

# KENYA NATIONAL ASSEMBLY

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EIGHTH PARLIAMENT  
FIFTH SESSION

PARLIAMENT  
OF KENYA  
LIBRARY

**REPORT OF THE  
DEPARTMENTAL COMMITTEE ON  
ENERGY, COMMUNICATIONS &  
PUBLIC WORKS  
ON  
OPERATIONS OF KENYA ROADS  
BOARD**

APRIL, 2001

**REPORT OF THE DEPARTMENTAL COMMITTEE ON ENERGY COMMUNICATIONS AND PUBLIC WORKS ON THE ACTIVITIES OF KENYA ROADS BOARD**

Mr. Speaker Sir,

On behalf of the Departmental Committee on Energy Communications and Public Works, I beg to lay on the table of the House the Report of the Committee on the activities of Kenya Roads Board pursuant to the provisions of Standing Order No.162.

**MANDATE**

The Committee was constituted at the commencement of the Eighth Parliament pursuant to the provisions of Standing Order No.151 and has executed its mandate in strict compliance with the provisions of the said Standing Order. The members of the Committee are:-

The Hon. Darius M. Mbela, M.P. (**Chairman**)  
The Hon. Basil N. Mwakiringo, M.P.  
The Hon. Jimmy Angwenyi, M.P.  
Dr. the Hon. Shem Ochuodho, M.P.  
Eng. the Hon. Karue Muriuki, M.P.  
The Hon. J. M. Kiyon'ga, M.P.  
The Hon. Ramadhan Kajembe, M.P.  
The Hon. Zipporah Kittony, M.P.  
The Hon. Mohammed Shidiye, M.P.  
The Hon. Samuel K. Kiminza, M.P.  
The Hon. Stephen Ndicho, M.P.

Standing Order No. 151(e) states that one of the functions of the Departmental Committees will be to 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 or a Minister.

Standing Order No. 151(f) states that another function of a Departmental Committee is "*to make reports and recommendations to the House as often as possible including recommendation of proposed legislation*". In this respect the Committee has closely followed the activities of Kenya Roads Board from its inception to date because construction and maintenance of

public roads are some of the subjects which fall within the mandate of the Committee.

### **ACTIVITIES OF KENYA ROADS BOARD**

Kenya Roads Board Act of 1999 gave provisions for the establishment of a Kenya Roads Board, which started its operations in July 2000. The object and purpose of the Board are clearly stated in section 6(1) and (2) of the Act which state as follows:-

*6(1) The object and purpose for which the Board is established is to oversee the road network in Kenya and thereby coordinate its development, rehabilitation and maintenance and to be the principal adviser to the Government on all matters related thereto.*

*(2) Without prejudice to the generality of subsection (1), the Board shall-*

*(a) co-ordinate the implementation of all policies relating to the development, rehabilitation and maintenance of the road network.*

*(b) co-ordinate the development, rehabilitation and maintenance of the road network with a view to achieving efficiency, cost effectiveness and safety;*

*(c) administer the funds derived from the fuel levy and any other funds that may accrue to it;*

*(d) determine the allocation of financial resources from the Fund or from any other source available to the Board required by roads agencies for the development, rehabilitation and maintenance of the road network to ensure that the allocation of funds is pegged to specific categories of roads and not less than –*

*(i) twenty-four per cent of monies from the Fund is allocated equitably to District Roads Committees; and*

*(ii) sixteen percent of the monies from the Fund is*

*allocated equally to all constituencies in the country.*

- (e) monitor the operations or activities undertaken by road agencies in the development, rehabilitation and maintenance of roads and evaluate, by means of technical, financial and performance audits, the delivery of works;*
- (f) ensure that all procurements for the development, rehabilitation and maintenance of roads or other associated works, funded out of the Fund or other funds are conducted in accordance with the guidelines and criteria set out by the Board;*
- (g) recommend to the Government appropriate levels of road user charges, fines, penalties, levies or any sums required to be collected under the Road Maintenance Levy Fund Act, 1993 and paid into the Fund and recommend such periodic reviews of the fuel levy as are necessary for the purposes of the Fund and other potential sources of revenue for the development, rehabilitation and maintenance of roads which could be made available to it for the performance of its functions;*
- (h) advise the Minister on –*
  - (i) the research and studies necessary for promoting the development, rehabilitation and maintenance of roads;*
  - (ii) the specifications, design standards and classification of roads;*
  - (iii) the types, sizes and usage of vehicles on roads and the laden and axle weight and axle load limits of vehicles for purposes of protecting roads from damage and;*
  - (iv) the development and training of human resources required for the development, rehabilitation and maintenance of roads.*

In order to enable the Board to operate Section 31(1) of the Act states that *“There is established a Fund to be known as the Kenya Roads Board Fund which shall vest in the Board”*.

(2) There shall be paid into the Fund all proceeds from the Road Maintenance Levy Fund”.

From the foregoing it is worthy noting that all proceeds from the Road Maintenance Levy should be sent directly to Kenya Roads Board from the Kenya Revenue Authority of Ministry of Finance. By 9<sup>th</sup> March 2001 the Ministry of Finance had collected Kshs.5,569,302,337.15. Contrary to the provision of the Section 31(2) of the Act the Minister dispatched Kshs.5,568,669,221.80 in the following manner; 79% to the Ministry of Roads and Public Works and 21% to the Ministry of Local Government. Since there are no provisions of such percentages in the Act the Minister should inform this House how the percentages were arrived at, by who and why the Act was ignored in favour of these percentages. By March, 2001, the total collection by the Ministry of Roads and public Works from the Roads Maintenance Levy Funds was Kshs.4,501,773,137.20. Attached, here find a list which shows that by 5<sup>th</sup> April, 2001, the Ministry of Roads and Public Works had disbursed only Kshs.346,917,531.25 to the constituencies which translates to 7.7% of collection instead of 16%.

The Committee was informed that out of the 3% of the funds collected which is supposed to be passed to KRB for its maintenance Kshs.121,746,977 is with the Ministry of Roads and Public Works while Kshs.116,213,023 is with the Ministry of Local Government. The Committee was further informed that the amount with the Ministry of Roads and Public Works has been reserved for the intended purpose while nothing is known about the amount with the Ministry of Local Government. There is no explanation as to why 24% of the collected funds which should go to the Districts have not been disbursed neither is the Committee aware when this will be done. It is suspected that the Ministry plans to spend the money on on-going projects whose priorities have been chosen by the Ministry.

By March, 2001, the Ministry of Local Government had received Kshs.1,372,082.179.00 from the Fund. Since the Ministry has not been named in the Act as a beneficiary of the funds, this House must be informed why the funds were sent there and why the above named Ministry has not disbursed the amount to Kenya Roads Board.

Section 12(1) of the Act states that *“There shall be an Executive Director of the Board who shall be appointed by the Board in consultation with the Minister and whose terms and conditions of service shall be determined by the Board in the instrument of appointment or otherwise in writing from time to time”*. So far no convincing reason has been given to the Committee to explain why the Executive Director has not been appointed. The Ministry also refuses the option of seconding a senior officer to start the Board.

Section 34 of the Act states that *“The Financial Year of the Board shall be the period twelve months ending on the thirtieth June in each year”* while Section 35 (1) of the Act states that *“At least three months before the commencement of each financial year, the Board shall cause to be prepared estimates of the revenue and expenditure of the Board for that year”*. Since no monies have been received by the Board, the Committee fears that the Board will be unable to meet this requirement of the Act.

Section 36(4) of the Act states that *“The Board shall inform and keep the public informed of all its activities and operations through regular publications and such activities and operations shall be accessible to the public unless there are reasons of commercial confidentiality or security justifying exclusions”*. So far the Committee, the House and the public at large have not seen any publications explaining the activities which have been going on in the Board.

In such publications, the House and the public would learn why the Executive Director has not been appointed, the reasons why funds are dispatched to the Ministries instead of Kenya Roads Board and why the Board has no operational Bank Account.

Mr. Speaker Sir,

The Committee is aware that in the Miscellaneous Civil Application No.1372 of year 2000, Kenya Roads Board Act was contested in Court and on 27<sup>th</sup> February, 2001, judgement was passed concerning the Act. The Judge declared that Section 17(1) of Kenya roads Board Act is inconsistent with the Constitution to the extent that Members of Parliament participate in the activities of the District Roads Committees in Executive capacities. The Committee is also aware that the Board has appealed against this ruling through its Lawyer. With regard to the said ruling and appeal, the Attorney-General should inform the House about the way forward for Kenya Roads Board. The Attorney General was not available to attend a sitting of the Committee on 23<sup>rd</sup> April, 2001 to discuss the matter.

Finally, the Committee appeals to the House to take note of the provisions of Section 39 (1) of the Act which states as follows:-

*“Any person who appropriates or applies or causes any other person to appropriate or apply, any proceeds or assets of the Board or the Fund otherwise than in accordance with the Act or the directions of the Board shall be guilty of an offence upon conviction be liable in addition to any other penalties which the Board may prescribe to the penalties prescribed in the Penal Code, Cap 63 of the Laws of Kenya.”*

### RECOMMENDATIONS

The Committee recommends that the House resolves as follows:-

- (i) That, pursuant to the provisions of Section 12(1) of the Act, the Executive Director of the Board should be appointed by 10<sup>th</sup> May, 2001 failing which a senior officer will be seconded from the Ministry to attend to the affairs of the Board.
- (ii) That, no further disbursements should be made by the Ministry of Finance to the Ministry of Local Government and the Ministry of Roads and Public Works.
- (iii) That, the provisions of Section 31 (1) and (2) of the Act should be strictly adhered to.
- (iv) That, all funds emanating from the Road Maintenance Levy Fund which have been disbursed to the Ministry of Local Government and the Ministry of Roads and Public Works should be disbursed to Kenya Roads Board by 10<sup>th</sup> May, 2001.
- (v) That, the House adopts this report of the Committee and resolves accordingly.

SIGNED:.....

  
(CHAIRMAN)

DATE:..... 26<sup>th</sup> April, 2001 .....

TABLE 1: TRANSIT TOLL AND ROAD MAINTENANCE LEVY FUND COLLECTIONS TO DATE

TRANSIT TOLL		ROAD MAINTENANCE LEVY FUNDS				
Date	Toll Collections	Tranches	Date	MRPW Share Collected to date	MOLG Share Collected to date	
J.n. 2000	15,794,203.10	1st Tranche	11th Aug. 2000	528,568,460.00	140,505,540.00	
J.jl. 2000	10,180,384.15					
Aug. 2000	14,310,392.95					
Oct. 2000			3rd Oct. 2000		92,618,343.00	
Sep. 2000	15,251,994.80	2nd Tranche	2nd Nov. 2000	1,592,000,000.00	423,000,000.00	
Oct. 2000	15,601,709.55					
Nov. 2000	17,557,747.65	3rd Tranche	8th Dec. 2000	552,999,990.25	147,000,000.00	
Dec. 2000	15,162,558.65					
		4th Tranche	23rd Jan. 2001	869,540,000.00	231,000,000.00	
				9th Feb. 2001		28,629,595.00
				9th Feb. 2001		86,238,701.00
Jan. 2001	14,895,696.10	5th Tranche	27th Feb. 2001	501,000,000.00	133,000,000.00	
		6th Tranche	13th Mar. 2001	338,910,000.00	90,090,000.00	
Transit Toll Collections	118,754,686.95	Total RMLF Collections by both MRPW and MOLG		4,383,018,450.25	1,372,082,179.00	
		Total Collections by MRPW and MOLG		4,501,773,137.20	1,372,082,179.00	
Total Road Maintenance Levy Fund and Transit Toll Collections by MRPW and MOLG up to March 2001					5,873,855,316.20	

\*\* Transit Toll (Ksh. 15,090,544.45) received on 4th Apr. 2001 and Road Maintenance Levy Funds (Ksh. 328,000,000.00) received on March 30th 2001 by MRPW are being prepared for disbursement.



Table 5: Road Maintenance Levy Funds and Transit Tolls Receipts and Disbursement Profile

Agency/	Agency % as per KRB Act 1999	Proposed Ministry Contributions		Total Receipts and Disbursements to agencies by MRPW	Total Receipts and available for disbursement to agencies from MOLG	Total Disbursed and available for disbursement from MRPW and MOLG
		Ministry	Contributions			
Kenya Roads Board	3%	MRPW	121 746.977 00	78.621.468.92	* 95.726.663.50	78.621.468.92
		MOLG	116 213.023.00			95.726.663.50
		Total	237 960.000 00			78.621.468.92
Roads Department	57%	MRPW	4.521.240.000.00	3.574.593.934.39		3.574.593.934.39
		Transit T	180.000.000.00	118.754.686.95		118.754.686.95
		Totals	4.701.240.000.00	3.693.348.621.34		3.693.348.621.34
DRC - Constituency DRC - District on going works		MRPW	537.209.303.00	346.917.531.25		346.917.531.25
		MRPW	1.086.083.721.00	382.385.516.18		382.385.516.18
			1.623.293.024.00	729.803.047.43		729.803.047.43
DRC - Constituency DRC - District on going works		MOLG	512.790.697.00		* 422.394.506.48	422.394.506.48
		MOLG	1.036.716.279.00		853.961.009.02	853.961.009.02
			1.549.506.976.00		1.276.355.515.50	1.276.355.515.50
District & Constituency	40%		3.172.300.000.00	729.803.047.43	1.276.355.515.50	2.006.158.562.93
KWS		MRPW				
		MOLG				
		Total				
Totals			8.112.000.000.00	4.501.773.137.69	1.372.082.179.00	5.873.855.316.20

\* These Funds are with the Ministry of Local Government

Percentage Total Received and Disbursed or available for disbursement to agencies as per the KRB Act 1999