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REPUBLIC OF KENYA





THE PARLIAMENT

TWELFTH PARLIAMENT-THIRD SESSION

MEDIATION COMMITTEE ON THE LAND VALUE INDEX LAWS
(AMENDMENT) BILL, NATIONAL ASSEMBLY BILL NO. 3 OF 2018

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

 NATIONAL ASSEMBLY PAPERS LAID	
DATE: 02 JUL 2019	DAY: TUESDAY
TABLED BY:	MAJORITY LEADER
CLERK-AT THE-TABLE:	

JOINT CLERKS' CHAMBERS
PARLIAMENT OF KENYA
NAIROBI

JULY, 2019

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1.0 INTRODUCTION

1.1 Establishment of the Committee

The Mediation Committee on the Land Value Index Laws (Amendment) Bill, National Assembly Bills No. 3 of 2018 was constituted by the Speaker of the National Assembly pursuant to Standing Order 149 (2) of the National Assembly Standing Orders and the Speaker of the Senate pursuant to Standing Order 160 (2) of the Senate Standing Orders on 28th March, 2019 and 4th April, 2019, respectively. Thereafter the Senate membership in the Committee was reconstituted on 9th June, 2019 with Sen. Halake Abshiro, MP temporarily replacing Sen. Mary Seneta, M.P for the first meeting held on 11th June, 2019 as per Senate Standing Order 206 on the temporary absence of a Member of a Select Committee.

The Members of the Committee were: -

- | | |
|---|---------------------------|
| 1. Hon. Aden Duale, EGH, MP | (Chairperson) |
| 2. Sen. Mwangi Paul Githiomi, M.P. | (Vice Chairperson) |
| 3. Hon. John Mbadi, EGH MP | Member |
| 4. Sen. Mutula Kilonzo Junior, MP | Member |
| 5. Hon. Dr. Rachael Nyamai, MP | Member |
| 6. Sen. (Prof.) Margaret Kamar, EGH, MP | Member |
| 7. Sen. Mary Seneta, M.P. | Member |
| 8. Hon. Mishi Mboko, M.P. | Member |
| 9. Sen. (Arch.) Sylvia Kasanga, M.P | Member |
| 10. Hon. Caleb Kositany, MP | Member |

1.2 Mandate of the Committee

The Mediation Committee derives its mandate from Article 113 of the Constitution of Kenya and the National Assembly Standing Order No. 149 and Senate Standing Order No. 160 (1).

The Committee was established to develop a version of the Land Value Index Laws (Amendment) Bill, National Assembly Bills No. 3 of 2018 that would be presented to both Houses for approval as provided for under the National Assembly Standing Order No. 149 (6) and the Senate Standing Order No. 161 (3).

The National Assembly, through its Departmental Committee on Lands, considered the amendments forwarded to it through its report tabled before the National Assembly on 26th March, 2019. The National Assembly approved **the Senate's amendments to clauses 2; 3; 4; 6(a)(i), (iii) & (b); 7(a); 12; 13; 14 and 16.**

The National Assembly rejected **the Senate Amendments to clauses 1; 5; 6(a)(ii) & (iv); 7(b) and 17.**

1.3 Committee Sittings

The Committee held its first meeting on 11th June, 2019 and elected Hon. Aden Duale, EGH, MP as Chairperson and Sen. Mwangi Paul Githiomi, M.P. as Vice - Chairperson respectively. The Committee thereafter deliberated on the contested clauses. The Committee held another sitting on 18th June, 2019 and adopted its report on 25th June, 2019 (Appendix II).

1.4 Committee Resolutions

The Committee deliberated on the contentious clauses and unanimously agreed on a version of the Bill to be presented to both Houses for approval. The agreed version of the Bill is appended to this report.

1.5 Adoption of the Report

Members of the Mediation Committee on the Land Value Index Laws (Amendment) Bill, National Assembly Bills No. 3 of 2018 adopted this report pursuant to Standing Order 150 (1), of the National Assembly Standing Orders and Standing Orders 161 (1) of the Senate Standing Orders and affixed their signatures to affirm approval and confirm accuracy, validity and authenticity as per the attached schedule (Appendix I).


1.6 Acknowledgment

The Committee thanks the Offices of the Speakers and the Clerks of the National Assembly and the Senate for the necessary support extended to it in the execution of its mandate.

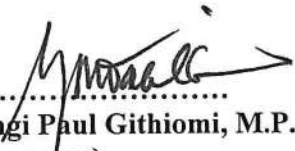
The Chairperson thanks all the Members of the Committee for their sacrifice, commitment and selflessness to the cause of the mediation process until a common ground was arrived at.

Mr. Speaker Sir,

It is my pleasant duty, pursuant to Standing Order 150 (1) and 161 (1) of the National Assembly and Senate Standing Orders respectively, to present the report on the Mediation Committee on the Land Value Index Laws (Amendment) Bill, National Assembly Bills No. 3 of 2018 for consideration by the National Assembly and the Senate.


SIGNED:
Hon. Aden Duale, EGH, MP
(Chairperson)

DATE..... 2/7/2019


SIGNED:
Sen. Mwangi Paul Githiomi, M.P.
(Vice Chairperson)

DATE..... 02-07-2019

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

The Land Value Index Laws (Amendment) Bill, National Assembly Bill No. 3 of 2018 was published in the Kenya Gazette Supplement No. 9 of 12th February, 2018 as a Bill originating in the National Assembly.

The Bill seeks to amend three Acts of Parliament, i.e. the Land Act, 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 underwent the First and Second readings and was subjected to public participation as required by the Constitution of Kenya, 2010 and both the National Assembly and Senate Standing Orders.

The Bill was passed by the National Assembly on 8th August, 2018 and referred to the Senate for consideration pursuant to National Assembly Standing Order 142. The Bill was passed by the Senate with amendments on 14th February, 2019.

The Bill was then read a first time in the Senate on 12th September, 2018 thereafter referred to the Senate Committee on Land, Environment and Natural Resources and it was passed by the Senate on 14th February, 2019. Pursuant to Article 110 (4) of the Constitution, the Senate conveyed a message to the National Assembly seeking the concurrence of the National Assembly to the amendments made to the Land Value Index Laws (Amendment) Bill, National Assembly Bills No. 3 of 2018.

The National Assembly, through its Departmental Committee on Lands, considered the amendments forwarded to it through its report tabled before the National Assembly on 26th March, 2019. The National Assembly Committee approved the Senate's amendments to clauses 2; 3; 4; 6(a) (i), (iii) & (b); 7(a); 12; 13; 14 and 16.

The National Assembly Committee rejected the Senate Amendments to clauses 1; 5; 6(a)(ii) & (iv); 7(b) and 17.

Consequently, and pursuant to the National Assembly Standing Order No. 149 and Senate Standing Order No. 160 the Bill was referred to a Mediation Committee with the sole objective of developing a version of the Bill that would be presented to both Houses for approval.

3.0 CONSIDERATION OF THE LAND VALUE INDEX LAWS (AMENDMENT) BILL, NATIONAL ASSEMBLY BILL NO. 3 OF 2018

Clauses 2; 3; 4; 6(107A) (1), (107A) (4)(c)(ii) & (107B) (2); 7(1A); 12; 13; 14 and 16.

The Committee observed that the National Assembly concurred with the above-mentioned Senate amendments. The Committee therefore resolved to adopt the Senate amendments as concurred to by the National Assembly.

1. Clause 5

The Senate sought to amend clause 5 -

(a) by deleting paragraph (a) and substituting therefor the following new paragraph—

(a)by inserting the following new subsection immediately after subsection (3)—

(3A) Where the Commission rejects a request of an acquiring body in accordance with subsection (3), the Commission shall inform the relevant acquiring body within seven days of the decision to reject the request.;

(b) in paragraph (b) by deleting the proposed new subsection (4)(b) and substituting therefor the following new paragraph—

(b)establish that the acquiring authority 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 the improvements thereon;

(c) in paragraph (c) by deleting the word “body” appearing immediately after the words “in the acquiring” in the proposed subsection 107(5B) and substituting therefor the word “authority”.

Committee observation

The Committee observed that the duration within which the Commission shall inform the acquiring body of the decision to reject the request should be within 14 days and not 7 days. The Committee noted that a period 14 days was reasonable and more adequate for the decision to be communicated.

The Committee further considered the Senate amendment to clause 5(b)(4)(b) and agreed with the amendment. The Committee noted that the list of persons in actual occupation of the land

prior to the date of request for acquisition would facilitate survey and inquiries for purposes of determining compensation.

The Committee also considered the Senate amendment to Clause 5(c)(5B) and agreed that Bill be amended in paragraph (c) by deleting the word “body”, in the proposed subsection 107 (5B) and substitute it with the word ‘authority’. This will provide uniformity in the text of the Land Act being amended.

Recommendation

The Committee agreed with the Senate amendments to-

- (a) Clause 5(a) save for increase of the timeline from seven to fourteen days.
- (b) Clause 5(b)(4)(b); and
- (c) Clause 5(c)(5B).

2. Clause 6

The Senate sought to amend clause 6

- (a) in the proposed new section 107A—
 - (i) by deleting subsection (1) and substituting therefor the following new subsection—
 - (a) Valuation of freehold land and community land for purposes of compensation under this Act shall be based on the provisions of this Part and the land value index developed for that purpose by the Cabinet Secretary in consultation with county governments and approved by the National Assembly and the Senate;
 - (ii) in subsection (4) by deleting the word “apparent” appearing immediately after the words “increase in the” in the introductory clause in paragraph (c);
 - (iii) in subsection (4) by inserting the words “and are not capital improvements” immediately after the words “state of repair” in paragraph (c)(ii)
 - (iv) in subsection (8) by deleting the word “twelve” appearing immediately after the words “uninterrupted period of” in paragraph (a) and substituting therefor the word “six”;

Committee Observations

The Committee noted that the Senate amendment to the new section 107A had proposed that the word ‘apparent’ in subclause 4(c) be deleted. The Committee resolved that Clause 6(107A) (4)(a), (b) and (c) all be redrafted by deleting the words ‘potential’, ‘actual’ and “apparent” as all these words may present a challenge in interpretation regarding assessing the value of land.

The Committee also considered the Senate amendment to Clause 6(107A) (8) and agreed with the amendment that the duration of what can be termed as ‘uninterrupted occupation’ as used in sub-clause 8(a) be reduced from 12 to 6 years.

The Committee also observed that there is need to state the timelines within which the land value index shall be developed. The Committee proposed a timeline of six months from the date of commencement of the Act.

Recommendation

The Committee agreed with the Senate amendments to-

- (a) Clause 6(107A) (4)(c) with a further amendment to delete the words ‘potential’ and ‘actual’ appearing in paragraphs (a) and (b);
- (b) Clause 6(107A) (8)(a).

The Committee also proposed the insertion of the following further amendment under the proposed Section 107A-

(1A) The land value index under sub-section (1) shall be developed within six months of the commencement of this Act.

3. Clause 7

The Senate sought to amend clause 7 by inserting a new sub-clause (2) —

(2) Section 111 of the Land Act is amended in subsection (1A) by deleting the word “body” appearing immediately after the words “The acquiring” and substituting therefor the word “authority”.

Committee Observation

The Committee considered the Senate amendment that inserted a new sub-clause (2) to Clause 7 and agreed that the word “body”, in sub-section (1A) of the Land Act be deleted and substituted with the word ‘authority’ for uniformity in the text of the Act.

Recommendation

The Committee agreed with the Senate amendments to Clause 7.

4. Clause 17

The Senate Sought to amend clause 17 in the proposed new section 133A by deleting subsection (2) and substituting therefor the following new subsection—

- (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.

Committee Observation

The Committee considered the Senate amendment to Clause 17(133A) (2) and agreed with the amendments to paragraph (a), (b) and (e). The Committee observed that the inclusion of the valuers and surveyors to the Tribunal would create conflict of interest noting the matters being considered by the Tribunal relate to the process of compulsory acquisition of land which may include disputes on valuation.

Recommendation

The Committee agreed with the Senate amendments to Clause 17(133A) (2) save for deletion of paragraph (c) and (d) relating to representation of the valuers and surveyors to the Tribunal.

5. Clause 1

The Senate sought to amend clause 1 by deleting the words “Value Index” appearing immediately after the words “as the Land”.

Committee Observations

The Committee considered the Senate amendment to clause 1 seeking to change the title of the bill from Land Value Index Laws (Amendment) Bill, 2018 to Land Laws (Amendment) Bill, 2018. The Committee observed that the Bill largely dealt with matters relating to compulsory acquisition of land. Matters relating to land value index were provided for in clause 5 and 6 of the Bill. The Committee also observed that the Land Value Index Laws were non-existent and what sought to be amended is the Land Act, Land Registration Act and the Protection and Assistance to Internally Displaced Persons and Affected Communities Act. The Committee further observed that once the Bill is enacted, the various amendments to three Acts would be effected in the parents Acts.

Recommendation

The Committee resolved to amend the Title of the Bill to be “Land Value (Amendment) Bill, 2018”.

Appendix I

Report

Adoption List

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

We, the undersigned Members of the Mediation Committee on the Land Value Index Laws (Amendment) Bill, National Assembly Bills No. 3 of 2018, do hereby append our signatures to adopt the Report-

1. Hon. Aden Duale, EGH, MP (Chairperson) 

2. Sen. Mwangi Paul Githiomi, M.P. (Vice Chairperson) 

3. Hon. John Mbadi, EGH MP

4. Sen. Mutula Kilonzo Junior MP 

5. Hon. Dr. Racheal, Nyamai, MP 

6. Sen. (Prof.) Margaret Kamar, EGH, MP 

7. Sen. Mary Seneta, M.P.

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

9. Hon. Mishi Mboko, M.P.

10. Hon. Caleb Kositany, MP 

Appendix II

Minutes of the Committee

MINUTES OF THE 2ND MEETING OF THE MEDIATION COMMITTEE ON THE LAND VALUE INDEX LAWS (AMENDMENT) BILL, NATIONAL ASSEMBLY BILLS NO. 3 OF 2018 HELD ON TUESDAY, 18TH JUNE, 2019 IN COMMITTEE ROOM 10, MAIN PARLIAMENT BUILDING AT 9.00 AM

PRESENT

1. Hon. Aden Duale, EGH, MP (**Chairperson**)
2. Sen. Mwangi Paul Githiomi, MP (**Vice Chairperson**)
3. Hon. John Mbadi, EGH, MP
4. Sen. (Prof.) Margaret Kamar, EGH MP
5. Hon. Dr. Racheal Nyamai, MP
6. Sen. Mutula Kilonzo Jnr, MP
7. Hon. Caleb Kositany, MP
8. Sen. Mary Seneta, MP
9. Hon. Mishi Mboko, M.P.

ABSENT WITH APOLOGY

Sen. (Arch.) Slyvia Kasanga, M.P

IN ATTENDANCE

Sen. Halake Abshiro, MP

SECRETARIAT

- | | |
|-------------------------|--|
| 1. Ms. Vane Akama | - Director Legal Services, National Assembly |
| 2. Mr. Leonard Machira | - Clerk Assistant I |
| 3. Mr. Victor Bett | - Clerk Assistant III |
| 4. Ms. Jemimah Waigwa | - Legal Counsel I |
| 5. Mr. Mitchell Otoro | - Legal Counsel |
| 6. Ms. Sylvia Ocharo | - Senior Research Officer |
| 7. Ms. Joyce Chelang'at | - Audio Recording Officer |

MIN. MC/LVILB/2019/006: PRELIMINARIES

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

MIN. MC/ LVILB /2019/007: ADOPTION OF AGENDA

The agenda was agreed to having been proposed by Sen. Mutula Kilonzo Jnr, MP and seconded by Hon. (Dr.) Racheal, Nyamai, MP as follows;

1. Prayers & Preliminaries
2. Adoption of the agenda
3. Confirmation of Minutes of the Previous Sitting
4. Mediation of the Land Value Index Laws (Amendment) Bill, National Assembly Bill No. 3 of 2018

5. Any other Business
6. Date of the next meeting/ Adjournment

MIN. MC/ LVILB /2019/008: CONFIRMATION OF MINUTES

The Minutes were confirmed as true record of the proceedings having been proposed by Sen. Mutula Kilonzo Jnr, MP and seconded by Hon. Caleb Kositany, MP.

MIN. MC/ LVILB /2019/009: MEDIATION OF THE AMENDMENTS TO THE LAND VALUE INDEX LAWS (AMENDMENT) BILL, NATIONAL ASSEMBLY BILLS NO. 3 OF 2018

The Committee considered the clauses as follows:

Clause 6

The Committee agreed to amend clause 6 to provide:

- i. That a report on the Land Value Index prepared by the national and county governments is tabled in both the national Assembly and Senate; and
- ii. To include timelines within which the Land Value Index should be developed. In this regard, the Committee agreed that the index should be developed within 6 months after the Bill is enacted into law.

Clause 17

The Committee considered the Senate amendment to Clause 17(133A) (2) and agreed with the amendments to paragraph (a), (b) and (e). The Committee observed that the inclusion of the valuers and surveyors to the Tribunal would create conflict of interest noting the matters being considered by the Tribunal relate to the process of compulsory acquisition of land which may include disputes on valuation.

The Committee agreed with the Senate amendments to Clause 17(133A) (2) save for deletion of paragraph (c) and (d) relating to representation of the valuers and surveyors to the Tribunal.

Clause 1

The Committee noted that the Senate sought to amend clause 1 by deleting the words “Value Index” appearing immediately after the words “as the Land”.

The Committee observed that the Bill largely dealt with matters relating to compulsory acquisition of land. Matters relating to land value index were provided for in clause 5 and 6 of the Bill. The

Committee also observed that the Land Value Index Laws were non-existent and what sought to be amended is the Land Act, Land Registration Act and the Protection and Assistance to Internally Displaced Persons and Affected Communities Act. The Committee further observed that once the Bill is enacted, the various amendments to three Acts would be effected in the parents Acts.

The Committee deliberated on the proposals put forward by Members and resolved that the Title of the Bill be "Land Value (Amendment) Bill, 2018".

MIN. MC/ LVILB /2019/10: ADJOURNMENT

There being no other business the meeting was adjourned at 11.10 am. The date of the next meeting was scheduled for Tuesday, 25th June, 2019 at 9.00 am.

SIGNATURE.....



DATE.....

25-6-2019

(CHAIRPERSON: HON. ADEN DUALE, EGH, MP)

MINUTES OF THE 1ST MEETING OF THE MEDIATION COMMITTEE ON THE LAND VALUE INDEX LAWS (AMENDMENT) BILL, NATIONAL ASSEMBLY BILLS NO. 3 OF 2018 HELD ON TUESDAY, 11TH JUNE, 2019 IN COMMITTEE ROOM 10, MAIN PARLIAMENT BUILDING AT 11.00 AM

PRESENT

- | | | |
|--|---|-------------------------|
| 1. Hon. Aden Duale, EGH, MP | - | Chairperson |
| 2. Sen. Mwangi Paul Githiomi, MP | - | Vice Chairperson |
| 3. Hon. John Mbadi, EGH, MP | | |
| 4. Sen. (Prof.) Margaret Kamar, EGH MP | | |
| 5. Hon. Dr. Racheal Nyamai, MP | | |
| 6. Sen. Mutula Kilonzo Jnr, MP | | |
| 7. Hon. Caleb Kositany, MP | | |
| 8. Sen. Halake Abshiro, MP | | |

ABSENT WITH APOLOGY

1. Hon. Mishi Mboko, M.P.
2. Sen. (Arch.) Slyvia Kasanga, M.P

IN ATTENDANCE

Hon. (Dr. Wilberforce Oundo MP

SECRETARIAT

- | | |
|-------------------------|-----------------------|
| 1. Mr. Leonard Machira | - Clerk Assistant I |
| 2. Mr. Victor Bett | - Clerk Assistant III |
| 3. Mr. Ahmad Guliye | - Clerk Assistant III |
| 4. Ms. Jemimah Waigwa | - Legal Counsel I |
| 5. Mr. Mitchell Otoro | - Legal Counsel |
| 6. Mr. Wilson Bosmet | - Sergeant at Arms |
| 7. Mr. Abdalla Mbore | - Sergeant at Arms |
| 8. Ms. Joyce Chelang'at | - Audio Recording |

MIN. MC/LVILB/2019/001: PRELIMINARIES

The meeting was called to order at 12.01 p.m followed by a word of prayer.

MIN. MC/ LVILB /2019/002: ADOPTION OF AGENDA

The agenda was agreed to having been proposed by Sen. Mutula Kilonzo Jnr, MP and seconded by Hon. (Dr.) Racheal, Nyamai, MP as follows;

1. Prayers & Preliminaries
2. Adoption of the agenda
3. Election of Chairperson and Vice Chairperson

4. Mediation of the Land Value Index Laws (Amendment) Bill, National Assembly Bill No. 3 of 2018
5. Any other Business
6. Date of the next meeting/ Adjournment

MIN. MC/ LVILB /2019/003: ELECTION OF THE CHAIRPERSON AND THE VICE CHAIRPERSON

The Members unanimously elected Hon. Aden Duale, EGH, MP to be the Chairperson after having been proposed by Sen. Mwangi Paul Githiomi, MP and seconded by Sen. Halake Abshiro, MP. Sen. Mwangi Paul Githiomi, MP was also unanimously elected as the Vice Chairperson after having been proposed by Hon. John Mbadi, EGH, M.P and seconded by Hon. Dr. Rachael Nyamai, MP.

MIN. MC/ LVILB /2019/004: MEDIATION OF THE AMENDMENTS TO THE LAND VALUE INDEX LAWS (AMENDMENT) BILL, NATIONAL ASSEMBLY BILLS NO. 3 OF 2018

The Committee considered the clauses as follows:

Clause 5

The Committee considered the Senate amendment to Clause 5(a) and agreed with the amendment save for the timelines. The Committee observed that the duration within which the Commission shall inform the acquiring body of the decision to reject the request should be within 14 days and not 7 days. The Committee noted that a period 14 days was reasonable and adequate for the decision to be communicated.

The Committee further considered the Senate amendment to clause 5(b) and agreed with the amendment. The Committee noted that the list of persons in actual occupation of the land prior to the date of request for acquisition would facilitate survey and inquiry for purposes of determining compensation.

The Committee also considered the Senate amendment to Clause 5(c) and agreed that the Bill be amended in in paragraph (c) by deleting the word “body”, in the proposed subsection 107 (5B) and substituting it with the word ‘authority’.

Clause 6

The Committee noted that the Senate amendment had proposed that the word ‘apparent’ in subclause 4 (c) be deleted. The Committee resolved that Clause 6(4)(a), (b) and (c) be redrafted

by deleting the words 'potential', 'actual' and "apparent" as the words may present a challenge in interpretation in regard to assessing the value of land .

The Committee also considered the Senate amendment to Clause 6(8) and agreed that the duration of what can be termed as 'uninterrupted occupation' as used in sub-clause 8(a) be reduced from 12 to 6 years.

Clause 7

The Committee considered the Senate amendment to Clause 7 and agreed that the word "body", in sub-section (1A) be deleted and substituted with the word 'authority'.

Clause 17

The Committee considered the Senate amendment to Clause 17 and agreed with the amendments to paragraph (a), (b) and (e). The Committee tasked the secretariat to identify other persons who can be members of the Tribunal.

Clause 1

The Committee deferred the consideration of clause 1 to the next meeting.

MIN. MC/ LVILB /2019/005: ADJOURNMENT

There being no other business the meeting was adjourned at 2.05 pm. The date of the next meeting was scheduled for Tuesday, 18th June, 2019 at 9.00 am.

SIGNATURE.....

DATE.....

18-6-2019

(CHAIRPERSON: HON. ADEN DUALE, EGH, MP.)



Appendix III

Mediated

Version of the

Bill



REPUBLIC OF KENYA

PARLIAMENT

NATIONAL ASSEMBLY BILLS
(Bill No. 3 of 2018)

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

(A version of the Land Value Index (Amendment) Bill (National Assembly Bill No. 9 of 2018) as agreed on 25th June, 2019, by a mediation committee appointed pursuant to Article 113 of the Constitution.)

N.A./B/No.3/2018

THE LAND VALUE (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 (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” means within a reasonable time of, and in any case not more than one year after, the taking of possession of the land by the Commission; and

“full” in relation to compensation for compulsorily acquired land or creation of wayleaves, easements and public rights of way 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 this Act.

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

3. Section 107 of the Land Act is amended—

Amendment to section 107 of No. 6 of 2012.

(a) by inserting the following new subsection immediately after subsection (3)—

(3A) Where the Commission rejects a

request of an acquiring authority in accordance with subsection (3), the Commission shall inform the relevant acquiring authority within fourteen days of the decision to reject the request.

(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 that the acquiring authority 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 the improvements thereon.

(c) by inserting the following subsections 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

authority.

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

4. 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 provisions of this Part and the land value index developed for that purpose by the Cabinet Secretary in consultation with county governments and approved by the National Assembly and the Senate.

(2) The land value index under subsection (1) shall be developed within six months of the commencement of this Act.

(3) 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 a specific time.

(4) 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.

(5) 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 value of land is occasioned by the intended use or development of the land to be acquired;
- (b) the increase in the value of the land as at the date of publication of the notice of intention to acquire it is

likely to accrue from the use to which the land will be put when acquired;

(c) the increase in the 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 and are not capital improvements.

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

(6) 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;

(7) Despite subsections (1) and (3), 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.

(8) 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.

(9) 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 six years immediately before the publication of the 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;
- (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.

(10) An occupant in good faith does not

include a person unlawfully occupying any land without the consent of the owner.

(11) The compensation payable under subsection (7) shall not in any case exceed the value of the structures and improvements on the land.

(12) Despite subsection (10), 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.

(13) 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 term 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 the unexpired term of the lease calculated on the basis of a land value index developed for that purpose by the Cabinet Secretary in consultation with county governments and approved by the National Assembly and the Senate;
- (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 grant; and

- (c) any other criteria which the Commission may prescribe in Regulations in consultation with the Cabinet Secretary and county governments and with the approval of the National Assembly and the Senate.

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

Amendment to
section 111 of
No. 6 of 2012.

(1B) 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

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

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

(1D) 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.

(2) Section 111 of the Land Act is amended in subsection (1A) by deleting the word “body” appearing immediately after the words “The acquiring” and

substituting therefor the word “authority”.

6. 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.

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

Amendment to section 114 of No. 6 of 2012.

8. 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.

9. 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.

10. Section 120 of the Land Act is amended—

Amendment to section 120 of the Principal Act.

(a) by deleting subsection (1) and substituting therefor the following new subsection—

(1) After an award has been made, the Commission may take possession of the respective land by serving on every person interested in the land a notice that on a specified day possession of the land and the title to the land will vest in the national or county government as the case may be, provided that such taking of possession will not result in persons being rendered homeless.

(b) 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”.

11. Section 124 of the Land Act is amended in

Amendment to section 124 of No. 6 of 2012.

subsection (3) by deleting the words “after paying full compensation”. 6 of 2012.

12. Section 125 of the Land Act is amended in subsection (1) by deleting the phrase “before taking possession,” appearing immediately before the word “pay”. Amendment to section 125 of No. 6 of 2012.

13. The Land Act is amended by inserting the following new Part immediately after Part VIII— Insertion of new Part VIII A in No. 6 of 2012.

PART VIII A—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 three persons appointed by the Cabinet Secretary through a notice in the *Gazette*.

(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; and

(c) one person nominated by the Attorney-General.

(3) 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.

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

(5) 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 sixty 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.

14. 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.

15. Section 157 of the Land Act is amended by inserting the following subsections immediately after

Amendment to section 157 of No. 6 of 2012.

subsection (5)—

(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 an 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 any 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.

16. 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.

17. The Prevention, 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.

22. 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.

