
section 22 of Act  
No. 56 of 2012.

Displacement  
occasioned by  
compulsory  
acquisition of land.

**23.** 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 this Act, constitute arbitrary displacement.

## **MEMORANDUM OF OBJECTS AND REASONS**

### **Statements of the Objects and Reasons for the Bill**

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.

The Land Value Index will standardise and harmonize the value of land across the country for the primary purpose of determining Land Rent, Land Rates, Stamp Duty on conveyance of land and compensation of expropriated land. The Bill seeks to make Land Rates, Rent, Stamp Duty and compensation predictable, rational and not prone to subjective valuations.

The Bill also seeks to regulate the long and protracted process of compulsory acquisition and harmonize and standardize the compensation thereof. Huge variations in the amounts paid by way of compensation has led to huge inequities to those whose land was compulsorily acquired, the law seeks to equalize those payments.

The Bill proposes to amend the Land Act in order to ease the acquisition of and access to land or rights over land in order 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.

Kenya's Vision 2030 development strategy is largely pegged on development of infrastructure which is dependent on, among other things, availability of land, which needs in certain instances to be acquired by Government for project development purposes or the creation of easements over land, or creation of public rights of way or the acquisition of wayleaves for infrastructure installations.

The ease with which such required land or rights over land are accessed signals Kenya's quality in ease of doing business, since it determines the pace at which public infrastructure investments can be realized.

The purpose of this Bill is to amend the three laws to address the above challenges.

The structure of the Bill is as follows:

**Clause 2** seeks to amend section 2 of the principal Act by introducing definition of new terms including "just", "prompt", "full" and "Tribunal".

**Clause 1-2** provides for short title, commencement and interpretation.

**Clause 3** proposes to amend section 31 of the principal Act to limit

the application of principles of equity against forfeiture where the land held under lease is required for public purpose.

**Clause 4** proposes to amend section 32 of the principal Act to limit the application of principles of equity against forfeiture where the land held under a license is required for public purpose.

**Clause 5** seeks to amend section 107 of the principal Act to remove a typographical error and to substitute subsection (4) with a requirement that once the Commission determines that a request to acquire land meets the laid down prerequisites, the Commission shall have the land mapped and a valued by a government valuer using the valuation criteria set out under this Act. Once that is done the Commission then issues the notice of intention to acquire the land notifying the public and the affected persons of the specific purpose for which the land is to be acquired, the location and general description of the land including the approximate size. The Registrar is then required make an order in the register prohibiting or restricting dealings with the affected portion of land thereof until it vests in the acquiring body.

**Clause 6** seeks to introduce a new section 107A which provides the criteria seeks to amend section 107 of the principle Act by making it a requirement the any land to be compulsorily acquired be valued by a government valuer using the criteria set out in the Act. This valuation and mapping of the land is required to be done before the issuance of the notice of intention to acquire the land.

**Clause 5** proposes criteria for assessing the value for land to be compulsorily acquired. The criteria makes a distinction between matters to be taken into account and those to be disregarded. This clause also provides for compensation to be paid to occupants in good faith of land compulsorily acquired who may not hold title to the land.

**Clause 7** seeks to amend section 111 of the principal Act to provide for forms of compensation for compulsory acquisition of land, including alternative allocation of land of equal value and comparable use, monetary payment, issuance of government bonds, grant or transfer of development rights and equity shares in government owned entities. Monetary compensation may be paid in lump sum or in instalments spread over not more than one year.

**Clause 8** proposes a minor amendment to section 113 to align it with the amendments proposed under section 111.

**Clause 9** proposes to delete subsections (2) and (3) of section 114. These provisions provide for election by the owner of the land of the form of compensation in form of alternative land on the basis of an agreement between the Commission and an interested party.



**Clause 10** seeks to amend section 115 of the principal Act by providing that where compensation is in the form of an alternative land, and the beneficiary is not in a position to take possession, the Commission may hold the title to such land in trust for the beneficiary.

**Clauses 11-16** seek to rectify inconsistencies in the marginal notes and to remove typographical errors. This part also proposes to amend sections 117, 118, 120, 121, 122, 124 (3) and 125 to allow the Commission to take possession of land upon making an award for compulsory acquisition and limits courts from issuing orders stopping any public funded project after the formal taking of possession for a public purpose. It is also proposed to amend the rate of interest payable from prevailing bank rates to the prevailing Treasury bond rate.

**Clause 18** seeks to re-establish the Land Acquisition Tribunal. This clause further provides for the composition, term of office, jurisdiction and appeals to the court.

**Clause 19** proposes to reduce from ninety to thirty the number of days after which the Commission is supposed to make its decision following an application for creation of public right of way.

**Clause 20** proposes to make it an offence for any public officer to collude or corruptly influence transactions in land intended to be compulsorily acquired.

**Clause 21** proposes to amend section 76 of the Land Registration Act so as to harmonize the Act with the proposed provisions in the Bill.

**Clause 22** proposes to amend the Prevention, Protection and Assistance to Internally Displaced Persons and Affected Communities Act so as to harmonize the Act with the proposed provisions in the Bill.

### **Statement on the delegation of legislative powers and limitation of fundamental rights and freedoms**

This Bill does not delegate legislative powers.

### **Statement of how the Bill concerns county governments**

This is a Bill concerning county governments within the meaning of Article 110 of the Constitution and is an ordinary Bill.

### **Statement as to whether the Bill is a money Bill within the meaning of Article 114 of the Constitution**

The enactment of this Bill shall occasion additional expenditure of public funds which shall be provided for in the annual estimates.

Dated the 1st February, 2018.

ADEN DUALE,  
*Leader of the Majority Party.*

*Sections of the Land Act No. 6 of 2012 which are proposed to be amended*

## **2. Interpretation**

In this Act, unless the context otherwise requires—

**“actual notice”** means the notice which a person has personally of a matter or action or document or the rights and interests of another person;

**“adjoining”** in relation to parcels of public land, includes parcels of land separated by—

- (a) roads;
- (b) railways;
- (c) watercourses or other natural features of such a character as to be insufficient to prevent the passage of stock; or
- (c) reserves or unallocated public land.

**“alienation of land”** means the sale or other disposal of the rights to land;

**“allocation of land”** means the legal process of granting rights to land

**“assignee”** means a person to whom an assignment is made;

**“building”** means any structure or erection of any kind whatsoever whether permanent or temporary, whether movable or immovable and whether completed or uncompleted;

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

**“certificate of lease”** has the meaning assigned to it under the law relating to land registration;

**“certificate of title”** has the meaning assigned to it under the law relating to land registration;

**“charge”** means an interest in land securing the payment of money or money’s worth or the fulfilment of any condition, and includes a subcharge and the instrument creating a charge, including—

- (a) an informal charge, which is a written and witnessed undertaking, the clear intention of which is to charge the chargor’s land with the repayment of money or money’s worth obtained from the chargee; and
- (b) a customary charge which is a type of informal charge whose undertaking has been observed by a group of people over an indefinite period of time and considered as legal and binding to such people;

**“child”** has the meaning assigned to it in Article 260 of the Constitution;

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

**“community land”** has the meaning assigned to it in Article 63 of the Constitution;

**“compulsory acquisition”** means the power of the State to deprive or acquire any title or other interest in land for a public purpose subject to prompt payment of compensation;

**“corruption”** has the meaning assigned to it under the Anti-Corruption and Economic Crimes Act, 2003 (No. 3 of 2003);

**“county executive committee member”** means the county executive committee member responsible for matters relating to land;

**“Court”** means the Environment and Land Court established under the Environment and Land Court Act, 2011 (No. 19 of 2011);

**“co-tenancy”** means the ownership of land by two or more persons in undivided shares and includes joint tenancy or tenancy in common;

**“customary land rights”** refer to rights conferred by or derived from Kenyan customary law whether formally recognized by legislation or not;

**“dealing”** includes disposition and transmission;

**“deliver”** includes to transmit by post, hand, email, fax or other prescribed medium;

**“development”** means the carrying out of any building operation, engineering operation, farming activities or mining operation in, on, under or over land or the making of any change of a substantial nature in the use of land;

**“disposition”** means any sale, charge, transfer, grant, partition, exchange, lease, assignment, surrender, or disclaimer and includes the disclaimer or the creation of an easement, a usufructuary right, or other servitude or any other interest in a land or a lease and any other act by the owner of land or under a lease where the owner’s rights over that land or lease are affected or an agreement to undertake any of the dispositions;

**“dwelling house”** means any house or part of a house or room used as a separate dwelling in any building and includes a garden or other premises within the curtilage of and used as a part of the dwelling house;

**“easement”** means a non-possessory interest in another’s land that allows the holder to use the land to a particular extent, to require the

proprietor to undertake an act relating to the land, or to restrict the proprietor's use to a particular extent, and shall not include a profit;

**“freehold”** means the unlimited right to use and dispose of land in perpetuity subject to the rights of others and the regulatory powers of the national government, county government and other relevant state organs;

**“geo-reference”** means reference to an object by a specific location either on, above or below the earth's surface;

**“geo-referenced boundaries”** means reference to boundaries of a parcel of land to a specific or unique location on, above or below the earth surface as defined in the Survey Act (Cap. 299);

**“instrument”** means a writing, including an enactment which creates or affects legal or equitable rights and liabilities and includes any covenant or condition expressed in an instrument or implied in a instrument under this Act or any other law relating to land and, except where otherwise provided includes, any variation of an instrument;

**“interest”** means a right in or over a land;

**“joint tenancy”** means a form of concurrent ownership of land where two or more persons each possess the land simultaneously and have undivided interest in the land under which upon the death of one owner it is transferred to the surviving owner or owners;

**“land”** has the meaning assigned to it in Article 260 of the Constitution;

**“lease”** means the grant, with or without consideration, by the proprietor of land of the right to the exclusive possession of his or her land, and includes the right so granted and the instrument granting it, and also includes a sublease but does not include an agreement for lease;

**“lessee”** means a person to whom a lease is granted and includes a person who has accepted a transfer or assignment of a lease;

**“lessor”** means a person by whom a lease is granted and includes a person who has accepted the transfer or assignment of the reversion of a lease;

**“licence”** means a permission given by the Commission in respect of public land or proprietor in respect of private or community land or a lease which allows the licensee to do some act in relation to the land or the land comprised in the lease which would otherwise be a trespass, but does not include an easement or a profit;

**“management body”** means a statutory body, public corporation or a public agency that is authorized by the Commission to manage reserved land under section 16;

**“marriage”** means a civil, customary or religious marriage;

**“matrimonial home”** means any property that is owned or leased by one or both spouses and occupied by the spouses as their family home;

**“partition”** means the separation by a formal legal instrument of the shares in land or lease held by owners in common so that each such owner takes shares free of the rights of the others;

**“private land”** has the meaning assigned by Article 64 of the Constitution;

**“proprietor”** means—

- (a) in relation to land or a lease, the person named in the register as the proprietor; and
- (b) in relation to a charge of land or a lease, the person named in the register of the land or lease as the person in whose favour the charge is made;

**“public land”** has the meaning assigned by Article 62 of the Constitution and includes the coast foreshore, river, dams lakes and other reserves under the Survey Act (Cap. 299) or under any other law;

**“public purposes”** means the purposes of—

- (a) transportation including roads, canals, highways, railways, bridges, wharves and airports;
- (b) public buildings including schools, libraries, hospitals, factories, religious institutions and public housing;
- (c) public utilities for water, sewage, electricity, gas, communication, irrigation and drainage, dams and reservoirs;
- (d) public parks, playgrounds, gardens, sports facilities and cemeteries;
- (e) security and defence installations;
- (f) settlement of squatters, the poor and landless, and the internally displaced persons; and
- (a) any other analogous public purpose;

**“registry”** has the meaning assigned to it under the law relating to land registration;

**“register of public land”** means a register for public land maintained under the law relating to land registration for the recording of rights and interests in and dispositions of public land;

**“restrictive agreement”** means an agreement by one owner of land restricting the building on, or the use, or other enjoyment of land for the

benefit of the owner under a land or neighbouring land and includes a restrictive covenant;

**“riparian reserve”** means the land adjacent to the ocean, lake, sea, rivers, dams and water courses as provided under the Survey Act (Cap. 299) or any other written law;

**“squatter”** means a person who occupies land that legally belongs to another person without that persons consent;

**“State”** has the meaning assigned to it under Article 260 of the Constitution;

**“State organ”** has the meaning assigned to it under Article 260 of the Constitution;

**“tenancy in common”** means a form of concurrent ownership of land in which two or more persons possess the land simultaneously where each person holds an individual, undivided interest in the property and each party has the right to alienate, or transfer their interest;

**“transfer”** means the passing of land, a lease or a charge from one party to another by an act of the parties and not by operation of the law and includes the instrument by which such passing is effected;

**“transferee”** means a person who receives the land, lease or charge passed by an act of transfer;

**“transferor”** means the person who passes the land, lease or charge by an act of transfer;

**“transmission”** means the passing of land, a lease or a charge from one person to another by operation of law on death or insolvency or otherwise howsoever, and includes the compulsory acquisition of land under any written law;

**“trustee”** includes personal representative;

**“valuable consideration”** includes marriage, but does not include a nominal consideration; and

**“valuer”** means a valuer registered and licensed to practice as a valuer in accordance with the Valuers Act (Cap. 532);

**“unexhausted improvement”** means anything or any quality permanently attached to the land directly resulting from the expenditure of capital or labour by an owner or any person acting on the owner’s behalf and increasing the productive capacity, the utility, the sustainability of its environmental quality and includes trees, standing crops and growing produce whether of an agricultural or horticultural nature.

**31. Forfeiture of lease if rent unpaid or for breach of covenant**

(1) If any part of the rent or royalties reserved in a lease under this Act is unpaid for a period of twelve months after becoming due, or if the lessee breaches any express or implied covenant, the Commission may—

(a) serve a notice upon the lessee, specifying the rent or royalties in arrears or the covenant of which a breach has been committed; and

(b) commence an action in Court for the recovery of the land at any time at least one month after serving the notice contemplated in paragraph (a).

(2) In an action commenced under subsection (1)(b) on proof of the facts, the Court shall declare the lease forfeited, subject to relief upon such terms as may appear just.

(3) If the Court has declared a lease to be forfeited under subsection (2), the Commission may re-enter upon the land.

(4) In exercising the power of granting relief against forfeiture under this subsection (1) the Court shall be guided by the principles of the doctrines of equity.

**32. Forfeiture of licence**

(1) Subject to any other provision of this Act, where the rent or any part thereof payable under a license issued under this Act is at any time unpaid for a period of thirty days after the same has become due, or if the licensee fails to comply with, or commits any breach of, the conditions, whether express or implied, of the license, the Commission may make an application in Court to declare the license forfeited.

(2) Upon receipt of an application under subsection (1), together with a statement specifying the rent in arrears or the condition which has not been complied with or of which a breach has been committed, the Court shall cause to be served upon the licensee, a copy of the statement together with a notice of the date, not being less than fourteen days from the date of the notice, when the application will be heard.

(3) If upon the date fixed for the hearing of the application or to which the hearing is adjourned it is proved to the satisfaction of the court that rent is in arrears or that the licensee has failed to comply with or has committed a breach of any of the conditions of the license, the Court shall, subject to such relief against forfeiture for non-payment of rent as may seem just, declare the license forfeited.

**107. Preliminary notice**

(1) Whenever the national or county government is satisfied that it may be necessary to acquire some particular land under section 110, the

respective Cabinet Secretary or the County Executive Committee Member shall submit a request for acquisition of public land to the Commission to acquire the land on its behalf.

(2) The Commission shall prescribe a criteria and guidelines to be adhered to by the acquiring authorities in the acquisition of land.

(3) The Commission may reject a request of an acquiring authority, to undertake an acquisition if it establishes that the request does not meet the requirements prescribed under subsection (2) and Article 40(3) of the Constitution.

(4) In the event that the Commission has not undertaken the acquisition in accordance with subsection (1) the acquiring authority may proceed and acquire the land.

(5) Upon approval of a request under subsection (1), the Commission shall publish a notice to that effect in the *Gazette* and the county *Gazette*, and shall deliver a copy of the notice to the Registrar and every person who appears to the Commission to be interested in the land.

(6) Upon service of the notice, the registrar shall make an entry in the register of the intended acquisition.

(7) For the purposes of sections 110 to 143, interested persons shall include any person whose interests appear in the land registry and the spouse or spouses of any such person, as well as any person actually occupying the land and the spouse or spouses of such person.

(8) All land to be compulsorily acquired shall be geo-referenced and authenticated by the office or authority responsible for survey at both the national and county government

### **111. Compensation to be paid**

(1) If land is acquired compulsorily under this Act, just compensation shall be paid promptly in full to all persons whose interests in the land have been determined.

(2) The Commission shall make rules to regulate the assessment of just compensation.

### **113. Award of compensation**

(1) Upon the conclusion of the inquiry, the Commission shall prepare a written award, in which the Commission shall make a separate award of compensation for every person whom the Commission has determined to have an interest in the land.

(2) Subject to Article 40 (2) of the Constitution and section 122 and 128 of this Act, an award—



(a) shall be final and conclusive evidence of—

- (i) the size of the land to be acquired;
- (ii) the value, in the opinion of the Commission, of the land
- (iii) the amount of the compensation payable, whether the persons interested in the land have or have not appeared at the inquiry; and

(b) shall not be invalidated by reason only of a discrepancy which may thereafter be found to exist between the area specified in the award and the actual area of the land.

(3) If an interest in land is held by two or more persons as co-tenants, the award shall state—

- (a) the amount of compensation awarded in respect of that interest; and
  - (b) the shares in which it is payable to those persons.
- (4) Every award shall be filed in the office of the Commission.

#### **114. Notice of award**

(1) On making an award, the Commission shall serve on each person whom the Commission has determined to be interested in the land, a notice of the award and offer of compensation.

(2) Upon acquisition of land, and prior to taking possession of the land, the Commission may agree with the person who owned that land that instead of receiving an award, the person shall receive a grant of land, not exceeding in value the amount of compensation which the Commission considers would have been awarded, and upon the conclusion of the agreement that person shall be deemed to have conclusively been awarded and to have received all the compensation to which that person is entitled in respect of the interest in that land.

(3) An agreement under subsection (2) shall be recorded in the award.

#### **115. Payment of compensation**

(1) After notice of an 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, except in a case where—

- (a) there is no person competent to receive payment;
- (b) the person entitled does not consent to receive the amount awarded; or

- (c) there is a dispute as to the right of the persons entitled to receive the compensation or as to the shares in which the compensation is to be paid.

(2) In any of the cases referred to in paragraphs (a), (b) and (c) of subsection (1), the Commission may at any time pay the amount of the compensation into a special compensation account held by the Commission, notifying any persons interested accordingly.

#### **117. Grant of land in lieu of award**

(1) If the amount of any compensation awarded is not paid, the Commission shall on or before the taking of possession of the land, open a special account into which the Commission shall pay interest on the amount awarded at the rate prevailing bank rates from the time of taking possession until the time of payment.

(2) If additional compensation is payable under section 120 there shall be added to the amount of the additional compensation interest thereon at the prevailing bank rates from the time when possession was taken or compensation was paid, whichever is the earlier.

#### **118. Survey where part of holding is acquired**

If part of the land comprised in documents of title has been acquired, the Commission shall, as soon as practicable, cause a final survey to be made of all the land acquired.

#### **119. Payment of interest**

Whenever the survey provided for in section 118 discloses that the size of the land acquired is greater or less than the size of the land in respect of which the award has been made, compensation shall be paid for the excess size in accordance with this Act.

#### **120. Additional compensation where area found to be greater**

(1) 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 governments as the case may be.

(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 following the normal procedures of compulsory acquisition under this Act, the Commission may take possession of uncultivated or pasture or arable land upon the expiration of fifteen 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).

(3) Upon taking possession of land under subsection (1) or subsection (2), the Commission shall also serve upon—

- (a) the registered proprietor of the land; and
- (b) 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.

(4) Upon taking possession and payment of just compensation in full, the land shall vest in the national or county governments absolutely free from encumbrances.

### **121. Formal taking of possession and vesting**

(1) If the documents evidencing title to the land acquired have not been previously delivered, the Commission shall, in writing, require the person having possession of the documents of title to deliver them to the Registrar, and thereupon that person shall forthwith deliver the documents to the Registrar.

(2) On receipt of the documents of title, the Registrar shall—

- (a) cancel the title documents if the whole of the land comprised in the documents has been acquired;
- (b) if only part of the land comprised in the documents has been acquired, the Registrar shall register the resultant parcels and cause to be issued, to the parties, title documents in respect of the resultant parcels.

(3) If the documents are not forthcoming, the Registrar will cause an entry to be made in the register recording the acquisition of the land under this Act.

### **122. Surrender of documents of title to the Commission**

(1) The powers of acquisition conferred by this Part shall not be exercised so as to acquire a part only of a permanent building in any case if—

- (a) that part is reasonably required for the full and unimpaired use of that building; and
- (b) a person interested in the building desires that the whole of the building shall be acquired.

(2) The person referred to under subsection (1) (b) may, at any time before the Commission has made an award, withdraw or modify the person's statement by notice in writing served on the Commission.

(3) If the Commission is satisfied that the partial compulsory acquisition originally intended will render the remaining land inadequate

for its intended use or will severely and disproportionately reduce the value of the remaining land, it will instruct the acquiring authority to acquire the remaining land.

(4) The remaining land referred to in subsection (3) shall be used for public purposes or be included in the Land Bank.

(5) If a question arises as to whether or not any part of a building is reasonably required for the full and unimpaired use thereof, and the parties cannot agree thereon, the matter shall be referred by the Commission to the Court for determination.

### **123. Acquisition of other land on account of severance**

(1) At any time before possession is taken of any land acquired under this Act, the Commission may, revoke a direction to acquire the land, and, shall determine and pay compensation for all damage suffered and all costs and expenses reasonably incurred by persons interested in the land by reason of or in consequence of the proceedings for acquiring the land.

(2) The principal s relating to the determination of compensation set out in the rules shall apply, so far as they are relevant, to the determination of compensation payable under this section.

### **124. Withdrawal of acquisition**

(1) If the Commission is satisfied that the possession of any land is required by a public body for a particular period not exceeding five years, and that—

- (a) the possession of the land is necessary for public purpose or public interest;
- (b) the possession of the land is necessary in the interests of defence, public safety, public order, public morality, public health, urban and planning, or the development or utilization of any property in such manner as to promote the public benefit; and
- (c) the necessity therefore is such as to afford reasonable justification for the causing of any hardship that may result to any person having an interest in or right over the property, and so certifies in writing, possession of such land may be taken for that period under this section.

(2) The Commission shall then serve on every person interested or who claims to be interested in the land to be taken possession of under subsection (1), or on such of them as after reasonable inquiry are known to the Commission, a notice that the Commission is to take possession of the land for the period in question.

(3) At the end of seven days after service of notices has been completed under subsection (2), the Commission may after paying the first offer of compensation, take possession of the land by entering, personally or by agents, on the land and positing on the land a notice in the prescribed form that possession has been taken of the land, and shall serve a copy of the notice on the occupier.

(4) This section shall not apply where the use of land is likely to cause permanent damage to land.

### **125. Power to obtain temporary occupation of land**

(1) The Commission shall, as soon as is practicable, before taking possession, pay full and just compensation to all persons interested in the land.

(2) An acquiring authority shall pay the first offer of compensation to the interested parties before taking possession.

### **157. Offences**

(1) Any person who—

- (a) knowingly makes any false statement, orally or in writing, in connection with any disposition or other transaction affecting land or any other matter arising under this Act;
- (b) knowingly gives any false information or makes any false statement, either orally or in writing, in connection with any call for information made under this Act or in connection with any investigation into the commission of any offence under this Act;
- (c) fraudulently procures—
  - (i) the registration or issue of any certificate of ownership, or any other document or instrument relating to the land; or
  - (ii) the making of any entry or the endorsement of any matter on any document or instrument referred to in sub-paragraph (i); or
  - (iii) the cancellation or amendment of any of the documents referred to in this paragraph instruments or entries or endorsements; or
- (d) fraudulently alters, adds to, erases, defaces, mutilates or destroys any document or instrument relating to land or any entry on or endorsement of any such document or instrument; suppresses or conceals from the Commission, the Registrar, or any authorized officer exercising powers under this Act or assists or joins in so doing, any material document, fact or matter, commits an offence

and on conviction is liable to a fine not exceeding ten million shillings or imprisonment for a term not exceeding ten years or to both the fine and imprisonment;

(2) Any person who unlawfully occupies public land commits an offence and upon conviction is liable to a fine not exceeding five hundred thousand shillings, and in the case of a continuing offence to an additional fine not exceeding ten thousand shillings for every day during which the offence shall have continued.

(3) Any person who wrongfully obstructs or encroaches on to a public right of way and who does not within the time specified in any notice served on the person under section 112 or where the person has appealed against the notice, within the time specified in the notice after the hearing of the appeal where the court has rejected that appeal, remove that obstruction or cease that encroachment commits an offence and upon conviction is liable, on conviction to a fine not exceeding ten million shillings and in the case of a continuing offence to an additional fine not exceeding one hundred thousand shilling for every day during which the offence continues.

(4) Any person who wilfully—

- (a) delays;
- (b) obstructs;
- (c) hinders;
- (d) intimidates; or
- (e) assaults,

any person authorized under this Act to inspect any land in the lawful exercise of the power in that behalf commits an offence and upon conviction is liable to a fine not exceeding five hundred thousand shillings or to a term of imprisonment not exceeding three years or to both the fine and imprisonment.

(5) Any person who, being an authorized officer under this Act, whether generally or for a specific function, in the course of any official function or otherwise, unlawfully or with force enters on the land of any person or while on land, willfully commits any damage to the land or anything on the land, whether naturally on the land, or stock owned by any person using the land or crops planted or buildings erected on the land commits an offence and upon conviction is liable, to a fine not exceeding five hundred thousand shillings or to imprisonment not exceeding three months or to both the fine and imprisonment.

(6) If a court has convicted any person of an offence under this section and the commission of that offence enabled that person to obtain or retain or regain any interest in land which the person would otherwise

not have been able to obtain, retain or regain, the court may in addition to any punishment provided for by this section imposed on such person, make any such order in relation to that interest in land so obtained, retained or regained by such person as appears to the court necessary to ensure that such person does not profit by the offence of which the person has been convicted and without prejudice to the generality of this provision, any such order may—

- (a) direct the Commission to commence proceedings to—
  - (i) revoke the allocation; or
  - (ii) terminate a lease.
- (b) direct the Registrar to cancel any entry in any register which has been obtained by virtue or on account of the offence;
- (c) require that person to make restitution to any person who has suffered loss by virtue or on account of the offence, including taking all necessary action to transfer to any such person any interest in land obtained, retained or regained by such offence from that person, and any such order may be made subject to any conditions which the court.

(7) The Registrar shall not be personally liable in respect of any act done while exercising any powers under this Act and within the scope of official capacity, if the Registrar did that act in the honest belief that the Registrar was entitled to do it.

*Section 76 of the Land Registration Act, 2012 (No. 3 of 2012) which is proposed to be amended*

## **76. Restrictions**

(1) For the prevention of any fraud or improper dealing or for any other sufficient cause, the Registrar may, either with or without the application of any person interested in the land, lease or charge, and after directing such inquiries to be made and notices to be served and hearing such persons as the Registrar considers fit, make an order (hereinafter referred to as a restriction) prohibiting or restricting dealings with any particular land, lease or charge.

- (2) A restriction may be expressed to endure—
  - (a) for a particular period;
  - (b) until the occurrence of a particular event; or
  - (c) until the making a further order is made and may prohibit or restrict all dealings or only or the dealings that do not comply with specified conditions, and the restriction shall be registered in the appropriate register.

(3) The Registrar shall make a restriction in any case where it appears that the power of the proprietor to deal with the land, lease or charge is restricted.

*Section 22 of the Prevention, Protection and Assistance to Internally Displaced Persons and Affected Communities Act No. 56 of 2012 which is proposed to be amended*

## **22. Procedures for displacement induced by development projects**

(1) Subject to the Constitution and section 21(2) of this Act and prior to the decision to give effect to the displacement of persons due to development projects or projects to preserve the environment, the Government shall—

- (a) seek the free and informed consent of the affected persons; and
- (b) hold public hearings on the project planning.

(2) The decision to give effect to the displacement of persons shall give the justification for the displacement and demonstrate that the displacement is unavoidable and no feasible alternatives exist. The decision shall contain detailed justification on the alternatives explored.

(3) The Government shall ensure that the displacement is not carried out unless—

- (a) reasonable time is given to the affected persons to review the decision and challenge it before an independent body on the grounds that the conditions in section 21(2) are not adhered to; and
- (b) an effective remedy in accordance with articles 46 and 47 of the Constitution is available for those affected.

(4) The Government shall ensure that the displacement is carried out in manner that is respectful of the human rights of those affected, taking in particular into account the protection of community land and the special needs of women, children and persons with special needs. This requires in particular—

- (a) full information of those affected and their effective participation, including by women, in the planning, management of the displacement, and in defining suitable durable solutions;
- (b) provision of safe, adequate and habitable sites and to the greatest practicable extent, of proper accommodation; and
- (c) creation of satisfactory conditions of safety, nutrition, health and hygiene and the protection of the family unity.

(5) The Government shall ensure the presence of a Government official when the displacement and relocation is effected and the monitoring by an independent body.





