

LAND VALUE (AMENDMENT) ACT, 2019

BACKGROUND

- On **2 August 2019**, the President of Kenya officially signed the Land Value (Amendment) Bill into law.
- On **19 August 2019**, the Land Value (Amendment) Act No. 5 of 2019 (hereinafter referred to as “the Act”) officially became effective and will therefore apply to any subsequent compulsory land acquisition processes occurring after the commencement date.
- The purpose of the Act is to amend the **Land Act**, the **Land Registration Act** and the **Prevention, Protection and Assistance of Internally Displaced Persons and Affected Communities Act**.
- It spells out a criteria for the assessment of the value of land being acquired compulsorily and for connected purposes.
- The Act makes amendments which may negatively impact the constitutional rights of communities during compulsory land acquisition processes.
 - Government can now take possession of land acquired compulsorily before paying compensation and has up to one year to do so.
 - The Act adopts a market value approach for computing the value of community land.

THE ACT THREATENS THE CONSTITUTIONAL RIGHTS OF MARGINALISED COMMUNITIES

It makes several unconstitutional provisions which may jeopardise the realisation of the Bill of Rights.

- Where previously the National Land Commission (NLC) was required to pay compensation **before** taking possession of land, the new Act allows for compulsory acquisition to take place before the payment of compensation. In this Act, compensation is to be paid within a **year after taking possession of the land**.
 - The protracted period within which compensation is to be made threatens the rights of majority Kenyans who depend on their land and would be unable to sustain their livelihood without immediate compensation.
- The Act repeals the requirement for Free Prior Informed Consent (FPIC) of people who will be displaced due to development projects.

- It threatens communities' right to information: -
 - The Act makes no provision as to the format in which information on the location and approximate area of land to be acquired should be made.
 - Past practice has been to provide this information in the form of Geographic Information System (GIS) coordinates which citizens cannot understand.
- Communities and other landowners will not be compensated for any inconveniences caused where the land is acquired as a matter of urgency. No attempts are made to address what might amount to "matters of urgency" or provide any statutory measures to mitigate the interference with constitutional property rights.
 - This will cause arbitrary displacement of communities from their ancestral lands without prompt and adequate compensation.

THE ACT THREATENS THE PROPERTY RIGHTS OF COMMUNITIES

Currently, most community land remain unregistered and without titles.

- For communities whose lands are not registered, compensation will only be paid to occupants in good faith.
- The current requirement to prove ownership rights for unregistered community lands is evidence of occupation of land for an uninterrupted period of six years.
- This does not consider pastoralists way of life who are itinerant by nature and do not normally stay in one area for more than 3 months at a time.
- Similarly, communities whose lands are unregistered risk losing their lands without receiving any compensation.

VALUATION OF COMMUNITY LAND FOR PURPOSES OF COMPULSORY ACQUISITION SHALL BE BASED ON THE MARKET VALUE APPROACH

The Act presumes that community land should be valued in a similar way as private land without considering the differences in their nature, values and conditions.

- Community land, like private property is to be valued according to a Land Value Index which is to be developed using the market-value approach.
- The use of market approaches to compute the value of community may result in:-
 - Undervaluing of community land given that the market approach does not take into consideration non-monetary values that communities attach to such lands such as cultural values, emotional attachment and values of livelihood arising from its use.
 - The protracted compensation period could mean that valuation done at the time of acquisition would not reflect the value at the time of compensation

NATURAL JUSTICE is an African non-profit organisation specialising in environmental and human rights law, in pursuit of social and environmental justice for marginalised communities affected by development projects.

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