



THE INSTITUTION OF SURVEYORS OF KENYA

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PRESS STATEMENT

ON

DELAY OF NATIONAL INFRASTRUCTURE PROJECTS BY COMPULSORY LAND ACQUISITION PROCESS

a) Killing of a Professional Colleague

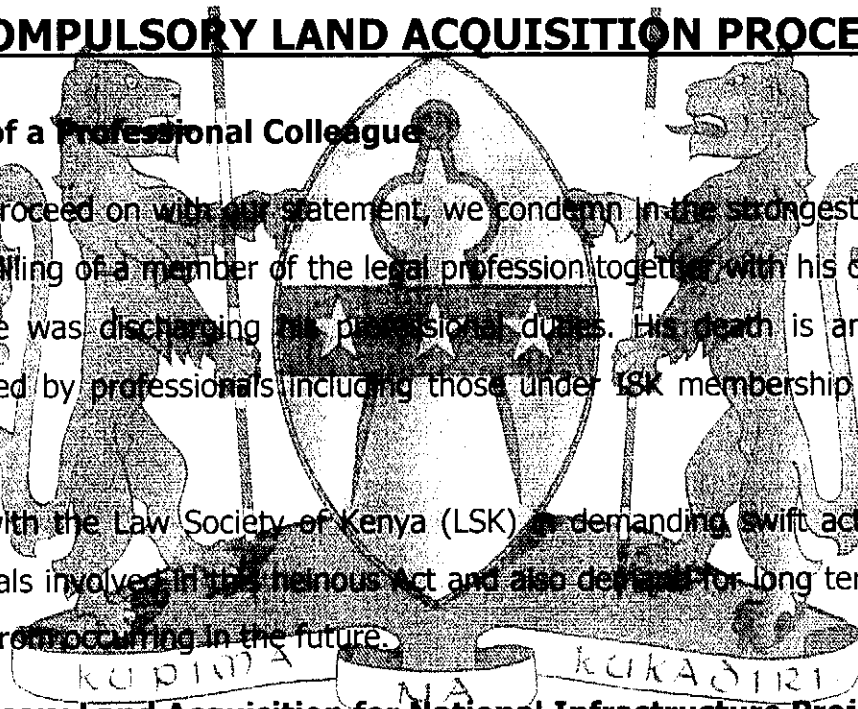
Before we proceed on with our statement, we condemn in the strongest terms possible the recent killing of a member of the legal profession together with his client and a taxi driver as he was discharging his professional duties. His death is an illustration of hazards faced by professionals including those under ISK membership in line of their duty.

We stand with the Law Society of Kenya (LSK) in demanding swift action to bring to book criminals involved in this heinous act and also demand for long term measures to deter such from occurring in the future.

b) Compulsory Land Acquisition for National Infrastructure Projects

The Issue:

The last few years, the Government has been carrying out compulsory land acquisition to facilitate the implementation of various infrastructure projects of national



importance. Key among these are the construction of the Standard Gauge Railway, expansion of road network and fixing of powerlines.

We are concerned that the process has interfered with the project implementation process. Sections of the media in the past two weeks have highlighted this issue and especially the loss of millions of shillings of taxpayers' money in the process.

The Institution has received complaints from some of the Government agencies who allege that the process of compulsory land acquisition is very expensive and almost unaffordable.

There have also been court cases that have dragged on for a long period delaying the implementation of the projects. In addition, there are instances where the courts eventually award exorbitant sums, sometimes way above the valuation figures. Such was the case at the Langata Road junction construction.

This is a matter of public interest given that taxpayer's funds are used for the acquisition. The delay in the project implementation ends up increasing the costs by huge proportions. This matter should be addressed expeditiously to avoid further loss.

The Process of Compulsory Land Acquisition in Kenya:

In Kenya, under Section 40 of the Constitution, the state is empowered to acquire private land for public benefit. The current enabling legislation for this process is the Land Act, 2012. The Land Act, 2012 provides for the National or the County Government to submit a request to the National Land Commission to acquire land on its behalf. Once the Commission is satisfied and carries out mandatory steps, it puts a notice of the acquisition in the Kenya gazette and county gazette and thereafter determines the value of land to be acquired through an elaborate process provided for in the Act.

It is also important to note that the Land Act, 2012 Section 120 (2) and (3) allows the state to access land awaiting compensation. If this provision is well applied, then the state is not held at ransom by private land owners unlike the scenario where people demand unreasonable claims on public projects without allowing access.

Any dispute arising during the acquisition, including a dispute on a professionally determined valuation should be referred to the Environment and Land Court for determination as per Section 128 of the Land Act, 2012.

It can be deduced that there are emerging issues concerning inflated valuation and high costs of compulsory acquisition to the Government. The main agency that is concerned is the National Land Commission!

We have also been informed of a dangerous trend where the land owners collude with the procuring entity to inflate the price of land to be acquired. In instances, where their expectations are not met, they seek redress in court and in the process delaying the project implementation.

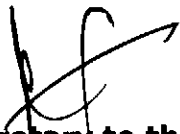
Way Forward:

- a) The Institution will carry out internal inquiry to establish among others whether the land values submitted to guide compensation were fair or correct, whether the beneficiaries of the compensation were genuine among others. This will inform appropriate action including relevant disciplinary mechanism on our members who might have erred.

- b) Routes to be followed by infrastructure projects on the ground as it were, should only be communicated to the public on the commencement of the projects. All information during the planning stage ought to be held in confidence by those concerned to avoid speculators taking advantage.

- c) The Government should evaluate alternative routes for the infrastructure projects so that those that turn out to be too expensive due to high compulsory acquisition figures should be abandoned in favour of those relatively affordable.
- d) The National Land Commission together with office of the Ombudsman should appoint a taskforce comprising of ISK among others to review all the issues of compulsory acquisitions with a view of establishing challenges and informing compulsory acquisition going forth.
- e) The Government and the Commission should finalize amendments to the land laws and gazette regulations that shall give a guideline to the process.

Signed



Secretary to the Council



Chairman to the Council