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THE NATIONAL ASSEMBLY  
THIRTEENTH PARLIAMENT – THIRD SESSION- 2024

DEPARTMENTAL COMMITTEE ON TRANSPORT AND INFRASTRUCTURE

REPORT ON CONSIDERATION OF THE NATIONAL TRANSPORT AND SAFETY  
AUTHORITY (AMENDMENT) BILL (*NATIONAL ASSEMBLY BILLS NO. 36 OF  
2023*)

CLERKS CHAMBERS  
DIRECTORATE OF DEPARTMENTAL COMMITTEE SERVICES  
PARLIAMENT BUILDINGS  
NAIROBI

FEBRUARY, 2024

THE NATIONAL ASSEMBLY PAPERS LAID	
DATE: 29 FEB 2024	DAY: THURS
TABLED BY:	HON GEORGE KARIUKI, MP Chairperson, Committee on Transport & Infrastructure
CLERK AT THE TABLE:	A. Shubuko

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- Annexure 2** Minutes of the Committee on sittings considering the Bill and adoption of the report
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## **CHAIRPERSON'S FOREWORD**

The National Transport and Safety Authority Amendment) Bill (*National Assembly Bills No. 36 of 2023*) was Read a First Time on 4<sup>th</sup> October, 2023 and subsequently committed to the Departmental Committee on Transport and Infrastructure for consideration and reporting to the House pursuant to National Assembly Standing Order 127.

The principal object of this Bill is to amend the National Transport and Safety Authority Act No. 3 of 2012. The amendments seek to introduce a new section which provides for the development of policy guidelines to regulate the fares payable by passengers in the public service vehicles within the country. The new section will ensure that the relevant stakeholders are involved in the process of developing such policy guidelines so as to ensure that there are maximum fares payable by passengers in the public vehicles from one point to another to avoid being subjected to abuse.

While conducting public participation, the Committee placed advertisements in the print media of 6<sup>th</sup> October, 2023, seeking comments from the public on the Bill pursuant to the provisions of Article 118 of the Constitution and Standing Order 127(3). The Committee received memoranda from the Ministry of Roads and Transport, Federation of Public Transport Sector and the National Gender and Equality Commission. The Committee also vide a letter Ref. No. NA/DDC/TI/2023/ (100) dated 15<sup>th</sup> November, 2023 sought the views and comments on the Bill from Kenya Private Sector Alliance, Consumers Federation of Kenya, Matatu Owners Association among others.

The Committee further received both oral and written submissions from the Cabinet Secretary of Roads and Transport in 8<sup>th</sup> November 2023 who was accompanied by the Principal Secretary for the State Department for Transport and other officials from the Ministry of Roads and Transport.

The Committee is grateful to the Offices of the Speaker and the Clerk of the National Assembly for the logistical and technical support accorded to it during the consideration of the Bill. I wish to express my appreciation to the Committee Members and the Committee Secretariat for their resilience and devotion to duty which made the consideration of the Bill successful. Finally, I wish to express gratitude to Members of the public who submitted their views and comments on the Bill in the course of public participation. Their views and commends indeed were vital in the consideration of the Bill.

On behalf of the Committee and pursuant to the provisions of Standing Order 199 (6), it is my pleasant privilege and honour to present to this House the report of the Committee on its consideration of the National Transport and Safety Authority (Amendment) (National Assembly Bills No. 36 of 2023).

**HON. G.K. GEORGE KARIUKI, M.P**

**Chairperson, Departmental Committee on Transport and Infrastructure**

## EXECUTIVE SUMMARY

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The principal object of this Bill is to amend the National Transport and Safety Authority Act No. 3 of 2012. The amendments seek to introduce a new section which provides for the development of policy guidelines to regulate the fares payable by passengers in the public service vehicles within the country. The new section will ensure that the relevant stakeholders are involved in the process of developing such policy guidelines so as to ensure that there are maximum fares payable by passengers in the public vehicles from one point to another to avoid being subjected to abuse.

In order to fulfill the requirements of Article 118 of the Constitution, the Committee placed an advertisement in the print media of 6<sup>th</sup> October, 2023 requesting for comments from the general public on the Bill. The Committee received memoranda from the Federation of Public Transport Sector and the National Gender and Equality Commission. The Committee considered all the submissions before making its recommendations. The Committee further received both oral and written submissions from the Cabinet Secretary of Roads and Transport on 8<sup>th</sup> November 2023 who was accompanied by the Principal Secretary for the State Department for Transport and other officials from the Ministry.

Having considered the Bill and taken into account stakeholder views the Committee observed that the Kenya operates as a capitalist country and that the legislation might bring more problems than solutions.

In view of the foregoing, the Committee recommends that the House rejects the National Transport and Safety Authority (Amendment) Bill (*National Assembly Bills No. 36 of 2023*) in its entirety.

## PART ONE

### 1.0 PREFACE

#### 1.1 Mandate of the Committee

1. The Departmental Committee on Transport and Infrastructure is established pursuant to the provisions of Standing Order No. 216 (1) and (5) with the following terms of reference: -
  - a. *investigate, inquire into, and report on all matters relating to the mandate, management, activities, administration, operations and estimates of the assigned Ministries and departments;*
  - b. *study the programme and policy objectives of Ministries and departments and the effectiveness of the implementation;*
  - c. *on a quarterly basis, monitor and report on the implementation of the national budget in respect of its mandate;*
  - d. *study and review all legislation referred to it;*
  - e. *study, assess and analyze the relative success of the Ministries and departments as measured by the results obtained as compared with their stated objectives;*
  - f. *investigate and inquire into all matters relating to the assigned Ministries and departments as they may deem necessary, and as may be referred to them by the House;*
  - g. *vet and report on all appointments where the Constitution or any law requires the National Assembly to approve, except those under Standing Order 204 (Committee on Appointments);*
  - h. *examine treaties, agreements and conventions;*
  - i. *make reports and recommendations to the House as often as possible, including recommendation of proposed legislation;*
  - j. *consider reports of Commissions and Independent Offices submitted to the House pursuant to the provisions of Article 254 of the Constitution; and*
  - k. *examine any questions raised by Members on a matter within its mandate.*

#### 1.2 Committee Subjects

2. The Committee is mandated to consider the following subjects as per the Second Schedule of the Standing Orders:
  - i. Transport, including non-motorized transport;
  - ii. Construction and maintenance of roads;
  - iii. Rails, air and marine transport; Seaports and national integrated infrastructure policies and
  - iv. programmes; and
  - v. Transport safety.

### 1.3 Oversight

3. The Committee oversees the Ministry of Roads and Transport which has two State Departments namely:
  - i. State Department for Roads
  - ii. State Department for Transport
4. Further, Committee oversees the State Department for Shipping and Maritime Affairs which is under the Ministry of Mining, Blue Economy, and Maritime Affairs.

#### 1.4 Committee Membership

5. The Committee membership comprises: -

The Hon. G.K George Kariuki, M.P – **Chairperson**  
Ndia Constituency  
**United Democratic Alliance Party**

The Hon. Mutua Didmus Wekesa Barasa, M.P- **Vice- Chairperson**  
Kimilili Constituency  
**United Democratic Alliance Party**

The Hon. Arama Samuel, M.P  
Nakuru Town West Constituency  
**Jubilee Party**

The Hon. Elsie Muhanda, M.P.  
Kakamega County  
**Orange Democratic Movement Party**

The Hon. Naicca, Johnson Many, M.P  
Mumias East Constituency  
**Orange Democratic Movement Party**

The Hon. Chege John Kiragu, M.P.  
Limuru Constituency  
**United Democratic Alliance Party**

The Hon. Francis, Kajwang' Tom Joseph,  
M.P.  
Ruaraka Constituency  
**Orange Democratic Movement Party**

The Hon. Abdirahman, Husseinweytan  
Mohamed, M.P.  
Mandera East Constituency

**Orange Democratic Movement Party**

The Hon. Kiaraho, David Njuguna, M.P.  
Ol Kalao Constituency  
**Jubilee Party**

The Hon. Kiunjuri Festus Mwangi, M.P.  
Laikipia East Constituency  
**The Service Party**

The Hon. Komingoi Kibet Kirui, M.P.  
Bureti Constituency  
**United Democratic Alliance Party**

The Hon. Bady, Bady Twalib, M.P.  
Jomvu Constituency  
**Orange Democratic Movement Party**

The Hon. Saney Ibrahim Abdi, M.P  
Wajir North Constituency  
**Orange Democratic Movement Party**

The Hon. Abdul Rahim Dawood, M.P.  
North Imenti Constituency  
**Independent**

The Hon. Jhanda Zaheer, M.P  
Nyaribari Cache Constituency  
**United Democratic Alliance Party**



## 1.5 Committee Secretariat

6. The Committee secretariat comprises: -

Ms. Tracy Chebet Koskei  
Senior Clerk Assistant  
**Lead Clerk**

Mr. Mohamednur M. Abdullahi  
Clerk Assistant III

Mr. Eric Kariuki  
Research Officer II

Ms. Clare Choper Doye  
Clerk Assistant III

Mr. Mabuti Mutua  
Legal Counsel

Mr. Yusuf Moge  
Fiscal Analyst II

Mr. Josphat Bundotich  
Senior SAA

Ms. Ivy Maritim  
Media Relations Officer

## 2.0 INTRODUCTION

### 2.1 Background Information

7. The National Transport and Safety Authority (Amendment) Bill (*National Assembly Bills No. 36. Of 2023*) seeks to amend to the National Transport and Safety Authority Act No. 3 of 2012. The amendments seek to introduce a new section which provides for the development of policy guidelines to regulate the fares payable by passengers in the public service vehicles within the country. The new section will ensure that the relevant stakeholders are involved in the process of developing such policy guidelines so as to ensure that there are maximum fares payable by passengers in the public vehicles from one point to another to avoid being subjected to abuse.

### 2.2 Summary of the Bill

#### A. CLAUSE BY CLAUSE CONSIDERATION

8. The amendments proposed in the Bill are outlined below.

- (a) **Clause 2** of the Amendment Bill seeks to renumber the existing provision in section 54 of the National Transport & Safety Authority Act as subsection 1 and introduce a new subsection (2) which proposes to empower the Cabinet Secretary for Transport & Infrastructure to publish regulations to prescribe the following-
- i. the maximum and minimum fares payable by the passengers in the public service vehicles within the country;
  - ii. the mechanisms of reviewing fares in the public service motor vehicles;
  - iii. the measures for ensuring that fares imposed are fair and reasonable;
  - iv. the modalities by which public service vehicles retain copies of timetables and fare tables to be displayed for all passengers to see; and
  - v. the means of ensuring that safety of the passengers in the public service vehicles is guaranteed.

### 2.3 Public Participation in the review of the Bill

9. Article 118 (1) (b) of the Constitution of Kenya provides as follows: -

***“Parliament shall facilitate public participation and involvement in the legislative and other business of Parliament and its Committees”***

Standing Order 127(3) provides as follows-

*“The Departmental Committee to which a Bill is committed shall facilitate public participation and shall take into account the views and recommendations of the public when the Committee makes its recommendations to the House”*

10. In line with the Constitution and Standing Orders, the Committee placed advertisements in the print media on 6th October, 2023. The Committee further invited the Principal Secretary for Transport to make both written and oral submissions on the Bill vide a letter Ref: NA/DDC/TI/2023/093 dated 16th October, 2023.
11. The Committee received memoranda from, the Federation of Public Transport Sector and The National Gender and Equality Commission. on 8th November 2023. The Committee, on the same date, also received oral and written submissions from the Cabinet Secretary for Roads and Transport accompanied by the Principal Secretary for the State Department for Transport and other officials of Ministry of Roads and Transport.

### 3.0 SUBMISSION BY STAKEHOLDERS

#### 3.1 Submission by the Ministry of Roads and Transport

The Cabinet Secretary for Roads and Transport, Hon. Kipchumba Murkomen, EGH appeared before the Committee on 9<sup>th</sup> November, 2023 accompanied by the Principal Secretary for Roads Eng. Joseph Mbugua, CBS and submitted as follows, that-

12. Trade liberalization was part of a broader push in Kenya to decrease the government's role in the economy and give market forces greater influence. Price controls, widespread in the economy before the structural adjustment loans, were largely eliminated throughout the late 1980s and early 1990s.
13. The Kenya Institute for Public Policy Research and Analysis (KIPPRA) is an autonomous institute whose primary mission is to conduct public policy research leading to policy advice. According to a publication by KIPPRA, price controls have merit when markets are not perfect, and direct price-controls as a long-term measure have not worked in the past in Kenya and elsewhere. In addition, price controls will violate international and regional trade agreements that the country has signed.
14. In Conclusion the Cabinet Secretary recommended for a comprehensive study and stake holder engagement on the Bill's proposals to assess practicability and ensure compliance conventions or treaties.

#### 3.2 Submission by the Federation of Public Transport Sector

The Federation of Public Transport Sector in their written memorandum Ref. No. FPT/11/2023/5 dated 22<sup>nd</sup> November 2023 and signed by Mr. Edwins Mukabanah the Chairperson of the Federation submitted as follows, that-

15. Governments all over the world seek to control fares to cushion vulnerable and the socially excluded members of the society. Such are; the urban poor, the rural poor, the sick, persons living with disabilities (PWDs), senior citizens, school children, pregnant mothers, etc.
16. Progressive Governments are often concerned with its population's ability to pay for Public Transport (PT) services, because PT is a facilitator of journey purposes, such as, school, work, leisure, worship, sports, etc. An efficient, fast, comfortable, safe and affordable PT is an enabler or driver of economic activities in a 24-hour economy. Control fares can assist manage the cost living.
17. Where PT is provided by the Public Sector, e.g., on rail transport in Kenya; it is easy for the government to provide a subsidy as it has often done with Kenya Railways' SGR or Likoni Ferries. But where such services

are provided (note: contracted out) to the private sector, it becomes difficult to justify subsidy payments to parliament.

18. PT fares are controlled (regulated) in most urbanized areas in the world. Such cities use different type of fare structures, such as, graduated fares, flat fares, multi-journey tickets, zonal fares, peak/off peak fares, contra-flow fares, seasonal fares, special fares (school children, senior citizens, PWDs, essential services staff, etc.)
19. Some cities in developed countries now provide their citizens with free PT services. That means, just like parliament appropriates money for infrastructure development and maintenance, it also appropriates money to provide 'free' PT services. It is argued that road infrastructure is the hardware and transport is the software. For infrastructure to deliver transportation must be efficient and affordable. An equitable PT neutralises social classes and promotes inclusivity. A good PT is often desired to curtail the growth of private car to reduce congestion and for environmental sustainability reasons.
20. It should be noted that, using technology, both urban and inter-city fares are controlled in our neighbouring country of Rwanda using the regulator RURA. In the city of London, we have many operators whose PT buses are painted red and operate on one controlled route network and a cashless fare platform controlled by an organising authority called Transport for London. The framework to administer regulated fares, as is in Rwanda and London, include all stakeholders.
21. To regulate fares, government require policy, legislative, regulatory and institutional frameworks to be able to provide a controlled fare regime that is based on correct cost parameters. It is the duty of parliament to ensure the above frameworks are in place first before allowing government to control fares in a free market economy.
22. It should be noted that most government institutions use a price control mechanism on mileage claims. They use predefined rates, such as, Automobile Association of Kenya (AA) rates.
23. It should further be noted that three major costs in PT operations, that is, Fuel is regulated by EPRA and Insurance is regulated by IRA with no complaints from the Competition Authority of Kenya. Labour Cost is subject to the government controlled Minimum Wage Guidelines under the Labour Laws.
- 24.
25. In fact, most costs of operating a PT vehicle are inscribed in law. For example, a PT vehicle must:
  - (i) Comply with all Labour Laws
  - (ii) Operate under a Sacco or Company
  - (iii) Pay County Parking Fees
  - (iv) Clean vehicles at all times
  - (v) Have crew who are uniformed, with Police Compliance Certificate and NTSA Badge
  - (vi) Issue passengers with Cashless Ticket

- (vii) Fit a tracking device and a speed governor
- (viii) PT vehicle fitted seat belts - even if one is operating in an urban area
- (ix) Carry a Fire Extinguisher and Reflectors Have a TP Insurance
- (x) Have a Road Service License
- (xi) Inspect vehicles annually
- (xii) Pay Advance Tax

26. All the above legal requirements increase the cost of doing business hence making PT operation a loss-making enterprise. It should be noted that most PT operators collapse after a few years of operation. International investors such United Transport and Stagecoach pulled out of PT operation in Kenya and since then we have not attracted any new ones. This is because of the operation and business environment where the licencing regime is not aligned to international best practice. For example, routes are over buses and PT fares applied in Kenya are not based on proper costing. Regulated fares will ensure operators charge passengers fares that have a costing basis.
27. For the profit-oriented enterprises such as Kenya's private sector driven PT, a costing model that provides Gross Cost Contract - plus margin will be ideal. This can only be done in a jurisdiction where regulated fares are reviewed regularly by a PT Management Board. The Board composition should be made up of all stakeholders. The stakeholders should sit down to agree on costing parameters or a pricing formula similar to the one used by the Energy and Petroleum Regulatory Authority (EPRA).

#### **a) Regulated Fares and a Free Market**

28. The current operator is used to carrying at 100% load factor at the start of a journey and reacts to market forces of supply and demand by charging less fares during low demand and high fares during high demand. Currently the private operator adjusts fares depending on seasonality or peak / off peak. Factors, such as, school holidays, rain, time of day, availability of competition, etc create a spike in fare pricing. Intercity operators, also, adjusts fares depending on who booked first and who booked last, for example, during Easter and Christmas seasons, etc.
29. The above phenomenon is typical of a free market and is often seen in airlines fare pricing. In this scenario travel is just like any other valuable commodity that reacts to the law of supply and demand in a perfect market.
30. Unfortunately, there are no complaints made at airlines when they use Amadeus airline ticketing system to charge fares based on market forces of supply and demand but a lot of complaints are made when PT uses stage cartels to charge fares based on passenger demand and supply. This is perhaps because of the inability to pay of a PT passenger whose disposable income is limited compared to the airline passengers. It could also be noted that in PT a large number of members of public (passengers) are affected.
31. Modern principles of providing PT requires a controlled market (not a free market) where there are rules of entry and exit using a fair licencing regulatory regime. During the era of TLB Act, when fares were

controlled, the TLB controlled the number of vehicles to be licenced on a route to and from a destination. TLB Board travelled to every region and used data and public participation to license operators.

32. Under TLB Act there as competition for the routes instead of competition for passengers which is the case under the National Transport Safety Authority (NTSA) Act now. There were consultations in a public forum between the regulator, provincial administration, consumers and all operators. TLB endeavoured to licence an optimum number of buses or operators to or from a particular destination to minimise unfair and wasteful competition. TLB also made great effort towards removing cartels on routes, stages and terminals, who in most cases determine fares chargeable.
33. During the TLB era, every operator was required to file with TLB a fare table, time table and to display a Condition of Carriage at the head office. Under NTSA Act, now, it is a free for all where free or perfect market forces principles have collapsed. Fares are controlled by illegal stage cartels who are not alive to the mechanisms of a pricing formula. Fares are either too high or too low (predatory pricing). Passengers or vehicle owners are often held at ransom.
34. Enforcement is lacking or is compromised by corruption. Illegal operators who are not compliant with the above-mentioned laws are often left to roam the market giving compliant operators a run for their money. The result is; every operator decides to start cutting corners by breaking the law with limited revenue, the vehicle owners reduce vehicle maintenance expenses leading to increased accidents. Workers' terms of employment get worse. Investing in new vehicles stalls.
35. The fact that there is no fare control means passengers and vehicle owners are left at the mercy of illegal cartels or crew. Operators (Saccos and Companies) continue owe their management commissions from vehicle owners without caring about the vehicle owner's profitability. The owner of the vehicle losses control of his PT business but he / she is the one who takes the beating when passengers are overcharged or undercharged. It is well known that the overcharged amounts arising out of malpractices, such as, carrying excess passengers never reaches the business owners but he/she often takes the blame or insurance risk.
36. The beneficiaries who are, the enforcement officers who abate traffic violations, the crew who break the law and the stage cartels who set un-predicable fares, often get away scot-free.
37. Whereas passengers complain of being charged high fares, often set by stage cartels, during high demand or even when it rains, operators complain of very low fares (predatory pricing) when there are few passengers (low demand), when the same stage cartels, charge fares that are below the cost of providing the service. Over charging or under charging fares should both be punishable by the Competition Authority of Kenya. Over supply of vehicles (legal and illegal) has led to cut throat, unfair and wasteful competition.
38. It should further be noted that passengers complain only when the fares are high but they never complain when fares are below the cost of providing the service. Politicians are more concerned with high fares but do not try to find out why the Competition Authority of Kenya never prosecutes those operators who apply predatory pricing, with some under cutting fares or even carrying passenger for free, when they get a license to operate a route where there are other operators.

39. Fares need to be controlled, because Competition Authority of Kenya whose mandate is to enforce the Competition Act No.12 of 2010 with the objective of enhancing the welfare of the people of Kenya by promoting and protecting effective competition in markets and preventing misleading market conduct throughout Kenya is dysfunctional when it comes to overseeing competition in PT provision. Equally the PT regulator NTSA has been unable to regulate the passenger market in terms of standards, tariffs and the entry and exit of PT vehicles and operators (Saccos and Companies).
40. The paratransit transport that operates today in Kenya does not benefit the operator, vehicle owner (investor, the passenger, the staff or the government).

#### **b) Enablers to a Regulated Fare Regime**

41. Looking at scenarios mentioned above, there is a justification for regulation of fares in PT. If done well, operators, passengers, staff and the government will stand to benefit. But to do so, the following measures need to be put in place,
- (i) Framework - There will be need to put in place a Fare Policy, amend the Traffic Act and the NTSA Act, develop regulations and insure Nairobi Metropolitan Transport Authority (NaMATA), NTSA, Competition Authority of Kenya, Transport Licensing Tribunal and National Police Service work as a team.
  - (ii) Route Network Plan - NTSA and County government will have to develop a countrywide and countywide PT Route Network Plans. The network plans will have to have data on aspects, such as, kilometres, stages, PT infrastructure, staff, vehicle makes, types and specifications, operators, etc.
  - (iii) Licensing Regime - NTSA will have to start issuing PT Operators with an Operator's Licence of 5 - 15-years that allows operators to compete for routes and not passengers.
  - (iv) Regulate taxis, two and three wheelers - County government will need to put in place robust mechanisms of regulating taxis, probox, *tuk tuks* and *boba boda*
  - (v) Externalities - The State Department of Transport (SDoT) will have to develop a policy that will assist curtail externalities (listed above) in paratransit operation and promote formal PT operators
  - (vi) Capacity Building for Regulator and Transport Committees at County level - For fare regulation to take effect, there is need to train investors and operators on pricing. The regulator will need to capacitate the PT licencing department at NTSA and in Counties to be able to have both the tools to capture PT operation costs and to recruit and train staff that can do the job.
  - (vii) Capacity Building for Operators - There will be need for Operators and their staff to be trained on how to operate under the new law where fares are regulated.



- (viii) Enforcement - There will be need to ensure that enforcement officers have the tools and wherewithal to enforcement compliance and here violations are seen legal action to be taken without taking bribes. Otherwise, this will be an avenue for enforcement officers to enrich themselves at the expense of operators.
- (ix) Centralised Automatic Fare Collection - There will be need to put in place a government funded central fintech switch to enable cashless fare transactions to take place. To enforce compliance with fares regulations, every PT operator will have to give each passenger a form of receipt or ticket for every journey made. Using technology this should be possible.
- (x) Removal of Cartels from Stages - There will be need for County governments together with security agencies to remove cartels from stages / terminals and provide their own County staff to manage the stages. This could also be done under a National Youth Service recruitment program or *Kazi Kwa Vijana*.
- (xi) Collection of Data - NTSA and operators will have to collect data that can be used to cost PT operation and set fares for each category of vehicle per kilometre or hour of operation
- (xii) Dispute Resolution Mechanism - There will be need to rejuvenate and fund the Transport
- (xiii) Licensing Tribunal so that those operators who may be denied a licence or feel that the fare tariffs given to them do not reflect the cost of operating the route and are therefore aggrieved could seek redress in the Tribunal, as used to be then when Transport Licensing Tribunal was functional.
- (xiv) Priority Measures - The government will have to put in place PT priority measures, using both economic and political instruments, over private transport, such as, subsidised fares for socially disadvantaged, a progressive licencing regime, a friendly tax regime, traffic management, use of road space, staggering start and finish of working hours, etc.
- (xv) County PT Laws - PT being a devolved function there will be need for the Council of Governors (CoG) to harmonise county transport laws across the 47 counties with the NTSA Act.
- (xvi) Creation of multi-stakeholder National PT Management Board or Committee under NTSA Act with powers to regulate fares that will work closely with County Transport and Safety Committee at County level.

**c) Benefits of a Regulated fares**

- (i) Passengers - Fares will be predictable. There will be no overcharging. Operators will now maintain their vehicles well and be able to invest in new safe, reliable and comfortable rolling stock.
- (ii) Operators - Operators will have a level playing field. There will be no fare undercutting and revenue leakages will reduce due to cashless fare collection system. Correct pricing will lead to profitability. The ease and cost of doing business will reduce.
- (iii) Staff - They will get social protection and descend jobs.

(iv) Government - National and County governments will have a quality PT system which will lead to a better quality of life. It will be able to bring more operators and workers in PT under its tax bracket.

42. The Federation in conclusion, submitted that if the above aspects are considered, regulation of fares is the way to go. The Federation will support the Bill to regulate fares in PT industry.

### **3.3 Submission by the National Gender and Equality Commission**

**The National Gender and Equality Commission submitted as follows;**

43. The Commission in its submission, proposed that Clause 2 be amended to refer to section 54 of the National Transport and Safety Authority Act which the clause seeks to amend. This wended. oversight since the clause does not make reference to the section of the Act being amended. The provision therefore should read-

**Clause 2 The National Transport and Safety Authority Act. 2012 is amended in section 54-**

**by renumbering the existing provision as subsection (1); and  
by inserting the following new subsection immediately after subsection (1) ...**

44. The Commission further submitted that paragraph (e) to the new subsection (2) be amended to include the words "dignity and comfort" immediately after the word "safety".

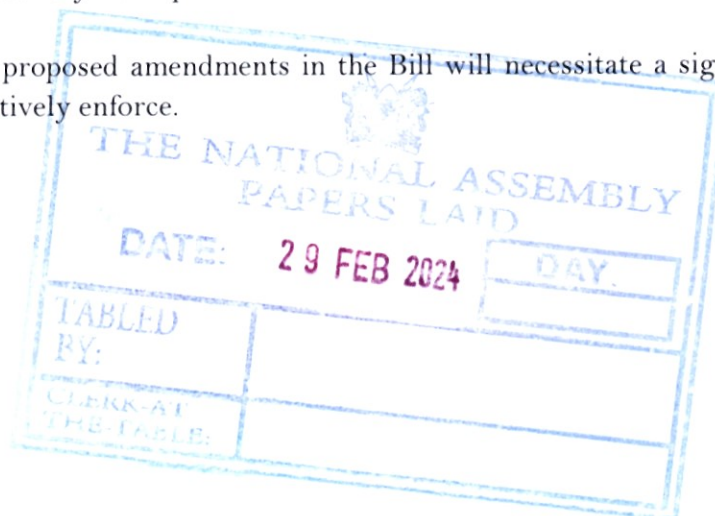
### **Justification of the proposed Amendment**

45. The effect of the amendment is to require that the regulations made by the Cabinet Secretary should also address issues pertaining not only safety but also the need to maintain certain standards to safeguard the dignity and guarantee the comfort of consumers transport services through public service vehicles.

#### 4.0 COMMITTEE OBSERVATIONS

46. The Committee while considering the Bill made the following observations;

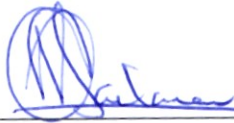
- 1) The proposed amendments in the Bill could pose more challenges especially administrative challenges of implementation and ensuring compliance.
- 2) The Committee observed that implementing price controls in the public service transport sector will conflict with international and regional agreements that Kenya is party to.
- 3) The committee observed that the predominant market players in public transport are private investors organized in form of Saccos, Companies or Individuals and imposition of controlled fare prices would require extensive structured engagements to take into account extenuating factors associated with the transport sector including the unpredictable fuel prices; the varying cost of spare parts which are mostly imported; the need for structured town planning to ensure designated alighting and boarding stations alongside which such fare prices would be determined.
- 4) The Committee observed that in Kenya, a substantial initiative was undertaken to reduce the government's role in the economy and promote free market economy policies geared to allow consumers an array of choice in the market.
- 5) The Committee observed that regulating fare prices may significantly affect the public transport sector causing a decline in supply (*if operators exit*) which would consequently hamper ability to commute and engage in economic activity.
- 6) The Committee observed that the costs of providing public transport services are significant and grossly unpredictable. For instance, Time related costs, distance related & vehicle related. The determination of consumer prices in the transport sector must take into account the time of travel, the distance to be covered and the type of vehicle and also factor the labour costs (salaries for drivers, touts, including their uniforms), costs of fuel, costs of spare parts and repair services, cost of insurance, advance tax costs, road license costs, ticketing costs, county seasonal parking costs, compliance costs, loan repayments and other overhead costs (vehicle cleaning, sacco membership fees and franchise management fee. The committee surmised that the metric for price determination and disaggregation is significantly nuanced for any entity to effectively and objectively make price determination.
- 7) The implementation of the proposed amendments in the Bill will necessitate a significant number of traffic police officers to effectively enforce.



5.0 COMMITTEE RECOMMENDATIONS

47. Having considered the Bill and taken into account stakeholder views, the Committee recommends as follows-

That the National Transport and Safety Authority (Amendment) Bill (National Assembly Bills No. 36 of 2023) **be rejected in its entirety.**

SIGNED 

THE NATIONAL ASSEMBLY	
DATE	27/02/24
DAY	
TABLED BY:	
CLERK	
THE	

HON. G.K. GEORGE KARIUKI, MP  
CHAIRPERSON, DEPARTMENTAL COMMITTEE ON TRANSPORT AND INFRASTRUCTURE

THE NATIONAL ASSEMBLY	
RECEIVED	
DATE	29 FEB 2024
DAY	
TABLED BY:	
CLERK	
THE	

Annexure 1:

**Signed list of Members who attended the sitting that considered and adopted the report**



REPUBLIC OF KENYA  
THE NATIONAL ASSEMBLY  
13<sup>TH</sup> PARLIAMENT - THIRD SESSION - 2024  
DEPARTMENTAL COMMITTEE ON TRANSPORT AND INFRASTRUCTURE  
MEMBERS ADOPTION LIST

DATE: 16-02-2024 START: 2:10 PM END: 4:00 PM  
VENUE: Simba Lodge, Nairasha, Nakuru County  
AGENDA: Adoption of the National Transport and Safety  
Authority (Amendment) Bill (National Assembly  
Bill No. 38 of 2023)

NO.	NAME	SIGNATURE
1.	The Hon. GK George Kariuki, MP – Chairperson	
2.	The Hon. Didmus Barasa, MP- Vice Chairperson	
3.	The Hon. Kiunjuri, Festus Mwangi, MP	
4.	The Hon. Abdul Rahim Dawood, MP	
5.	The Hon. Arama Samuel, MP	
6.	The Hon. Bady, Bady Twalib, MP	
7.	The Hon. Francis, Kajwang' Tom Joseph, MP	
8.	The Hon. Kiaraho, David Njuguna, MP	
9.	The Hon. Naicca, Johnson Many, MP	
10.	The Hon. Chege, John Kiragu, MP	
11.	The Hon. Elsie Muhanda, MP	
12.	The Hon. Saney, Ibrahim Abdi, MP	
13.	The Hon. Hussein Weytan Mohamed, MP	
14.	The Hon. Jhanda Zaheer, MP	
15.	The Hon. Komingoi, Kibet Kirui, MP	

Annexure 2

**Minutes of the Committee on sittings considering the Bill and adoption of the report**



REPUBLIC OF KENYA  
THE NATIONAL ASSEMBLY  
THIRTEENTH PARLIAMENT - THIRD SESSION - 2024  
DIRECTORATE OF DEPARTMENTAL COMMITTEES

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MINUTES OF THE THIRD SITTING OF THE DEPARTMENTAL COMMITTEE ON  
TRANSPORT AND INFRASTRUCTURE HELD ON FRIDAY 16<sup>TH</sup> FEBRUARY, 2024 AT  
SIMBA LODGE, NAIVASHA, NAKURU COUNTY AT 2:00 P.M.

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**MEMBERS PRESENT**

1. The Hon. GK George Kariuki, M.P. – **Chairperson**
2. The Hon. Kiunjuri Festus Mwangi, M.P.
3. The Hon. Samuel Arama, M.P.
4. The Hon. Bady, Bady Twalib, M.P.
5. The Hon. Francis, Kajwang' Tom Joseph, M.P.
6. The Hon. Johnson Many Naicca, M.P.
7. The Hon. Chege John Kiragu, M.P.
8. The Hon. Muhanda Elsie, M.P
9. The Hon. Jhanda Zaheer, M.P
10. The Hon. Komingoi Kibet Kirui, M.P.

**APOLOGIES**

1. The Hon. Mutua Didmus Wekesa Barasa, M.P. – **Vice-Chairperson**
2. The Hon. Abdul Rahim Dawood, M.P.
3. The Hon. Kiaraho, David Njuguna, MP.
4. The Hon. Saney Ibrahim Abdi, M.P.
5. The Hon. Hussein Weytan Mohamed, MP



## **SECRETARIAT**

1. Ms. Tracy Chebet Koskei - Senior Clerk Assistant
2. Mr. Mohamednur Abdullahi - Clerk Assistant III
3. Ms. Clare Choper Doye - Clerk Assistant III
4. Mr. Mabuti Mutua - Legal Counsel II
5. Mr. Abdinasir Moge - Fiscal Analyst
6. Mr. Eric Kariuki - Research Officer
7. Mr. Eugene Luteshi - Audio Officer
8. Mr. Josphat Bundotich - Principal Sergeant At- Arms

**MIN./NO.015/NA/T&I/2024:**

### **PRELIMINARIES**

The meeting was called to order ten minutes past Two O'clock (2:10 pm) with a word of prayer from the Chairperson. The Agenda of the meeting was adopted having been proposed and seconded by the Hon. Samuel Arama, M.P, and the Hon. Chege John Kiragu, M.P, respectively.

**MIN./NO.016/NA/T&I/2024:**

### **CONFIRMATION OF MINUTES OF THE PREVIOUS SITTING**

Confirmation of minutes of the previous sitting was differed

**MIN./NO.017/NA/T&I/2024:**

### **REVIEW AND DISCUSSIONS ON THE NATIONAL TRANSPORT AND SAFETY AUTHORITY (AMENDMENT) BILL, (*NATIONAL ASSEMBLY BILLS NO. 36 OF 2023*)**

Members noted that the Bill was considered in the Fifty-Second Sitting of the Committee held on Thursday, 30<sup>th</sup> November, 2023.

The Legal Counsel brought to the attention of the Committee a submission by the Federation of Public Transport Sector highlighting the global need for governments to control fares, particularly to support vulnerable populations. They emphasized the role of Public Transport (PT) in facilitating essential journeys and its impact on economic activities.

The submission argued that technology enabled fare control, as seen in Rwanda and London, can be applied to urban and inter-city transport. It emphasized the necessity of policy, legislative, and regulatory frameworks for regulated fares, with the responsibility falling on parliament.

The Federation outlined the benefits of a regulated fare system for passengers, operators, staff, and the government, emphasizing predictability, fair competition, social protection for staff, and improved quality of public transport services.

In conclusion, the Federation expressed support for a bill to regulate fares in the PT industry, emphasizing the potential positive impacts on various stakeholders if the proposed enablers and measures are implemented.

### **Committee observations**

The Committee while considering the Bill made the following observations;

1. The proposed amendments in the Bill could pose more challenges than solution due to Kenya's capitalist nature
2. That price controls might be okay when markets are not perfect, using them for a long time has not worked well in Kenya and other places. Also, these controls could break international and regional trade agreements the country signed.
3. The Committee observed that in Kenya, a substantial initiative was undertaken to reduce the government's role in the economy and enhance the influence of market forces.
4. The implementation of the proposed amendments in the Bill will necessitate a significant number of traffic police officers to effectively enforce the new regulations.

## COMMITTEE RECOMMENDATIONS

Having considered the Bill and taken into account stakeholder views, the Committee recommended that the House rejects the National Transport and Safety Authority (Amendment) Bill (National Assembly Bills No. 36 of 2023) in its entirety

The Committee however undertook to will engage the sponsor of the Bill and relevant stakeholders on mechanisms for regulating fares in the country.

### **MIN./NO.018/NA/T&I/2024: BRIEFING BY THE LEGAL COUNSEL ON THE PROPOSED KENYA CUSTOMS AND FREIGHT FORWARDERS BILL**

The Legal Counsel informed the Committee that the proposed Custom Agents and Freight Forwarders Bill is a legislative proposal to be sponsored by the Committee upon conviction of its merit and objectives and that the legislative proposal is intended to be an Act of Parliament to provide for a framework for the coordination, training and regulation of customs agents and freight forwarders with the aim to enhance professionalism, work ethics and standards in the customs and freight forwarding industry through the registration and licensing of the customs agents and freight forwarders.

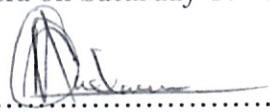
The Legal Counsel further informed the Committee that the legislative proposal seeks to set out its objectives in clause 3 to include the provision of a framework for self- regulation of the freight logistics, to ensure an efficient and effective service delivery in the industry and the registration and licensing of customs agents and freight forwarders. The organization is guided by the principle that a professional organization cannot discipline its members if it is not able to register and license such members.

**Members Resolution**

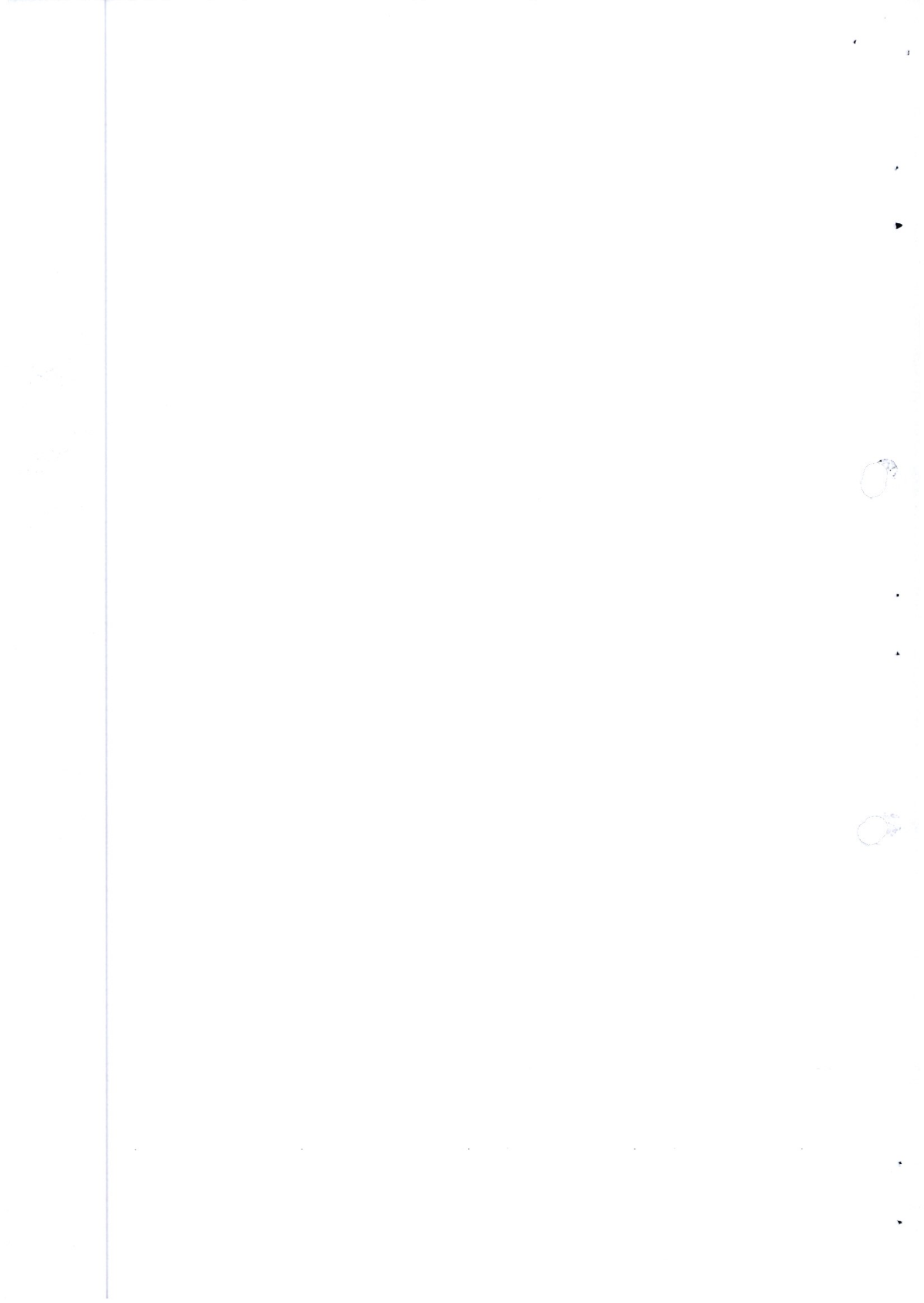
Members noted it was not how the Association had forwarded the Bill and what the motivation n for the Bill was. The Committee therefore resolved that the Association should look for a Member to Sponsor the Bill.

**MIN./NO.019/NA/T&I/2024: ADJOURNMENT/DATE OF THE NEXT MEETING**

There being no other business, the meeting was adjourned at Four O'clock (4:00 pm). The next meeting will be held on Saturday 17<sup>th</sup> February 2024 at the same venue

Signed..........Date.....25/2/2024.....

**HON. GK GEORGE KARIUKI, MP – CHAIRPERSON**



**MINUTES OF THE FIFTY-SECOND SITTING OF THE DEPARTMENTAL COMMITTEE ON TRANSPORT AND INFRASTRUCTURE HELD ON THURSDAY, 30<sup>TH</sup> NOVEMBER 2023 IN 5<sup>TH</sup> FLOOR COMMITTEE ROOM, CONTINENTAL HOUSE PARLIAMENT BUILDINGS AT 10.00 A.M**

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**MEMBERS PRESENT**

1. The Hon. GK George Kariuki, M.P. – **Chairperson**
2. The Hon. Samuel Arama, MP
3. The Hon. Bady, Bady Twalib, M.P.
4. The Hon. Francis, Kajwang’ Tom Joseph, M.P.
5. The Hon. Chege John Kiragu, M.P.
6. The Hon. Saney Ibrahim Abdi, M.P.
7. The Hon. Hussein Weytan Mohamed Abdirahman, M.P.
8. The Hon. Jhanda Zaheer, M.P.

**APOLOGIES**

1. The Hon. Mutua Didmus Wekesa Barasa, M.P. – **Vice-Chairperson**
2. The Hon. Kiunjuri Festus Mwangi, M.P.
3. The Hon. Abdul Rahim Dawood, M.P.
4. The Hon. Johnson Manya Naicca, M.P.
5. The Hon. David Njuguna Kiaraho, M.P.
6. The Hon. Muhanda Elsie, M.P
7. The Hon. Komingoi Kibet Kirui, M.P.

**SECRETARIAT**

- |                             |                       |
|-----------------------------|-----------------------|
| 1. Mr. Mohamednur Abdullahi | - Clerk Assistant III |
| 2. Ms. Choper Clare Doye    | - Clerk Assistant III |
| 3. Mr. Mabuti Mutua         | - Legal Counsel II    |
| 4. Mr. Abdinasir Moge       | - Fiscal Analyst II   |
| 5. Mr. Erick Kariuki        | - Research Officer I  |
| 6. Ms. Sandra Kamunto       | - Legal Counsel       |
| 7. Mr. Josphat Bundotich    | - Serjeant At-Arms    |
| 8. Ms. Mercyline Karubo     | - Audio Officer       |
| 9. Ms. Tracy Kinaga         | - Legal Intern        |
| 10. Ms. Beatrice Mawia      | - Legal Intern        |

**MIN./NO./TI/2023/250:**

**PRELIMINARIES**

The meeting was called to order at twenty minutes past ten O’clock (10:20 am) with a word of prayer from the Chairperson. The Agenda of the meeting was adopted having been proposed and seconded by the Hon. Francis, Kajwang’ M.P, and Chege Kiragu, M.P, respectively.

**MIN./NO./TI/2023/251: CONFIRMATION OF MINUTES OF THE PREVIOUS SITTING**

- i. Minutes of the forty-seventh meeting of the Committee held on 24<sup>th</sup> October, 2023 were confirmed as a true record of the proceedings after being proposed and seconded by the Hon. Francis, Kajwang' M.P, and The Hon. Chege John Kiragu, M.P, respectively.
- ii. Minutes of the forty-eighth sitting meeting of the Committee held on 6<sup>th</sup> November, 2023 of 2023 were confirmed as a true record of the proceedings after being proposed and seconded by The Hon. Samuel Arama, M. P and The Hon. Chege John Kiragu, M.P, respectively.
- iii. Minutes of the Forty-ninth meeting of the Committee held on 6<sup>th</sup> November, 2023 sitting of 2023 were confirmed as a true record of the proceedings after being proposed and seconded by the Hon. Francis, Kajwang' M.P and The Hon. Samuel Arama, M.P, respectively.
- iv. Minutes of the Fiftieth meeting of the Committee held on 7<sup>th</sup> November, 2023 were confirmed as a true record of the proceedings after being proposed and seconded by the Hon. Francis, Kajwang' M.P and the Hon. Chege John Kiragu, M.P, respectively.

**MIN./NO./TI/2023/252: BRIEF BY THE DIRECTORATE OF LITIGATION AND COMPLIANCE SERVICES ON THE PETITION CHALLENGING THE NATIONAL ASSEMBLY'S RESOLUTION REGARDING THE INCLUSION OF THE COUNTY GOVERNMENTS AS BENEFICIARIES OF THE RMLF FOR FY 2024/25 AND 2024/26**

The Directorate of Litigation and Compliance Services informed the Committee that a Petition was filed by Issa Elanyi Chamao, Patrick Karani Ekirapa, Paul Ngweywo Kirui, International Legal Consultancy Group Limited, and the Council of County Governors contesting the National Assembly's September 28, 2023 resolutions. The House resolved among others, that *“The ceilings for Roads Maintenance Levy Fund under Kenya Rural Roads Authority for the Financial Years 2024/2025 and 2025/2026 be maintained as per the formula setting out percentages in section 6 of the Kenya Roads Board Act, 1999” this in essence refused to include county governments as beneficiaries of the Road Maintenance Levy Fund (RMLF).*

The petitioners assert that this action violates the constitution by disregarding the roles of county governments in road maintenance and devolution principles.

The Petitioners claim that the decision disregarded public participation and Senate concurrence and was made arbitrarily, potentially affecting county governments' funding and responsibilities. Allegations include the decision's unconstitutional nature, its adverse

impact on devolution objectives, and the absence of recognition for county governments' rightful share of RMLF funds.

The prayers sought in the petition include declarations of unconstitutionality for various legislative sections, an order to freeze RMLF disbursements until county governments are recognized as beneficiaries, and directives to amend relevant laws aligning them with constitutional provisions regarding county government functions.

The Directorate of Litigation and Compliance Services further informed the Committee that the court issued conservatory orders suspending the National Assembly's decision pending further directions.

The Directorate received instructions from the Speaker of the National Assembly to defend against the petition. The matter is scheduled for mention on January 17, 2024.

### **Committee Concerns**

#### **The following matters arose:**

(i) Funds allocated to County Governments

Members sought clarification regarding the allocated funds directed to the County Government, they believe that despite these allocations, the county Government does not undertake the construction of those roads.

(ii) Independence of each Arm of Government

Members have expressed concerns about the independence of the Arms of Government. They sought clarification whether the judiciary has the authority to suspend laws enacted by the legislature.

(iii) Members emphasized that resolutions made in Parliament are final if they are unlawful, and the Department of Litigation and Compliance Services has been tasked to construct a legal case based on this argument

Members emphasized that Section 6 of the Kenya Roads Board Act remains enforceable, clarifying that the court solely suspended the decision made by the House.

(iv) Classification of Roads

Members sought clarification on the distinction between County Roads and National Roads. Members believe that the Kenya National Highway Authority (KeNHA) and the Kenya Rural Roads Authority (KURA) do not fall under the purview of County Roads. There is also a concern regarding the proposal for the County to assume the functions of the Kenya Rural Roads Authority (KeRRA)



## **Committee Resolution**

The Committee resolved to hold a meeting with the Director, Litigation and Compliance Services to deliberate on the National Assembly's response on the Petition. The Director was scheduled to brief the Committee on Tuesday, December 5th, 2023

**MIN./NO./TI/2023/253: BRIEF BY THE LEGAL COUNSEL ON THE KENYA ROADS (AMENDMENT) BILL, 2023; THE NATIONAL TRANSPORT AND SAFETY AUTHORITY (AMENDEMNT) BILL AND THE PROPOSED NATIONAL TARNSPORT AND SAFETY AUTHORITY (AMENDMENT) BILL, 2023**

### **1. The Kenya Roads (Amendment) Bill, 2023**

The Legal Counsel informed the Committee that the Kenya Roads (Amendment) Bill, 2023 is sponsored by Hon. Daniel Manduku, M.P. The Bill seeks to amend section 7(2) (i) of the Kenya Roads Act, 2007 by introducing a new paragraph that requires the Kenya Rural Roads Authority (KERRA) to plan the equitable development, rehabilitation, and maintenance of rural roads in each constituency.

This therefore means that whenever the Rural Roads Authority is developing its annual roads investment program among other plans principles of equity and fairness must guide such plans in respect to every constituency. This proposal is in consonance with the Constitutional principles of public finance under article 201 and the national values and principles of governance under article 10.

The Bill also seeks to amend section 34(2) of the Kenya Roads Act, 2007 by inserting the words "in each county" after the word priorities, the consequence of this amendment is that the Kenya Roads Board in discharging its mandate of developing the road investment programmes in consultation with the Cabinet Secretary for Transport will be required to outline the development and maintenance priorities for all the 47counties.

### **Committee concerns and resolutions**

Members expressed concerns regarding the practical implementation of the language used by the Hon. Member in the Kenya Roads (Amendment) Bill, 2023, particularly in relation to Sections 4 and 19 of the Roads Act.

The Committee therefore tasked the Legal Counsel to incorporate certain amendments in the Bill in consultation with the sponsor of the Bill and brief the Members on the amendments on Tuesday, 5<sup>th</sup> December 2023.

## **2. The National Transport and Safety Authority (Amendment) Bill 2023**

The Legal Counsel informed the Committee that the National Transport & Safety Authority (Amendment) Bill 2023 is sponsored by Hon. Didmus Barasa, M.P. The Bill seeks to amend section 54 of the National Transport & Safety Authority Act No. 33 of 2012 by empowering the Cabinet Secretary to have among other delegated powers, powers to prescribe through regulations fares payable by consumers of the Public Transport Services.

In the memorandum of objects and reasons of the Bill, Hon. Didmus Barasa indicates that the principal object of the Bill to introduce a new section which requires the Cabinet Secretary in consultation with the National Transport and Safety Authority to develop policy guidelines to regulate the fare prices payable by passengers using the public service vehicles within the country.

Therefore, in this regard, Clause 2 of the Amendment Bill seeks to renumber the existing provision in section 54 of the National Transport & Safety Authority Act as subsection 1 and introduce a new subsection (2) which proposes to empower the Cabinet Secretary for Transport & Infrastructure to publish regulations to prescribe the following-

- i. the maximum and minimum fares payable by the passengers in the public service vehicles within the country;
- ii. the mechanisms of reviewing fares in the public service motor vehicles;
- iii. the measures for ensuring that fares imposed are fair and reasonable;
- iv. the modalities by which public service vehicles retain copies of timetables and fare tables to be displayed for all passengers to see; and
- v. the means of ensuring that safety of the passengers in the public service vehicles is guaranteed.

### **Comments by Stakeholders**

**The Committee was informed that the following submissions had been received regarding the Bill:**

#### **a) Submissions by the Ministry of Roads, Transport & Infrastructure**

In their November 8, 2023 submissions, the Ministry highlighted the government's past role in the economy and its shift to promote a free market. They emphasized the need for minimal government intervention, citing laissez-faire policies adopted in the 1980s. The Cabinet Secretary mentioned that price controls are suitable only in imperfect markets, where limited suppliers lead to unfair pricing due to high demand. They cautioned that imposing price controls might breach international commitments and emphasized the necessity for thorough research and consultations before enacting amendments in line with Kenya's liberalized market.

#### **b. Submissions by the National Gender and Equality Commission**

The Committee also received written submissions from the National Gender and Equality Commission. The commission submitted that Clause 2 be amended to refer to section 54 of the

National Transport and Safety Authority Act which the clause seeks to amend. This was an oversight since the clause does not make reference to the section of the Act being amended. The provision therefore should read-

Clause 2 The National Transport and Safety Authority Act is amended in section 54-

by renumbering the existing provision as subsection (1); and  
by inserting the following new subsection immediately after subsection (1) ...

The commission further submitted that paragraph (e) to the new subsection (2) be amended to include the words "dignity and comfort" immediately after the word "safety". The effect of the amendment is to require that the regulations made by the Cabinet Secretary should also address issues pertaining not only safety but also the need to maintain certain standards to safeguard the dignity and guarantee the comfort of consumers transport services through public service vehicles.

### **Committee Concerns**

Members expressed concerns about the Bill, citing that Kenya operates as a capitalist country, they opined that the Legislation might generate more problems than solutions

Members raised concerns over the number of Traffic/police officers who will deal with the implementation of the Bill.

Members however noted that there was need to regulate fares in the Country after it was brought to the attention of the Committee of a surge in transportation costs, particularly during the El Nino period, citing the situation in Garissa as an example. Flight fares to Garissa have escalated from Ksh. 7,000 to Ksh. 25,000 due to the road damage caused by heavy rains.

### **3. The Proposed National Transport and Safety Authority (Amendment) Bill, 2023**

The Legal Counsel informed the Committee that the Proposed National Transport and Safety Authority (Amendment) Bill, 2023 is sponsored by Hon. Chege Kiragu, M.P. The legislative Proposal seeks to amend the National Transport and Safety Authority Act, 2012 to assign overall responsibility for safety including transport by road, rail, pipeline, marine or air to the National Transport and Safety Authority.

The Legal Counsel also informed the Committee that the Legislative Proposal seeks to consolidate and integrate regulation of safety of various modes of transportation to be under the stewardship of the NTSA. The current framework is fragmented where different regulatory agencies also handle safety of the transportation sector for which they regulate. For instance, the Kenya Maritime authority is bestowed with the mandate to enforce safety of shipping including compliance with construction regulations, maintenance of safety standards and safety navigation rules and also conduct investigations into maritime casualties including wreck.

Similarly, the Kenya Railways Corporation is bestowed with responsibilities to ensure safety for the public during the use of rail transport and carry out any mitigation measures to prevent accident as well as any investigations for accidents associated with rail transport.

In this respect, the legislative proposal contains seven (7) clauses as follows —

- i. Clause 2 seeks to amend the short title of the Act by deleting the word 'transport' and substituting with "transportation' so that the short title shall be The National Transportation and Safety Authority Act.
- ii. Clause 3 seeks to amend section 2 of the Act in respect to certain definitions to align them with the purpose and intent of the Bill.
- iii. Clause 4 seeks to amend section 4 of the Act by deleting the word 'transport' and substituting it with the word 'transportation'.
- iv. Clause 5 seeks to amend section 4 of the Act by deleting the words road transport and safety' and substituting them with the words 'transportation safety' to capture safety broadly to include air; rail; road or marine transport as proposed in the new definition in clause 3.
- v. Additionally, clause 5 seeks to amend the functions of the National Transport and Safety Authority to expand the authority's mandate to include coordination of transportation safety activities; investigation or cause to be investigated any aircraft; road; railway; marine; pipeline or other accidents.
- vi. Clause 6 seeks to amend section 22 of the Act by deleting the words road transport' and substitute with the word "transportation' and finally;
- vii. Clause 7 seeks to amend reference to the National Road and Transport Fund in section 47 of the Act to National Transportation Safety Fund.

**MIN./NO./TI/2023/254: MEETING WITH HON. CHEGE KIRAGU REGARDING  
THE PROPOSED NATIONAL TRANSPORT AND  
SAFETY AUTHORITY (AMENDMENT) BILL, 2023**

The Hon. Chege Kiragu appeared before the Committee to shed light on the Proposed National Transport and Safety Authority (Amendment) Bill, 2023 and submitted as follows;

That “transport” encompasses more than just roads, and that it extends to aviation, marine, pipeline, and railway. The Hon. Member highlighted the absence of an entity to investigate railway accidents in the country.

The Hon. Member highlighted the unresolved air accident in the country for instance the one that claimed the life of the late Prof. Saitoti, emphasizing the absence of an investigation into the cause of the plane crash until now.

The Hon. Member referenced the United States' approach, highlighting the National Transportation Safety Board (NTSB) as an example. He brought to the attention of the Committee that the National Transportation Safety Board (NTSB) is responsible for investigating accidents across various modes of transportation, including aviation, highway, marine, pipeline, and rail accidents. The NTSB conducts thorough investigations to determine the probable cause of accidents and make safety recommendations to prevent similar incidents in the future.

In concluding his submission, the Hon. Kiragu advocated for broadening the National Transport and Safety Authority's (NTSA) scope to encompass and address safety issues across aviation, highways, marine, pipelines, and railways within the country.

#### **Committee Concerns**

Having considered the Legislative Proposal, the Members urged the Hon. Member to refine the legislation by looking into the roles of other Transport related Agencies. For instance, the Kenya Civil Aviation Authority is tasked with ensuring air safety. The Members proposed that Hon. Kiragu counterchecks on the provisos from other Acts governing various Transport Agencies to prevent overlapping of roles or conflicting of responsibilities.

#### **MIN./NO./TI/2023/255: ANY OTHER BUSINESS**

The Chairperson brought to attention of the Committee of a letter received from the National Treasury as a response to a letter by the Committee had requested the National Treasury to brief the Committee on measures that have been put in place to deal with high pending bills in the Ministry of Roads and Transport. The Committee had also sought to know the interventions by the National Treasury to ensure timely completion of projects in the Ministry.

#### **MIN./NO./TI/2023/256: ADJOURNMENT/DATE OF THE NEXT MEETING**

There being no other business, the meeting was adjourned at twenty five minutes past Noon (12:25pm). The next meeting will be held on Tuesday, 5<sup>th</sup> December 2023.

SIGNED..... DATE.....

HON. GK GEORGE KARIUKI, M.P.(CHAIRPERSON)

**MINUTES OF THE FIFTY-FIRST SITTING OF THE DEPARTMENTAL COMMITTEE ON TRANSPORT AND INFRASTRUCTURE HELD ON THURSDAY 9<sup>TH</sup> NOVEMBER, 2023 AT THE 4<sup>TH</sup> FLOOR COMMITTEE ROOM, CONTINENTAL HOUSE AT 9:00 A.M.**

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**MEMBERS PRESENT**

1. The Hon. GK George Kariuki, M.P. – **Chairperson**
2. The Hon. Mutua Didmus Wekesa Barasa, M.P. – **Vice-Chairperson**
3. The Hon. Kiunjuri Festus Mwangi, M.P.
4. The Hon. Chege John Kiragu, M.P.
5. The Hon. Bady, Bady Twalib, M.P.
6. The Hon. Abdul Rahim Dawood, M.P.
7. The Hon. Samuel Arama, M.P.
8. The Hon. David Njuguna Kiaraho, M.P.
9. The Hon. Muhanda Elsie, M.P.
10. The Hon. Jhanda Zaheer, M.P.
11. The Hon. Komingoi Kibet Kirui, M.P.
12. The Hon. Saney Ibrahim Abdi, M.P.
13. The Hon. Hussein Weytan Mohamed Abdirahman, M.P.

**APOLOGIES**

1. The Hon. Francis, Kajwang' Tom Joseph, M.P.
2. The Hon. Johnson Manya Naicca, M.P.

**IN-ATTENDANCE**

**MINISTRY OF ROADS AND TRANSPORT**

1. Hon. Kipchumba Murkomen - Cabinet Secretary, Ministry of Roads and Transport
2. Eng. Joseph Mbugua - Principal Secretary, State Department of Roads
3. Mr. Mohamed Daghar - Principal Secretary, State Department of Transport
4. Mr. Henry Ogoye - Ag. Managing Director- Kenya Airports Authority
5. Eng. Kung'u Ndung'u - Director General- Kenya National Highways Authority (KeNHA)
6. Mr. Cosmas Ngeso - Director, National Transport and Safety Authority

**SECRETARIAT**

1. Ms. Tracy Chebet Koskei - Senior Clerk Assistant
2. Ms. Clare Choper Doye - Clerk Assistant III
3. Mr. Abdinasir Moge - Fiscal Analyst
4. Ms. Ivy Maritim - Media Relations Officer
5. Mr. Erick Kariuki - Research Officer

- 6. Ms. Rehema Koech - Audio Officer
- 7. Mr. Joseph Bundotich - Sergeant at Arms

**MIN./NO./TI/2023/246: PRELIMINARIES**

The meeting was called to order forty minutes past nine O'clock (09:40am) with a word of prayer by the Vice Chairperson. The Agenda of the meeting was adopted having been proposed and seconded by the Hon. Samuel Arama, M.P, and the Hon. Chege John Kiragu, M.P, respectively. This was followed by introduction from the Committee Members, followed by the Committee Secretariat then the Officials of the Ministry of Roads and Transport.

**MIN./NO./TI/2023/247: CONFIRMATION OF MINUTES OF THE PREVIOUS SITTING**

Confirmation of minutes of the previous sitting was differed.

**MIN./NO./TI/2023/248: SUBMISSION BY THE AG. MANAGING DIRECTOR, KENYA AIRPORTS AUTHORITY**

The A.g. Managing Director In his submission informed the Committee that the Kenya Airports Authority is the registered proprietor of the Land commonly referred to as Jomo Kenyatta International Airport for a term of 99 years from 1<sup>st</sup> August, 1996.

He also submitted that the JKIA measures Four thousand six hundred and seventy four (4,674.60) Hectares. He further submitted the list of companies operating within JKIA among them;

NO	TENANT NAME	NATURE OF BUSINESS
1.	748 AIR SERVICES	AIRLINE
2.	ACCESS FREIGHT SERVICES LTD	CLEARING AND FORWADING
3.	ACHARYA TRAVELAGENCIES LTD	TOURS AND TRAVEL
4.	BARCLAYS BANK OF KENYA	BANK
5.	BEAN PLANT	RESTAURANT
6.	BETH INTERNATIONAL	CURIOS

In his submissions, he gave a status report on revocation of titles at JKIA that were declared illegal by the National Land Commission. He stated that, The authority vide letter Ref: KAA/CS/GEN Vol. 6 of 30<sup>th</sup> October, 2019 requested the Principal Secretary for the Ministry of Lands and Physical Planning to assist in the revocation of illegal titles within JKIA as recommended by the National Land Commission. Later at a meeting between the National Land Commission and the Kenya Airports Authority held on 1<sup>st</sup> April, 2021, the National Land Commission undertook to follow up with The Principal Secretary and the Cabinet Secretary for lands on revocation as a responsibility of managers of public land. Several reminders have been done last resting with the Authority's letter dated 28<sup>th</sup> April 2023.

In his conclusion, he submitted that in respect of Implementation of National Land Commission recommendation that all long term grants affecting the Authority's land be cancelled and replaced by short term subleases in accordance with terms and conditions approved by the Authority, the same is being considered in line with the Authority's Land Policy and Policy on Leases, Licenses and Concessions. The same shall be subject to surrender of the unencumbered title in and subject to unconditional withdrawal of any pending court case in exchange of a sublease.

#### **Committee concerns**

The Members sought to know the exact size of the JKIA land that was in dispute, the Managing sought the indulgence of the Committee to enable him consult with his team before responding. However, the Cabinet Secretary having arrived, the Committee resolved to pend the matter to allow the Cabinet Secretary to respond to other matters that were pending before the Committee.

#### **MIN./NO./TI/2023/248: SUBMISSION BY THE CABINET SECRETARY, MINISTRY FOR ROADS AND TRANSPORT**

##### ***Proposed leasing of sections of Mombasa and Lamu Ports to private investors***

The Cabinet Secretary was pleased to appear before this Committee in regard to the response sought on the proposed leasing of sections of the Mombasa and Lamu Ports to private investors as advertised in Tender No. *KPA/052/2023-2024/CPS* dated 8<sup>th</sup> September 2023

He submitted to the committee a brief background model used by KPA in the development and operations of port assets christened *Public Service Port* Model. He noted that there is a number of



private sector cargo operations within the purview of KPA i.e Kipevu Oil Jetty, Shimanzi Oil Terminal, Storage facilities for East African Molasses Ltd, operations of Magadi Soda Company, Bamburi Portland Cement, grain bulk handling, and private Container Freight Stations.

The CS further submitted that, In a service port, the port authority does the administration and operation of port activities. The port operation includes providing navigational services, warehouse facilities, equipment and skilled employees/laborers. This means, the construction of infrastructure, superstructure, and providing for the employees is the responsibility of the Port authority. The port authority act to the public interest with full ownership of the port remaining with the State or the Government.

And as part of policy direction, the Integrated National Transport Policy 2009 currently under revision recommended for the country to transform the port into a landlord port status and promote regulated private sector participation in stevedoring, storage, and shore handling operations at the port. The policy states that the involvement of private sector in the crucial cargo handling activities will enable quick decision making by eradicating bureaucracy. Additionally, the Kenya Ports Authority National Ports Master plan 2018-2047 envisages that Lamu port will be operated principally as a landlord port.

Further to the above, the current policy under review, has identified gaps in the existing status of infrastructure ownership, management and control, predominantly vested in the Government and its agencies. Over time, this has occasioned an imbalance in the supply of infrastructure and the services thereof, and limited modal choice to the users.

He stated that the policy recommends that involvement of the private sector participation in the development of transport could go a long way in mobilizing adequate financing, especially for transport infrastructure and operations. There is a need to ensure adequate funds are available for the development and maintenance of transport infrastructure and operations, consistent with economic development and population growth.

In addition, there is need for integration of development of port infrastructure and associated commercial and logistics hubs such as special economic zones and industrial parks to grow the

port throughput, manufacturing and value addition activities. Hence, the need for development of port capacity through establishment/operationalization of Special Economic Zones and logistics hubs around ports.

The Cabinet Secretary further submitted that, there were benefits of Public Private Partnership (PPP) in Operations and Development of Port Assets and they include;

- i. Injection of private capital into port development will reduce Government funding burden on capital projects: the private party will be expected to invest in the rehabilitation, equipping of Berths 11-14 & Container terminal 1 and operate them for a specified period of time and also undertake the development of the SEZ infrastructure. This will free up government resources for other developmental purposes.
- ii. Elimination of port congestion; The port of Mombasa serves Kenya and the other landlinked/transit countries namely; Uganda, DR Congo, Rwanda, Burundi, South Sudan etc
- iii. The port of Lamu will also open up the LAPSSET Corridor and Serve Ethiopia, South Sudan and Western Somalia. The growth of these economies will require port capacity.
- iv. Improve efficiency in service delivery: There will be productivity improvements and efficiency gains to be brought about by the private sector expertise. This will improve the country' s competitiveness.
- v. Modernization of our ports; improved availability of cargo handling equipment; increase competition among terminals hence creating efficiency and competitiveness.
- vi. Increase output through Kenyan Ports: the private party will as part of the project agreement take up the demand risk and commit to agreed volume guarantees. This will grow Kenyan Ports especially in handling transshipment cargo.
- vii. Transfer of Knowledge, Technology and Expertise: Through engagement with the private renowned terminal operators, KPA will gain from the knowledge and expertise in port operations that will be deployed as well as be able to adopt modern technological trends in port development and operations.

- viii. Increase in Freight volumes: Through PPP, there will be a potential increase of freight volumes through SGR freight services due to efficiency increase of cargo by the use of the new equipment.

In his submission, he stated that before settling for the proposal of leasing sections of the ports, various considerations such as *stakeholders engagement* in the development of policy documents that guided on transition to landlord model was considered. Additionally, in terms of Labor relation, the concessionaire is expected to absorb a percentage of the staff already working and engage several third parties such as contractors for efficiency in the respective facilities and therefore no redundancies will be declared.

And as for the revenue impact associated with this proposal, he informed the Committee that KPA will retain Marine dues and charges as well as Wharfage which comprises 26% of the total charges per Twenty Foot Equivalent Units (TEUs) (others are stevedoring and shore handling). Regarding these other charges, even those that arise due to penalties, such as storage, KPA will negotiate- on percentage of variable fee, based on number of TEUs handled by the concessionaire. Furthermore, there will be at the start of the contract, an upfront fee to be paid by the concessionaire to compensate KPA for the already made investments, and a fixed fee payable every month.

He also reiterate that the Government's intention is to focus on PPP as opposed to Privatization. Comparatively, Privatization and Public-Private Partnership (PPP) arrangements are two different approaches to involving private sector participation in the operation and management of public infrastructure such as ports.

***Ministry's submission on the NTSA (Amendment) Bill that seeks to amend the NTSA Act No.33 of 2012 to provide for development of policy guidelines to regulate fares payable by passengers in Public Service Vehicles in the Country***

On the request seeking for policy guidance in the legislative proposal to introduce a new section, which provides for the development of policy guidelines to regulate the fares payable by passengers in public service vehicles, the CS submitted that;

1. Trade liberalization was part of a broader push in Kenya to decrease the government's role in the economy and give market forces greater influence. Price controls, widespread

in the economy before the structural adjustment loans, were largely eliminated throughout the late 1980s and early 1990s.

2. The Kenya Institute for Public Policy Research and Analysis (KIPPRA) is an autonomous institute whose primary mission is to conduct public policy research leading to policy advice. According to a publication by KIPPRA- price controls have merit when markets are not perfect, and direct price- controls as a long-term measure have not worked in the past in Kenya and elsewhere. In addition, price controls will violate international and regional trade agreements that the country has signed.
3. Apart from the research conducted by KIPPRA, the value and effect of this need to be researched by competent institutions and ministries before introduction. Some of the bodies that ought to be consulted include (but not limited to) are the Ministry of Trade, the National Treasury, the Ministry of Foreign Affairs, the Competition Authority and the private sector.

He noted that if price controls are to be introduced in the PSV sector it would be apparent to set a price ceiling rather than a minimum price. He therefore advised that a comprehensive study and stakeholder engagement should be undertaken on the Bill's proposals to determine their practicability and ensure the same do not violate any conventions or treaties applicable. He referred to 2018, where the then Minister for Transport sought approval from the National Assembly to amend the Traffic Act to give him powers to regulate fares in the Public Service Vehicle industries. However, the proposal was not approved by Parliament.

On the measures undertaken by the ministry in preparation for El nino rains to prevent flooding of roads in cities and across the country, the CS submitted that KeNHA has assessed and mapped the flood prone road sections and drainage structures from GIS that are likely to be affected by the El Nino rains and submitted the cost estimates for reinstatement works to the Ministry of Roads.

The CS stated that, the Ministry was prioritizing the road sections that are prone to washouts in our current budget and ensuring that the drainage structures as well as the outfalls are clean and clear to mitigate the risk of flooding.

He also submitted that the rehabilitation of Mombasa Road (A8) is currently ongoing and being implemented in 2 lots namely the **James Gichuru Road Junction - Nairobi Southern Bypass Interchange (Olesereni) - 12km** whose rehabilitation works commenced on 26<sup>th</sup> April, 2023 with a contract period of 18 months. The works are 31% complete and the expected completion date is 25<sup>th</sup> October, 2024 and the **Nairobi Southern Bypass Interchange (Olesereni) - Athi River Interchange** whose rehabilitation works commenced on 26<sup>th</sup> April, 2023 with a contract period of 18 months. The works are 23.5% complete and the expected completion date is 25<sup>th</sup> October, 2024.

The CS also briefed the Committee on the standard of humps along Sagana Highway. He mentioned that, there were a total No. of 3 (three) humps along the Nairobi Southern Bypass. The humps are installed along the Mombasa Bound Carriageway between Thogoto and Dagorreti interchanges with the standards adopted being

- Length - 10m (Across the entire carriageway)
- Height - 80mm (From the base to the crown)
- Material - Asphalt Concrete.

The CS also submitted that, measures have been put in place to ensure safety and enforcement, this measures include;

- Marking of the humps with white thermoplastic paint to ensure visibility
- Installation of a set of 3 approach rumble strips (30mm height) before the humps to alert motorists
- Installation of warning signs

He also submitted that, the erected humps on Kenol - Sagana road have been properly designed, positioned, and painted according to the standard specifications. Further to which warning signs and road markings for the speed calming measures; including rumble strips and speed humps have adequately been provided as illustrated.

On the plans put in place by the Ministry to address abandoning of road project sites by contractors and the measures for maintenance of the said roads and plans to address abandoning of road project sites by Contractors, the CS submitted that, The Ministry, in collaboration with the National Treasury, is working to clear the pending payments to ensure resumption of Works for the projects suspended due to non-payment. It will start by termination of non-performing Contractors and procurement of competent Contractors to execute the pending Works. He also submitted that the Ministry is working with the National Land Commission (NLC) to expedite land acquisition to enable completion of the suspended/ slow projects.

He concluded by stating that the Ministry will through relevant agencies ensure protection of complete road layers to minimize damages. It will also ensure proper maintenance of road drainage on the suspended projects. He mentioned that, the Ministry is putting in place proper road signage to enhance safety of the road users

### **Committee Concerns**

The following matters arose:

- a) The committee members sought concession on the leasing of part of the Mombasa and Lamu Port to Private Sector and the property still remains as a public land
- b) The committee wanted to know if there was any public participation on the leasing agreement as this will help address any challenges coming from the BPP, the Cabinet Secretary assured the Committee that public participation was carried out. In addition, the Cabinet Secretary submitted that feasibility studies and market sounding had been done and findings incorporated in the proposed concession agreements;
- c) The members were concerned on the policy culmination, if the parliament or the committee over sighting the agency is responsible in summoning any misconduct from the leasers.
- d) The committee wanted to know the competitive advantage does Kenya gain from the privatization of the public property, the Cabinet Secretary submitted that Kenya stands to benefit from upgrade of infrastructure to support cargo transportation which will increase revenue. The Cabinet Secretary also noted that the upfront payment by investors will guarantee their investment and also help unlock other assets like the Lamu Port.

MIN./NO./TI/2023/249:

**ADJOURNMENT/DATE OF THE NEXT MEETING**

There being no other business, the meeting was adjourned at half past noon (1:30pm). The next meeting will be held on notice.

Signed.....Date.....

**HON. GK GEORGE KARIUKI, MP – CHAIRPERSON**

**Annexure 3:**

**Copy of the National Transport and Safety Authority  
(Amendment) Bill (National Assembly Bills No. 36 of 2023)**



**THE NATIONAL TRANSPORT AND SAFETY  
AUTHORITY (AMENDMENT) BILL, 2023**

**A Bill for**

**ACT of Parliament to amend the National  
Transport and Safety Authority Act**

**ENACTED** by the Parliament of Kenya, as follows—

1. This Act may be cited as the National Transport and Safety Authority (Amendment) Act, 2023.

Short title.

2. The National Transport and Safety Authority Act (the Act referred to as the “principal Act”) is amended—

Insertion of a new subsection in Act No.33 of 2012.

(a) by renumbering the existing provision as subsection (1); and

(b) by inserting the following new subsection immediately after subsection (1) —

“(2) Without prejudice to the generality of subsection (1), the Cabinet Secretary may in consultations with the Authority make regulations prescribing—

- (a) the maximum and minimum fares payable by the passengers in the public service vehicles within the country;
- (b) the mechanisms of reviewing fares in the public service motor vehicles;
- (c) the measures for ensuring that fares imposed are fair and reasonable;
- (d) the modalities by which public service vehicles retain copies of timetables and fare tables to be displayed for all passengers to see; and
- (e) the means of ensuring that safety of the passengers in the public service vehicles is guaranteed.”

## **MEMORANDUM OF OBJECTS AND REASONS**

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

The principal object of this Bill is to amend the National Transport and Safety Authority Act No. 33 of 2012. The amendments seek to introduce a new section which provides for the development of policy guidelines to regulate the fares payable by passengers in the public service vehicles within the country.

The new section will ensure that the relevant stakeholders are involved in the process of developing such policy guidelines so as to ensure that there are maximum fares payable by passengers in the public vehicles from one point to another to avoid being subjected to abuse.

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

This Bill delegates legislative powers but does it limit fundamental rights and freedoms.

### **Statement of how the Bill concerns County Governments**

The Bill concerns County Governments as per Article 110(1)(a) of the Constitution as it contains provisions that affect the functions and powers of the County Governments as set out in the Fourth Schedule to the Constitution.

Paragraph 5 of Part 2 of the Fourth Schedule to the Constitution provides that the county transport including county roads is a function of the County Governments.

### **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 not occasion additional expenditure of public funds.

Dated the 20th June, 2023.

DIDMUS WEKESA BARASA,  
*Member of Parliament.*

*Section 54 of No. 33 of 2012 which it is proposed to amend—*

**Section 54 of the National Transport and Safety Authority Act**

**54. Regulations**

The Cabinet Secretary may, in consultation with the Board, make regulations for the better carrying into effect of the provisions of this Act.

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**SPECIAL ISSUE**

*Kenya Gazette Supplement No. 115 (National Assembly Bills No. 36)*



REPUBLIC OF KENYA

***KENYA GAZETTE SUPPLEMENT***

**NATIONAL ASSEMBLY BILLS, 2023**

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**NAIROBI, 21st July, 2023**

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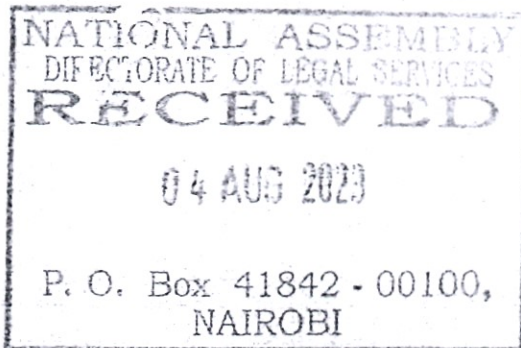
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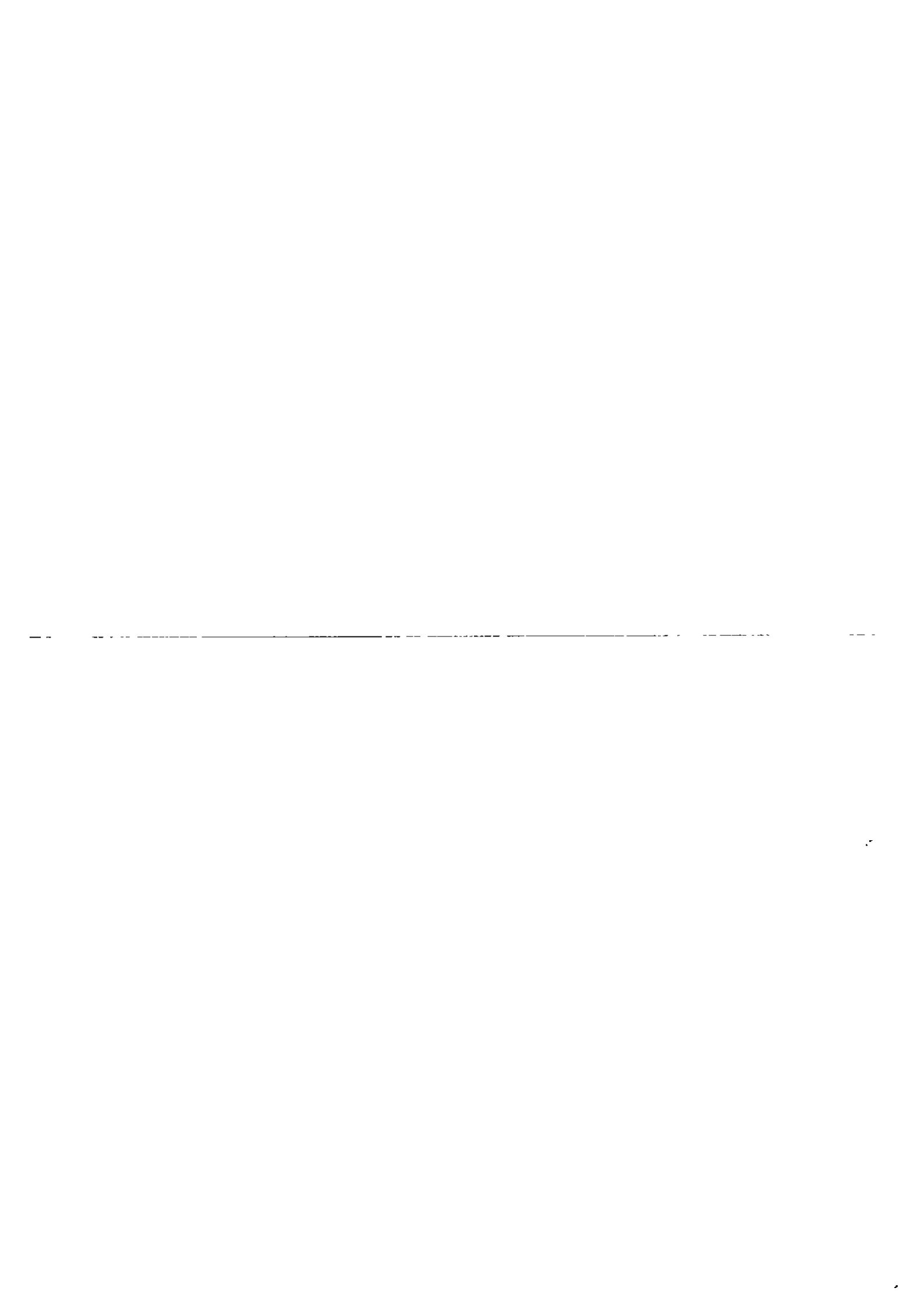
CONTENT

Bill for Introduction into the National Assembly—

PAGE

The National Transport and Safety Authority (Amendment) Bill, 2023 1203





**Annexure 4: Correspondence to stakeholders requesting for submission of comments**



**THE NATIONAL ASSEMBLY  
OFFICE OF THE CLERK**

P. O. Box 41842-00100  
Nairobi, Kenya  
Main Parliament Buildings

Telephone: +254202848000 ext. 3300  
Email: [cna@parliament.go.ke](mailto:cna@parliament.go.ke)  
[www.parliament.go.ke/the-national-assembly](http://www.parliament.go.ke/the-national-assembly)

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When replying, please quote

**Ref: NA/DDC/TI/CORR/2023/ (100)**

**15<sup>th</sup> November, 2023**

**Ms. Carole Kariuki**

Chief Executive Officer  
Kenya Private Sector Alliance  
Shelter Afrique House, Mamlaka House  
P.O. Box 3556-00100  
**NAIROBI**

**Mr. Albert Karakacha**

Chairman  
Matatu Owners Association  
Tumaini House  
Moi Avenue, City Center  
PO. Box 2462-00202  
**NAIROBI**

**The Secretary General**

Consumers Federation of Kenya (COFEK)  
Rehema Place, Ngong Road/Ring Rd  
Kilimani  
P.O Box 28053-00200  
City Square  
**NAIROBI**

**Mr. Edwin Mukabana**

Chairman  
Federation of Public Transport Operators  
**NAIROBI**

**Mr. Francis Theuri**

Group Managing Director  
AA Kenya  
Renaissance Park, Upper Hill  
**NAIROBI**

**Mr. Azim Dossa**

Managing Director  
Easy Coach Limited  
**NAIROBI**

**Mr. James Kahiyo**

Chairman  
2NK Sacco  
**NYERI**

**Mr. Joseph Ngige**

Director  
North Rift Shuttle  
**ELDORET**

Dear

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**RE: REQUEST FOR SUBMISSION ON THE NATIONAL TRANSPORT & SAFETY  
AUTHORITY (AMENDMENT) BILL (NATIONAL ASSEMBLY BILL NO. 36 OF 2023)**

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The Departmental Committee on Transport and Infrastructure is established under National Assembly Standing Order 216 and is mandated to amongst others, "*study and review all legislation referred to it*".

**The National Transport and Safety Authority (Amendment) Bill (National Assembly Bill No. 36 of 2023)**, sponsored by Hon. Didmus Wekesa Barasa, M.P, was Read a First Time on 4<sup>th</sup> October, 2023 and referred to the Committee for consideration and reporting to the House.

The Bill seeks to amend the National Transport and Safety Authority Act No. 33 of 2012, to provide for development of policy guidelines to regulate the fares payable by passengers in the public service vehicles within the Country. The amendment also seeks to ensure that there are maximum fares payable by passengers in the public vehicles from one point to another to avoid being subjected to abuse.


In that regard, the Committee is requesting for submissions on Bill from relevant stakeholders for consideration. This is therefore to invite you to make your submissions through the Office of the Clerk, Main Parliament Buildings by **Wednesday, 28<sup>th</sup> November 2023**. You are requested to send a soft copy of the submissions to [cna@parliament.go.ke](mailto:cna@parliament.go.ke).

The Liaison Officers facilitating this matter are **Ms. Tracy Chebet Koskei** who may be contacted on tel. No. **0726416794** or email: [tracy.koskei@parliament.go.ke](mailto:tracy.koskei@parliament.go.ke); and **Mr. Mohamednur M. Abdullahi** on tel. no. **0720928507** or email: [mohamednur.abdullahi@parliament.go.ke](mailto:mohamednur.abdullahi@parliament.go.ke).

Yours

**SERAH KIOKO, MBS**  
**For: CLERK OF THE NATIONAL ASSEMBLY**

Copy to:

  
**Hon. Didmus Wekesa Barasa, MP**  
Member of Parliament  
Kimilili Constituency  
Parliament Buildings  
**NAIROBI**

**Annexure 5: Newspaper advertisement inviting the public to submit memoranda on the Bill**

## COUNTY GOVERNMENT OF TANA RIVER



**THE COUNTY ASSEMBLY OF TANA RIVER**  
**THIRD COUNTY ASSEMBLY**  
 The Constitution of Kenya, 2010  
 The County Governments Act, 2012

### PUBLIC HEARINGS/RECEIPT OF MEMORANDA/ VIKAO VYA BARAZA

Pursuant to the provisions of Article 196(1)(a) & (b) of the Constitution of Kenya, 2010, Section 88 of the County Government Act, 2012, the County Assembly committee on Trade, Tourism, Industry and co-operative development invites members of the public, civil society organizations, special interest groups and professionals to attend and/or submit presentations to the public hearings on the Tana River County Trade and Investments Policy [sessional paper no 2 of 2023] scheduled as indicated below:

Public hearings schedule shall be as follows/ mipangilio ya mikutano:

TANA RIVER COUNTY TRADE AND INVESTMENTS POLICY				
Date	Time	Venue	Ward	Sub-County
Thursday, 12 <sup>th</sup> October 2023	9:00AM-12:30PM	Millenium Hall	Hirimani	Tana North
Thursday, 12 <sup>th</sup> October 2023	9:00AM-12:30PM	Chewani Village	Chewani	Tana River
Thursday, 12 <sup>th</sup> October 2023	9:00AM-12:30PM	YWCA, Minjila	Garsen South	Tana Delta

Written Memoranda may be forwarded to the Clerk of the County Assembly of Tana River, P. O Box 113-70101, Hola, hand-delivered to the office of the clerk, Assembly Building-Hola or emailed to: [info@tanariverassembly.go.ke](mailto:info@tanariverassembly.go.ke), to be received on or before 12<sup>th</sup> October 2023.

Copies of the documents can be obtained from the office of the area chiefs, ward managers, ward administrators and the county assembly website [www.tanariverassembly.go.ke](http://www.tanariverassembly.go.ke)

**MULLAHI DAYIB HUSSEIN**  
 CLERK TO THE COUNTY ASSEMBLY



REPUBLIC OF KENYA

## THE NATIONAL ASSEMBLY

### 13<sup>TH</sup> PARLIAMENT-SECOND SESSION 2023

IN THE MATTER OF ARTICLE 118(1)(b) OF THE CONSTITUTION  
 AND

IN THE MATTER OF CONSIDERATION BY THE NATIONAL ASSEMBLY OF:

1. THE TRIBUNALS BILL (NATIONAL ASSEMBLY BILL NO. 45 OF 2023)
2. THE PRESERVATION OF PUBLIC SECURITY (AMENDMENT) BILL (NATIONAL ASSEMBLY BILL NO. 48 OF 2023)
3. THE LEGAL AID (AMENDMENT) BILL (NATIONAL ASSEMBLY BILL NO. 53 OF 2023)
4. THE PRISONS BILL (NATIONAL ASSEMBLY BILL NO. 54 OF 2023)
5. THE PENAL CODE (AMENDMENT) BILL (NATIONAL ASSEMBLY BILL NO. 55 OF 2023)
6. THE LAND CONTROL BILL (NATIONAL ASSEMBLY BILL NO. 39 OF 2023)
7. THE NATIONAL TRANSPORT AND SAFETY AUTHORITY BILL (NATIONAL ASSEMBLY BILL NO. 36 OF 2023)

### INVITATION FOR PUBLIC PARTICIPATION AND SUBMISSION OF MEMORANDA

WHEREAS, Article 118(1)(b) of the Constitution requires Parliament to facilitate public participation and involvement in the legislative and other business of Parliament and its Committees and Standing Order 127(3) of the National Assembly Standing Orders requires House Committees considering Bills to facilitate public participation;

AND WHEREAS, the Tribunals Bill (National Assembly Bill No. 45 of 2023) and the Preservation of Public Security (Amendment) Bill (National Assembly Bill No. 48 of 2023), were read a First Time on **Tuesday, 26<sup>th</sup> September 2023**, the Legal Aid (Amendment) Bill (National Assembly Bill No. 53 of 2023), the Prisons Bill (National Assembly Bill No. 54 of 2023) and the Penal Code (Amendment) Bill (National Assembly Bill No. 55 of 2023) were read a First Time on **Tuesday, 3<sup>rd</sup> October 2023** while the Land Control Bill (National Assembly Bill No. 39 of 2023) and the National Transport and Safety Authority (Amendment) Bill (National Assembly Bill No. 36 of 2023) were read a First Time on **Wednesday, 4<sup>th</sup> October 2023** and thereafter referred to the relevant Departmental Committees for consideration and reporting to the House:

IT IS NOTIFIED that:

1. **The Tribunals Bill (National Assembly Bill No. 45 of 2023)** is a Bill sponsored by the **Leader of the Majority Party (The Hon. Kimali Ichung'wah, MP)** with the principal object being to give effect to Articles 1(3)(c), 20(4), 47(3), 159(1), and 169 of the Constitution in relation to governance and administrative framework of Tribunals in Kenya.  
 The Bill also seeks to reform the Tribunal system in Kenya by *inter alia*, rationalizing and regulating the administration and functions of Tribunals, establishing the Tribunals Registry, and providing for the structure, membership and administration of Tribunals.
2. **The Preservation of Public Security (Amendment) Bill (National Assembly Bill No. 48 of 2023)** is a Bill sponsored by the **Leader of the Minority Party (The Hon. Opiyo Wandayi, MP)** with the principal object being to abolish the death penalty and the imposition of a death sentence in relation to offences related to the preservation of public security. Abolishing the death penalty is aimed at preserving the fundamental right to life as guaranteed under Article 26 of the Constitution of Kenya, 2010.
3. **The Legal Aid (Amendment) Bill (National Assembly Bill No. 53 of 2023)** is a Bill sponsored by the **Leader of the Minority Party (The Hon. Opiyo Wandayi, MP)** with the principal object being to amend the Legal Aid Act, No. 6 of 2016 in order to abolish the death penalty in order to preserve the fundamental right to life, to put an end to cruel, inhuman and degrading treatment and punishment of condemned persons occasioned by the enforcement of the death penalty.  
 The Bill further seeks to stop the psychological trauma brought about by the death sentence and to reflect the international commitment by Kenya to the abolition of the death penalty in accordance with the current position of the Supreme Court as pronounced in the case of Francis Karioko Muruatetu and another versus Republic (2017) eKLR which declared the mandatory death sentence unconstitutional.  
 The Bill also seeks to amend section 43 by deleting subsection 4 of the Legal Aid Act, 2013 which provides for the provision of legal representation for accused persons charged with the offences punishable by death.
4. **The Prisons Bill (National Assembly Bill No. 54 of 2023)** is a Bill sponsored by the **Leader of the Minority Party (The Hon. Opiyo Wandayi, MP)** with the principal object being to amend the Penal Code Cap 90 Laws of Kenya in order to abolish the death penalty and the manner of its execution.  
 The objectives of the Bill are to preserve the fundamental right to life, to put an end to cruel, inhuman and degrading treatment and punishment of condemned persons occasioned by the enforcement of the death penalty.  
 Further the Bill seeks to stop the psychological trauma brought about by the death sentence and to reflect Kenya's international commitment to abolition of the death penalty through ratification of the Second Optional Protocol to the International Covenant on Civil and Political Rights.  
 The Bill seeks to repeal section 69 of the Prisons Act which contains provisions regulating the manner of execution of persons sentenced to death.
5. **The Penal Code (Amendment) Bill (National Assembly Bill No. 55 of 2023)** is a Bill sponsored by the **Leader of the Minority Party (The Hon. Opiyo Wandayi, MP)** with the principal object being to amend the Penal Code Cap 63 Laws of Kenya in order to abolish the death penalty.  
 The objectives of the Bill are to preserve the fundamental right to life, to put an end to cruel, inhuman and degrading treatment and punishment of condemned persons occasioned by the enforcement of the death penalty, to stop the psychological trauma brought about by the death sentence and to reflect the international commitment by Kenya to abolition of the death penalty in accordance with the current position of the Supreme Court as pronounced in the case of Francis Karioko Muruatetu & another versus Republic (2017) eKLR which declared the mandatory death sentence unconstitutional.
6. **The Land Control Bill (National Assembly Bill No. 39 of 2023)** is a Bill sponsored by **Hon. Wilberforce Oundo, MP** and seeks to repeal and replace the Land Control Act, Cap. 302 to align the law governing dealings in agricultural land with the provisions of the Constitution of Kenya 2010, the Environment and Land Court Act, 2011, the Land Registration Act, 2012 and the Land Act, 2012.  
 The Bill further seeks to establish Land Control Committees in each constituency to replace the current Land Control Boards. The Land Control Committees are to comprise persons drawn from within the locality they serve and who are conversant with the traditions, customs, and way of life of the community in the area.  
 The Bill also seeks to establish Land Control Appeals Committees to handle any appeals arising from the Land Control Committees.
7. **The National Transport and Safety Authority (Amendment) Bill (National Assembly Bill No. 36 of 2023)** is a Bill sponsored by **Hon. Didimus Wekesa Barasa, MP** and seeks to amend the National Transport and Safety Authority Act No. 33 of 2012 to introduce a new section which provides for the development of policy guidelines to regulate fares payable by passengers in the public service vehicles within the country and for the involvement of relevant stakeholders in the development of such policy guidelines.

NOW THEREFORE, in compliance with Article 118(1)(b) of the Constitution and Standing Order 127(3), the Departmental Committees hereby invite the public and stakeholders to submit memoranda on the Bills as follows:

#### SCHEDULE

S/N	BILL	COMMITTEE
1.	The Tribunals Bill (National Assembly Bill No. 45 of 2023)	Justice and Legal Affairs
2.	The Preservation of Public Security (Amendment) Bill (National Assembly Bill No. 48 of 2023)	Justice and Legal Affairs
3.	The Legal Aid (Amendment) Bill (National Assembly Bill No. 53 of 2023)	Justice and Legal Affairs
4.	The Prisons Bill (National Assembly Bill No. 54 of 2023)	Justice and Legal Affairs
5.	The Penal Code (Amendment) Bill (National Assembly Bill No. 55 of 2023)	Justice and Legal Affairs
6.	The Land Control Bill (National Assembly Bill No. 39 of 2023)	Lands
7.	The National Transport and Safety Authority (Amendment) Bill (National Assembly Bill No. 36 of 2023)	Transport and Infrastructure

Copies of the Bills are available at the National Assembly Table Office, Main Parliament Buildings or on [www.parliament.go.ke/the-national-assembly/house-business/bills](http://www.parliament.go.ke/the-national-assembly/house-business/bills).

The memoranda may be forwarded to the Clerk of the National Assembly, P.O. Box 41842-00100, Nairobi; hand-delivered to the Office of the Clerk, Main Parliament Buildings, Nairobi; or emailed to [cas@parliament.go.ke](mailto:cas@parliament.go.ke) to be received on or before **Monday 23<sup>rd</sup> October, 2023 at 5.00 p.m.**

S. NJORGE  
 CLERK OF THE NATIONAL ASSEMBLY

6<sup>th</sup> October 2023

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**REPUBLIC OF KENYA**  
**THE NATIONAL ASSEMBLY**  
**13<sup>TH</sup> PARLIAMENT-SECOND SESSION 2023**  
**IN THE MATTER OF ARTICLE 118 (1)(b) OF THE CONSTITUTION**  
**AND**  
**IN THE MATTER OF CONSIDERATION BY THE NATIONAL ASSEMBLY OF:**

1. THE TRIBUNALS BILL (NATIONAL ASSEMBLY BILL NO. 45 OF 2023)
2. THE PRESERVATION OF PUBLIC SECURITY (AMENDMENT) BILL (NATIONAL ASSEMBLY BILL NO. 48 OF 2023)
3. THE LEGAL AID (AMENDMENT) BILL (NATIONAL ASSEMBLY BILL NO. 53 OF 2023)
4. THE PRISONS BILL (NATIONAL ASSEMBLY BILL NO. 54 OF 2023)
5. THE PENAL CODE (AMENDMENT) BILL (NATIONAL ASSEMBLY BILL NO. 55 OF 2023)
6. THE LAND CONTROL BILL (NATIONAL ASSEMBLY BILL NO. 39 OF 2023)
7. THE NATIONAL TRANSPORT AND SAFETY AUTHORITY BILL (NATIONAL ASSEMBLY BILL NO. 36 OF 2023)

**ITATION FOR PUBLIC PARTICIPATION AND SUBMISSION OF MEMORANDA**

AS, Article 118(1)(b) of the Constitution requires Parliament to facilitate public participation and involvement in the legislative or business of Parliament and its Committees and Standing Order 127(3) of the National Assembly Standing Orders requires House Committees considering Bills to facilitate public participation;  
 AND WHEREAS, the Tribunals Bill (National Assembly Bill No. 45 of 2023) and the Preservation of Public Security (Amendment) Bill (National Assembly Bill No. 48 of 2023), were read a First Time on **Tuesday, 26<sup>th</sup> September 2023**, the Legal Aid (Amendment) Bill (National Assembly Bill No. 53 of 2023), the Prisons Bill (National Assembly Bill No. 54 of 2023) and the Penal Code (Amendment) Bill (National Assembly Bill No. 55 of 2023) were read a First Time on **Tuesday, 3<sup>rd</sup> October 2023** while the Land Control Bill (National Assembly Bill No. 39 of 2023) and the National Transport and Safety Authority (Amendment) Bill (National Assembly Bill No. 36 of 2023) were read a First Time on **Wednesday, 4<sup>th</sup> October 2023** and thereafter referred to the relevant Departmental Committees for consideration and report to the House;

**IT IS NOTIFIED THAT:**

1. **The Tribunals Bill (National Assembly Bill No. 45 of 2023)** is a Bill sponsored by the **Leader of the Majority Party (The Hon. Kimani Ichung'wa, MP)** with the principal object being to give effect to Articles 1(3)(c), 20(4), 47(3), 159(1), and 169 of the Constitution in relation to governance and administrative framework of Tribunals in Kenya.  
 The Bill also seeks to reform the Tribunal system in Kenya by *inter alia*, rationalizing and regulating the administration and functions of Tribunals, establishing the Tribunals Registry, and providing for the structure, membership and administration of Tribunals.
2. **The Preservation of Public Security (Amendment) Bill (National Assembly Bill No. 48 of 2023)** is a Bill sponsored by the **Leader of the Minority Party (The Hon. Opiyo Wandayi, MP)** with the principal object being to abolish the death penalty and the imposition of a death sentence in relation to offences related to the preservation of public security. Abolishing the death penalty is aimed at preserving the fundamental right to life as guaranteed under Article 26 of the Constitution of Kenya, 2010.  
 The Bill further seeks to stop the psychological trauma brought about by the death sentence and to reflect the international commitment by Kenya to the abolition of the death penalty in accordance with the current position of the Supreme Court as pronounced in the case of Francis Karioko Muruateta and another versus Republic (2017) eKLR which declared the mandatory death sentence unconstitutional.  
 The Bill also seeks to amend section 43 by deleting subsection 4 of the Legal Aid Act, 2013 which provides for the provision of legal representation for accused persons charged with the offences punishable by death.
3. **The Legal Aid (Amendment) Bill (National Assembly Bill No. 53 of 2023)** is a Bill sponsored by the **Leader of the Minority Party (The Hon. Opiyo Wandayi, MP)** with the principal object being to amend the Legal Aid Act, No. 6 of 2016 in order to abolish the death penalty in order to preserve the fundamental right to life, to put an end to cruel, inhuman and degrading treatment and punishment of condemned persons occasions by the enforcement of the death penalty.  
 The Bill further seeks to stop the psychological trauma brought about by the death sentence and to reflect the international commitment by Kenya to the abolition of the death penalty in accordance with the current position of the Supreme Court as pronounced in the case of Francis Karioko Muruateta and another versus Republic (2017) eKLR which declared the mandatory death sentence unconstitutional.  
 The Bill also seeks to amend section 43 by deleting subsection 4 of the Legal Aid Act, 2013 which provides for the provision of legal representation for accused persons charged with the offences punishable by death.
4. **The Prisons Bill (National Assembly Bill No. 54 of 2023)** is a Bill sponsored by the **Leader of the Minority Party (The Hon. Opiyo Wandayi, MP)** with the principal object being to amend the Penal Code Cap 90 Laws of Kenya in order to abolish the death penalty and the manner of its execution.  
 The objectives of the Bill are to preserve the fundamental right to life, to put an end to cruel, inhuman and degrading treatment and punishment of condemned persons occasions by the enforcement of the death penalty.  
 Further the Bill seeks to stop the psychological trauma brought about by the death sentence and to reflect Kenya's international commitment to abolition of the death penalty through ratification of the Second Optional Protocol to the International Covenant on Civil and Political Rights.  
 The Bill seeks to repeal section 69 of the Prisons Act which contains provisions regulating the manner of execution of persons sentenced to death.
5. **The Penal Code (Amendment) Bill (National Assembly Bill No. 55 of 2023)** is a Bill sponsored by the **Leader of the Minority Party (The Hon. Opiyo Wandayi, MP)** with the principal object being to amend the Penal Code Cap 63 Laws of Kenya in order to abolish the death penalty.  
 The objectives of the Bill are to preserve the fundamental right to life, to put an end to cruel, inhuman and degrading treatment and punishment of condemned persons occasions by the enforcement of the death penalty, to stop the psychological trauma brought about by the death sentence and to reflect the international commitment by Kenya to the abolition of the death penalty in accordance with the current position of the Supreme Court as pronounced in the case of Francis Karioko Muruateta & another versus Republic (2017) eKLR which declared the mandatory death sentence unconstitutional.
6. **The Land Control Bill (National Assembly Bill No. 39 of 2023)** is a Bill sponsored by **Hon. Wilberforce Oundo, MP** and seeks to repeal and replace the Land Control Act, Cap. 302 to align the law governing dealings in agricultural land with the provisions of the Constitution of Kenya 2010, the Environment and Land Court Act, 2011, the Land Registration Act, 2012 and the Land Act, 2012.  
 The Bill further seeks to establish Land Control Committees in each constituency to replace the current Land Control Boards. The Land Control Committees are to comprise persons drawn from within the locality they serve and who are conversant with the traditions, customs, and way of life of the community in the area.  
 The Bill also seeks to establish Land Control Appeals Committees to handle any appeals arising from the Land Control Committees.
7. **The National Transport and Safety Authority (Amendment) Bill (National Assembly Bill No. 36 of 2023)** is a Bill sponsored by **Hon. Didimus Wekesa Barasa, MP** and seeks to amend the National Transport and Safety Authority Act No. 33 of 2012 to introduce a new section which provides for the development of policy guidelines to regulate fares payable by passengers in the public service vehicles within the country and for the involvement of relevant stakeholders in the development of such policy guidelines.

NOW THEREFORE, in compliance with Article 118(1)(b) of the Constitution and Standing Order 127(3), the Departmental Committees hereby invite the public and stakeholders to submit memoranda on the Bills as follows:

S/N	BILL	COMMITTEE
1.	The Tribunals Bill (National Assembly Bill No. 45 of 2023)	Justice and Legal Affairs
2.	The Preservation of Public Security (Amendment) Bill (National Assembly Bill No. 48 of 2023)	Justice and Legal Affairs
3.	The Legal Aid (Amendment) Bill (National Assembly Bill No. 53 of 2023)	Justice and Legal Affairs
4.	The Prisons Bill (National Assembly Bill No. 54 of 2023)	Justice and Legal Affairs
5.	The Penal Code (Amendment) Bill (National Assembly Bill No. 55 of 2023)	Justice and Legal Affairs
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The memoranda may be forwarded to the **Clerk of the National Assembly, P.O. Box 41842-00100, Nairobi**; hand-delivered to the **Office of the Clerk, Main Parliament Buildings, Nairobi**; or emailed to [cpa@parliament.go.ke](mailto:cpa@parliament.go.ke) to be received on or before **Monday 23<sup>rd</sup> October, 2023 at 5.00 p.m.**

**S. NJOROGE**  
**CLERK OF THE NATIONAL ASSEMBLY**  
 6<sup>th</sup> October 2023

"For the Welfare of Society and the Just Government of the People"

You're In Control

**Ms. Esther Koimett Appointed as Board Chair of AAR Insurance Kenya Limited**



AAR Insurance Kenya Limited is delighted to announce the appointment of Ms. Esther Koimett as the new Chair of its Board, succeeding Mr. Thomas Mshindi, who has served with distinction. This appointment marks a significant moment in the company's history and ushers in an era of dynamic leadership.

Ms. Koimett brings to AAR Insurance Kenya Limited a wealth of experience as one of Kenya's most seasoned and distinguished public servants with a 30-year track record spanning investment promotion, banking, privatisation, public enterprise oversight and public policy. She is recognised as a leading figure in the public and private sectors, having led, structured and executed several high-profile and strategic transactions, projects, and initiatives on behalf of the Government of the Republic of Kenya.

She has diligently served at the highest levels of leadership within the Government of Kenya, notably having held the following positions:

- Principal Secretary - State Department of Broadcasting and Telecommunications, Ministry of ICT, Innovation and Youth Affairs
- Principal Secretary - State Departments of Transport, Ministry of Transport, Infrastructure, Housing, Urban Development and Public Works
- Investment Secretary, The National Treasury
- Permanent Secretary, Ministry of Tourism and Information

In recognition of her positive contribution to Kenya, she was awarded the Elder of the Order of the Burning Spear (EBS) and the Chief of the Burning Spear (CBS) conferred by the President of the Republic of Kenya in 2006 and 2011 respectively. In addition, she also received a letter of commendation from the late President Mwai Kibaki in 2008 in recognition of her leadership in the successful execution of the Safaricom IPO.

She currently serves on the boards of the Africa Trade and Investment Development Insurance (ATIDI) and the Art of Music Foundation (Ghetto Classics) and is the Chairperson of the Board of Management of Moi Girls High School, Eldoret. She previously served as a director in the Tourism Trust Fund (where she was Chairperson), Nairobi Securities Exchange, Kenya Airways, Safaricom Limited, Kenya Reinsurance Corporation Limited, Telkom Kenya Limited, Capital Markets Authority, Kenya Ports Authority, Kenya Airports Authority, Kenya Railways Corporation, Mumias Sugar Company and the Privatisation Commission.

Ms. Koimett's appointment as the AAR Insurance Kenya Limited Board Chair symbolises a new era of visionary leadership. Her extensive expertise, dedication, and unwavering commitment to excellence will undoubtedly propel AAR Insurance Kenya Limited to new heights of success and innovation.

We extend our warmest welcome to Ms. Esther Koimett and express our heartfelt appreciation to Mr. Thomas Mshindi for his valuable contributions during his tenure. Together, we are committed to providing exceptional insurance services to our esteemed customers.

Sincerely,

BY ORDER OF THE BOARD  
 LEX SECRETARIAL LLP  
 COMPANY SECRETARY



**BOLD THINKERS  
 DRIVING REAL-WORLD  
 IMPACT**

**REQUEST FOR QUOTATION (RFQ)**

<b>RFQ Number:</b>	KENYA-IRS-MASS ITN-COMMODITIES 2023/24
<b>Issued by:</b>	US President's Malaria Initiative (PMI) Kenya Vector Control Activity Project Whitehouse, Milliani, Ojjo Oteko Road Kisumu, Kenya
<b>Bid Issuance Date:</b>	6 <sup>th</sup> October 2023
<b>Bid Closing Date:</b>	19 <sup>th</sup> October 2023 17:00 EAT
<b>Prime Contract Number:</b>	Contract: AID-OAA-I-17-00008
<b>USAID Source / Nationality (Geo) Code:</b>	935

**About Abt Associates:**

In 2021, USAID Kenya awarded Abt Associates, the Kenya Vector Control Activity. It seeks to build on PMI AIRS and VectorLink. The purpose of the project is to plan, implement, provide technical assistance for, monitor, and evaluate critical malaria vector control activities. This includes indoor residual spraying (IRS) and insecticide treated net (ITN) activities for prevention of malaria in Kenya. The project has six objectives: (1) indoor residual spraying and other proven vector control interventions, (2) entomological monitoring and surveillance, (3) ITN durability monitoring (4) data driven decision making to inform strategic deployment of ITNs and IRS, (5) capacity building of Kenya national malaria program and selected counties and (6) continuous net distribution system in the community through multiple channels. In 2023, Abt Associates shall implement IRS in Busia and Migori Counties.

The purpose of these RFQ's is to obtain quotations and eventually issue a Firm Fixed Purchase Order for Provision of Mass ITN and IRS commodities

**The category of services to be quoted for are enlisted below:**

REFERENCE NUMBER	CATEGORY OF SERVICES
RFQ-IRS-STATIONERY2023-24-KVCA0470	SUPPLY OF STATIONERY
RFQ-IRS-STORCONSUMJUM2023-24-KVCA0471	SUPPLY OF STORE CONSUMABLES
RFQ-IRS-HARDMAT2023-24-KVCA0472	SUPPLY OF HARDWARE MATERIALS
RFQ-IRS-WATERTANK 2023-24-KVCA0473	SUPPLY OF WATER TANKS
RFQ-IRS-PRINTING2023-24-KVCA0474	PROVISION OF PRINTING SERVICES
RFQ-IRS-FACSHIELD2023-24-KVCA0475	SUPPLY OF FACE SHIELDS
RFQ-IRS-SOPBAGS 2023-24-KVCA0476	SUPPLY OF SOP/HAVERSACK BAGS
RFQ-POWERSTATION2023-KVCA0478	SUPPLY OF PORTABLE POWER STATIONS
RFQ-IEC-POSTERS-STICKER2023-24-KVCA0479	PRINTING OF IEC POSTERS AND IRS BARCODE STICKERS
RFQ-IEC-TSHIRTSREFLECTOR2023-24-KVCA0480	PROVISION OF PRINTING AND BRANDING SERVICES, TSHIRTS AND REFLECTOR JACKETS
RFQ-IRS-MOBILIZERBAGS 2023-24-KVCA0482	SUPPLY OF BRANDED MOBILIZER BAGS
RFQ-FIRSTAIDKIT2023-24-KVCA0486	SUPPLY OF FIRST AID KITS
RFQ-BOTTLEDWATER2023-24-KVCA0487	SUPPLY OF BOTTLED DRINKING WATER

**Instructions to bidders**

- Application must be on the company's letterhead, must indicate Physical address and phone number.
- Certified Copy of Business/Company Registration Certificate.
- Certified Copy of Company KRA PIN Certificate.
- Valid Tax Compliance Certificate for the Company.
- This RFQ shall not be misconstrued to be a commitment on the part of Abt Associates to award any form of contract to any respondent nor shall it entitle any organization or individual to be reimbursed the costs preparing or delivering bids to Abt Associates.
- Offeror is required to reference the RFQ number on their offer/quotation.
- Bids shall be valid for 120 days after submission.
- The bid must clearly indicate the **Price and VAT**
- Interested bidders can request the complete RFQ/RFP by writing to the email [kenyaprocmnt@kenyavac.com](mailto:kenyaprocmnt@kenyavac.com)
- Duly completed proposal for Proposals should be submitted via email to the [kenyaprocmnt@kenyavac.com](mailto:kenyaprocmnt@kenyavac.com) on or Before **19<sup>th</sup> October, 2023 5:00pm EAT.**

**Annexure 6: Written submissions received from stakeholders**

D/DC  
DLPS  
Please deal  
17/11/23



REPUBLIC OF KENYA  
MINISTRY OF ROADS AND TRANSPORT  
STATE DEPARTMENT FOR TRANSPORT  
Office of the Principal Secretary

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MOT&I/C/ADM/034/7/2 VOL.1 (77)

7<sup>th</sup> November 2023

Mr. Samuel Njoroge  
The Clerk of the National Assembly  
Parliament Buildings  
NAIROBI

Tracy chebet  
to facilitate consideration  
ca n 6  
20/11/23

Dear Mr. Samuel

RESPONSE TO QUESTIONS FOR REPLY BEFORE THE NATIONAL ASSEMBLY  
DEPARTMENTAL COMMITTEE ON ROADS AND INFRASTRUCTURE.

Reference is made to letters of Ref Nos. NA/DDC/TI/2023/083,093 dated 28<sup>th</sup> September and 12<sup>th</sup> October 2023 respectively from the National Assembly. Enclosed herewith, please find signed response by the Cabinet Secretary, Ministry of Roads and Transport on;

- i. Proposed leasing of sections of Mombasa and Lamu Ports to private investors; and
- ii. Ministry's submission on the NTSA (Amendment) Bill that seeks to amend the NTSA act No. 33 of 2012 to regulate fares payable by passengers in PSV

Yours Sincerely  
  
Mohamed Daghar  
PRINCIPAL SECRETARY

RECEIVED  
16 NOV 2023  
Directorate of Departmental Committees

NATIONAL ASSEMBLY  
RECEIVED  
16 NOV 2023  
DEPUTY CLERK S. KIOKO  
P.O. Box 41842 - 00100, NAIROBI

NATIONAL ASSEMBLY  
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16 NOV 2023  
CLERK'S OFFICE  
P.O. Box 41842, NAIROBI

**REPUBLIC OF KENYA**



**MINISTRY OF ROADS & TRANSPORT**

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**REPORT**

**TO**

**THE DEPARTMENTAL COMMITTEE ON TRANSPORT &  
INFRASTRUCTURE QUESTIONS SCHEDULED FOR  
RESPONSE ON THURSDAY, 26<sup>TH</sup> OCTOBER, 2023**

**BY**

**HON. KIPCHUMBA MURKOMEN, E.G.H**

**CABINET SECRETARY**

26<sup>TH</sup> THURSDAY, 2023

**Hon. Chairman,** I am pleased to appear before this Honorable Committee in regard to the response sought on the proposed leasing of sections of the Mombasa and Lamu Ports to private investors as advertised in Tender No. *KPA/052/2023-2024/CPS* dated 8<sup>th</sup> September 2023 and as communicated by the National Assembly vide letter of *Ref. No. NA/DDC/TI/2023/083* of 28<sup>th</sup> September 2023 and information requested on the Ministry's submission on the NTSA (Amendment) Bill that seeks to amend the NTSA Act No 33 of 2012 to provide for development of policy guidelines to regulate fares payable by passengers in Public Service Vehicles in the country as communicated vide letter of *Ref. No. NA/DDC/TI/2023/093* of 12<sup>th</sup> October 2023.

***Proposed leasing of sections of Mombasa and Lamu Ports to private investors***

**Hon. Chairman,** I wish to respond to this committee by laying down a brief background model used by KPA in the development and operations of port assets christened *Public Service Port Model*. It is also important to note that there is a number of private sector cargo operations within the purview of KPA i.e Kipevu Oil Jetty, Shimanzi Oil Terminal, Storage facilities for East African Molasses Ltd and operations of Magadi Soda Company, Bamburi Portland Cement, grain bulk handling, and private CFSs. In a service port, port authority does the administration and operation of port activities. The port operation includes providing navigational services, warehouse facilities, equipment and skilled employees/laborers. This means, the construction of infrastructure, superstructure, and providing for the employees is the responsibility of the port authority. The port authority act to the public interest with full ownership of the port remaining with the State or the Government.

**Hon. Chairman,** as part of policy direction, the Integrated National Transport Policy 2009 currently under revision recommended for the country to transform the port into a landlord port status and promote regulated private sector participation in stevedoring, storage, and shore handling operations at the port. The policy states that the involvement of private sector in the crucial cargo handling activities will enable quick decision making by eradicating bureaucracy. Additionally, the Kenya Ports Authority National Ports Master plan 2018-2047 envisages that Lamu port will be operated principally as a landlord port.



Further to the above, the current policy under review, has identified gaps in the existing status of infrastructure ownership, management and control, predominantly vested in the Government and its agencies. Over time, this has occasioned an imbalance in the supply of infrastructure and the services thereof, and limited modal choice to the users.

The policy recommends that involvement of the private sector participation in the development of transport could go a long way in mobilizing adequate financing, especially for transport infrastructure and operations. There is a need to ensure adequate funds are available for the development and maintenance of transport infrastructure and operations, consistent with economic development and population growth.

In addition, there is need for integration of development of port infrastructure and associated commercial and logistics hubs such as special economic zones and industrial parks to grow the port throughput, manufacturing and value addition activities. Hence, the need for development of port capacity through establishment/operationalization of Special Economic Zones and logistics hubs around ports.

**Hon Chairman**, detailed report on the development and operations of port assets through Public Private Partnerships on four projects, namely; the Lamu Port First three berths, Mombasa Port Container Terminal 1, Lamu SEZ and Mombasa Port Berth (11-14) is attached as **Appendix 1**.

**Hon. Chairman**, below are the **benefits** of Public Private Partnership (PPP) in Operations and Development of Port Assets

The benefits of port concession include;

1. Injection of private capital into port development will reduce Government funding burden on capital projects: the private party will be expected to invest in the rehabilitation, equipping of Berths 11-14 & Container terminal 1 and operate them for a specified period of time and also undertake the development of the SEZ infrastructure. This will free up government resources for other developmental purposes,
2. Elimination of port congestion; The port of Mombasa serves Kenya and the other landlinked/transit countries namely; Uganda, DR Congo, Rwanda, Burundi, South Sudan etc

3. The port of Lamu will also open up the LAPSSET Corridor and Serve Ethiopia, South Sudan and Western Somalia. The growth of these economies will require port capacity.
4. Improve efficiency in service delivery: There will be productivity improvements and efficiency gains to be brought about by the private sector expertise. This will improve the country's competitiveness.
5. Modernization of our ports; improved availability of cargo handling equipment; increase competition among terminals hence creating efficiency and competitiveness.
6. Increase output through Kenyan Ports: the private party will as part of the project agreement take up the demand risk and commit to agreed volume guarantees. This will grow Kenyan Ports especially in handling transshipment cargo.
7. Transfer of Knowledge, Technology and Expertise: Through engagement with the private renowned terminal operators, KPA will gain from the knowledge and expertise in port operations that will be deployed as well as be able to adopt modern technological trends in port development and operations.
8. Increase in Freight volumes: Through PPP, there will be a potential increase of freight volumes through SGR freight services due to efficiency increase of cargo by the use of the new equipment.

**Hon. Chairman**, in coming up with the proposal of leasing sections of the ports, it is important that I inform this committee that various considerations such as **stakeholders engagement** in the development of policy documents that guided on transition to landlord model was considered. Additionally, in terms of **Labor relation**, the concessionaire is expected to absorb a percentage of the staff already working and engage several third parties such as contractors for efficiency in the respective facilities and therefore no redundancies will be declared.

**Hon. Chairman**, as for the revenue impact associated with this proposal, I wish to inform this Committee that KPA will retain Marine dues and charges as well as Wharfage which comprises 26% of the total charges per Twenty Foot Equivalent Units (TEUs) (others are stevedoring and shore handling). Regarding these other charges, even those that arise due to penalties, such as storage, KPA will negotiate on percentage of variable fee, based on number of TEUs handled by the concessionaire. Furthermore, there will be at the start of the contract, an upfront fee to be paid by the concessionaire to compensate KPA for the already made investments, and a fixed fee payable every month.

**Hon. Chairman,** I wish to reiterate to this committee that the Government's intention is to focus on PPP as opposed to Privatization. Comparatively, Privatization and Public-Private Partnership (PPP) arrangements are two different approaches to involving private sector participation in the operation and management of public infrastructure such as ports. In the context of the port industry in Kenya, privatization and PPP differs in aspects of Asset ownership, scope of involvement, risk sharing, governance and control and overall objectives. The ultimate objective in PPPs is Government retains ownership of the projects as well as defines the extent of private sector's participation in a PPP project. Similarly, the government remains accountable for the provision of a particular service in a PPP project. It is also important to note that given the capital nature of port investment, the Authority is financially constrained to support implementation of its long-term investment plans, using internally generated funds. In view of the foregoing, the Authority is seeking strategic partners to invest in Port development in the form of PPP arrangements.

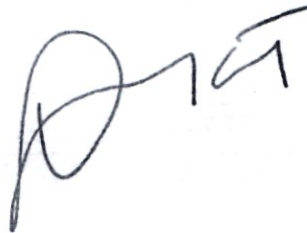
***Ministry's submission on the NTSA (Amendment) Bill that seeks to amend the NTSA Act No.33 of 2012 to provide for development of policy guidelines to regulate fares payable by passengers in Public Service Vehicles in the Country***

**Hon. Chairman,** on the request seeking for policy guidance in the legislative proposal to introduce a new section, which provides for the development of policy guidelines to regulate the fares payable by passengers in public service vehicles. We wish to give guidance and comment that-

1. Trade liberalization was part of a broader push in Kenya to decrease the government's role in the economy and give market forces greater influence. Price controls, widespread in the economy before the structural adjustment loans, were largely eliminated throughout the late 1980s and early 1990s.
2. The Kenya Institute for Public Policy Research and Analysis (KIPPRA) is an autonomous institute whose primary mission is to conduct public policy research leading to policy advice. According to a publication by KIPPRA, price controls have merit when markets are not perfect, and direct price-controls as a long-term measure have not worked in the past in Kenya and elsewhere. In addition, price controls will violate international and regional trade agreements that the country has signed.
3. Apart from the research conducted by KIPPRA, the value and effect of this need to be researched by competent institutions and ministries before introduction. Some of the bodies that ought to be consulted include (but not limited to) are the Ministry of Trade, the National Treasury, the Ministry of Foreign Affairs, the Competition Authority and the private sector.

**Hon. Chairman**, it is noteworthy to state that if price controls are to be introduced in the PSV sector it would be apparent to set a price ceiling rather than a minimum price. Therefore, in conclusion, we advise that a comprehensive study and stakeholder engagement should be undertaken on the Bill's proposals to determine their practicability and ensure the same do not violate any conventions or treaties applicable. In 2018, the then Minister for Transport sought approval from the National Assembly to amend the Traffic Act to give him powers to regulate fares in the Public Service Vehicle industries. However, the proposal was not approved by Parliament.

**Hon Chairman**, I submit



Hon. Kipchumba Murkomen, ECH

CABINET SECRETARY

Date.....

6/11/23

*N/B: Attached hereunder is additional information on the previous PPP attempts on Port Assets and case studies of various ports across Africa and Asia on the same.*

OUR REF: FPTS/11/2023/5

November 22, 2023

Office of The Clerk  
P. O. Box 41842 - 00100  
Main Parliament Buildings  
NAIROBI.

Email: [Tracy.Koskei@parliament.go.ke](mailto:Tracy.Koskei@parliament.go.ke)

Email: [mohamednur.abdullahi@parliament.go.ke](mailto:mohamednur.abdullahi@parliament.go.ke)

*Tracy Chebet Koskei*  
*to facilitate consideration*  
*1/12/23*

**Attention: Ms. Tracy Chebet Koskei**

**Attention: Mr. Mohamednur M. Abullahi**

Dear Madam / Sir,

**REQUEST FOR SUBMISSINS ON THE NATIONAL TRANSPORT AND SAFETY AUTHORITY  
(AMENDMENT) BILL (NATONAL ASSEMBLY BILL NO. 36 OF 2023)**

We take this opportunity to thank your office for reaching out to the Public Transport (PT) industry to obtain views regarding a Bill by Hon. Didmus Wekesa Barasa, MP. that is seeking to regulate fares in Public Transport (PT) operation.

**Federation of Public Transport Sector**

Federation of Public Transport Sector (FPTS) is the apex advocacy and lobby group registered under the Societies Act Cap 108 to represent rights and interests of the PSV (Matatu and Omnibuses) stakeholders in the Republic of Kenya.

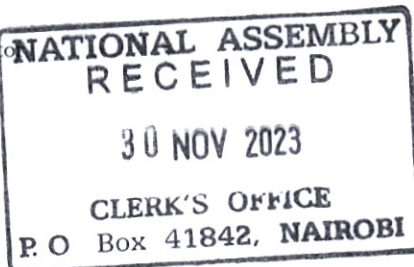
FPTS current members are; Matatu Welfare Association (MWA), Matatu Owners Association (MOA), Mt. Kenya Matatu Owners Association (Mt. Kenya MOA), Association of Bus Operators Kenya (ABOK), Association of Matatu Operators (AMO), Matatu Transport Vehicles Association (MTVA), Association of Matatu Transport Owners (AMTO), Linear Park Association (LPA), Association of Investors in Matatu Transport (AIMT).

**National Transport and Safety Authority**

National Transport and Safety Authority (NTSA) was established through an Act of Parliament; Number 33 on 26th October 2012.

The main functions of the Authority as outlined in section 4 of the NTSA Act;

- To advise and make recommendations on matters relating to road transport and safety.
- To implement policies relating to road transport and safety
- To **plan, manage and regulate** the road transport sector in accordance with the provisions of the Act No. 33, 2012
- To ensure the provision of safe, reliable and efficient road transport service.



In establishing NTSA, the Act repealed the Transport Licencing Act Cap 404 (TLB Act) which regulated road-based passenger and freight transport. TLB regulated motorised and non-motorised transport.

At the offset, it should be noted that prior to 1991 when Breton Wood institutions came up with privatisation of public enterprises and liberalised trade under the Structural Adjustment Programme, the TLB Act controlled fares. It should also be borne in mind that in the 1980s fares of the defunct Kenya Bus Services Ltd which had a Franchise Agreement to operate PT in City of Nairobi, were controlled by City Council of Nairobi and by extension government.

During the removal of price control (liberalisation of trade) in the early 1990s, just like in other sectors of the economy, TLB Act removed price control, where prior to, higher fares chargeable were by then capped at Ksh. 88 cents per Kilometre.

### **What is Public Transport?**

PT (also known as public transportation, public transit, mass transit, or simply transit) is a system of transport for passengers by group or shared travel systems available for use by the general public unlike private transport, typically managed on a schedule, operated on established routes, and that charges a posted fee or reward for each trip.

Efficient PT systems, especially in the urban areas, are often considered a **public good**. They are funded or subsidised just like the government does for education, health and infrastructure.

PT is mostly operated by public enterprises but in recent years governments have predominantly **contracted out** its operation to the private sector. PT is operated on road or rail. Road PT in Kenya is mostly operated by private sector using buses or matatus. PT in Kenya, and indeed Africa, is mainly informal and is mostly referred to as **paratransit** or matatus as is commonly called to in Kenya.

One thing we, however, need to deliberate on is whether fares for **taxis, tuk tuk and boda bodas** need to be regulated, since in Kenya these modes of transport are classified as PSVs.

It is worth noting that one of the key attributes of a good PT system is the **predictability of journey times and fares** amongst many other factors.

### **Other attributes of a paratransit (matatu) system of operation are: -**

- Private Sector driven – there is no or very limited government investment
- Demand responsive / Fill and go - no schedules (no timetables)
- Lack of Standards – therefore difficult and expensive to police / enforce
- **Unpredictable – both on fare and time**
- Profit driven - rather than service delivery, no justice and equity
- Individualized - hence many unregulated industry players
- 'Informal' operations - yet often licensed by Authorities mainly for collection of fees
- Limited level of compliance – on tax and safety matters
- Do not meet the full cost of labor – creates a hopeless work force, no trade unions
- Thrive on illegalities – these illegalities lead to cartels, gang behavior, matatu culture
- Un-regulated - unfair and wasteful competition
- High degree of altruism – there are no rules of entry/exit, no professionalism
- Totter towards low - capacity vehicles – probox, boda boda and bicycle 'taxi'

It is important to note that in most African cities paratransit carry 95% of motorised trips. Paratransit operation is thought to have been responsible for collapse of formal PT operators in

Kenya, for example, KBS, Nyayo Bus, OTC, Akamba, Mawingo, Malindi Bus, Jogoo Kimakia, etc. A Paratransit operation often breeds externalities, such as, accidents, pollution, congestion, corruption, cartelism, etc.). Despite the above, Paratransit thrives over formal transport. Like with most SMEs paratransit often receive an “unofficial state subsidy” compared to formal operators.

In our considered opinion, it is not fair to only look at **fares** and fail to **reform** the whole PT system wholesomely so as to deal with most of the above attributes.

### **Why Regulate PT Fares?**

Governments all over the world seek to control fares to cushion vulnerable and the socially excluded members of the society. Such are; the urban poor, the rural poor, the sick, persons living with disabilities (PWDs), senior citizens, school children, pregnant mothers, etc.

Progressive Governments are often concerned with its population’s ability to pay for PT services, because PT is a facilitator of journey purposes, such as, school, work, leisure, worship, sports, etc. An efficient, fast, comfortable, safe and affordable PT is an enabler or driver of economic activities in a 24-hour economy. Control fares can assist manage the cost living.

Where PT is provided by the Public Sector, e.g., on rail transport in Kenya; it is easy for the government to provide a subsidy as it has often done with Kenya Railways’ SGR or Likoni Ferries. But where such services are provided (**note: contracted out**) to the private sector, it becomes difficult to justify subsidy payments to parliament.

PT fares are controlled (regulated) in most urbanised areas in the world. Such cities use different type of fare structures, such as, graduated fares, flat fares, multi-journey tickets, zonal fares, peak/off peak fares, contra-flow fares, seasonal fares, special fares (school children, senior citizens, PWDs, essential services staff, etc.)

Some cities in developed countries now provide their citizens with free PT services. That means, just like parliament appropriates money for infrastructure development and maintenance, it also appropriates money to provide **‘free’** PT services. It is argued that road infrastructure is the hardware and transport is the software. For infrastructure to deliver transportation must be efficient and affordable. An equitable PT neutralises social classes and promotes inclusivity. A good PT is often desired to curtail the growth of private car to reduce congestion and for environmental sustainability reasons.

It should be noted that, using technology, both urban and inter-city fares are controlled in our neighbouring country of Rwanda using the regulator RURA. In the city of London, we have many operators whose PT buses are painted red and operate on one controlled route network and a cashless fare platform controlled by an organising authority called Transport for London. The framework to administer regulated fares, as is in Rwanda and London, include all stakeholders.

To regulate fares, government require policy, legislative, regulatory and institutional frameworks to be able to provide a controlled fare regime that is based on correct cost parameters. It is the duty of parliament to ensure the above frameworks are in place first before allowing government to control fares in a free market economy.

### **Pricing in Public Transport**

To price (cost account) PT, let us look at some expenses which can be divided into three cost drivers – time related, vehicle related and kilometre related. To arrive at the correct fare payable

by a passenger from point A to B, the below listed costs should be considered as per the type of vehicle, kilometres operated and hours operated.

- a. Labour Costs – salaries for drivers, conductors and mechanics, platform staff
- b. Other Labour Costs – PPEs, NSSF, SHIF, Housing Levy, allowances (leave, house, travel, WIBA)
- c. Fuel Costs
- d. Tyre Costs
- e. Insurance Cost – comprehensive, third party, own damage, insurance excess
- f. Vehicle Maintenance Costs
- g. Advance Tax Costs - never refunded even when one makes loses
- h. Annual Dock / Annual Vehicle Inspection Costs
- i. Road Service Licence Cost
- j. Ticketing Costs
- k. IT costs
- l. County Parking Fees – payable to every County where PT vehicle passes
- m. Compliance Costs - Anti-theft devices, speed governors,
- n. Depot Parking / Security fees
- o. Vehicle Cleaning Costs
- p. Cash Bails, Court Fines and Impounding Fees
- q. Illegal Stage Commissions extorted by untaxed individuals at every stage
- r. Sundry Road Expenses – Bribes to county askaris, police and court officials, etc.
- s. Management Fee levied by operators (Sacco and Companies)
- t. Overheads - admin staff, electricity, land rates, telephone, stationary, etc.
- u. Loan Repayment - principal and interest (36 months at 18% interest rate)

**Note:**

It should be noted that most government institutions use a price control mechanism on mileage claims. They use predefined rates, such as, **Automobile Association of Kenya (AA) rates**. Such rates are calculated using a model that considers costs such as the ones listed above.

It should further be noted that three major costs in PT operations, that is, **Fuel** is regulated by EPRA and **Insurance** is regulated by IRA with no complaints from the Competition Authority of Kenya. **Labour Cost** is subject to the government controlled Minimum Wage Guidelines under the Labour Laws.

In fact, most costs of operating a PT vehicle are inscribed in law. For example, a PT vehicle must:

- a. Comply with all Labour Laws
- b. Operate under a Sacco or Company
- c. Pay County Parking Fees
- d. Clean vehicles at all times
- e. Have crew who are uniformed, with Police Compliance Certificate and NTSA Badge
- f. Issue passengers with Cashless Ticket
- g. Fit a tracking device and a speed governor
- h. PT vehicle fitted seat belts - even if one is operating in an urban area
- i. Carry a Fire Extinguisher and Reflectors
- j. Have a TP Insurance
- k. Have a Road Service License
- l. Inspect vehicles annually
- m. Pay Advance Tax



All the above legal requirements increase the cost of doing business hence making PT operation a loss-making enterprise. It should be noted that most PT operators collapse after a few years of operation. International investors such as United Transport and Stagecoach pulled out of PT operation in Kenya and since then we have not attracted any new ones. This is because of the operation and business environment where the licencing regime is not aligned to international best practice. For example, routes are over buses and PT fares applied in Kenya are not based on proper costing. Regulated fares will ensure operators charge passengers fares that have a costing basis.

For the profit-oriented enterprises such as Kenya's private sector driven PT, a costing model that provides **Gross Cost Contract - plus margin** will be ideal. This can only be done in a jurisdiction where regulated fares are reviewed regularly by a PT Management Board. The Board composition should be made up of all stakeholders. The stakeholders should sit down to agree on costing parameters or a pricing formula similar to the one used by the Energy and Petroleum Regulatory Authority (EPRA).

### **Regulated Fares and a Free Market**

Note that the current operator is used to carrying at 100% load factor at the start of a journey and reacts to market forces of supply and demand by charging less fares during low demand and high fares during high demand. Currently the private operator adjusts fares depending on seasonality or peak / off peak. Factors, such as, school holidays, rain, time of day, availability of competition, etc create a spike in fare pricing. Intercity operators, also, adjusts fares depending on who booked first and who booked last, for example, during Easter and Christmas seasons, etc.

The above phenomenon is typical of a free market and is often seen in airlines fare pricing. In this scenario travel is just like any other valuable commodity that reacts to the law of supply and demand in a perfect market.

Unfortunately, there are no complaints made at airlines when they use Amadeus airline ticketing system to charge fares based on market forces of supply and demand but a lot of complaints are made when PT uses stage cartels to charge fares based on passenger demand and supply. This is perhaps because of the **inability to pay** of a PT passenger whose disposable income is limited compared to the airline passengers. It could also be noted that in PT a large number of members of public (passengers) are affected.

Modern principles of providing PT requires a controlled market (not a free market) where there are rules of entry and exit using a fair licencing regulatory regime. During the era of TLB Act, when fares were controlled, the TLB controlled the number of vehicles to be licenced on a route to and from a destination. TLB Board travelled to every region and used data and public participation to license operators.

Under TLB Act there was **competition for the routes** instead of **competition for passengers** which is the case under the National Transport Safety Authority (NTSA) Act now. There were consultations in a public forum between the regulator, provincial administration, consumers and all operators. TLB endeavoured to licence an optimum number of buses or operators to or from a particular destination to minimise unfair and wasteful competition. TLB also made great effort towards removing cartels on routes, stages and terminals, who in most cases determine fares chargeable.

During the TLB era, every operator was required to file with TLB a fare table, time table and to display a Condition of Carriage at the head office. Under NTSA Act, now, it is a free for all where free or perfect market forces principles have collapsed. Fares are controlled by illegal stage cartels

who are not alive to the mechanisms of a pricing formula. Fares are either too high or too low (predatory pricing). Passengers or vehicle owners are often held at ransom.

Enforcement is lacking or is compromised by corruption. Illegal operators who are not compliant with the above-mentioned laws are often left to roam the market giving compliant operators a run for their money. The result is; every operator decides to start cutting corners by breaking the law. With limited revenue, the vehicle owners reduce vehicle maintenance expenses leading to increased accidents. Workers' terms of employment get worse. Investing in new vehicles stalls.

The fact that there is no fare control means passengers and vehicle owners are left at the mercy of illegal cartels or crew. Operators (Saccos and Companies) continue to collect their management commissions from vehicle owners without caring about the vehicle owner's profitability. The owner of the vehicle loses control of his PT business but he / she is the one who takes the beating when passengers are overcharged or undercharged. It is well known that the overcharged amounts arising out of malpractices, such as, carrying excess passengers never reaches the business owners but he/she often takes the blame or insurance risk.

The beneficiaries who are, the enforcement officers who abate traffic violations, the crew who break the law and the stage cartels who set un-predicable fares, often get away scot-free.

Whereas passengers complain of being charged high fares, often set by stage cartels, during high demand or even when it rains, operators complain of very low fares (predatory pricing) when there are few passengers (low demand), when the same stage cartels, charge fares that are below the cost of providing the service. Over charging or under charging fares should both be punishable by the Competition Authority of Kenya. Over supply of vehicles (legal and illegal) has led to cut throat, unfair and wasteful competition.

It should further be noted that passengers complain only when the fares are high but they never complain when fares are below the cost of providing the service. Politicians are more concerned with high fares but do not try to find out why the Competition Authority of Kenya never prosecutes those operators who apply predatory pricing, with some under cutting fares or even carrying passenger for free, when they get a license to operate a route where there are other operators.

Fares need to be controlled, because Competition Authority of Kenya whose mandate is to enforce the Competition Act No.12 of 2010 with the objective of enhancing the welfare of the people of Kenya by promoting and protecting effective competition in markets and preventing misleading market conduct throughout Kenya is dysfunctional when it comes to overseeing competition in PT provision. Equally the PT regulator NTSA has been unable to regulate the passenger market in terms of standards, tariffs and the entry and exit of PT vehicles and operators (Saccos and Companies).

The paratransit transport that we operate today in Kenya does not benefit the operator, the vehicle owner (investor), the passenger, the staff or the government. See externalities as mentioned above.

### **Enablers to a Regulated Fare Regime**

Looking at scenarios mentioned above, there is a justification for regulation of fares in PT. If done well, operators, passengers, staff and the government will stand to benefit. But to do so, the following need to be put in place.

- a. Framework – There will be need to put in place a Fare Policy, amend the Traffic Act and the NTSA Act, develop regulations and insure Nairobi Metropolitan Transport Authority

- (NaMATA), NTSA, Competition Authority of Kenya, Transport Licensing Tribunal and National Police Service work as a team.
- b. Route Network Plan – NTSA and County government will have to develop a countrywide and countywide PT Route Network Plans. The network plans will have to have data on aspects, such as, kilometres, stages, PT infrastructure, staff, vehicle makes, types and specifications, operators, etc.
  - c. Licensing Regime – NTSA will have to start issuing PT Operators with an Operator's Licence of 5 – 15-years that allows operators to compete for routes and not passengers.
  - d. Regulate taxis, two and three wheelers - County government will need to put in place robust mechanisms of regulating taxis, probox, tuk tuks and boba boda
  - e. Externalities – The State Department of Transport (SDoT) will have to develop a policy that will assist curtail externalities (*listed above*) in paratransit operation and promote formal PT operators
  - f. Capacity Building for Regulator and Transport Committees at County level – For fare regulation to take effect, there is need to train investors and operators on pricing. The regulator will need to capacitate the PT licencing department at NTSA and in Counties to be able to have both the tools to capture PT operation costs and to recruit and train staff that can do the job.
  - g. Capacity Building for Operators – There will be need for Operators and their staff to be trained on how to operate under the new law where fares are regulated.
  - h. Enforcement – There will be need to ensure that enforcement officers have the tools and wherewithal to enforcement compliance and where violations are seen legal action to be taken without taking bribes. Otherwise, this will be an avenue for enforcement officers to enrich themselves at the expense of operators.
  - i. Centralised Automatic Fare Collection – There will be need to put in place a government funded central fintech switch to enable cashless fare transactions to take place. To enforce compliance with fares regulations, every PT operator will have to give each passenger a form of receipt or ticket for every journey made. Using technology this should be possible.
  - j. Removal of Cartels from Stages – There will be need for County governments together with security agencies to remove cartels from stages / terminals and provide their own County staff to manage the stages. This could also be done under a National Youth Service recruitment program or Kazi Kwa Vijana.
  - k. Collection of Data – NTSA and operators will have to collect data that can be used to cost PT operation and set fares for each category of vehicle per kilometre or hour of operation
  - l. Dispute Resolution Mechanism – There will be need to rejuvenate and fund the Transport Licensing Tribunal so that those operators who may be denied a licence or feel that the fare tariffs given to them do not reflect the cost of operating the route and are therefore aggrieved could seek redress in the Tribunal, as used to be then when Transport Licensing Tribunal was functional.
  - m. Priority Measures – The government will have to put in place PT priority measures, using both economic and political instruments, over private transport, such as, subsidised fares for socially disadvantaged, a progressive licencing regime, a friendly tax regime, traffic management, use of road space, staggering start and finish of working hours, etc.
  - n. County PT Laws – PT being a devolved function there will be need for the Council of Governors (CoG) to harmonise county transport laws across the 47 counties with the NTSA Act.
  - o. Creation of multi-stakeholder National PT Management Board or Committee under NTSA Act with powers to regulate fares that will work closely with County Transport and Safety Committee at County level.

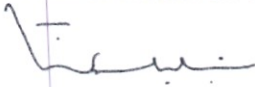
### **Benefits of a Regulated Fares**

- a. Passengers – Fares will be predictable. There will be no overcharging. Operators will now maintain their vehicles well and be able to invest in new safe, reliable and comfortable rolling stock.
- b. Operators – Operators will have a level playing field. There will be no fare undercutting and revenue leakages will reduce due to cashless fare collection system. Correct pricing will lead to profitability. The ease and cost of doing business will reduce.
- c. Staff – They will get social protection and descend jobs.
- d. Government – National and County governments will have a quality PT system which will lead to a better quality of life. It will be able to bring more operators and workers in PT under its tax bracket.

**If the above aspects are considered, regulation of fares is the way to go. We will support the Bill to regulate fares in PT industry.**

Thank you.

Your Faithfully,  
For: FEDERATION OF PUBLIC TRANSPORT SECTOR



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## MEMORANDUM ON THE NATIONAL TRANSPORT AND SAFETY AUTHORITY (AMENDMENT) BILL 2023

S/NO	PROVISION	PROPOSAL FOR AMENDMENTS	RATIONALE/JUSTIFICATION
1.	<p>Clause 2</p> <p>The National Transport and Safety Authority Act in this Act referred to as the "principal Act") is amended-</p> <p>(a) by renumbering the existing provision as subsection ( 1 ); and</p> <p>(b) by inserting the following new subsection immediately after subsection (1) -</p> <p>"(2) Without prejudice to the generality of subsection (1), the Cabinet Secretary may in consultations with the Authority make regulations prescribing-</p> <p>(a) the maximum and minimum fares payable by the passengers in the public service vehicles within the country;</p> <p>(b) the mechanisms of reviewing fares in the public service motor vehicles;</p>	<p>a. Amend clause 2 by inserting after the phrase "is amended" the following " in section 54"</p>	<p>The Commission notes that the section sought to be amended is not quoted and we opine it is section 54 on Regulations.</p>

	<p>( c) the measures for ensuring that fares imposed are fair and reasonable;</p> <p>(d) the modalities by which public service vehicles retain copies of timetables and fare tables to be displayed for all passengers to see; and</p> <p>( e) the means of ensuring that safety of the passengers in the public service vehicles is guaranteed."</p>	<p>b. Amend subclause (2) 2)e) by inserting after the phrase "safety" the following  ", dignity and comfort"</p>	<p>The Commission is concerned about the number of ills committed against fare-paying passengers in public vehicles including harassment, abuse (physical, sexual and verbal), playing and displaying inappropriate media, cramped seats without adequate leg room and poor hygiene and dirt of both seats and interiors.</p> <p>Article 28 of the Constitution states that every person has inherent dignity and the right to have that dignity respected and protected.</p>
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**General Comment**

The Commission lauds the proposed amendment on the regulation of fares which is timely. Many special interest groups go through a lot of diverse abuses and harassment from public service vehicles as fare-paying passengers. Disagreements on the fare payable has led to the death of some passengers as a result of being thrown out of moving vehicles or being dropped off at unfamiliar stages. The issue of regulating fares has been adequately addressed, however, the Commission is of the opinion that there are other ills that need

to be specifically regulated as proposed for amendments to (2)2)e which will ensure not only the safety but also comfort, and dignity of the passengers on board and invites the house to consider them.

The proposed amendments are in line with section 4(2)(c ) on the Regulation of public service vehicles.